LEGAL FRAMEWORK- CARBON CREDITS

By ***Yamini Praveen Singh***

Senior Manager Law, South Eastern Coalfields Limited, Bilaspur, Chhattisgarh, India

HISTORY OF CARBON CREDITS

The popular term today in India finds its genesis, dating back to 1989 in America, where an American company called AES Corp financed an agri forest in Guatemala to offset its emissions of coal fired power plant in Connecticut.

The term was given an international recognition with the Kyoto protocol of 1997 whereby developed countries found carbon offsets as a mechanism to reduce carbon footprint and emissions and carbon credits as a motivator. Resultantly, Carbon as a tradeable commodity was recognised in 1997, 2005 and again in 2015 in the Paris agreement.

India recognised carbon as a “good” as late as 2008 and declared trading of carbon credits on multi commodity exchange.

WHAT DOES ONE MEAN BY CARBON CREDIT?

Technically speaking carbon credit refers to any tradable certificate or permit reflecting emissions reductions i.e. to say that when an entity reduces its carbon emissions beyond its set targets, it is required to be rewarded. This tangible form of appreciating the reduction of carbon emissions is carbon credits.

Scientifically one carbon credit is equal to 1 tonne of CO2 or other equivalent greenhouse gases.

INDIA AND THE CARBON CREDIT RENAISSANCE

Inspite of there being no formal recognition and policy, a self conscious effort has been made by many Indian companies and government bodies towards generation of carbon credits and the sale thereof. For instance a Mumbai-based Indian company was the first Indian company to sell 20,000 credit generated from agriculture by running a crop residue management programme and avoiding more than 1,000,000 tonne of CO2 along with other pollutant gases. The Delhi Metro is also the first metro project registered with UN under CDM[i] in 2007 and has a record of sale of 3.55 million credits generated from 2012 to 2018, earning a revenue of Rs.195 million.

Indore municipal Corporation is the first Indian civil body to earn carbon credits worth Rs 50 lakhs against 1.7 lakh tonnes of CO2 emission.

As per report published in the ETA energy world, it is estimated that from the year 2010 to 2022, India has issued 33.94 million carbon credits and has also traded such carbon credits on international global markets.

However, it is only after the Energy Conservation amendment Bill 2022 that carbon credit has been legitimised by the Indian government.

GOVERNMENT POLICIES ON CARBON CREDIT AND CARBON CREDITS TRADING

In order to achieve COP 26[ii] commitments, the Indian Energy Conservation Act, 2001 was amended through Energy Conservation Amendment Act 2022 which was brought into force from January 1, 2023. This act has empowered the central government, Ministry of power to formulate and regulate the carbon trading scheme under section 14 and issue carbon credit certificates under section 14AA.

Amendment also introduces a state energy conservation fund which will be utilised for meeting the expenses of the designated agency and for furthering the object and purpose of the act. The amendment also introduces penalty of maximum 10,00,00 rupees and a penalty of Rs.10,000 per day for continuous failures, or non-compliance of the provisions of section 14.

It is pertinent to mention here that the globally the carbon markets are essentially of two categories:

Voluntary markets and compliance markets.

The voluntary market as the name suggests works on voluntary solution to set up carbon offset projects or take steps to reduce emissions by the companies as a matter of consciousness towards adding positively to climate change. On the other hand, the compliance market runs on a cap and trade mechanism where as per a regulation or a law, there is a mandate to reduce the carbon emissions or a mandate to emit greenhouse gases to particular limit.

Vide notification dated 28 June 2023. The central government in consultation with the bureau of energy efficiency notified the carbon credit trading scheme 2023. This scheme is based on the cap and trade mechanism.

Vide notification dated 12 October 2023, the Ministry of Environment, Forest and climate change notified the Green Credit Rules, 2023. These rules are based on voluntary market mechanism.

SALIENT FEATURES OF THE CARBON CREDIT TRADING SCHEME 2023

A. The scheme defines the following expressions and phraseology:

Carbon credit - means the value assigned to reduction or removal or avoidance of greenhouse gas emissions achieved and is equivalent to 1 tonne of carbon dioxide equivalent.

Accredited carbon verification agency - means an agency accredited by the bureau to carry out verification activities under the scheme.

Commission means the Central Electricity Regulatory commission as defined in section 76 of the Electricity Act, 2003

Compliance mechanism - means a mechanism under the scheme where the obligated entities shall comply with the greenhouse gas emission norms, as may be notified by the central government.

Meta registry - means the national greenhouse gas registry that will serve the following purposes

1. Data management
2. Transaction with features of establishing the linkage with any national or international registry

Non-obligated entities - means registered entities that can purchase the carbon credit certificate on voluntary basis.

Obligated entities - means registered entities that are notified under the compliance mechanism.

Registry - means the agency designated as such to perform such functions as defined in respect of the scheme.

B. The governance of the Indian carbon market and direct oversight of its functioning shall vest with a national steering committee formed by central government which will have members of the rank of secretaries and joint secretaries from various ministries like Ministry of power, finance, environment, steel Coal et cetera.

C. The national steering committee will recommend to the bureau the formulation and finalisation of procedures for the Indian carbon market. It would also formulate guidelines regarding trading of carbon credit certificate outside India. It would recommend to the bureau to issue carbon credit certificate, and also renewal or expiry of such certificate.

D. As per clause 5 of the scheme, the Bureau of Energy Efficiency shall act as the administrator for the Indian carbon market. The Bureau will develop trajectory and targets for the entities under compliance mechanism. It would issue carbon credit certificates based on the recommendation of the national steering committee and subsequent approval of the central government It will also develop procedure for accreditation and functions of accredited carbon verification agency. It will develop data submission formats and forms for effective functioning of Indian carbon market.

E. As per clause 6, the Grid Controller of India Ltd shall act as a registry for the carbon market.

The registry will undertake registration of obligated or non-obligated entities and shall maintain record of all transactions. It will function as meta registry for India.

F. The Central Electricity Regulatory Commission shall be the regulator of the trading activities of the carbon market.
The Commission shall register power exchanges and approve carbon credits certificates trading in the Indian carbon market from time to time
The power exchange, shall seek approval of the commission for their respective bylaws and rules for trading

G. The sectors and obligated entities to be covered under the compliance mechanism shall be decided by the Ministry of power based on the recommendation of the bureau.

H. The Ministry of Power after considering the recommendation of the bureau and national steering committee shall recommend the notification of greenhouse gases emission intensity targets, to the Ministry of Environment.

I. the obligated entity shall be required to achieve this target. The obligated entities shall be issued Carbon credits certificates for the achievement in reducing the greenhouse gas emission intensity exceeding the target set for such obligated entities. The obligated entities who do not achieve the targets shall meet short fall by purchasing carbon credit certificates from Indian carbon market.

Though regulation wise the arena of carbon credit market in India is at a nascent stage and there is ambiguity and uncertainty as to the procedures and regulations that will form part of the scheme. However India's first carbon trading market is about to be set up in Gujarat on the cap and trade scheme. For this an MoU has been signed between Gujarat government, EPIC India (the Energy Policy Institute at the University of Chicago, Trust in India) and J- PAL (Abdul Latif Jameel Poverty Action Lab).

SALIENT FEATURES OF THE GREEN CREDIT RULES 2023

A. Green credit generated or procured to fulfil any obligation in compliance of any law for the time being in force shall not be tradable.

B. The activities that account for green credit include :

(i) tree plantation

(ii) water management.

(iii) sustainable agriculture

(iv) waste management

(v) air pollution reduction

(vi) mangrove conservation and restoration

(vii) ecomark label development

(viii) sustainable building and infrastructure

C. The activity is required to be registered electronically with The Indian Council of Forestry Research and Education (Administrator). The activities will be verified by a designated agency. Post verification the green credits shall be issued by the Administrator.

D. A Steering Committee to be constituted by the Central Government shall be responsible for the monitoring of the implementation of the Green Credit programme.

E. The Administrator or designated agency shall establish and maintain a Green Credit Registry for the registration and issuance of each Green Credit.

F. The Administrator shall establish and maintain a trading platform with the approval of the Central Government.

ISSUES WITH THE GREEN PROGRAMME

The Program is completely voluntary and has no deterrent effect associated with it.

There is no clarity as to how the green credits will be calculated. What is the trading forum and how will trading be augmented in a sector which is purely based on an ideology of good karma.

HOW TO REGISTER FOR CARBON CREDITS IN AN INTERNATIONAL MARKET

For the voluntary model, the company registers itself with international platform like VERRA[iii] and submits its project report.

The report is put up by VERRA for public comments and on submission of the final project report the same is submitted to an Auditor.

The validation of the project shall be done by the Auditor

VERRA will register the project with itself.

Then the emissions and the activity will be monitored.

The company shall apply for validation of the emissions to the Auditor.

The auditor will verify and validate the emissions and submit to VERRA

VERRA in turn will issue the credits.

For the CDM model, the company's application and project is required to be approved by the host country, first and then the project report is submitted to the CDM Board.

The CDM Board follows the same process of getting the project validated by an accredited auditing agency and so on and so forth.

PROBLEMS LIKELY TO BE ARISE

Double Counting - CIL and its subsidiaries work on an outsourcing model for its mining and maintenance activities. Projects that shall earn carbon credits will lead to a situation where claims on those carbon credits can be made both by CIL and the contractor concerned.

Alternatively, if the activity leads to non achievement of the emission targets, who shall be penalised and who shall bear the burden of purchase of carbon credits would be a matter of discussion and whether such additional financial burden shall be borne by the contracting agency will be a matter of dispute.

Therefore a separate agreement for Carbon credit sharing will have to be formulated to meet out contingencies as stated above and to answer questions like what treatment shall be given to a contract where the mining activity has been completed successfully but the emission standards were missed.

Whether such a contract shall be termed to have been successfully executed by the contractor or whether it would be considered as a failed contract?

ENDNOTES

[i]The Clean Development Mechanism (CDM) is a United Nations-run carbon offset scheme allowing countries to fund greenhouse gas emissions-reducing projects in other countries and claim the saved emissions as part of their own efforts to meet international emissions targets.

[ii]COP26 was the 2021 United Nations climate change conference

For nearly three decades the UN has been bringing together almost every country on earth for global climate summits – called COPs – which stands for 'Conference of the Parties

[iii] Verra is registered as a non profit corporation under the laws of the District of Columbia (Washington, DC, USA). Verra was founded in 2007 by environmental and business leaders which now manages the world's leading voluntary carbon markets program.