

WORKSHOP BACKGROUND PAPER No.1

SETTING THE LEGAL FRAMEWORK FOR TRANSACTION REGISTRIES

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1. Overview: A ‘register’ or a ‘registry’?

1.1 A sliding-scale of platform functionality

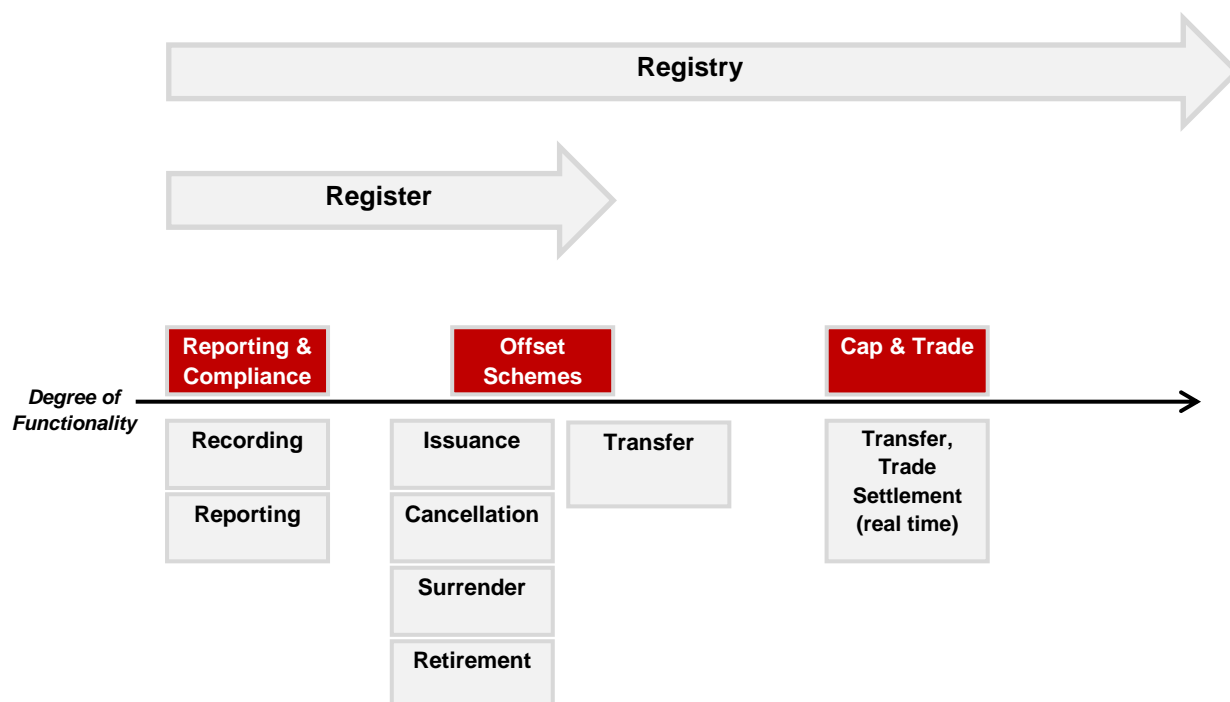
The context of environmental market mechanisms, the terms ‘database’, ‘reporting platform’ and ‘register’ have often been used interchangeably. The terms ‘register’ and ‘registry’ have also been used interchangeably. If all these terms are so interchangeable, then it raises the question, what, if any, is the difference between them? We start this chapter by inviting the reader to consider that there is, and should be, a distinction drawn between the type of transaction platform that is a ‘registry’ and the data and reporting management tool, that we have, for the purposes of this chapter, called a ‘register’. As described by the author for the purposes of this report, the key difference between a ‘registry’ and a ‘register’ is a sliding scale of legal and functional considerations that attach to them when developing and managing a ‘transaction registry’ for a carbon market. At the lower end of the scale, is an electronic database recording carbon or other environmental units (referred to herein as a “Register”), and at the other end, a multi-functional settlement and trading platform (referred to herein as a “Registry”).

For the sake of clarity, please note that the legal framework for a Registry requires all the framework requirements of a Register, plus more. The additional framework requirements are more complex and require a greater degree of legal and fiscal consideration. The primary reason for this requirement for greater certainty is recognition that at the top end of our sliding scale, the carbon asset held in the Registry will be treated as just that, an ‘asset’. As with all assets, the holder will wish to ensure it maintains its value and that it may be used as other assets are (e.g. it may be sold freely, pledged, used as collateral etc.).

1.2 Proposed modular approach

Whether under the framework of a new international climate change agreement or under the solutions independently chosen by each PMR/FCPF Participant country, it is impossible to prescribe a ‘one size fits all’ solution in this report. Therefore, it is recognised that, depending on where on the sliding scale each such country’s preferred option for its domestic market based policy in relation to greenhouse gas mitigation activity sits, the functional and technical and legal layers of sophistication of its legal framework to support that choice will need to match accordingly. For example, a country that merely adopts an obligation to adopt a self-reporting regime for its greenhouse gas emissions will not need much more than a Register; whereas a country that adopts a form of offset mechanism may require something closer to a Registry. In order therefore to assist the reader to advance its assessment of the degrees of sophistication that its legal framework may need to adopt, we have adopted a modular approach to our chapter.

Figure 1 – Sliding-scale of platform functionality



2. Factors influencing the choice of platform

2.1 Purpose of the policy-based Market Mechanism

The purpose of the underlying market based mechanism adopted by the PMR/FCPF Participant country (hereafter referred to as the “Market Mechanism”) is an important consideration in determining the suitability of the choice of platform. For example a ‘cap and trade’ mechanism, where the ability to trade and establish a successful market for such trading will be key to its success, is likely to require a greater degree of sophistication than an offset scheme. An offset scheme that is simply aiming at registering offsets, recording purchases, sale and retirement of such offsets will require less sophistication. In simple terms, where the purpose of the policy is to establish a market mechanism in its most complete sense, then there will be a larger number of building blocks required to create the necessary legal infrastructure to support that mechanism than if the objective or purpose of the Market Mechanism was less ambitious.

2.2 Scope of the Market Mechanism

The scope of the Market Mechanism is also important. A Market Mechanism that covers a larger number of sectors (e.g. energy generation, forestry, transportation (road, aviation, shipping), manufacturing, medium and large industrial operations etc.) will attract a greater number of participants, potentially more transactions and therefore, by necessity, more automation. The wider the scope of participants in the Market Mechanism, the harder it is to

find the right functional balance on the platform as the varying levels of experience, knowledge and familiarity of those actors will impact the design.¹

2.3 Scale of the Market Mechanism

The larger the size of the proposed trading market, the more likely that automated (as opposed to manual) processes will be required to capture, manage and record transactions. With such automation, there is an increased level of risk commensurate to the functionality of the platform (e.g. the need for specific rules or laws to ensure the protection of legal rights and liabilities in an underlying asset that is subject to electronic dealings).² E-commerce laws, cyber security laws and other property legislation will need to be modified recognised and applied in the context of an intangible asset. The fact that carbon units held in registries may have a value makes them a target for theft. Enshrining security arrangements into law helps to protect against such risk.

2.4 Potential for growth (international or domestic)

If the intention of the Market Mechanism is to progressively scale up by linking with other similar Market Mechanisms in other regions (e.g. if the various Chinese pilot markets were to link) or countries (e.g. the previously proposed linkage between the EU ETS and the Australian ETS), then the use of platforms that operate under compatible legal frameworks in such regions or countries will make such scaling up or linkages easier to achieve. For example, it would be more difficult to link to another mechanism if a carbon unit is recognised under the laws of one mechanism as a property right but is not so recognised in the mechanism to which it is being linked. The alternative would inevitably require one country to adopt a legal framework similar to the other as a condition of linkage, will make such linkage harder to do. Therefore, just as a Market Mechanism that adopts a minimum internationally accepted standard for verification, reporting and compliance will make such functional linkage easier, so will platforms that have in common a similar supporting legal framework. In the more fragmented ‘bottom-up’ approach contemplated by a prospective international climate change agreement in Paris 2015, and where such scaling up or linkage is being discussed, to avoid a patchwork of legally incompatible platforms, a recognition of similar legal treatment of rights associated with a register/registry could be considered.

3. The Building blocks of the legal framework

3.1 Levels of laws within a legal framework

The focus in this and the next immediate section is to discuss the legal framework that will be necessary to support the relative functions of the Register/Registry. Keeping in mind that the nature of a Register or Registry is functional or transactional, this section concentrates on the necessary legal framework to procure the action or give effect to the outcome triggered by the function/transaction on the Register or Registry. References to the building blocks are to the

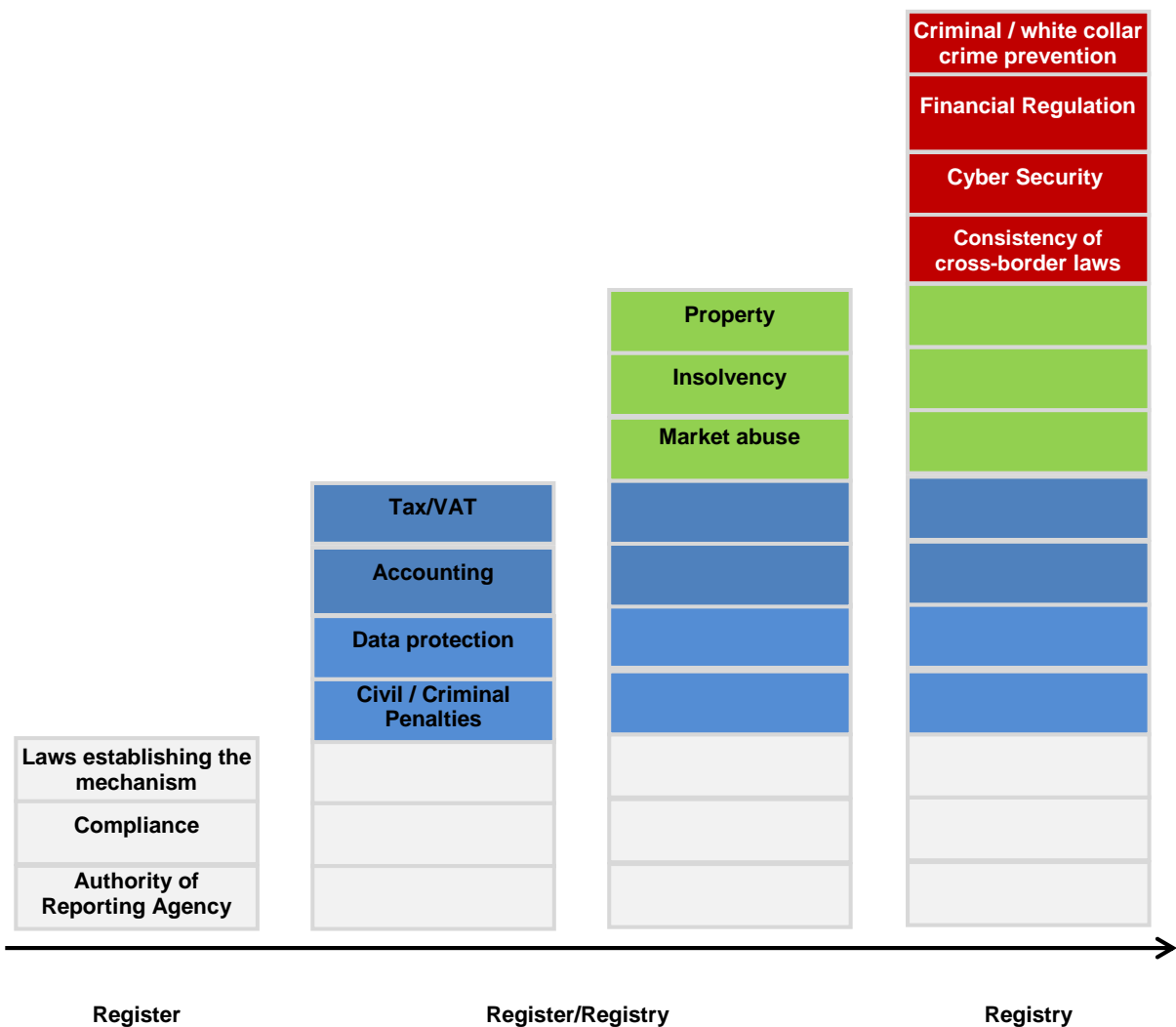
¹ Logically, lack of sophisticated participants will lead to the platform having less sophistication and functionality, until later stages of market maturity.

² Greater technology requirements will also increase the cost of implementation and maintenance of the Market Mechanism.

broad areas of law that will need to be addressed to affect the functional/transactional outcome of the Register/Registry.

The legal framework itself assumes here a number of potential legislative sources and layers of laws. Not all outcomes necessitate primary legislation. In many instances primary legislation will only provide the broad framework which then is further supplemented by secondary legislation or enabling legislation which gives specific authorisation to bodies to determine rules, regulations or terms and conditions that give expression to the original primary legislative intent. As such, and without wishing to be prescriptive, references here to a legal framework should be understood to mean the publication of that which is necessary to give effectiveness in the PMR/FCPF Participant country in question.

Figure 2 – The Building Blocks of the Legal Framework



At the end of the process, one should be in a position to answer if there is an appropriate framework in place for protecting the integrity of the Market Mechanism? The suitability of the overall market regulation and oversight rules that apply, the legal status and definition of the carbon unit, the Register/Registry system for recording and disclosing data etc. will all be components of such an assessment.

Registers

Starting at the lower end of the sliding scale, the functions that the legal framework, will need to support are likely to include the following:

3.1.1 To act as a reporting database

This function is necessary to give effect to the desired Market Mechanism adopted by the relevant PMR/FCPF Participant country. It is expected that there would, at a national or state level³, be laws that set out the necessary monitoring and reporting obligation (e.g. the obligation to report all Co2 emissions) and enabling legislation to allow a specific authorised body or entity to develop the by-laws or rules necessary to develop the tools supporting such reports (e.g. what, when and how to report, where to report etc.). That same body may be authorised to create the database to capture that reported data. Where this is the case, the legislation may also need to ensure that the data is subject to a specific level of audit or quality control⁴. For example, a requirement for verification of data prior to reporting by third parties that are qualified, independent, pre-approved or accredited etc.

The use of that data, would similarly be dictated by the primary legislation. For example, to whom the compiled reported data must be sent to, whether its disclosure should be public or private. However questions such as whether the data is presented in a particular format (e.g. as required by international reporting standards/ISO or mandated by international treaties etc.) could be determined by the authorities appointed by the primary legislation.

How sensitive the data collected is and how it is managed will also be driven by the nature of the Market Mechanism and the data in question. For example, data concerning whether a particular entity may or may not have met its compliance obligation is sensitive to that compliance entity but may be of less significance to other market participants. In contrast, information about whether the covered sector's overall emissions levels have gone down because there was a need for less units to be surrendered, will be highly sensitive in the context of a full cap and trade mechanism. The collected data may or may not be released or distributed by the register/registry operator but there will need to be a clear recognition of the sensitivity and value of that data based on the type of Market Mechanism.

The legal status of the Register/Registry administrator should be clearly enshrined in law. In order to operate a registry and maintain the registry, including its technical infrastructure, the administrator will need to that actions and ad hoc decisions. It will be necessary to empower the administrator with discretion (e.g. to suspend the operations of the Register/Registry for foreseeable events as well as unforeseen events). The successful operation of the Register/Registry requires sound governance structures, with appropriate segregation of IT

³ Depending on the scope of the mechanism.

⁴ To be compliant for use in the California cap and trade system, American Carbon Registry offset projects have to be have been approved, and offsets generated by the project need to be verified by an approved party before they are issued in the California Registry.

and business duties in the internal organization of the relevant administrator with an adequate and commensurate level of resources.

3.1.2 To record the creation (i.e. registration) or issuance (serialisation) of a unit (e.g. offset unit)

A database where a unit is issued to reflect the underlying environmental benefit achieved (e.g. a reduction of a tonne of CO₂e against a baseline) reduces the risk of double-counting; in particular, where the information about the units is transparent. It also creates accountability to the users of the registry. For example, a register that publishes information about offsets issued from activities recognised by a market organisation (e.g. offsets issued by the Verified Carbon Standard or the Pennsylvania Emission Reduction Credit (“ERC”) system⁵). The fact that this information is public, allows interested parties to ensure that the offset that they are being sold has environmental integrity, and has not already been used as evidence of compliance with an environmental obligation. However, the obligation to be transparent should not be left to the voluntary will of the platform administrator. The detail surrounding this (e.g. when, how and to whom the data will be) could be reflected in secondary legislation, although the primary obligation to be transparent may be set out in primary legislation.

3.1.3 To facilitate the unit’s surrender, cancellation and retirement

The Register may have various types of accounts. For example, if dealing with offsets, the register could distinguish between the accounts for project operators from which offsets are traded or accounts which can be used for the surrender or cancellation of offsets. With that, there will need to be administrative rules or terms and conditions of the Register relating to account opening, closing and access. The granularity of this could include issues such as KYC requirements for account opening, fees payable for account maintenance, limitation of liability for the Register administrator etc.

The account opening process may involve the platform operator collating a lot of data including personal data about individuals. Account holders will want protection that their confidential information is not publicly disclosed so the rules should provide protection for this. Consideration should also be given to rules around the protection of personal information and how the legislation surrounding registries fits in with existing data protection laws.

3.1.4 To facilitate transfers of the underlying unit (including tracking)

A feature that may impact the sophistication of the supporting legal framework for the register/registry is the purpose behind any transfer of the underlying carbon unit. If the nature of the Market Mechanism contemplates unit trading, then the purpose of the transfer is different than a transfer for surrender or compliance purposes. For example, where the unit is used to trade, it obtains the character of an asset that has an associated value. Such transfers may therefore carry urgency, need for additional security and settlement finality. In contrast, where the mere purpose of transfer is compliance, then the unit’s value arises from the

⁵ The Federal Clean Air Act creates an offset requirement but there are no U.S. federal rules on ERC generation. Each state has its own rules. The ERC rules require the Pennsylvania Department of Environmental Protection (DEP) to maintain a statewide registry of ERCs and deduct ERCs from the registry when ERCs are consumed in issuance of a construction permit.

avoidance of a penalty for non-compliance. Whereas the former invites the need to provide greater transactional certainty the later merely requires receipt by the regulating authority before a particular cut off point (e.g. to avoid being hit by a penalty). In the UK, the power and gas market regulator Ofgem, maintains an electronic, web-based system called the Renewables and CHP Register (“R&CHP Register”) which enables the issuance of and trading of renewable obligation certificates (“ROCs”) (among other similar certificates). This is presently a relatively illiquid product with few transactions occurring unless in the immediacy of the ROCs compliance deadline. ROCs can be transferred directly between two parties using the online R&CHP Register provided the parties have accounts at the register but at the time of compliance, the administrator will automatically redeem the required ROCs in the compliance entity’s account and cancel them.

Where the market is highly liquid and the number of transactions requires automation of processes to ensure transfer settlement is manageable, the legal framework of traditional national laws will need to evolve to address such an electronic environment. Often, even where those laws currently exist, they may be designed to support electronic share trading but may not necessarily be fit for the purpose of or extend to trading carbon units.

Registries

Although there is no fixed or rigid demarcation between the point where a platform’s functionality morphs from a register to registry, it is fair to say that the closer the Market Mechanism is to an operational free market, the greater, deeper and more detailed the legal framework required to support that registry will be. The sophistication of the legal framework needed to support a Market Mechanism from mid to upper end of the scale will get progressively higher.

For instance, the American Carbon Registry (ACR) is a voluntary offset scheme whose offset credits may be sold between account holders. Sales, and therefore, transfer or the offset credits are not driven by any compliance deadline. Sales occur outside the platform and settlement is via each of the account holders confirming their willingness to have their records altered to reflect the change. Given that this is a voluntary framework, the registry operates outside of any legislative framework and is therefore entirely contractual. The legal certainty associated with the value of an offset credit issued by the ACR will be very different from the same offset once it is reissued in the California Air Resources Board registry (CITSS)⁶ as an ARBOC⁷ where it has the recognition as a compliance unit under State legislation. The legislation confirms that the compliance entity holding an ARBOC is entitled to a limited authorisation to emit up to one metric tonne in CO₂e of any greenhouse gas. It, however, also confirms that an ARBOC does not constitute property or a property right. Although this may be a different legal position to the legal treatment of a carbon unit within the EU ETS, it certainly avoids any confusion as to whether an ARBOC or California allowances is not to be classed as property⁸. The level of certainty cannot be accorded to an ACR offset. The difference between the same tonne of CO₂ reduction, one that is supported by a legislative framework and the other which is entirely contractual, is not just reflected in the different

⁶ The Compliance Instrument Tracking System Service (CITSS)

⁷ Air Resources Board Offset Credit

⁸ Potentially making this a legal framework difference to have to resolve should the EU ETS ever wish to link with AB32.

prices the market is willing to pay for the offset but also in the degree of certainty an investor or holder may have for the nature and value of that offset.

3.2 Laws and rules to be modified or revised

As previously mentioned, the legal framework for a registry, supporting a Market Mechanism towards the right-end side of the scale, will require many of the general laws of a PMR/FCPF Participant country (e.g. its property, insolvency, tax, accounting and regulatory laws) to be extended or revised to recognise the activities carried out on the Registry. In some instances, new laws may well have to be created to address the novelty of trading an intangible asset in that country.

Market participants will look to laws and rules that are, clearly stated, understandable, internally coherent and unambiguous. PMR and FCPF participants will no doubt aspire to such laws and rules in all legislation that they implement. However, it is especially important in the development of a Market Mechanism, where market participants have no prior experience of how a carbon market will operate in a particular country. Using existing categories of law, we will seek to illustrate how the laws and rules for that category will need to be modified or revised to address key questions associated with a Market Mechanism. For example:

3.2.1 Property law

What is the legal nature of a carbon unit (e.g. administrative grant, licence, property)? There is no right or wrong answer to this question – but it is important that there is an answer so that certainty may be provided to market participants.

If a carbon unit is treated as property, there are rights that become associated with that property potentially allowing the carbon unit to be used in a broader range of transactions than merely selling/purchasing or surrendering for compliance (e.g. as collateral to raise financing). On the other hand, if the carbon unit is not property, then it is likely to have a more limited application beyond the Market Mechanism's primary goal. Where the legislative framework does not seek to address this question, the effect will be to invite speculative and opportunistic speculation that could have an adverse effect on the Market Mechanism in the longer term.

If a carbon unit is considered property, what type or class of property right is it? The answer will be important to enable further questions regarding the carbon unit to be answered. For example, can security be granted over that property right? The broader the use of the carbon unit, the wider its appeal will be to market participants and it also then attracts other investors including financiers (banks and hedge funds), insurers, intermediaries and brokers. This contributes to the increase in liquidity of the market. The indirect effect is to encourage greater investment in carbon related activities.

How will competing claims to carbon units be addressed at law? For example, in the event that a carbon unit is stolen from Party A by Party B and subsequently sold to Party C, will Party A or Party C have good title to the carbon units? In order to establish certainty, Party C should not be deprived over its title of the carbon units if it acted in good faith (e.g. was an innocent purchaser).

3.2.2 Tax and accounting

Should the transfer of a carbon unit between two account holders be treated as a provision of a service? If so, does it attract a sales or service tax such as VAT? Who pays the VAT, buyer or seller?

Alternatively, is it a transfer of a property or an asset that attracts a tax such as stamp duty? Do all entities have to pay it or should compliance entities be exempted given they have not voluntarily chosen to engage in the activity but do so as a regulatory requirement?

What accounting treatment should be applied by a holder of a carbon unit? If the unit has a market value but has been allocated under the Market Mechanism for free, how should that value be reflected – at nil or at market value? If at market value, does the daily movement in market value of the carbon unit impact on the overall financial accounting of the entity in question adversely?

3.2.3 Insolvency

National insolvency laws often provide for transactions carried out before an insolvency to be set aside in certain circumstances. In such circumstances, would a transaction between Party A and Party B for the sale of carbon units be voided where it took place 24 hours prior to Party A's insolvency?

Upon the insolvency of the Registry account holder, who has rights to the carbon units held in the account? If the account holder is a company and it has creditors, can they require the carbon units be sold to recover their claims? Does it make a difference to the answer to this question if the Registry account holder is a compliance entity? If security has been granted over that account in favour of a particular creditor, can that secured creditor's claim out rank the claims of the general creditors? Although this may be as much a question of company law as insolvency law, where the account holder is an individual, the question is equally applicable but with additional considerations. For example, will inheritance laws allow a father to bequeath carbon credits to a beneficiary in the way he may bequeath his shares? Will a Registry administrator recognise carbon units that are held on trust as distinct from those held in another capacity?

3.2.4 Financial Regulation and licensing

Potentially, at the most extreme end of the scale, a carbon unit may be considered to be subject to the same regulatory treatment as other financial products⁹. Therefore, would a participant who transacts in carbon units require a licence the way a broker who transacts in stocks and shares would be? There are, of course, both positive and negative aspects to such classification. On the one hand, treating a carbon unit as the same was as other financial products will envelope the carbon unit within a heavier regulatory legal framework which will increase consumer protection and legal certainty¹⁰. However, on the other hand, if this is introduced before the market is sufficiently mature, it will stifle its potential for growth by

⁹ As will be the case of the EU allowance in Europe from 2017 under the MIFID2

¹⁰ In many countries, financial products benefit from increased protection against creditor adverse but debtor friendly insolvency laws (e.g. by having a carver out for netting).

excluding some investors, making it more costly for participants and deterring the smaller businesses from participating in the carbon markets.

The risk of treating the participation in the Market Mechanism the same as participating in financial markets is to fail to recognise the underlying environmental purpose associated with the establishment of the scheme. In most financial markets, those who participate chose to do so voluntarily. Whereas, in the context of a compliance driven cap and trade market, the key actors, the compliance entities, are not there by choice. The mixture of compliance and non-compliance participants are necessary for a healthy, liquid mechanism but the mixing of the financial regulatory legal framework with the environmental compliance framework is very likely to lead to significant issues. Examples include, specific exemptions from licensing requirements, capital controls, reporting regimes, extension of laws on market abuse, insider trading and other financial crimes to carbon unit trading.

Where the functionality of the Registry includes trade settlement functions (e.g. real time transfers of carbon units) additional questions regarding transaction settlement finality have to be addressed. For example, at what point in time does the risk in a carbon unit transfer from Party A to Party B? Similarly, where under a transaction with Party B, Party A has initiated a transfer but it was not completed by the Registry administrator before Party A's insolvency, should the Registry administrator nonetheless continue with the transfer to Party B? If the news of Party A's insolvency arrives only after the transfer has been completed, can the transfer be unwound and the carbon unit clawed back? What happens if the Registry administrator or account holder transfers or cancels carbon units in error? What remedy should be provided to an account holder for this?

4. Lessons learnt from experience with existing mechanisms

To illustrate some of the problems arising from creating a market mechanism with an incomplete legal framework, we can look to the following examples from the EU Emissions Trading Scheme ("EU ETS"). As the pioneer in the establishment of a cap and trade market, the EU ETS has also borne the brunt of the consequences of 'learning by doing'. Although there are many more lessons that could be cited, the following offer ample lessons to be learnt¹¹:

4.1 VAT fraud

Until 2010, the EU ETS tax regime treated the transfer of a carbon unit as a service that attracted a value added tax with such tax collected by the seller for account of the local tax authorities. Trading of carbon units was also possible on exchanges offering carbon unit spot products¹² which, along with the 'real-time' (i.e. within seconds) transfer and settlement capability of EU Registries, allowed multiple transactions (involving the same carbon units changing hands) to be carried out within a short time span. These elements, along with lax

¹¹ Later cap and trade regimes such as California's AB32 were conscious in the design of their schemes to apply the painful lessons learnt by the EU ETS.

¹² These are exchange traded products with physical settlement by way of delivery of a carbon unit within 1-3 days of the transaction date.

Registry account opening procedures, including KYC requirements, combined to make the EU ETS an attractive space for VAT fraudsters perpetuating carousel fraud¹³. Europol estimated that loss to carbon credit fraud (through VAT carousel fraud) between June 2008 and December 2009 was approximately 5 billion euro.

4.2 Phishing, cyber theft and hacking

Although the EU ETS is a creature of EU law, the establishment of an ambitious multi-country, single trading market was always going to be ambitious as it would have to fit within the legal frameworks of existing national laws. Given sensitivities relating to national sovereignty and the jurisdictional limitations of the EU Commission's mandate, it was not possible, for the EU ETS to prescribe for many of the legal issues that have been discussed in this chapter (above). This resulted in each Member State having the freedom to establish its own Registries using different software platforms, with different degrees to functional and security arrangements. This led to a patchwork of linked but not harmonised registries with a common asset being traded that had, across all the Member States, a single market value. As a consequence, in order to find a means to recover the value of valuable carbon units they were able to acquire through phishing or hacking, cyber attackers merely had to utilise the weakest point of entry (i.e. account establishment) in order to transfer and transact the carbon allowances. The lack of prescribed KYC requirements and weaker Registry account access requirements led to EU carbon credits being hacked and then traded on a cross-border basis. Ultimately, this led to the EU having to shut down the Registries of all 27 Member States for up to 3 months to raise the security standards to a common level across all Registries. In addition, the lack of certainty under the laws of most Member States regarding what type of property a carbon unit was and whether established laws relating to stolen goods applied to carbon units led to such uncertainty that trading in the top exchange traded spot EU carbon contract was suspended for more than a year.

4.3 Management of market data

During the first phase of the EU ETS, although there was a fixed date in which the annual emissions compliance data was meant to be released, the Ministries of certain Member States, without notice disclosed this data on their website in advance of that fixed date. This data was very significant as it was the first time market participants would be able to compare the actual emissions of compliance entities against the estimated date on which carbon credit allocations were based. As a result the market positions (i.e. whether to go 'long' or 'short') of many active traders would turn on this information. The leakage of this sensitive information in a haphazard manner meant that some trading entities with prior access to this information were able to take better traded positions than those who were unaware of this information. Ultimately, by the fixed date when the information was published the market had already anticipated the outcome and taken positions accordingly.¹⁴

¹³ Fraudsters legally acquired carbon units without paying VAT (because of the cross-border nature of the transactions), then sold the carbon units in the same country at a price charging VAT and then 'disappearing' before the tax was handed over to the tax authorities.

¹⁴ Incidentally, the information showed that the EU ETS was over allocated in Phase 1 causing the carbon unit price to drop from above Eur 25 to Eur 0.05 within a relatively short period of time.

5. Common recommendations and guidance on the development of a legal framework for registries

(a)	Build the Register/Registry in a manner commensurate with the nature, scope and scale of the proposed Market Mechanism.
(b)	Identify what is required to establish the immediate legal framework necessary to support the role of the Register/Registry in the context of the Market Mechanism and the timeframe required to achieve that.
(c)	Identify the other areas of laws likely to be impacted by the intended market mechanism and identify the necessary responsible entity to address those laws (e.g. ministry of environment, ministry of finance, ministry of trade etc.).
(d)	Establish a plan to coordinate and consult on issues, obstacles to achieving the necessary changes (e.g. delay, lack of expertise, authority of budget). The changes determined need to be consistent and not conflict with each other with a view to implementing the policy objectives of the Market Mechanism. ¹⁵
(e)	Recognise limitations – seek expertise and support where required (including from other government agencies) and do so in a timely manner.
(f)	Do not avoid the hard issues (e.g. what is the legal nature of the carbon credit) as, sooner or later, the issue will get highlighted via a market incident where the fallout will be far more difficult to manage.
(g)	Ensure the allocation of responsibility, roles of regulators or administrators are clear and unambiguous. It is important that along with the allocation of roles and responsibilities, sufficient budgets are provided to enable their discharge. ¹⁶
(h)	If the scope of the Market Mechanism is to create a tradable carbon asset, recognise the success of a market product is dependent on the market participant’s confidence in it and provide what is necessary to achieve that confidence.

¹⁵ In a recent special report on ‘The integrity and implementation of the EU ETS’ by the European Court of Auditors (the “**EU Audit Report**”), the Court concluded, that “At the Commission, the development and operation of the Registry has been a complex project which was hindered by internal coordination issues and resource constraints ..”.

¹⁶ The same EU Audit Report concluded that “that the organizational structure and available resources in the Commission services did not sufficiently facilitate the management and development of the Registry.”