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# THE CLIMATE CHANGE (CARBON MARKETS) REGULATIONS, 2024

## LEGAL ALERT

### MAY 2024

# The Climate Change (Carbon Markets) Regulations, 2024

The Climate Change (Carbon Markets) Regulations 2024 (the “Regulations”) which came into force on 17th May 2024 provide technical, regulatory oversight over participation in carbon markets in Kenya. The Regulations give effect to the Climate Change (Amendment) Act 2023 (the “Act”) which amended the Climate Change Act 2016, to introduce provisions regulating participation in carbon markets. The Regulations provide clarity on the roles and responsibilities of the institutions that will oversee carbon market activities in Kenya. In addition to addressing governance concerns, the Regulations make provision for the operations and functions of the National Carbon Registry, the standards and approval processes for carbon projects, and the prescribed methods for benefit sharing.

The Regulations cover the following thematic areas:

## 1. Governance and Institutional Framework

The Regulations expound on the role of the Designated National Authority (“DNA”) which is responsible for overseeing all carbon market activities. The DNA will be responsible for making determinations on project concept notes, issuing letters of no objection once a project has obtained approval, providing guidance on the rules, modalities and procedures for Article 6.2 and Article 6.4 mechanisms and appointing project specific ad hoc committees to review project concept notes and project design documents.

To aid the DNA in the exercise of its duties, Regulation 9 establishes a multi-sectoral technical committee that will advise the DNA on carbon project assessment. The multi-sectoral committee will be made up of members with technical expertise in the energy, transport, agriculture, forestry, industrial processes, and waste sectors.

The Climate Change Directorate established under the Act will be responsible for coordinating and mobilizing stakeholders for effective management of carbon markets, facilitating research on carbon markets, and advising the government on new measures on how to control carbon market activities.

## 2. The National Carbon Registry

The National Carbon Registry, established under Section 23G of the Act will be overseen by the DNA which will act as the National Registrar. Part 3 of the Regulations provide that DNA will maintain and update registries of all carbon projects in the energy, transport, agriculture, forestry and land use, industrial processes, and waste sectors.

The Regulations also establish a role for Sector Registrars who will be appointed by the relevant Cabinet Secretary to head the six (6) sector registries respectively.

## 3. Participation in Carbon Markets

Part 4 of the Regulations prescribes rules and procedures that project proponents and carbon market projects must adhere to.

To receive project approval from the relevant Cabinet Secretary, the Regulations require that the proponent should be a legal entity with the financial capacity to undertake a carbon project. The proponent should also possess relevant knowledge and expertise in undertaking carbon project.

Project proponents will also be regularly required to make disclosures to the DNA on project costs, expected emission reductions or removals, estimated revenue from the project and any verified emission reductions issued to the project.

## 4. Procedures for developing Carbon Offset Projects

The Regulations provide a comprehensive step by step process for obtaining authorization to commence a carbon offset project. Regulation 21 provides that a project proponent will apply to the DNA for approval of a carbon project. The Application must be made in the prescribed form under the first schedule, be accompanied with all relevant supporting documents and the requisite application fee payment.



# The Climate Change (Carbon Markets) Regulations, 2024

Part 5 of the Regulations provides that the DNA may approve or reject the project idea. Upon approval, the DNA will direct the project proponent to prepare a project concept note to be assessed by the multi-sectoral technical committee. The findings of the multi-sectoral technical committee will then guide the relevant Cabinet Secretary on whether to approve a concept note. A successful project proponent will then be issued with a letter of no objection by the DNA.

Once issued with a letter of no objection, the project proponent will prepare a project design document for approval by the relevant Cabinet Secretary who may either reject the project design document or direct the DNA to issue the project proponent with a letter of approval.

Project proponents must commence implementation of the carbon project within twelve (12) months of receiving a letter of approval.

## 5. Land-based and Non-land based Projects

The Regulations define a land-based carbon project as ‘any project that involves activities related to land use, land management and ecosystem conservation or restoration that is aimed at reducing greenhouse gas emissions or carbon sequestration.’

Non-land based projects are defined as ‘any activity that reduces greenhouse gas emissions or remove carbon dioxide from the atmosphere and employ technologies that do not require land for their execution and include household or institutional green technologies such as hand-held solar lighting devices, energy efficient cookstoves, water purification devices, electric-powered or green transport.

## 6. Annual Social Contributions

The Regulations provide clarity on the provision of annual social contributions introduced under the Act in

2003. The Regulations provide that Land-based projects on public or community land are subject to an annual social contribution to the community of at least forty percent (40%) of the project’s aggregate earnings in the previous year.

Non-land based projects on public or community land are subject to an annual social contribution to the community of at least twenty-five percent (25%) of the project’s aggregate earnings in the previous year.

## 7. Environmental Protection

All projects will be required to undergo an environmental impact assessment by the National Environment Management Agency. Projects proponents will also be required to undertake an environmental audit.

## 8. Transition

The Regulations provide that all project proponents engaged in carbon project activities before the coming into operation of the Regulations will be required to comply with the Regulations within two years of commencement.

Similarly, all ongoing projects must undertake an environmental audit within six months of commencement of the Regulations.

## Conclusion

Whilst the Regulations have shed clarity on critical provisions such as the application annual social contributions to public land, they do not provide clarity on the legal status of carbon credits as commodities or financial instruments. The Regulations also fall short of providing for the general mechanism by which carbon trading transactions on the international voluntary carbon market will be synchronized with the National Carbon Registry.

# The Climate Change (Carbon Markets) Regulations, 2024

## Disclaimer

*This alert is for informational purposes only and should not be taken to be or construed as a legal opinion. If you have any queries or need clarifications, please do not hesitate to contact Cindy Oraro, Partner, ([cindy@oraro.co.ke](mailto:cindy@oraro.co.ke)) and Madikizela Otieno, Associate, ([madikizela@oraro.co.ke](mailto:madikizela@oraro.co.ke)) or your usual contact at our firm, for legal advice.*



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