



Operationalising Part 10 of the CCA

CMI Workshop II

AUGUST 2023

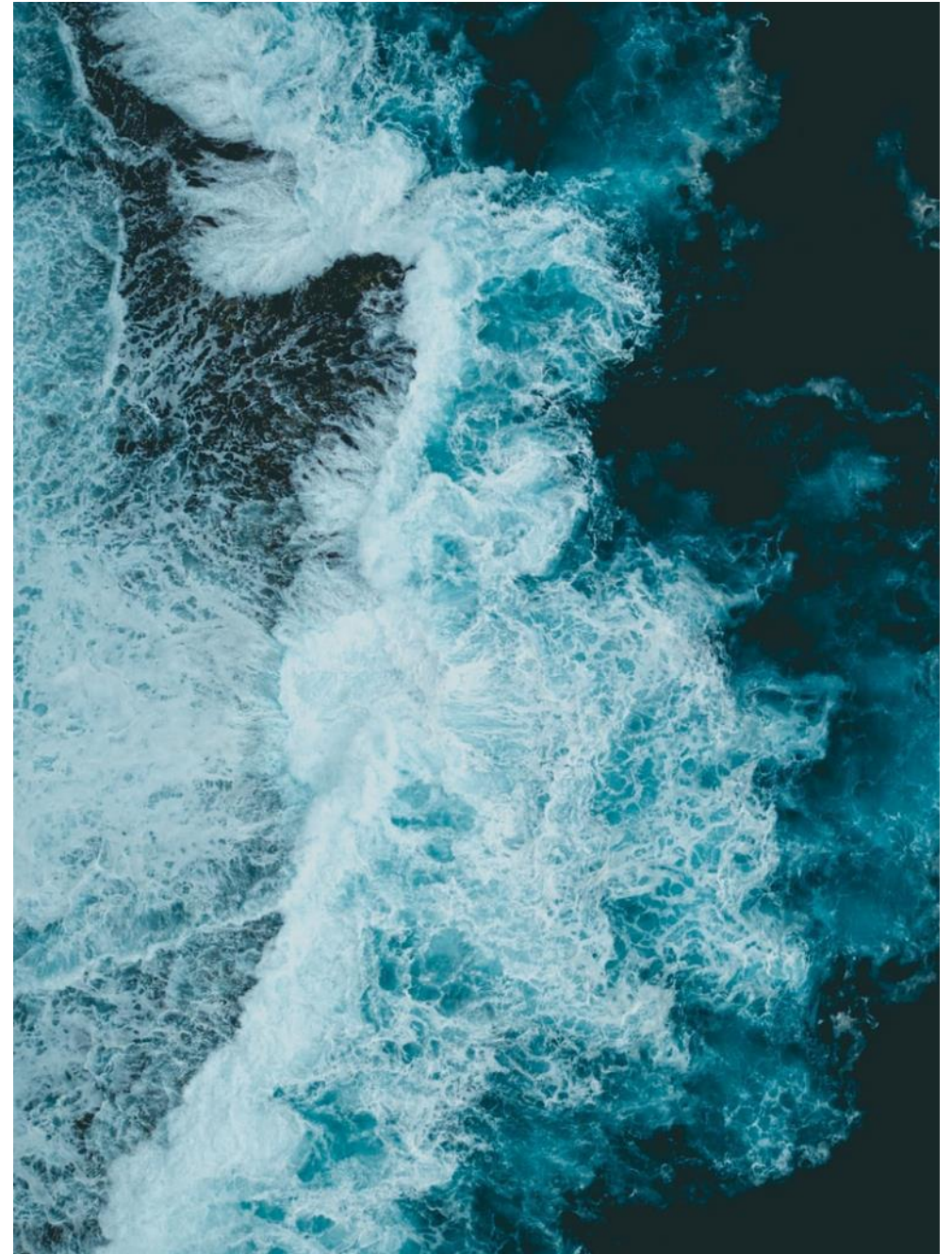
COMMERCIAL IN CONFIDENCE

Pollination is a specialist climate investment and advisory firm, dedicated to accelerating the transition to a net zero, nature positive future

○ Pollination has a presence in 13 countries across the Americas, EMEA, and the Asia-Pacific.

We bring together world leaders in finance, investment, technology, law and policy, to connect the dots and see around corners. We are solely focused on delivering sustainable solutions.

We have depth of experience in law reform work across the Asia-Pacific region and globally. In particular, we have a strong understanding of the Fijian climate landscape, acting as the lead external adviser to the Republic of Fiji in its Presidency of 23rd Conference of the Parties (COP23) to the United Nations Framework Convention on Climate (UNFCCC) and advising on the development of Fiji's Climate Change Act 2021.



We are a Fiji-based established law firm specializing in giving commercial advice particularly in the areas of:

- Natural Resources and Environmental Law
- Energy
- Telecommunications
- Construction and Major Infrastructure Projects
- Competition Law
- Property and Estate
- Tourism
- Aviation
- Mining
- Employment
- Intellectual Property
- Insurance
- NGO/CSO
- Tax



SIWATIBAU & SLOAN

BARRISTERS & SOLICITORS

Our core work is project-based rather than litigation-based. Our philosophy is to provide the right advice early on with a consultative and inclusive approach and to guide our client's away from legal risk.

We work with clients from the outset of a project or business venture and have local and international clients including Government Statutory Bodies.

Introductions to the team

CORE POLLINATION TEAM



Marisa Martin (Team lead)

Managing Director,
Head of Pollination
Law



Lauren Drake (co-engagement lead)

Executive Director



Joanna Zhou (co-engagement lead)

Director



Sophie Leitch

Associate

LOCAL LEGAL COUNSEL - SIWATIBAU AND SLOAN TEAM



Artika Prasad

Partner



Seini Tinaikoro

Senior Associate

POLLINATION' S INTERNATIONAL CARBON MARKETS & ARTICLE 6 EXPERTS



Martijn Wilder

Founder & CEO



Maggie Comstock

Director

A strong and robust legal framework is crucial to Fiji's engagement with carbon markets

FIJI'S NATIONALLY DETERMINED CONTRIBUTION UNDER THE PARIS AGREEMENT

In Fiji's latest 2022 NDC, Fiji recognises the intention to use voluntary cooperation under Article 6 of the Paris Agreement and the role of international market-based cooperation.

Specifically, this included reference to Article 6 of the Paris Agreement to support the achievement of Fiji's NDC and to provide additional mitigation outcomes to support NDC attainment by other countries.

OVERVIEW OF PART 10 OF THE CCA

- Part 10 of the CCA sets up the legal framework for **Fiji's engagement in carbon markets and climate mitigation frameworks**, including under Article 6 of the Paris Agreement.
- A robust legal framework is vital to help Fiji mitigate and adapt to the impacts of climate change and provide strong rules for Fiji's participation in carbon markets.

ROLE OF THE REGULATIONS

- Implementing regulations under Part 10 of the CCA is the next step to **enable Fiji to engage with international carbon markets and climate mitigation frameworks**.
- The regulations should be prepared to be aligned with overarching policy goals and climate ambitions of the Fijian government.

The categories of regulations under Part 10 of the CCA can be summarised into five key topics. These regulations have the potential to enable and unlock climate finance for Fiji to support a range of project types. Any regulations can and should be aligned with Fijian climate policies.

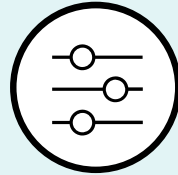
KEY TOPICS FOR POTENTIAL REGULATIONS UNDER PART 10 OF THE CCA



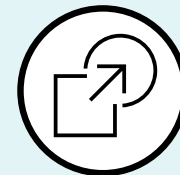
CARBON
SEQUESTRATION
PROPERTY RIGHTS
FOR LAND BASED
PROJECTS



METHODOLOGIES
AND PROJECT
TYPES FOR ALL
TYPES OF
PROJECTS



CREATION AND
RECORDING OF
FIJIAN
MITIGATION
OUTCOME UNITS



TRANSFER OF
FIJIAN
MITIGATION
OUTCOME UNITS



BENEFIT SHARING

The regulations can operationalise the recording of carbon sequestration property rights in Fiji



Carbon Sequestration Property Rights (CSPR) do not seek to change the rights of landowners in Fiji, rather it creates a separate interest in the land distinct from land ownership or possession rights.

These rights have been **used in other jurisdictions to clearly document who owns the rights to the carbon removed or reduced on land. This is important as the legal right to carbon underpins the ability to generate a carbon credit**, as project proponents are required to own the rights to the carbon which underpin the carbon credits generated. The ability for a landowner to transfer this right enables greater flexibility in how carbon projects are managed and financed.

In consultation with stakeholders, the regulations can clarify how carbon sequestration property rights are recorded and documented as well as the form and process for seeking relevant landowner consents.

The regulations can operationalise the recording of carbon sequestration property rights in Fiji



KEY SECTIONS OF PART 10 OF THE CCA

- *Section 45* creates a separate legal interest in land – a ‘carbon sequestration property right’ that must be registered in accordance with Part 10 with the office of the Registrar of Titles (who for the purposes of Part 10 is the **Registrar**). The holder of the CSPR has the exclusive and distinct legal right to carbon sequestered on the land.
- *Section 46* provides that leaseholders & licence holders may apply for registration with consent of landowner. A third party may also apply if the landowner consents to be issued the CSPR. For freehold land, the landowner may apply provided there are no conflicting leases or licences over the land.
- *Sections 46(1), (2), (3) and (4)* clarifies the various government consents which may need to be obtained as part of the process to register a CSPR, including the Director of Lands, iTLTB and Conservator of Forests for projects/programmes or activities which involve forests.
- *Sections 46(5) and (13)* provides that the Registrar of Titles or Deeds must register the CSPR, subject to satisfaction of certain conditions.



WHAT THE REGULATIONS COULD COVER

- Clarification on CSPR and registration processes
- Forms and requirements for stakeholders involved in registration process.
- Forms for notices of consent and the form of the certificate itself.
- Form of consent for applying for carbon sequestration property rights on iTaukei Land.

Part 10 of the CCA facilitates and contemplates inclusion of all carbon project types beyond land-based projects



Part 10 of the CCA contemplates that a broad range of emission reduction project activities, methods and types could be approved by the Climate Change Director for use in Fiji.

This could include, for example:

- energy projects such as renewable energy and energy efficiency projects
- cookstove projects
- land and nature-based solutions, including forestry, soil carbon or land management practices
- other project methodologies approved under voluntary carbon market standards such as Verra or Gold Standard.

In other jurisdictions, we have seen the **development and approval of new project activities, methods and types over time to attract climate financing through carbon markets in order to deploy a range of projects.**

Currently, REDD+ and blue carbon are explicitly recognised as eligible project types in Fiji under Part 10 of the CCA, but **in consultation with stakeholders, regulations under Part 10 of the CCA could make eligible additional project activities, methods and types in Fiji, as well as specify any approval requirements required.**

Part 10 of the CCA facilitates and contemplates inclusion of all carbon project types beyond land-based projects



KEY SECTIONS OF PART 10 OF THE CCA

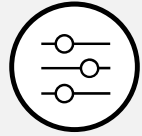
- *Section 50(1)* provides that specific projects, programmes and activities can be registered as a Fijian Emissions Reduction Project, Programme or Activity.
- *Section 49* provides that additional project methods can be developed by the Director and approved by the Minister responsible for climate change (**Minister**).
- *Section 49(2)(b)* provides that the Minister may also approve methods approved under approved international emissions reduction standards (e.g., Verra or Gold Standard).
- *Section 49(3)* provides that the Minister must consult with the Minister responsible for forests before approving a methodology that relates to an emissions reduction project, programme or activity involving forests.



WHAT THE REGULATIONS COULD COVER

- Approved project, programme or activity beyond those already contemplated (forestry and blue carbon).
- Applicable technical standards for specific methods to be approved (e.g., baselines, permanence periods, crediting periods etc).
- Potential overarching integrity requirements for projects and methods.

Consideration can be given to regulations which facilitate the process for the creation of Fijian Mitigation Outcome Units (FMOU)



Part 10 of the CCA outlines the process for issuances and nature of a Fijian Mitigation Outcome Unit as well as processes to approve emission reduction units generated from approved international emission reduction standards.

Part 10 of the CCA also creation of a separate “Fijian Registry” which is a register to record emission reduction projects, programmes and activities, serve as a registry or Fijian Mitigation Outcome Units or other approved international emission units and to facilitate domestic and international transfer of approved emission units.

These provisions are important to establish the infrastructure needed to not only facilitate the creation and recording of recognised carbon credits in Fiji (FMOUs) which represent one tonne of carbon dioxide equivalent reduced or removed, but also set up the ability for Fiji to directly engage in future transactions under Article 6 of the Paris Agreement.

Consideration can be given to regulations which facilitate the process for the creation of Fijian Mitigation Outcome Units (FMOU)



KEY SECTIONS OF PART 10 OF THE CCA

- *Section 52* sets out the process for issuing an FMOU. This is done by the Director once a project proponent has provided the number of emissions reductions that have been achieved by the project and this has been verified by the Director.
- *Section 61* establishes an online, publicly accessible registry which will provide a record of all Fijian emissions reduction projects, programmes and activities, as well as all carbon credits (including FMOUs) generated from these. The Director is responsible for keeping and maintaining the Registry.



WHAT THE REGULATIONS COULD COVER

- Requirements for the creation of an FMOU
- How the Registry will operate - including processes for the creation and recording of FMOUs
- Any clarification on the legal nature of FMOUs, with consideration for Article 6 developments

Consideration can also be given to how FMOUs can be transferred both domestically and internationally



Part 10 of the CCA sets up much of the infrastructure needed to facilitate transfers of recognised emission reduction units within Fiji as well as internationally.

Consideration will need to be given to how the Fijian government wants to manage any domestic and/or international transfers of emission reduction units generated in Fiji. This includes considering how Fiji will achieve its Nationally Determined Contribution and the role which carbon markets (including international voluntary markets) should play to help Fiji achieve its goals.

Processes to authorise and correspondingly adjust FMOUs under Article 6 can also be included under future regulations, to ensure compliance with requirements under the Paris Agreement.

Consideration can also be given to how FMOUs can be transferred both domestically and internationally



KEY SECTIONS OF PART 10 OF THE CCA

- *Section 53(3)* provides that FMOUs are personal property and may be transferred by their owner domestically and internationally, subject to the requirements of the CCA.
- *Section 58(2)* makes it an offence to transfer FMOUs internationally without the consent of the Director. The Director has the discretion to grant or refuse their consent, with the proviso that the Director must *only* grant consent if they are satisfied the transfer would be consistent with Fiji's NDC and relevant policies and guidelines.
- *Section 58(1)* gives the Director the power to develop standards and guidelines for the international transfer of FMOUs.



WHAT THE REGULATIONS COULD COVER

- Process and requirements for transferring FMOUs domestically
- Process for authorising and applying corresponding adjustments to FMOUs to be transferred internationally
- Any fees / levies / charges on FMOUs transferred internationally

Regulations can also capture key benefit sharing principles and requirements of the Fijian government



Future regulations under Part 10 of the CCA could also formalise government priorities for community and benefit sharing mechanisms for carbon projects in Fiji generally or specifically.



KEY SECTIONS OF PART 10 OF THE CCA

- *Section 111(3)(p)* gives the Minister responsible for climate change the power to make regulations under the CCA in relation to benefit sharing under emissions reduction projects, programmes and activities conducted in Fiji.
- *Section 60(1)* provides that the Minister responsible for forests, in consultation with the Minister responsible for lands, may approve a benefit sharing plan for any transaction under international REDD+ programmes.
- *Section 48(e)* provides that the Minister responsible for forests is responsible for developing a benefit sharing arrangement for forest emission reduction projects, programmes and activities.



WHAT THE REGULATIONS COULD COVER

- Specific and general benefit sharing plans or principles which are to apply to emission reduction projects, programmes in Fiji can be regulated



Delivering *Net Zero*

