

# CARBON CREDITS IN MALAYSIA – M&A AND ESG CONSIDERATIONS FOR BUSINESSES AND INVESTORS

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Carbon credits have rapidly evolved from niche environmental instruments into strategic corporate assets. As Malaysian businesses face increasing pressure to decarbonise operations, satisfy investor ESG expectations and align with global supply chain requirements, carbon credits are becoming embedded within corporate transactions and investment strategies.

In Malaysia, the voluntary carbon market (VCM) is developing against a backdrop of policy evolution, regional cooperation and growing institutional participation. For businesses and investors, particularly those involved in mergers and acquisitions (M&A), joint ventures, infrastructure investments and project finance, carbon credits now present both opportunity and risk.

This article examines Malaysia's emerging carbon market landscape, with a particular focus on M&A, transactional structuring, and ESG-related considerations relevant to corporate decision-makers.

## What Are Carbon Credits?

A carbon credit is a tradable instrument representing the reduction, avoidance or removal of one metric tonne of carbon dioxide equivalent (CO<sub>2</sub>e) from the atmosphere. Credits are generated by projects that demonstrably reduce greenhouse gas (GHG) emissions, such as renewable energy developments, energy efficiency initiatives, methane capture projects, or forestry and conservation activities that sequester carbon.

In the Malaysian context, carbon credits are presently generated and traded within the voluntary carbon market framework. Malaysian projects (such as forestry, peatland conservation and renewable energy initiatives) may issue credits verified under internationally-recognised standards such as Verra or Gold Standard. Once verified, credits are recorded in electronic registries maintained by the relevant standard body and may be transacted domestically or cross-border.

Malaysia's institutional trading platform, the Bursa Carbon Exchange (BCX), operated by Bursa Malaysia, facilitates the auction and trading of verified carbon credits. While BCX provides market infrastructure and governance rules for exchange participants, Malaysia does not yet have a comprehensive statutory compliance carbon pricing regime. As such, the legal validity and commercial

integrity of Malaysian carbon credits depend primarily on contractual arrangements, adherence to international verification standards, and registry transparency.

It is important to note that carbon credits are intangible assets rather than physical commodities. Their value depends on robust measurement, reporting and verification (MRV) processes, clarity of project rights (including land tenure in nature-based projects), and confidence that the credited emissions reductions are real, additional and not double-counted. In M&A transactions, this intangible and compliance-driven nature gives rise to distinct legal, regulatory and valuation considerations which form the core discussion in this article.

## Malaysia's Carbon Market Framework

Malaysia's carbon trading ecosystem is presently centred on the voluntary market. The launch of the Bursa Carbon Exchange (BCX) by Bursa Malaysia marked a significant step in institutionalising carbon credit trading domestically.

BCX facilitates the trading of verified carbon credits and other environmental instruments via three modes of trading: auction, continuous trading and off-market transactions. It aims to position Malaysia as a regional hub and is recognised as the world's first Shariah-compliant carbon exchange.

While BCX provides a regulated trading platform, Malaysia does not yet have a comprehensive statutory carbon pricing regime or overarching carbon trading legislation. Accordingly, much of the legal certainty surrounding carbon credits derives from contractual arrangements, international standards and exchange rules, rather than statute.

Due to the above, many Malaysian-origin credits are also verified under international standards such as:

- Verra (Verified Carbon Standard – VCS)
- Gold Standard

## Carbon Credits As Assets In M&A Transactions

Carbon credits increasingly feature in corporate transactions, typically in the following ways – as standalone assets being acquired or monetised; as embedded value within operating businesses; or as strategic tools supporting ESG positioning post-acquisition.

Each scenario raises distinct considerations.

Where credits are core assets, buyers must assess legal entitlement to generate credits, verification status under recognised standards such as Verra, forward sale obligations under ERPAs, and permanence risks. Where credits are embedded within broader operations, issues include ownership of carbon rights, valuation assumptions tied to pipeline credits, financing constraints

and policy exposure. As strategic ESG tools, attention must be paid to credit integrity, disclosure alignment (particularly for companies listed on Bursa Malaysia), reputational risk and decisions on retirement versus monetisation, including potential trading on platforms such as the Bursa Carbon Exchange. In all cases, carbon credits can materially affect valuation, risk allocation and transaction structuring.

From a transactional perspective, carbon credits are not merely ancillary ESG considerations. They can influence purchase price and earn-out structures; affect representations, warranties and indemnity scope; trigger consent requirements under commercial agreements; and introduce contingent liabilities tied to environmental performance.

As Malaysian carbon markets continue to develop, including trading infrastructure such as BCX, carbon credit-related considerations are likely to become increasingly central in structuring, valuing and negotiating corporate transactions. For dealmakers, the key is early identification: whether carbon credits represent core value, embedded upside, or reputational risk will determine the depth of diligence and sophistication of contractual protections required.

## Due Diligence In Transactions Involving Carbon Credits

In M&A involving companies that generate, hold, or rely on carbon credits, enhanced diligence is essential. Traditional financial and legal diligence must be supplemented with climate and registry-specific review.

### Title And Ownership

Unlike conventional tangible assets, carbon credits exist as registry entries. Accordingly, due diligence must confirm several key issues, including: the project developer's legal right to generate credits (including land tenure and environmental approvals); proper issuance under an accredited standard; registry records reflecting ownership and transfer history; and absence of encumbrances, pledges or double-counting risks.

Where credits are tied to forestry or land-use projects, underlying land rights including indigenous or customary rights must be carefully examined.

### Project Viability And Permanence Risk

Carbon projects often involve long-term monitoring and permanence obligations. Investors should also assess items such as risk of reversal; applicable insurance coverage or indemnity structures; and ongoing compliance with monitoring, reporting and verification (MRV) requirements.

Failure of a project to meet verification standards can impair the validity of credits and trigger replacement or refund obligations.

## Reporting Compliance And Regulatory Risk

### ESG And Disclosure Implications In Corporate Transactions

Carbon credits are closely tied to corporate sustainability claims. In an acquisition context, buyers must also assess the seller's disclosure obligations and whether those credits align with the buyers' own disclosed climate and corporate strategy and positioning, and if it can realistically meet the disclosure obligations tied to the carbon credits to be acquired. Misalignment between disclosed climate strategy and actual credit quality may create post-acquisition reputational and regulatory risk.

Further, Malaysia's carbon market remains policy-driven and evolving. Due diligence would require the appropriate reviews of regulatory and policy updates where available, and appropriate highlighting of risks of change. Policy shifts may affect exportability, recognition, or host-country authorisation of credits.

### Transaction Structuring Considerations

#### *Share vs Asset Acquisitions*

In share acquisitions, carbon credits and related liabilities transfer with the target company. Buyers must therefore assess items such as historic representations made to credit purchasers; forward delivery obligations under certain agreements such as Emission Reduction Purchase Agreements (ERPAs); and potential misstatements in ESG disclosures.

In asset acquisitions, parties must clearly define items such as whether issued but unretired credits are included; treatment of pending or pipeline credits; and allocation of historical liabilities.

Clear drafting is critical to avoid ambiguity over entitlement to future issuances derived from pre-completion activities.

#### *Emission Reduction Purchase Agreements (ERPAs)*

ERPAs are commonly used for forward sale of credits. In acquisition contexts, ERPAs may constrain future flexibility of the target or lock in pricing below current market value. Certain ERPA clauses may also impose strict delivery and verification conditions.

Change-of-control provisions, assignment rights, and termination triggers are also some clauses that must be carefully reviewed during due diligence and renegotiated where necessary.

#### *Representations, Warranties And Indemnities*

Given the intangible and compliance-driven nature of carbon credits, transaction

documentation should also include tailored representations and warranties provisions covering issues such as valid issuance under recognised standards; accuracy of registry records; absence of double issuance or double counting; compliance with environmental and land-use laws; and absence of disputes with verifiers or registry administrators (whether current, pending or threatened).

Indemnities may be required for credit invalidation, reversal events attributable to pre-completion conduct, or regulatory non-compliance. Further, warranty and indemnity insurance providers are increasingly scrutinising carbon-related exposures, requiring robust underwriting disclosures.

### *Valuation Challenges*

Separately, valuing carbon credits in an acquisition transaction would also present complexity due to its evolving and developing nature. Volatility in voluntary carbon markets, reputational value tied to ESG positioning, and permanence and policy risk may also affect the valuation of carbon credits.

### *Cross-Border and Regional Considerations*

Malaysia's growing participation in regional and international sustainability initiatives underscores the increasing cross-border dimension of carbon markets. In late 2024, Malaysia signed a Memorandum of Cooperation on the ASEAN Common Carbon Framework (ACCF) with other ASEAN member states to advance a more unified regional carbon market and strengthen collaboration on carbon trading. This development signals a broader push toward greater interoperability and efficiency of carbon credit systems across Southeast Asia.

As carbon credits are frequently transacted across borders, Malaysian-origin credits may be purchased by foreign entities or incorporated into multinational climate strategies. This cross-border dimension introduces additional legal and commercial complexity beyond purely domestic transactions. Parties must consider issues such as host-country authorisation requirements for international transfers, recognition of credits under foreign compliance or reporting regimes, currency and enforcement risks, and the practical challenges of resolving disputes across jurisdictions. In this context, careful drafting of governing law, jurisdiction and arbitration clauses in ERPA and carbon credit sale and purchase agreements becomes particularly important to manage multi-jurisdictional exposure and ensure enforceability.

## **Conclusion**

Malaysia's voluntary carbon market is developing into a structured and increasingly sophisticated ecosystem. Platforms such as the BCX provide institutional infrastructure, while international certification standards underpin credibility.

For businesses and investors engaged in M&A, carbon credits introduce a new asset class characterised by regulatory evolution, valuation uncertainty and ESG exposure. Properly structured and diligence, carbon assets can enhance transaction

value and strategic positioning. Poorly managed, they can generate contingent liabilities and reputational risk.

As Malaysia advances toward its long-term decarbonisation commitments, carbon credits will continue to intersect with corporate transactions, investment strategy and governance frameworks. Legal advisors should therefore integrate carbon market considerations into mainstream M&A practice where appropriate, ensuring that climate considerations are addressed as core transactional matters, rather than as peripheral ESG checklist items.

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