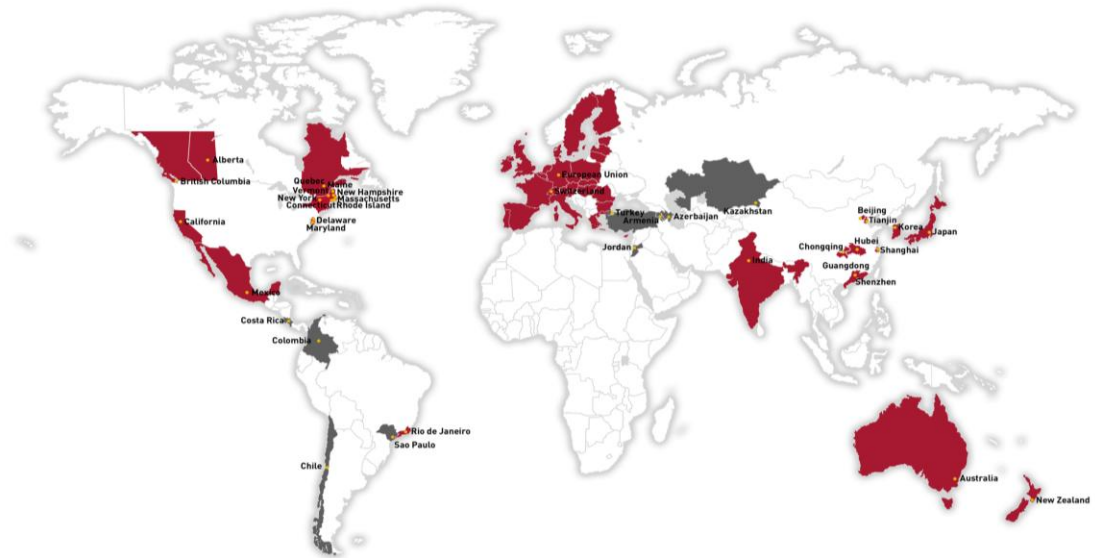


# Law making for emissions trading schemes - a private sector perspective

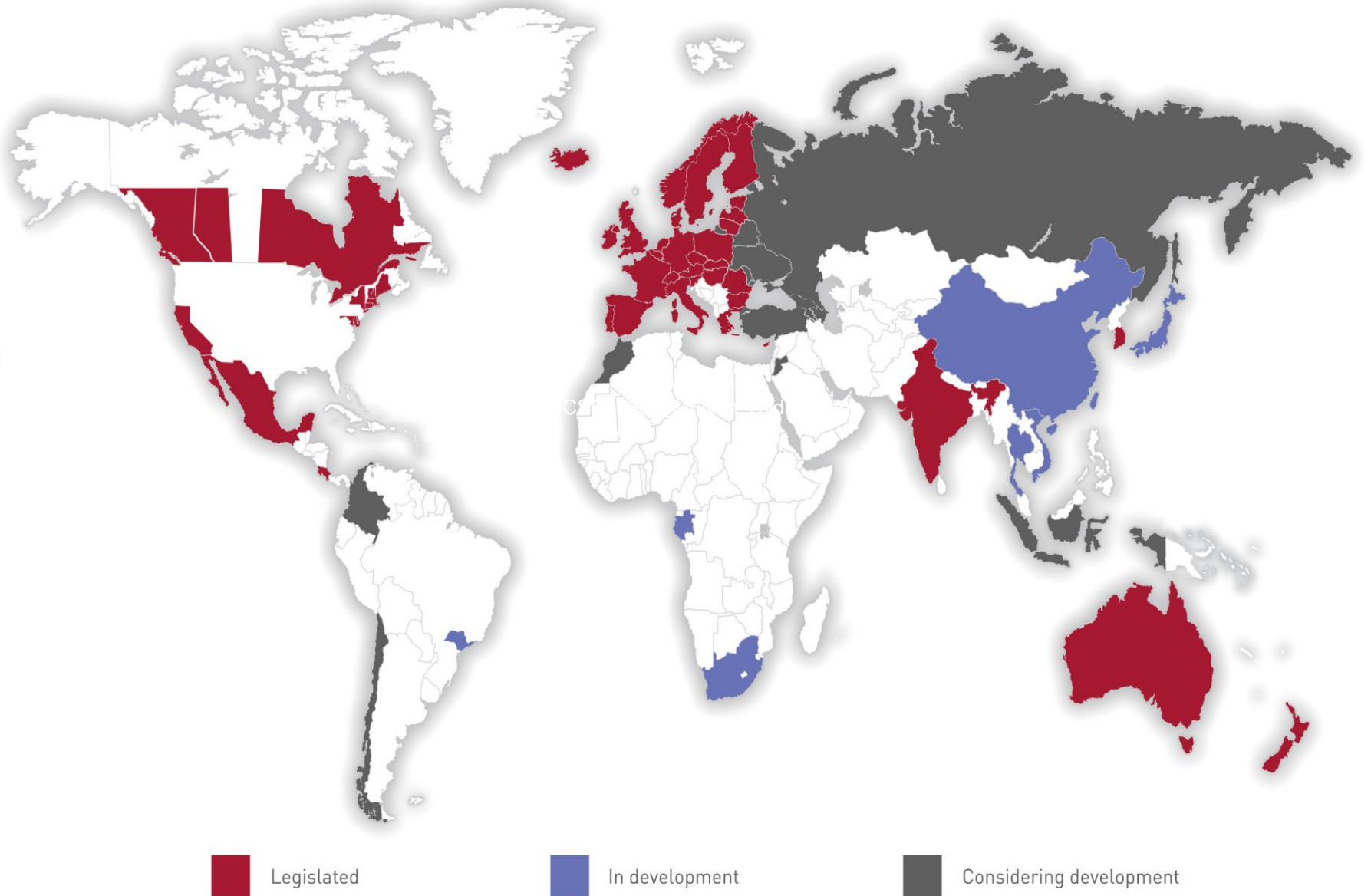
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# Carbon Pricing Regimes



Private Sector Engagement

# Early Private Sector Engagement

1. It is critical to appreciate that countries and their governments are designing an artificial legal and regulatory framework, but which will largely be imposed on the private sector.
2. In this regard, to ensure engagement in the market and design a market that will **DIRECT ABATEMENT** and **DRIVE INVESTMENT** in low emissions technology, requires private sector engagement from the very beginning. This will provide a well-functioning market.
3. Non-engagement will result in:
  - uncertainty regarding the scheme that is coming, leading to increased fear and opposition to it; and
  - a hostile private sector who is simply engaged in compliance.

# Early Private Sector Engagement

## 4. Lessons from the CDM:

- provided early private sector engagement;
- has resulted in significant investment in abatement;
- despite some early criticisms has maintained a high degree of integrity.

but now on verge of collapse because of:

- inability to adapt to private sector needs;
- supply/ demand imbalance;
- increased phase out from domestic schemes; and
- uncertainty regarding carry-over of CERs.

# Scheme Design Issues

# Design Considerations

- 1**. Rules must be long, long and legal to create an environment of investment certainty. In this context it is also critical to understand that small changes in legislation can have a significant effect on the marketplace, carbon price and carbon investments.
- 2**. Voluntary Action will not lead to long term reductions and action (although in some cultures even voluntary action creates some level of obligation). Any voluntary programme must be part of a fast transition to a compliance regime.
- 3**. Must be underpinned by reputable reporting data that can be easily obtained.

# Design Considerations

**4.** Need for alignment with existing legal frameworks on matters such as taxation, foreign investment, property laws, financial services laws, insolvency, corporate law and market regulation and consumer protection laws.

**5.** Careful legal construction of the nature of permits:

- define the legal nature of a Permit/Allowance - is it a property right; is it a financial product; do I need a licence?;
- identify legal ownership;
- am I compensated if it is cancelled or removed by Government or fraud perpetuated on me as holder of it.

**4.** Transparency around permits holders and owners.



# Design Considerations

7. Avoid over-allocation of free permits as over-allocation can destabilise the whole scheme. Start with a smaller amount and increase over time, but....
8. Coverage- focus on key emitting sectors and those points of obligation best suited to emissions trading - e.g. with fuel focus on upstream not drivers of vehicles.
9. Flexibility on who is liable and how it is managed. Ability to transfer liability within corporate groups and manage via one entity.
10. Allow open market trading. i.e.. not just confined to liable polluters.

# Design Considerations

## 11. Offset Regimes

- will you include offsets?
- what are the offset types? are they land based as well?
- dealing with permanence
- consistency with other national schemes such as around methodologies and rules
- liability for failed offsets? Buyer or seller?

## 12. Use of International Units - CDM

## 13. Broader linking to other schemes

# The Transition Process for Private Sector Players

# Experience with Private Sector Engagement

1. In Design stages the private sector will either work constructively if given the opportunity or will attempt to block and reduce any impact of the scheme.
2. Large push for exclusion free permits or compensation.
3. Once scheme implemented will be general acceptance and a learning phase.
4. Liable companies will look for ways to streamline compliance such as managing liability and trading via a single entity.
5. Trading will flow- provided scheme certainty.
6. With an offset scheme greater ability for abatement investment and the creation of a carbon investment environment
7. Simple Compliance Approach or active market participation?