

## Deeper Dive into Carbon Trading

7 September 2023



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Session ID: 195-091-164

Environmental, Social and Governance

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# Overview



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# Recap – Compliance vs Voluntary Markets



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## Compliance markets (CCM)

Government issues  
“**emission allowances**” to  
covered entities under a  
regulated scheme.

## Voluntary markets (VCM)

“**Voluntary carbon  
credits**” (VCCs) are  
generated by projects  
and issued by private  
sector bodies.



# Recap – Developments across the globe – Compliance Markets



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## US

- > In the US, several exchanges, including **ICE Futures**, **CME**, and **Nodal Exchange**, offer futures and options contracts on California Carbon Allowances, California offsets, and Regional Greenhouse Gas Initiatives.



## UK

- > **ICE Futures Europe** provides futures and options trading for UK allowances.



## PRC

- > **National ETS - Shanghai Environment and Energy Exchange** operates a carbon trading platform with a temporary registry of transactions and holdings established under the China Hubei Carbon Emissions Exchange. Other exchanges engage in trading for the regional ETS schemes.



## European Union

- > In the EU trading in the secondary markets takes place on three venues: **EEX**, **ICE Endex**, and **NASDAQ Oslo**.
- > OTC trading appears to be limited unlike in other markets.
- > For EU allowances contracts, there has been a consistent increase in the volume traded in both options and futures contracts of this asset over the five years since 2017.



## Indonesia

- Presidential Regulation No. 98 of 2021 provides for a framework for carbon pricing instruments
- First phase of mandatory carbon trading for coal power plants launched in February 2023. Regulations for carbon trading in the forestry sector announced in June 2023.
- Plans to launch carbon exchange in September 2023
- Rules on setting up of a carbon exchange issued in August 2023



## India

- The Energy Conservation (Amendment) Act came into force on 1 January 2023, empowering government to specify a carbon trading scheme.
- Draft Carbon Credit Trading Scheme (CCTS) published by the Ministry of Power in March for public comment
- Notification of CCTS by Ministry of Power on 30 June



## Japan

- **Tokyo Stock Exchange** trialed the trading of carbon credits between September 2022 and January 2023
- February 2023 – Basic Policy for Realisation of Green Transformation (GX) including policies on carbon pricing
- Transition to compliance carbon market from FY2026

# Compliance markets - exchange offerings



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Exchange	Products	Spot trading	Futures trading	Options trading
EEX (DE)	EU Allowance (“ <b>EUA</b> ”)	✓	✓	✓
ICE Endex	EUA		✓	✓
Nasdaq Oslo (NO)	EUA		✓	✓
ICE Future Europe	EUA, UK Allowances (“ <b>UKA</b> ”)		✓	✓
Xpansiv CBL	California Carbon Allowance (“ <b>CCA</b> ”)	✓		
Chicago Mercantile Exchange	CCA, EUA		✓	✓
Nodal Exchange	CCA		✓	✓

# Recap – Developments across the globe – Voluntary Carbon Markets



## European Union

- > **EEX** has plans to launch a VCM trading platform and ICE Futures Europe has also launched futures contracts based on carbon credits.



## US

- > US-based exchange **Xpansiv CBL** claims to be the largest VCM exchange in terms of volume.



## London Stock Exchange

- > **London Stock Exchange** launched their voluntary carbon exchange in October 2022.
- > Carbon credit issuers required to disclose information relating to projects they are financing.



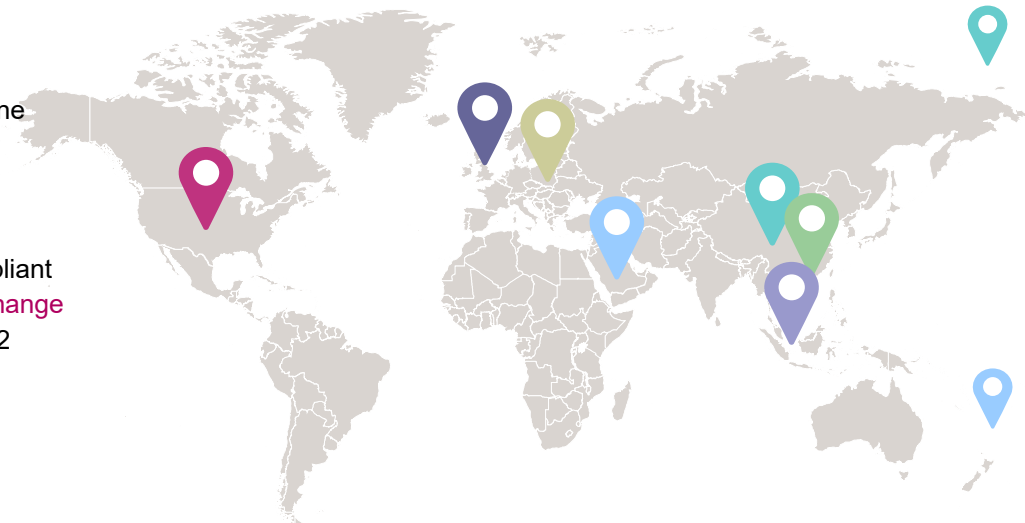
## ASEAN

- > Launch of first carbon credit exchange by **Climate Impact X (CIX)** in Singapore in June 2023
- > In Singapore, **AirCarbon Exchange** has significant operations.
- > In Malaysia, the world's first Shariah-compliant carbon exchange - the **Bursa Carbon Exchange ("BCX")** – was launched in December 2022
- > In Thailand, launch of first carbon credit exchange **FTIX** in January 2023



## Hong Kong SAR

- > **Hong Kong Exchanges and Clearing Limited** launched their trading platform for voluntary carbon credits, CoreClimate, in October 2022.



## PRC

- > China's national voluntary carbon scheme, the **China Certified Emission Reduction (CCER)**, could restart this year (previous suspension of new CCER issuances for six years).
- > MOU between HKEX and CEEX to explore the development of a voluntary carbon emission reduction programme in the Guangdong- Hong Kong-Macao Greater Bay Area.



## Saudi Arabia

- > Public Investment Fund (the Saudi sovereign wealth fund) and the Saudi Tadawul Group (the shareholder of the Saudi stock exchange) have recently established the **Regional Voluntary Carbon Market Company** – Is expected to be the first carbon trading platform in the Middle East.
- > **AirCarbon Exchange** has filed an application to launch its Recognised Investment Exchange and Recognized Clearing House operations, for voluntary carbon markets.



# Regulatory landscape for carbon trading



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# Regulatory landscape – Key questions



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Are compliance or voluntary carbon credits a regulated financial instrument in the relevant jurisdiction?



Could derivatives over carbon credits be regulated if carbon credits themselves are not regulated in the relevant jurisdiction?



Is the provision of trading or clearing facilities in respect of carbon credits or their derivatives a regulated activity?

# Regulatory landscape – Carbon credits



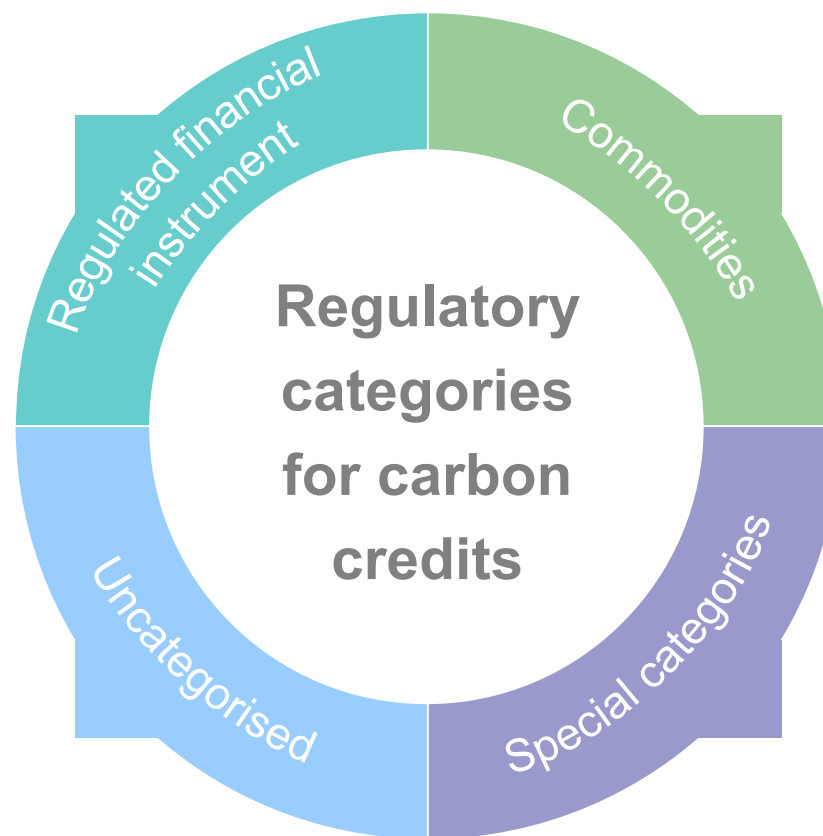
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> Treatment as a regulated financial instrument can vary based on whether carbon credit scheme is voluntary or compliance.

> Many jurisdictions have not yet provided guidance.



> Treatment as commodities often dependent on physical settlement.

> Abu Dhabi: Environmental instruments.

# Regulatory landscape – Carbon derivatives



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- > **Carbon derivatives**, e.g. listed futures, OTC forward or option with a carbon credit as the underlying - likely to be a regulated product in many jurisdictions, even if the carbon credits themselves are not regulated.
- > **EU** – Derivatives on VCCs will generally meet requirements in MIFID II (subject to national implementation) and constitute regulated financial instruments subject to MIFID II and EMIR.
- > **Hong Kong SAR:**
  - > Could carbon derivatives be a futures contract, regulated investment agreement, structured product or over-the-counter derivatives product under the SFO? Each refers to “property” as an underlying asset
  - > Carbon credits could potentially fall within definition of “property” in SFO.
  - > Depending on the nature of the carbon derivative, could potentially be caught.
  - > Any applicable exemptions?
- > **Singapore:**
  - > Derivatives of carbon credits are not regulated.



# Regulatory landscape – Carbon trading/clearing platforms

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- > Key question – is the carbon credit a regulated financial instrument?
  - > Jurisdictions which categorise carbon credits as financial instruments have trading and clearing framework.
- > Spot voluntary carbon markets are largely unregulated.

# Regulatory landscape – IOSCO reports on carbon markets

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- > IOSCO Final Report on Compliance Carbon Markets (CCMs).
- > Compares CCMs with traditional financial markets and outlines a set of recommendations to increase efficiency and integrity:
  - > Twelve recommendations relating to primary market and secondary market.
  - > Secondary market level recommendations focus on market integrity, transparency and structure.

# Carbon trading documentation – Current developments



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# Compliance trading documentation – ISDA



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## EU Emissions Allowance Transactions

- > For use with EU Emissions Trading Scheme.
- > Establishes terms for settlement of EU emissions allowance transactions in the form of (a) forward and spot transactions, and (b) options.

## UK Emissions Allowance Transactions

- > For use with UK Emissions Trading Scheme.
- > Substantially the same as the EU form.

## US Emissions Allowance Transactions

- > For use with US emissions products.
- > Generic approach.
- > Supports a range of “Emissions Products”, each with its own “Applicable Law” and “Tracking System”.
- > Supports spot, forward and option transactions.

# Voluntary Carbon Market trading documentation – Overview

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- > Primary market:
  - > Bespoke carbon offtake agreements.
  - > IETA Primary Emissions Reduction Purchase Agreement (ERPA)
- > Secondary Market
  - > ISDA Verified Carbon Credit (VCC) Definitions (including confirmation templates)
  - > IETA Contingent Secondary ERPA
  - > IETA Non-Contingent Secondary Emissions Reduction or Removal Purchase Agreement

# Voluntary Carbon Market Trading Documentation – Introduction to the ISDA VCC Definitions



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## What has been published by ISDA?

- > **Standard definitional booklet** for secondary market VCCs transactions.
- > **Template confirmations** for certain types of transactions.
- > VCC Definitions to be incorporated into a Confirmation.

## What kind of VCC transactions are covered?

- > **Physically settled** transactions.
- > **Spot, forward and option** transactions in secondary market VCCs transactions.
- > Elections to cater for **standardised or bespoke transactions**.

## What kind of VCCs are the VCC Definitions designed to be used with?

- > Global document to be used in any region and in respect of VCCs issued by different carbon standards globally.
- > Carbon standard and registry agnostic.

## What form are the VCC Definitions in?

- > **Natively digital.**
- > Published only in digital form via ISDA's "MyLibrary" platform. VCC Definitions will be restated as a new version on each update.



# ISDA VCC Definitions – What is being delivered?



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- > Delivering Party to Deliver/Retire “Required VCCs” on the Delivery Date/by no later than the Retirement Date.
- > **Agreed VCC Specification** – parties to agree in the Confirmation the attributes that VCCs delivered or retired (碳除役) under a VCC Transaction must have.
- > Agreed VCC Specification can be as broad or as specific as parties wish.
- > Specification of Project, serial numbers – optional.
- > List of definitions in Section 10 of the ISDA VCC Definitions:
  - > Carbon Standards.
  - > Registries.
  - > VCC types.
  - > Co-Benefit Programs.
  - > Carbon Standard Labels.
- > Placeholder in relation to Carbon Standard Labels/Market Eligibility Labels, and Article 6 labels in mind.

# ISDA VCC Definitions – Delivery and Settlement



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ISDA VCC Definitions defer to any requirements for delivery or retirement set out in the relevant carbon standard rules and registry rules. Reflects the carbon standard and registry agnostic approach.

## Delivery

- > Title in the Required VCCs passes when the Required VCCs are credited to the Receiving Party's Registry Account.
- > Payment to be made by the Receiving Party on the Payment Date.
- > Parties can specify transfer of Environmental Attributes associated with the Required VCCs.
- > Obligation to ensure have Registry Accounts.

## Retirement

- > Parties can elect for Required VCCs to be retired instead of credited to the Receiving Party's Registry Account.
- > Needs to satisfy **Retirement Requirements** first before retirement applies.
- > Delivering Party to hold the Required VCCs to be retired in accordance with the Retirement Instruction for the benefit of the Receiving Party from the Delivery Date.

# ISDA VCC Definitions – Representations and Warranties



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## Additional Delivering Party Representations

- > To be made by the Delivering Party on each Delivery Date.
- > E.g. Reps on title, satisfaction of Agreed VCC Specification, Required VCC not previously retired.
- > Electives: no Project rep; no third party has right to cancel any Required VCCs Delivered.
- > Can elect for “Delivering Party Representation Qualifier”.



## VCC Transaction Representations

- > That each party has complied with Carbon Standard rules and Registry rules to permit Delivery.
- > To be made by both parties on the Trade Date and each Delivery Date.
- > Breach will not give rise to an Event of Default of Potential Event of Default if it gives rise to a failure to Deliver or a failure to receive.



## Retirement Representations and Warranties

- > Only applies if Required VCCs to be retired.
- > E.g. valid issuance with relevant Carbon Standard rules, representations with respect to the underlying project.
- > Note that these representations are all subject to the Delivering Party's knowledge and belief.



**Suitability of VCCs:** Delivering Party makes **no** representation/warranty on the suitability/eligibility of any Required VCCs for any claims/offsetting purposes.

# ISDA VCC Definitions – Additional Disruption Events



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No additional Events of Default or Termination Events under the VCC Definitions. Three new types of **disruption events**.

## VCC Settlement Disruption Event

- > An event or circumstance **beyond the control of a party** that it (using all reasonable efforts) cannot overcome which makes it **impossible or impracticable** for it to deliver or receive the VCCs for a VCC transaction.
- > Defer the parties' obligations until the event ceases to exist, unless the event continues to exist on the SD Longstop Date, then an Additional Termination Event (if 1992 ISDA Master Agreement) or an Illegality (if 2002 ISDA Master Agreement) shall be deemed to have occurred on the SD Longstop Date.
- > Termination of the "Affected VCC Transactions" at mid-market.



## Failure to Deliver

- > Delivering Party fails to deliver some or all of the VCCs: operational failures.
- > Will not trigger an Event of Default. Opportunity to remedy the failure.
- > If not remedied, Delivering Party to pay the Receiving Party's **Early Termination Value** (can elect to be a one-way payment i.e. not payable by the Receiving Party).
- > Failure by the Delivering Party to **retire VCCs** will be an Event of Default under s.5(a)(ii) of the ISDA Master Agreement.



## Failure to Receive

- > Receiving Party fails to take any steps necessary to enable the Delivering Party to deliver the Required VCCs under a VCC transaction.
- > Will not trigger an Event of Default. Opportunity to remedy the failure.
- > If not remedied, payment of the Delivering Party's **Early Termination Value** (can elect to be a one-way payment i.e. not payable by the Delivering Party).



# ISDA VCC Definitions – Termination following Disruption; Cancellation Risk



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## Early Termination Value (ETV) and “Comparable VCCs”

- > Difference between agreed price of shortfall vs price of Comparable VCCs.
- > Comparable VCCs determined by Delivering Party (for DP ETV) or by Receiving Party (for RP ETV):
  - > Parties can specify the attributes of a Comparable VCC.
  - > Otherwise, VCC issued under same Carbon Standard with materially similar Agreed VCC Specification.
- > One-way RP/DP ETV election:
  - > No payment if ETV is negative.
  - > Note netting and regulatory capital implications.

## Cancellation risk

- > Who bears risk of loss from the cancellation of VCCs by registry post-trade?
- > Default position under ISDA VCC Definitions: risk passes from Delivering Party to Receiving Party on Delivery.
- > Election for “DP Cancellation Risk”.
- > Cancellation prior to Retirement discharges Delivering Party obligation to Retire.

# Renewable Energy Certificates (“RECs”)

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- > RECs (also known as energy attribute certificates) are tradeable, market-based instruments representing the property rights to the environmental, social and other non-power attributes of renewable electricity generation.
- > RECs are electronic certificates issued for a unit of electricity, conveying information about the production of that unit of electricity (e.g. country of production, identify of production facility, type of energy source).
- > RECs can be used to “green” a specific buyer’s electricity consumption.
- > RECs are traded on the REC spot or futures market.

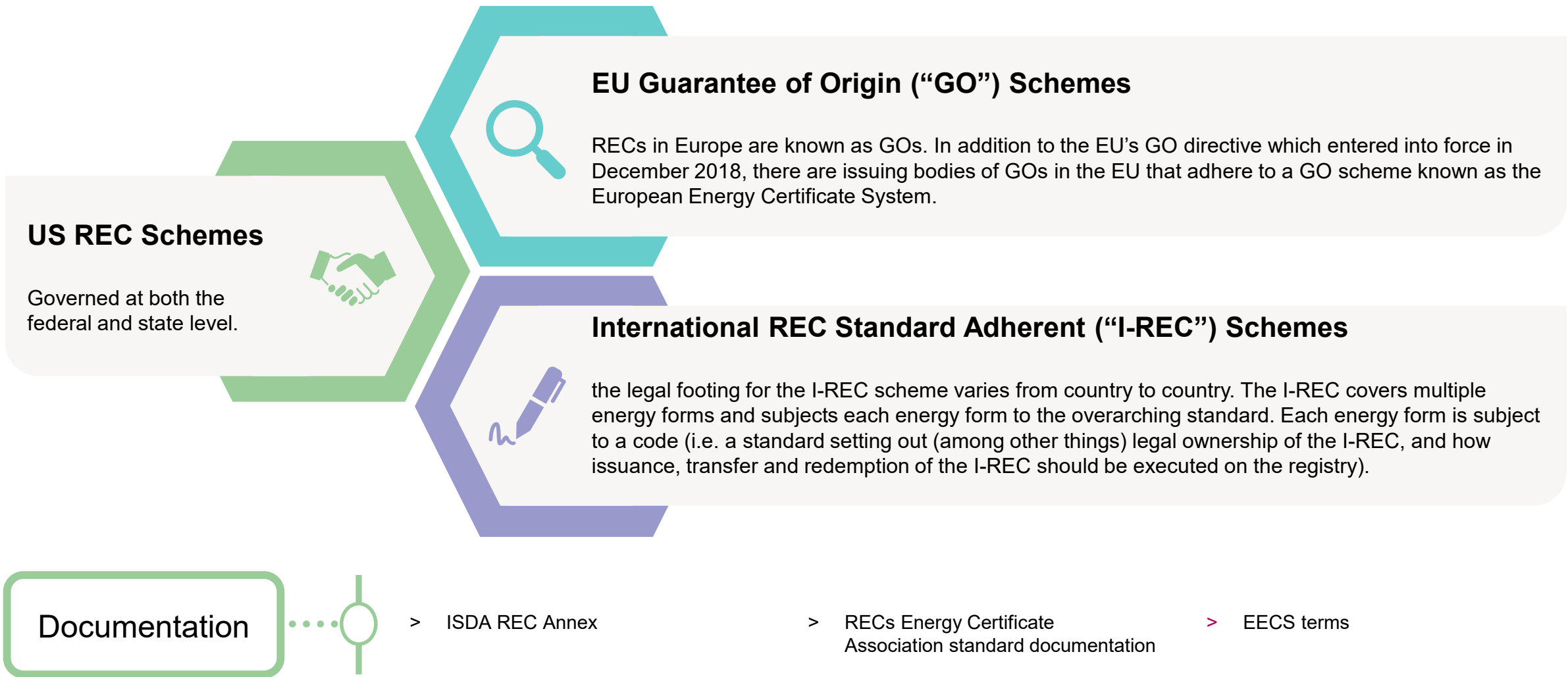
# REC Product Types



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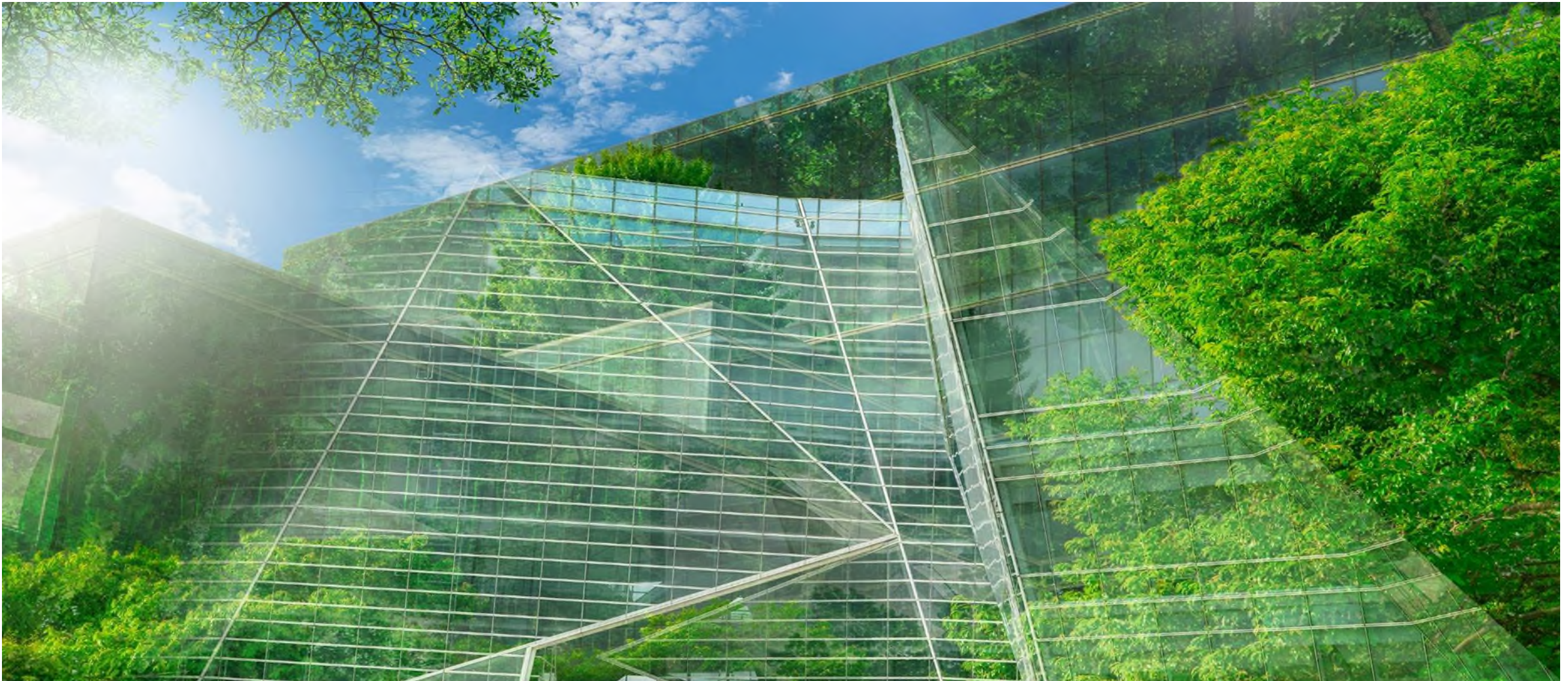
# Selected issues when on-boarding to carbon exchanges/trading platforms



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# Onboarding to trade in carbon markets



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## Example – EU ETS:

- > Register for an EU ETS account and on-boarding onto the relevant EU Registry.
  - > Different jurisdictions have different account opening requirements.
  - > Possible to hold via a custodian?
- > Trade OTC or on-board onto a carbon exchange such as ICE and EEX – reviewing standard terms of the exchange.

## Example – Voluntary carbon markets:

- > Register for carbon registry account (e.g. Verra or Gold Standard):
  - > Review of relevant carbon standard and registry rules
  - > Possible to hold via a nominee/agent? What rights do you have in the VCCs and what rights against the carbon registrar or carbon standard body?
- > Trade OTC or on-board onto a carbon trading (and settlement) platform – review relevant terms

# Carbon platforms that use tokenisation/DLT



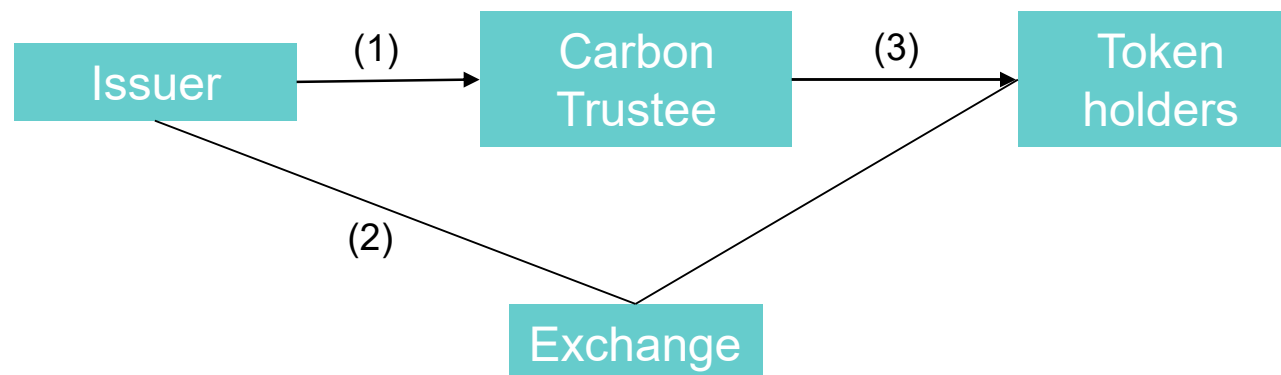
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## One example

- (1) Issuer places carbon credits with carbon trustee and mints tokens each representing one credit.
- (2) Issuer sells tokens on exchange.
- (3) Tokenholders acquire rights against carbon trustee to require delivery of credit.



## Questions to ask

- > Token risk:
  - > What rights does the token give you?
  - > How are the underlying carbon credits held?
- > Counterparty risk:
  - > Who is the token issued by?
  - > What happens if issuer, exchange or trustee goes insolvent?

# Q&A



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# Where to find more information

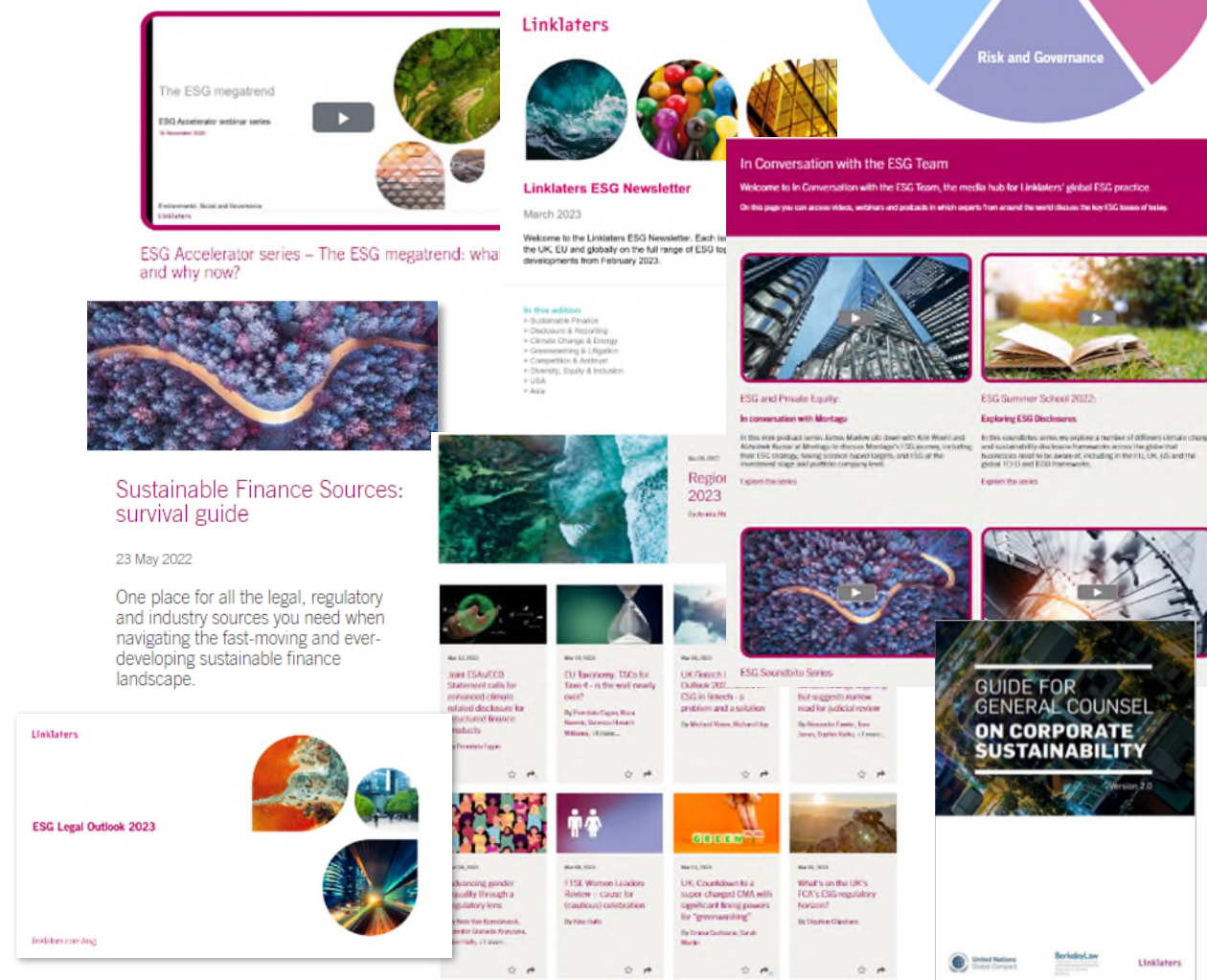
While ESG is of critical importance we know that the **pace of change and volume of new information** in this area can pose a real challenge.

We **regularly publish materials** in a range of formats on relevant topics and provide training and other support to our clients to help them navigate this changing landscape.

We always **welcome client feedback** on our materials so we can further tailor our support to meet client needs.

Visit our **website and knowledge portal** to keep up to date with all things ESG.

Sign up to our ESG newsletter [here](#).



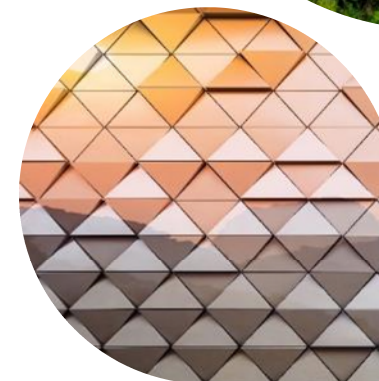


# Supporting your ESG horizon scanning needs

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Linklaters have launched a dynamic **global sustainable finance tracker** which provides updates on all aspects of sustainable finance for the financial services sector.

- > Leverages extensive Linklaters network for broad global coverage: **UK, US, EU, key Asian jurisdictions, UAE, Brazil, Australia** and **South Africa**.
- > Updated **every two months** – a reliable, accurate single source of sustainable finance laws, regulations, policy, guidelines and related developments.
- > Provides **snapshot view** of obligations impacting your institution across its global footprint in an easy-to-navigate format.
- > Filter by **topic, sector, and implementation date**, or use optimised search function – with links to Linklaters summaries, insights and briefing notes.
- > One annual subscription allowing **unlimited group-wide access**.



# How we are helping our clients

We work with a wide range of businesses across sectors and geographies helping them to navigate the changing ESG landscape. Our **broad offering** includes:

## Litigation risk and crisis management

- > Advising on emerging **ESG litigation risk**, including in relation to **parent company responsibility**, **corporate accountability** for ESG harms and decarbonisation strategies, and **greenwashing**. Acting on **ESG defence mandates**, supporting **businesses in crisis**, including in relation to investigations, public inquiries, litigation and stakeholder engagement as well as designing mitigation strategies, grievance mechanisms and alternative remedy schemes.

## Governance and strategy

- > Delivering Board **training and capacity building**, advising on **stakeholder mapping and engagement**, integrating **ESG into corporate decision-making** and on appropriate **governance structures** at and below Board level.

## Reporting and disclosures

- > Developing **governance, benchmarking and reporting models** aligned with ESG **strategy and risk management**, including use of disclaimers, methodology and assurance and legal review of **climate targets and transition plans**, **TCFD** and other ESG disclosures.

## Regulatory advice and horizon scanning

- > Advising on **existing and incoming ESG-related regulation**, including in relation to sustainable corporate governance, sustainable finance, carbon pricing and reduction, biodiversity and human rights in the EU, UK, US and APAC regions.

## Funds and financial regulation

- > Advising on the creation and allocation of funds into categorisations under the European Sustainable Finance package (**Article 6, 8 and 9 funds**) and preparing disclaimers. Advising on **implementing the EU Sustainable Finance package** including the disclosure and taxonomy regulations, and similar regulatory initiatives, including on the **development of policies, procedures, governance, training, disclosure** and the build out of programmes to address future changes.

## Corporate lending

- > Advising on **green and sustainability-linked finance**, supporting financiers navigate their evolving requirements, advising on **ESG-related covenant packages** and advising on **prudential regulation** and **other regulatory matters**.

## Equity and debt capital markets

- > Advising on ESG considerations in connection with **equity/debt capital markets issuances** including IPO-readiness, investor expectations, diligence and disclosures.

## Derivatives and structured products

- > Advising on various **sustainable derivatives and structured products**, including sustainability linked derivatives, sustainable securitisations, bespoke social financing structures and carbon repackagings/financing transactions.

## Carbon transactions

- > Advising on **carbon transactions** including offtakes, pre-pays, carbon financings, equity investments, carbon funds, credit packages and carbon-structured and carbon-linked notes.

## M&A

- > Advising on **ESG-driven disposals and demergers**, as well as ESG-driven **acquisitions, joint ventures** and related **antitrust** considerations.

## Project finance

- > Advising on **environment, health and safety aspects of project financings**, including advising on international standards, engagement with communities and action plans.

# Get in touch!

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