



Dewey & LeBoeuf

An Introduction to the
Climate Change Group



About Dewey & LeBoeuf

Dewey & LeBoeuf is one of the world's largest law firms with over 1,100 lawyers practicing in 26 offices worldwide. The firm is known for its preeminence in providing legal services to the energy, utilities, banking, finance and insurance industries. Our practice has grown from this foundation to become a full-service law firm with clients in all industry sectors, including oil and gas, power, chemicals, banking, mining, manufacturing, aviation and aerospace, maritime, real estate, telecommunications, technology,

information and media, as well as governments and their agencies. Our experience in these fields has, in turn, brought us to leading positions in capital markets, project finance, corporate and financial services, bankruptcy, environmental, tax, international arbitration and litigation practices.

Dewey & LeBoeuf's multinational network of offices serves local interests and ensures a cost-effective and coordinated strategy in matters involving multiple jurisdictions. Our

overseas offices are strategically located, enhancing clients' access to, and ease of doing business in, major international markets.

For additional information, please visit www.dl.com.

An Introduction to the Climate Change Group

Our Climate Change Group

A hallmark of Dewey & LeBoeuf's client service has been its commitment to pro-active counseling on emerging issues affecting the commercial and industrial sectors.

Since the early 1990s, our lawyers have been advising our domestic and foreign clients in the energy, utilities and industrial sectors on statutory programs and policies designed to regulate emissions and discharges from energy and manufacturing facilities. We also have been advising our insurance clients on the risks and opportunities associated with new products to manage environmental conditions in emerging regulatory markets. As the control of greenhouse gases ("GHGs") has evolved into a global issue, creating in the process voluntary and mandatory carbon trading markets, we have advised energy, utility and industrial sector businesses, banks, finance houses and governments on the development of, and participation in, mandatory directives and voluntary programs, as well as the business opportunities associated with renewable and clean energy, renewable

fuels, emissions trading schemes and carbon capture and sequestration ("CCS").

The broad scope of climate change issues requires diverse and coordinated expertise. To offer our clients the best possible service, our various practice resources have been pooled together into one unified group. Building upon our historical experience and client base in the oil and gas and energy sectors, and our multijurisdictional environmental law team, Dewey & LeBoeuf has established a truly international Climate Change Group, comprised of lawyers in London and Washington, DC, as well as Frankfurt, Paris, Warsaw, Moscow, Beijing, Johannesburg, New York, Houston, Chicago and Boston. All have considerable experience in business and regulatory climate change issues from working with industries in the affected sectors and those involved in the commercial markets arising from voluntary and mandatory initiatives. Our Climate Change Group is able to call upon lawyers from a range of specialist sectors, including insurance, tax, project finance, structured finance,

environmental, corporate, energy and utilities, real estate and intellectual property.

In addition, our team of economists in our Washington, DC office have developed a proprietary model to assist firm clients in any business sector with quantifying the impacts of currently proposed federal carbon reduction legislation and regulations, in order to develop risk-management strategies and advocate appropriate legislative and regulatory outcomes.

We offer the following services:

Projects and Investment

Dewey & LeBoeuf's lawyers have considerable experience in advising clients on the structuring and regulatory aspects of Kyoto-based emissions reductions projects in developing and developed countries and the Certified Emission Reductions ("CERs") under the Clean Development Mechanism ("CDM"), and Emission Reduction Units ("ERUs") under Joint Implementation ("JI"), which such projects generate. We have extensive experience with the European Union Emissions Trading Scheme ("EU ETS") and have



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advised on some of the largest and highest profile joint venturing arrangements entered into so far between international project developers and investors. As statutory and regulatory schemes governing markets related to carbon emerge in the US and other markets such as New Zealand, Australia and Japan, we continue to advise our clients on regulatory and business risk issues associated with voluntary federal and state mandatory GHG reduction programs.

Some of our recent experience includes:

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- Advising a French investor in relation to the creation of a joint venture company to pursue a CDM project involving abatement of HFC23 in China and the negotiation of an Emission Reductions Purchase Agreement (“ERPA”) for the purchase of the resulting CERs;
- Advising a Brazilian company in the paper/pulp sector in one of the pioneering CDM projects generating CERs through transfer of the company’s power generation from fossil fuel to biomass-fired, for sale to a leading global oil major;
- Advising a major US energy utility in the structuring and negotiation of joint venture agreements with a project developer as to the joint development and supply of GHG reduction technology and the joint ownership of companies in the business of developing methane-capture facilities;
- Advising a joint venture party in the establishment of, and negotiation of the shareholders agreement for, a joint venture company for the purposes of developing methane-capture facilities in various countries and producing and marketing the resulting emissions credits;
- Negotiating Framework and Investment Agreements, and assisting in the drafting of the Project Design Document, in relation to investment and purchase of ERUs from a “Track 2” JI project in Russia;
- Advising the developer of power plants on the repowering of plants utilizing carbon reduction technologies;
- Advising an energy company on allocation of climate change costs in power purchase and tolling agreements, developing legal arguments in support of the client’s position and negotiating agreements to allocate compliance costs associated with mandatory GHG reduction programs;
- Advising major US and international energy companies and private equity firms in the preparation of bids to acquire power plants (primarily coal) on the potential risks associated with the regulation of GHGs and the relevant assumptions used to quantify carbon risks in the US and strategic risk management opportunities (e.g., credit trading, offset projects, strategic portfolio planning);
- Advising a client in acquisition and reorganization of a company with carbon capture projects in Brazil, Mexico, Canada and the US;
- Managing the sale of approximately 1.2 million CERs created by a fuel-switching project in Nigeria; and
- Advising the largest North American GHG sequestration company on business development initiatives and Canadian and American CCS research grant programs.

Emissions Trading

The carbon market has grown enormously over the past five years. With the EU ETS at the forefront of this growth, lawyers in our London office in particular have developed consid-

erable experience in advising clients on applying for and trading carbon allowances.

Our US-based practitioners have experience in the voluntary and evolving mandatory emissions trading schemes and markets currently being implemented at the regional and state level, which may be transferable to the anticipated federal mandatory GHG trading schemes and markets.

Our lawyers have considerable experience advising clients in relation to current and emerging mandatory and voluntary market trading issues.

The following are examples of some of the recent experience of members of the group:

- Advising an energy company on compliance obligations related to the Regional Greenhouse Gas Initiative (“RGGI”);
- Negotiating ISDA, EFET and IETA emissions trading agreements with a number of counterparties, including airlines, hedge funds, manufacturing companies and utilities, on behalf of a global investment bank;

- Advising electricity generators and high energy users on their rights and obligations under, and in relation to strategic issues arising out of, Phases I, II, and future Phase III, of the EU ETS and the new Carbon Reduction Commitment (“CRC”);

- Drafting and negotiating emissions trading documentation for a major European electricity company;

- Advising various clients on compliance with and trading of Renewable Obligation Certificates under the UK’s Renewables Obligation;

- Advising a major Spanish energy company on the relative merits of using the International Swaps and Derivatives Association (“ISDA”), European Federation of Energy Traders (“EFET”) and International Emissions Trading Association (“IETA”) contract forms as a basis for its own master emissions trading agreements with various counterparties;

- Advising an airline and a major utility in connection with the development of a voluntary carbon offset program;

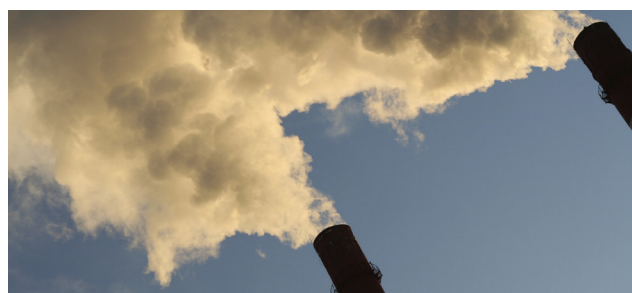
- Negotiating agreements and drafting contracts to buy and sell

carbon credits, renewable energy credits and energy efficiency credits to the forward market in the US states that have adopted mandatory GHG reduction programs, renewable portfolio and energy efficiency standards; and

- Advising energy companies on the legal requirements associated with the generation, ownership and trading of Renewable Identification Numbers (“RINs”) under the Environmental Protection Agency’s (“EPA”) Renewable Fuel Standard Program.

Legislation, Regulation and Policy Development

In the US, legislative inaction at the federal level has prompted states to move forward with programs to reduce GHG emissions. Although many believed that the results of the 2008 election would lead to federal climate change legislation and, despite passage of a comprehensive bill by the House of Representatives in 2009, the Senate has been unable to reach consensus, and it appears unlikely that Senators will be able to do so prior to 2011. Despite the failure of legislative efforts, EPA has moved forward with a number



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of proposals that would regulate GHG emissions under the Clean Air Act (“CAA”), pending the outcome of the lawsuits seeking to derail the Agency’s rulemakings. Our US-based lawyers have counseled clients on GHG program design, allowance allocation strategies (including early reduction of emissions and banking of allowances), the risks and opportunities associated with voluntary initiatives, and prospective mandatory regional, state and federal programs in the US.

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The following are examples of some of our lawyers’ recent experience:

- Advising insurer and members (gas and electric utilities) on legislative, regulatory, disclosure, litigation and risk management issues associated with climate change in the US;
- Counseling US and international companies on EPA’s actions to regulate GHG emissions, including

GHG monitoring, recordkeeping and reporting requirements for various industries, GHG emission standards, and regulation of GHG emissions through CAA permitting programs;

- Advising US companies on climate change bills in states and Congress and developments in the EU ETS;
- Advising several energy producers on the various state-specific carbon regulatory program options (California’s A.B. 32, Western Climate Initiative, etc.), including assisting them in preparing administrative filings in rulemaking proceedings on state and regional program design initiatives;
- Advising a member of a consortium on various aspects of CCS, in particular on current legal barriers to CCS projects;
- Advising land-based transportation sectors on the potential effects of federal climate change legislation;
- Drafting contractual agreements for future renewable power investments that qualify for CDM treatment in Asian and African countries;
- Advising members of the international aviation and shipping industries on scheme design issues associated with the proposed inclusion of the aviation sector in the EU ETS and a global or EU ETS for the shipping sector;

- Advising a merchant power generator on the requirements of the Mandatory Greenhouse Gas Reporting Rule and the potential impacts of the climate change bill passed by the U.S. House of Representatives;

- Advising clients in the power generation and industrial sectors on numerous technical issues under EU ETS implementing regulations such as the meaning and scope of an “installation,” definition of an “operator” and property rights in carbon credits;

- Advising a major international oil and gas producer and supplier on potential impacts of proposed legislative and regulatory changes related to climate change;

- Advising an international lender on regulatory structures to reduce carbon emissions from power sectors in developing countries on every continent;

- Developing the operating regulatory schemes for an independent power company’s involvement in foreign countries;

- Advising major US and European companies on their investment strategies on carbon reduction, offset creation, and trading strategies under state and regional GHG initiatives;

- Assisting a gas pipeline utility to successfully be listed in the Dow Jones Sustainability Index and the Carbon Disclosure Project S&P 500 Leadership Index;
- Advising electric utilities concerning the disclosure of climate change impacts in filings with the Securities and Exchange Commission (“SEC”); and
- Responding to shareholder inquiries and petitions regarding climate change for electric utilities.

Litigation

It is inevitable that the rapid growth of the carbon market, and the complex new issues to which it has given rise, will from time to time generate commercial and regulatory disputes. Our Climate Change Group contains a number of very experienced litigators who have handled civil and administrative climate change related disputes. For example:

- Representing a utility operator in the UK in resisting claims to title to on- and off-site climate change Levy Exemption Certificates (“LECs”);
- Representing the operator of a combined heat and power facility in the UK in defence of proceedings in the English High Court relating to disputed title to past and future credits worth approximately \$150 million;
- Representing power generation clients in three separate cases involving successful legal challenges to proposed Member State CO₂ allowance allocation decisions under the EU ETS;
- Advising a leading carbon offsetting company in defense of an investigation by advertising standards regulators in relation to alleged misleading advertising regarding the potential of various voluntary carbon emissions reductions projects in the developing world involving detailed examination of project methodology, additionality and verification;
- Representing a client in administrative proceeding regarding development of various state regulations implementing the RGGI;
- Handling major litigation to secure the future rights of carbon reduction projects in a key northeastern US market;
- Advising world-leading power companies on the level of validity of various state legislative and regulatory proposals;
- Advising various clients in the oil and gas, energy, industrial and insurance sectors on the implications of emerging public law and class action “climate change litigation,” and strategies for claim avoidance, defense preparation measures and other risk management strategies; and

- Advising a privately owned hedge fund sponsor on the status and likely success of legal challenges to a proposed county carbon tax.

Tax

Our experience in the tax sector includes:

- Advising a major US investor in the international CDM project market on tax advantages from strategic structuring and selection from Annex 1 parties for registration of credits; and
- Advising clients on the tax consequences of trading carbon in the US.

Insurance

Our experience in the insurance sector includes:

- Providing strategic and business advice to a major insurer regarding the scope of coverage for GHG gas emissions and global warming-related claims under existing liability insurance products, and advising in the development and implementation of new climate change-related products; and
- Maintaining an electronic database of relevant and important developments in climate change regulation for an electric and gas insurance captive.

Global Climate Change Group Contacts

Technology and Innovation Protection

Our Climate Change Group combines its substantial experience in general corporate and regulatory matters for our energy clients with its experience in technology transactions in assisting our clients in the implementation of their global intellectual property (“IP”) strategies. We regularly counsel clients in negotiating and drafting agreements for the commercialization of intellectual property, including licensing, joint ventures and strategic alliances, distribution arrangements and sourcing.

For further information, please contact any of the following members of the Group:

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With their experience in IP strategies and commercialization, and working with some of the top international global patent agents, our IP lawyers are able to assist clients who are investing or acquiring technology by performing legal diligence on IP portfolios and technology transactions.

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- “Law Firm of the Year” for Energy and Natural Resources (*Asian-Counsel*, 2010)
- “Best US Law Firm,” London (*Legal Business*, 2007)
- Band 1 for Climate Change in the UK (*Chambers Europe*, 2008)
- Band 1 for Energy & Natural Resources in New York for four consecutive years (*Chambers USA*, 2006-2009)
- Band 1 for Energy and Natural Resources in Russia (*Legal 500 EMEA*, 2007-2009)
- Band 2 for Corporate/Commercial: Energy and Natural Resources in Kazakhstan (*Chambers Global*, 2006-2009)
- Band 2 for Climate Change in Europe (*Chambers Europe*, 2008)
- Highly Recommended: Environment, England (*PLC Which Lawyer?*, 2008, 2009)
- Band 2 for Climate Change Europe-Wide (*Chambers Global*, 2009)
- Band 1 for Energy & Natural Resources in Russia (*Chambers Global*, 2002-2009)
- Recommended: Environment, Washington, DC (*PLC Which Lawyer?*, 2008, 2009)
- Band 3 for Climate Change (*Chambers UK*, 2010)
- Band 3 for Climate Change: Best of the UK (*Chambers UK*, 2009)
- Band 3 for Environment: Best of UK (*Chambers UK*, 2008, 2009)
- Band 3 for Environment in the UK (*Legal 500 EMEA*, 2008)
- Band 3 for Climate Change (*Chambers Global*, 2008)
- Band 3 for Environment in Connecticut (*Chambers USA*, 2007, 2008)

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