



LEGAL NOTICE NO.

THE CLIMATE CHANGE (CARBON MARKETS) REGULATIONS, 2023

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CLIMATE CHANGE ACT, 2016

(No. 11 of 2016)

IN EXERCISE of powers conferred by sections 23A(2), 23E(9), 23I of the Climate Change, Act, 2016 the Cabinet Secretary for Environment, Climate Change and Forestry makes the following Regulations:

CLIMATE CHANGE (CARBON MARKETS) REGULATIONS, 2023

	PART I: PRELIMINARY
Citation.	1. These Regulations may be cited as the Climate Change (Carbon Markets) Regulations 2023.
Interpretation.	2. In these Regulations unless the context otherwise requires:
No.11 of 2016.	“Act” means the Climate Change Act;
	“Aggregate earnings” means the total of all income in a carbon market project without adjustment for inflation, taxation or types of double counting: Provided that for purposes of these regulations, income shall refer to carbon credit revenues net of all operating costs;
	“Annual Social Contribution” means sharing of annual benefits accruing from carbon market projects
	“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for Climate Change matters;
	“carbon credit” means a credit created when the equivalent of one metric tonne of carbon dioxide is prevented from entering the atmosphere and is equal to one tonne of carbon dioxide or the equivalent amount of a different greenhouse gas reduced, sequestered, or avoided;
	“Carbon market projects” means interventions including programs, projects and products designed to remove, reduce, sequester or avoid carbon emissions and that are eligible to generate certified carbon credits under an accepted carbon standard in voluntary and compliance carbon markets.
	“carbon standards” means a complete set of rules, procedures, and methodologies that guide on the generation and issuance of certified carbon credits;

	“Committee” means the Ad Hoc Committee established under regulation 13.
	“Community Carbon market Project” means a carbon market project undertaken on community land
	“Community Development Agreements” means an agreement which outlines the relationships and obligations between the proponents of a project and the community in public and community land where the project is being developed;
	“Compliance Carbon Market” means the regulated market where carbon credits that represent certified emissions removals or reductions of greenhouse gases in the atmosphere are traded;
	“crediting period” means the period during which greenhouse gas emission reductions and removals are eligible for issuance as verified carbon units;
	“Designated National Authority” means the entity or organization granted the responsibility to approve and authorize participation in carbon market projects under the Paris Agreement;
	“National Carbon Registry” means the National Carbon Registry established under section 23G of the Act;
	“Private entity project” means either a non-land-based carbon market project where a private entity is the project proponent or a land-based project where the project is on private land;
	“Project proponent” means an entity responsible for carrying out a specific carbon market project;
	“Public carbon market project” means land based or non-land based public carbon market project
	“Principal Secretary” means the Principal Secretary for the time being responsible for climate change matters;
	“Project area” means the geographical area described in a project concept note and project design document within which the carbon market project takes place or is proposed to take place
	“Recognized Credible International Body” means a body defined as such under the Paris Agreement or any other international Convention or treaty.

	“Registrar” means the National Registrar under Regulation 14 (1);
	“UNFCCC” means the United Nations Framework Convention on Climate Change.
	“Voluntary Carbon Market” means a market where private investors, governments, non-governmental organizations, and businesses voluntarily buy and sell carbon credits that represent certified emissions removals or reductions of greenhouse gases in the atmosphere;
Objectives	<p>3. The objectives of these Regulations are —</p> <p>(a) to provide a framework for implementation of carbon market projects;</p> <p>(b) to create incentives and implement initiatives to support Green HouseGases emissions reduction and removal targets of in line with Nationally Determined Contributions; and</p> <p>(c) to provide guidance on the annual social contribution for carbon market projects.</p>
Scope	<p>4. These Regulations shall apply to—</p> <p>(a) principles governing trading in carbon markets;</p> <p>(b) participation in carbon markets;</p> <p>(c) environmental impact assessment relating to carbon markets projects;</p> <p>(d) social and environmental benefits relating to carbon markets; and</p> <p>(e) Published whitelists of eligible technologies.</p>
Application	5. These Regulations shall apply to voluntary and compliance carbon markets in Kenya.

	PART II: GENERAL PRINCIPLES
Additionality, Measurability, ,permanence and environmental integrity.	<p>6. The administration of these Regulations, shall comply with the fundamental principles enshrined in the Paris Agreement including —</p> <p>(a) all transactions in carbon trading as carried out under these Regulations shall result in the additional effect of a reduction and removal of greenhouse gas emissions;</p>

	<p>(b) all mitigation outcomes which are reported under the requirements of these Regulations are to be accounted for in tonnes of carbon dioxide equivalent;</p> <p>(c) all carbon offset projects shall ensure that emissions are kept out of the atmosphere for a reasonable length of time in accordance with the relevant carbon standards;</p> <p>(d) all emission reductions and removals must be carefully recorded and documented for every offset scheme, utilizing appropriate accounting terms, corresponding adjustments where applicable, and location of offset as required by the UNFCCC and other standard bodies; and</p> <p>(e) All carbon markets projects shall adhere to environmental integrity.</p>
<p>Prohibition against double counting.</p>	<p>7. Where necessary the Designated National Authority shall apply corresponding adjustments to carbon markets projects under these Regulations to ensure that there is no double counting of mitigation outcomes.</p>

PART III: GOVERNANCE AND INSTITUTIONAL FRAMEWORK

<p>Functions of the Cabinet Secretary.</p>	<p>8. The Cabinet Secretary shall—</p> <ul style="list-style-type: none"> (a) provide policy guidance in carbon markets and other crediting mechanisms; (b) coordinate the international processes for carbon markets in Kenya; (c) With the approval of Cabinet enter into bilateral or multilateral agreements with other state parties to trade carbon for emission reductions and removals; (d) with the approval of Cabinet, enter into an agreement with a private entity to offset carbon emissions; and (e) with the approval of cabinet, enter into any agreement to trade in a carbon market established or overseen by an internationally recognised entity that is approved by a recognized credible international body.
<p>Focal Point.</p>	<p>9. The focal point for the carbon market shall be the Principal Secretary.</p> <p>The Focal point shall in consultation with the Cabinet Secretary-</p> <ul style="list-style-type: none"> (a) oversee the implementation of all projects under Regulation 8 (c); (b) coordinate and oversee the implementation of matters related to carbon markets; (c) appoint project based ad hoc committees to review project concept notes and project design documents; and (d) collaborate with sector ministries on issues concerning carbon markets.

<p>Designated National Authority.</p>	<p>10 (1) The Designated National Authority shall-</p> <ul style="list-style-type: none"> (a) Be the custodian of the National Registry established under Section 23 G of the Act; (b) provide key information to project proponents in carbon market projects; (c) consider and make determinations on carbon market project concept notes and issuance of letters of no objection; (d) issue letters of authorization to project proponents; (e) receive and submit project design documents to the ad hoc committee for consideration; (f) monitor registered carbon market projects; and (g) provide guidance to project proponents on operationalizing Article 6.2 on cooperative approaches; and (h) provide guidance on the rules, modalities and procedures of Article 6.4 of the Paris Agreement, including approval and authorization of activities and the project proponents. <p>(2) The administrative fee for running the Designated National Authority shall be as set out in the Second Schedule.</p>
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Climate Change Directorate.	<p>11 The functions of the Climate Change Directorate shall be-</p> <ul style="list-style-type: none"> (a) to advise the government on measures and the control of carbon market activities being carried out by stakeholders in order to ensure compliance to these regulations; (b) to enhance sectoral coordination and mobilization of stakeholders for the effective control and management of carbon markets; (c) to co-ordinate and promote public participation and awareness on carbon markets; and (d) to facilitate research on carbon markets.
Multi-sectoral technical committee and ad hoc committee	<p>12. (1) There is established a Multi-sectoral technical committee comprising of state and non-state actors in all sectors of the Intergovernmental Panel on Climate Change to provide technical advisory on carbon markets project assessment.</p> <p>(2) The members of the committee established in Sub Regulation (1) shall be nominated by the sector Cabinet Secretaries</p> <p>(3) The Focal Point shall convene project specific ad hoc committees of not more than five members drawn from the Multi-sectoral technical committee established in sub-regulation (1).</p>
Functions of the Ad hoc Committees.	<p>13. (1) The Ad hoc Committee shall perform the following functions-</p> <ul style="list-style-type: none"> (a) review the project design document and provide recommendations to the Designated National Authority; and (b) perform any other functions as may be assigned under these Regulations. <p>(2) The Cabinet Secretary shall prescribe the rules of procedure for the ad hoc committees by notice in the gazette</p>

PART IV: THE CARBON REGISTRY

National Carbon Registry.	<p>14. (1) The National Carbon Registry established under section 23G of the Act shall be headed by a national registrar who shall be the head of the Designated National Authority.</p> <p>(2) The National Registrar shall maintain registers as provided for under Section 23G of the Act.</p>
Sector Carbon Registries.	<p>15. (1) There is established sector registries which shall be integrated into the national carbon registry</p> <p>(2) The sector registries shall be headed by sector registrars</p> <p>(3) The sector registrar shall be nominated by the sector cabinet secretaries and appointed by the Cabinet Secretary by notice in the gazette</p> <p>(4) The Cabinet Secretary shall designate each sector registry by notice in the <i>gazette</i>.</p>
Functions of the Registrar.	<p>16. (1) The Registrar shall perform the following functions-</p> <p>(a) keep, maintain and update a register of all carbon market projects under these regulations;</p> <p>(b) implement measures to ensure the confidentiality of information collected under these Regulations; and</p> <p>(c) submit to the focal point, quarterly reports of the information maintained in the register under Regulations 14(2).</p>
Functions of the Sector Registrars.	<p>17. (1) The Sector Registrars shall perform the following functions-</p> <p>(a) keep, maintain and update sector register of their respective carbon market projects;</p> <p>(b) implement measures to ensure the confidentiality of information collected under these Regulations; and</p> <p>(c) submit to the Registrar, quarterly reports of the information maintained in the sector register established in sub-regulation 1.</p>
	<p>PART V: PARTICIPATION IN CARBON MARKETS</p>

<p>Obligations of a project Proponent.</p>	<p>18. (1) A project proponent shall disclose relevant carbon market project information including-</p> <ul style="list-style-type: none"> (a) the project costs; (b) verified emission reductions and removal and estimated revenues; and (c) adherence to all applicable legal requirements in operating carbon projects. <p>(2) A project proponent who knowingly or willfully fails to provide information under sub regulation (1) or under-values the estimated revenue commits an offense.</p>
<p>Project Requirements</p>	<p>19. (1) A project proponent shall not operate a carbon market project without being registered by the Registrar.</p> <p>(2) A carbon market project shall-</p> <ul style="list-style-type: none"> (a) be in line with national policies, laws and strategies; (b) indicate how the project shall contribute to the Nationally Determined Contributions; (c) adhere to national priority carbon market sectors; (d) indicate the ownership of the property involved in the project; (e) provide community development agreements or agreements with property owners; (f) involve local communities in the project conceptualization and development in land based carbon market projects; (g) adhere to national priorities, ecological, social, cultural and economic safeguards; (h) indicate expected employment creation by the project; (i) describe how the project ensures environmental integrity; and (j) indicate how the project will contribute to sustainable development and alleviation of poverty

<p>Environmental and Social Impacts assessment. No. 8 of 1999.</p>	<p>20. (1) All Carbon market projects under these Regulations shall be subjected to an environmental and social impacts assessment in accordance with the Environmental Management and Coordination Act and its Regulations.</p> <p>Provided that ongoing carbon market projects shall undertake an environmental audit.</p> <p>(2) Without prejudice to sub regulation (1), each carbon market project shall adhere to sector specific standards and safeguards.</p>
<p>Certification, validation and verification.</p>	<p>21. (1) A carbon market project shall be subject to certification of known international standards and validation by a reliable and independent auditor before it starts and verification of each result in accordance with the principles under Regulation 6.</p> <p>(2) These regulations prohibit engagement in carbon markets projects without a reliable and independent auditor undertaking validation of each project before it starts and to verify each result.</p>
<p>Offence.</p>	<p>22. Any person who contravenes the provision of this Part commits an offence.</p>
<p>PART VI. PROCEDURES FOR DEVELOPING CARBON MARKET PROJECTS</p>	
<p>Application for a Carbon Market Project.</p>	<p>23. (1) An application for approval of carbon market project shall-</p> <ul style="list-style-type: none"> (a) Be in the form set out in the First Schedule; (b) Be accompanied by minutes of the proponent's meeting approving the project; and (c) Be accompanied by the fees specified in the Second Schedule. <p>(2) Where the Designated National Authority is satisfied that the project proponent has fulfilled the requirements for approval under these Regulations, the Designated Authority shall within fourteen days' of receipt of the application, issue a letter of no objection to the project proponent.</p> <p>(3) Where Designated National Authority declines an application under sub-regulation (1), the Designated National Authority shall within fourteen days' of such decision-</p> <ul style="list-style-type: none"> (a) notify, in writing, the project proponent of the refusal; and

	<p>(b) provide reasons for such refusal.</p> <p>(4) The Designated National Authority may decline an application under sub-regulation (1) where the-</p> <p>(a) particulars provided for inclusion in the application are incomplete;</p> <p>(b) appropriate safeguards for environmental protection have not been provided; and</p>
<p>Project Design Document</p>	<p>(c) project proponent is in violation of any provision of the Act and these Regulations.</p> <p>24. (1) A project proponent shall develop a project design document within twelve months after obtaining the letter of no objection and submit it to the Designated National Authority accompanied by the fees set out in the Second Schedule.</p> <p>(2) The project design document shall, in addition to the elements of the concept note contain-</p> <p>(a) detailed description of the project activity;</p> <p>(b) detailed description of the baseline and monitoring methodology; and</p> <p>(c) carbon credit period.</p> <p>(3) The project design document submitted under sub-regulation 2 shall comply with the project design document requirements of the applied accepted carbon standard.</p> <p>(4) Subject to sub regulation (1), the project proponent may through a written notice, request for extension of time by stating the reasons for delay to develop and submit the Project Design Document.</p> <p>(5) The Designated National Authority may grant extension of time of not more than twelve months to the project proponent to develop and submit the project design document after being satisfied with the reasons provided.</p> <p>(6) The Designated National Authority shall within seven days upon receipt of the project design document, submit the project design document to the ad hoc committee for recommendation.</p> <p>(7) The ad hoc committee shall within thirty days of the project design document under sub-regulation (6), review and submit its</p>

	<p>recommendation to the Designated National Authority.</p>
	<p>(8). The Designated National Authority shall within fourteen days of the receipt of the report and recommendations of the ad hoc committee-</p> <p>(a) with the concurrence of the focal point approve and issue a letter of authorization to the project proponent as prescribed in the Fourth Schedule upon payment of the administrative fees under the Second Schedule; or</p> <p>(b) reject the project setting out the reasons in writing.</p>
<p>Commencement of a Project.</p>	<p>25. (1) A project proponent undertaking a public carbon project shall, within 12 months after receiving the authorization commence the implementation of the project activities.</p> <p>Notwithstanding sub-regulation (1), a project proponent undertaking a public carbon project where it is unable to commence implementation of the project activities within the prescribed time may-</p> <p>(a) request for additional time to commence the implementation of the project activities; or</p> <p>(b) issue a notice to the Designated National Authority withdrawing its intent to not continue with the project.</p>

<p>Cancellation of Approval</p>	<p>26. (1) A project that has received approval and a letter of authorization maybe cancelled -</p> <ul style="list-style-type: none"> (a) for failure to commence the project activities within the prescribed time where it is a public carbon project; (b) for non-compliance with the project requirements prescribed in these Regulations; (c) where the project proponent voluntarily cancels the project by submitting an official notice; (d) where the authorization was obtained through fraud or misrepresentation; (e) where the continued operation of the project activity is or is likely to be injurious to the environment or human health; or (f) where the project proponent knowingly or willfully withholds information or provides misleading information.
<p>PART VII: ANNUAL SOCIAL CONTRIBUTION</p>	
<p>Public Carbon Market Projects.</p>	<p>27. The annual social contribution to the community in public carbon Market projects on public land shall be 25%. –</p>

Community carbon Market Projects.	<p>28. (1) Any community carbon market project shall in line with the Act provide for annual social contributions of at least 40 % of aggregate earnings of the previous year for Land-based projects.</p> <p>(2) The annual social contribution shall be included in the Community Development Agreement as set out in the Fifth Schedule.</p> <p>(3) The management and disbursement of the benefits for the community shall be undertaken by a Community Project Development</p>
	Committee as set out in the Community Development Agreement in the Fifth Schedule.
Private Entity carbon market project	29. (A private entity carbon market project on private land shall not be required to disburse the annual social contributions under section 23E (5)(b) of the Act.
	PART VIII: DISPUTE RESOLUTION
Dispute Resolution	30. Any agreement made pursuant to these Regulations shall provide for dispute settlement in line with the Act.
Appeals and Reviews.	31. Any party aggrieved by a decision made under these Regulations may appeal to the National Environmental Tribunal within sixty days of the decision.
	PART IX: OFFENCES AND PENALTIES
Offences and Penalties.	32. Any person who commits an offence under these Regulations shall be liable upon conviction, to a fine of not more than twenty thousand shillings or imprisonment for not more than six months or to both.
	PART X: GENERAL PROVISIONS

Confidentiality.	<p>33. (1) Any person who obtains information in any form in the performance of their duties under these Regulation, shall not communicate or disclose any information classified as confidential to an unauthorized person.</p> <p>(2) A person who contravenes the provisions of sub-regulation (1) commits an offence.</p> <p>(3) Nothing under this Regulation shall prohibit a person from disclosing information to another person so far as it is required or permitted under these Regulations or any written law.</p>
Funds to be paid into the consolidated fund	<p>34. At least 25% of the aggregate earnings of the previous year for non-land based Carbon Market Projects in public and community carbon Project shall be paid into the consolidated fund to be used for sustainable development.</p> <p>At least 15% of the aggregate earnings of the previous year for land based carbon market projects on public land shall be paid into the consolidate fund and used for sustainable development.</p>
Liability for environmental and human health damage.	<p>35 Where any damage to the environment or human health is caused by a carbon market project, the project proponent responsible for that particular carbon market project shall be liable for the damage caused.</p>
Non-transferability	<p>36. A project proponent shall not transfer a letter of no objection or a letter of authorization for a carbon market project issued under these Regulations unless-</p> <p>(a) a transfer is required upon change of control or full transfer of ownership of the project proponent; and</p> <p>(b) the proposed new project proponent meets the requirements under these Regulations.</p>
Guidelines.	<p>37. The Cabinet Secretary may issue guidelines for the effective implementation of these Regulations.</p>

Transition.	38. A project proponent engaged in a carbon market project before the coming into operation of these Regulations, shall comply with the provisions of Part V of these Regulations within two years of commencement of these Regulations.
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SCHEDULES

FIRST SCHEDULE

Application form

SECOND SCHEDULE

Schedule for fees

THIRD SCHEDULE

Letter of No Objection

FOURTH SCHEDULE

Letter of Endorsement

FIFTH SCHEDULE

Community Development Agreements