



HANSEN ADVOCATES

ONE VISION. ONE FIRM

“OUR TAKE”

**KEY LEGAL PROTECTIONS AND RISK MANAGEMENT FOR
CARBON PROJECTS**

“Building a Sustainable Future for Kenya”

PART 3

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INTRODUCTION

As Kenya's carbon financing landscape grows, businesses in renewable energy, agriculture, forestry, and waste management are increasingly pursuing carbon projects to reduce emissions and earn revenue through carbon credits. However, alongside these opportunities come complex legal, regulatory, and operational risks that demand robust protection and risk management strategies. Here's a look at the key legal protections and best practices for managing risk in carbon projects, so businesses can make the most of carbon financing while safeguarding their investments.

1. Establishing Clear Ownership Rights

Ownership clarity is foundational for carbon projects. Carbon credits are generated based on emission reductions, and businesses must clearly establish ownership of these reductions. Ambiguity around ownership can result in disputes or, worse, the invalidation of credits. Legal agreements should clearly state ownership rights and specify how they'll be transferred, traded, or retained. In Kenya, particularly with land-based carbon projects, land rights issues may arise, so businesses should collaborate with legal experts to verify land titles and secure landowner agreements when necessary.

2. Regulatory Compliance and Due Diligence

Compliance with local and international regulations governing carbon markets is essential. Projects should align with standards set by recognized bodies, such as the Verified Carbon Standard (VCS) or the Gold Standard, to ensure credibility. In Kenya, adherence to National Environment Management Authority (NEMA) guidelines as it is the Designated National Authority and other local regulations is critical.



Conducting comprehensive due diligence before project initiation can uncover potential compliance challenges, especially related to environmental impact assessments, community consent, and project documentation.

3. Contracts and Agreements for Carbon Rights and Credits

Contracts for carbon credits must be drafted with careful attention to detail, outlining terms for the issuance, sale, and transfer of carbon credits. Standard contractual clauses typically include terms on credit quality, volume guarantees, pricing, and dispute resolution. Agreements should also address contingencies, such as what happens if the project fails to meet its carbon reduction targets or if regulatory changes affect credit eligibility. Carbon project developers should work with legal professionals experienced in carbon markets to craft these contracts to minimize risks.

4. Risk Mitigation Through Insurance

Insurance is an essential tool for managing the inherent risks associated with carbon projects. Coverage options include:

- **Performance Insurance:** Protects against underperformance, where the project does not achieve the projected carbon reductions.
- **Political Risk Insurance:** Shields against losses from regulatory changes or expropriation in politically unstable regions.
- **Natural Catastrophe Insurance:** Critical for land-based projects that may be vulnerable to natural disasters, such as droughts or wildfires.

Insurance policies tailored to carbon projects provide a safety net, particularly for those investing significant capital in long-term projects.



5. Community Engagement and Benefit Sharing

Engaging with local communities is a best practice and, in some cases, a regulatory requirement. Carbon projects, especially those based on natural resources, affect local communities who may depend on these resources for their livelihoods. Establishing benefit-sharing mechanisms and securing community consent can prevent conflicts and foster long-term project sustainability. A legal framework outlining benefit-sharing terms, grievance mechanisms, and periodic engagement helps build trust and ensures that communities receive tangible benefits from carbon projects.

6. Monitoring, Reporting, and Verification (MRV)

Effective MRV systems are essential for the credibility and success of carbon projects. These systems help verify that the emission reductions claimed are real and quantifiable. Legal agreements should require strict adherence to MRV protocols set by international standards. Independent verification organizations are often engaged to assess and certify emission reductions. To ensure compliance, carbon project owners must also stay updated on evolving MRV requirements, which can vary based on project type and location.

7. Planning for Market and Price Volatility

Carbon markets are subject to price fluctuations driven by demand, policy changes, and other external factors. To mitigate financial risk, carbon project owners can explore:

- **Long-term Purchase Agreements:** Lock in buyers for the credits at agreed prices, ensuring revenue stability.
- **Market Diversification:** Selling credits in multiple markets (domestic and international) to reduce dependency on a single market.



- **Portfolio Diversification:** Diversifying project types (e.g., combining reforestation with renewable energy) to manage financial exposure and maximize revenue potential.

8. Navigating Policy Changes and Legal Uncertainty

Carbon policies and regulations evolve as governments adjust to climate realities and align with global standards. Projects that span years, even decades, are especially vulnerable to changes in carbon pricing, credit eligibility, or reporting standards. Engaging legal advisors with expertise in environmental and carbon law ensures that contracts contain provisions that accommodate policy changes, offering flexibility without sacrificing compliance. It also helps businesses stay ahead of any upcoming policy shifts that may impact their project's feasibility or profitability.

CONCLUSION: BUILDING A RESILIENT CARBON FINANCING ECOSYSTEM IN KENYA

Carbon projects in Kenya represent a promising path toward a low-carbon economy while unlocking new revenue streams for businesses. However, the success of these projects depends on careful planning, sound legal protections, and proactive risk management strategies. By investing in solid legal frameworks and risk mitigation practices, Kenyan businesses can maximize their returns on carbon projects, attract ESG-focused investors, and contribute to the country's climate goals.

Kenya's carbon financing future is bright, and with the right legal and risk management strategies in place, businesses can navigate the complexities and uncertainties of the carbon market with confidence.





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