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STEVE KIMATHI - PARTNER | YVONNE GOCHO - LAWYER | BRIAN MUNYAO - LAWYER

THE CLIMATE CHANGE (CARBON MARKETS) REGULATIONS, 2024

THE LAW

The Climate Change (Carbon Markets) Regulations, 2024 (the Regulations), were gazetted on May 17, 2024, by the Cabinet Secretary for Environment, Climate Change, and Forestry. These Regulations operationalize carbon markets in Kenya under the Climate Change Act, 2023 (the Act). This legal opinion examines the implications and nuances of these Regulations and their potential impact on businesses and stakeholders.

KEY TERMS

- **Carbon Market**: A mechanism allowing public and private entities to transfer and transact emission reduction units, mitigation outcomes, or offsets generated through carbon initiatives, products, programs, and projects, subject to compliance with national and international laws.
- **Carbon Project**: Interventions, including programs, projects, and products, designed to remove, reduce, sequester, or avoid carbon emissions.

GOVERNANCE & INSTITUTIONAL FRAMEWORK

The National Environmental Management Authority (NEMA) has been appointed as the Designated National Authority (DNA) to oversee the implementation of carbon projects. NEMA's responsibilities include:

- Issuing letters of approval and no objection for carbon projects.
- Evaluating carbon project concept notes.
- Providing guidance on the operationalization of the Paris Agreement rules and procedures.
- Monitoring carbon projects and maintaining a national registry.

NEMA's role ensures that businesses and stakeholders comply with the regulatory framework, promoting transparency and accountability in carbon market activities.

Participation in the Carbon Market

Part 4 of the Regulations outlines the rules and procedures for project proponents and carbon market projects. Key requirements include:

- Demonstrating financial capacity and expertise to undertake carbon projects.
- Notifying NEMA of all instances of carbon credit issuance.
- Submitting annual progress reports on carbon projects.

These requirements ensure that only capable entities participate in the carbon market, maintaining the integrity and effectiveness of carbon reduction efforts.

Annual Social Contribution

The Regulations specify the annual social contribution for carbon projects:

- Public entity and community land projects: 40% of aggregate earnings (less the cost of doing business) for land-based projects and 25% for non-land-based projects.
- Private projects on private land are exempt from this contribution.

For land-based projects, the contribution details and disbursement mode must be included in a Community Development Agreement (CDA) between the project proponent and the relevant community.

Transition of Ongoing Carbon Projects

The Regulations provide a two-year grace period for ongoing projects to align with the new legal framework. Businesses must undergo an environmental audit within six months of the Regulations' enactment. This transition period allows businesses to adapt to the new requirements without immediate disruption.

Potential Impact on Businesses and Stakeholders

The Regulations are expected to have several implications:

1. **Increased Compliance Costs**: Businesses will incur costs related to compliance with the new regulatory framework, including environmental audits and annual reporting.
2. **Enhanced Market Opportunities**: The structured carbon market may attract investment and create new business opportunities in carbon trading and project development.
3. **Community Engagement**: The requirement for Community Development Agreements ensures that local communities benefit from carbon projects, fostering social equity and support for climate initiatives.
4. **Regulatory Oversight**: NEMA's role in monitoring and approving projects ensures that carbon market activities align with national and international climate goals, promoting environmental integrity.

CONCLUSION

The Climate Change (Carbon Markets) Regulations, 2024, represent a significant step towards operationalizing carbon markets in Kenya. While they introduce new compliance requirements for businesses, they also offer opportunities for investment and community engagement. Stakeholders must navigate these changes carefully to maximize the benefits of the carbon market while ensuring compliance with the regulatory framework.

DISCLAIMER

This alert is for informational purposes only and should not be taken or construed as a legal opinion. If you have any queries or need clarifications, please get in touch with us on at as@asadvocates.co.ke or your usual contact in our firm for legal advice.

ANDREW & STEVE ADVOCATES
Advocates, Commissioners for Oaths and Notaries Public

Andrew & Steve Advocates

Advocates, Commissioners for Oaths and Notaries Public

Western Heights, 2nd Floor
+254 707 324113 / 0202 324113
as@asadvocates.co.ke