

THE SINGAPORE CARBON TAX: INVESTOR CERTAINTY FOR ELIGIBLE ICCS HASN'T IMPROVED UNDER THE NEW LEGISLATIVE UPDATES

The Ministry of Sustainability and the Environment has issued amending regulations, to implement changes contemplated under the Carbon Pricing (Amendment) Act 2022. These regulations impact (i) the eligibility criteria for an international carbon credit (ICC), (ii) the application procedure for obtaining confirmation about an ICC's eligibility and (iii) the ICC surrender process. In this note we discuss the impact of these amendments and, in particular, whether they should have the effect of increasing investor confidence. If the intention of the regulators is to spur market activity relating to ICCs, then we anticipate the need for significant further clarification.

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Introduction

We have previously written about the Singapore carbon tax and how it will permit the use of ICCs as a means of enabling compliance entities subject to the Singapore carbon tax (**Registered Persons**) to reduce their tax burden (the **HFW Carbon Tax Alert**)¹. Since that paper, the Singapore government has announced that the ability to use ICCs will be available to from 1 January 2024, which is when the amendments to the Carbon Pricing (Amendment) Act 2022 come into force.² Separately, the government has also published a number of subsidiary legislation that supplement and implement the ability to use ICCs under the Carbon Pricing Act 2018 (as amended, the **Act**), all of which come into effect on 1 January 2024.³ For the purposes of this paper, the most relevant instrument is the one that amends the Carbon Pricing (Carbon Tax and Carbon Credits Registry) Regulations 2020. Together with the amending instrument, we refer to this as the **Amended Registry Regulation**.

This paper discusses the Amended Registry Regulation and, in particular, whether it adds anything to benefit the investor certainty concerns we highlighted in the HFW Carbon Tax Alert. Specifically, we consider whether it improves our understanding of:

1. how the criteria (**Eligibility Criteria**) for an ICC that can be surrendered against a carbon tax liability (an **Eligible ICC**) will be prescribed;
2. the procedure for applying to the National Environmental Agency (**NEA**) for an ICC to be considered an Eligible ICC; and
3. the process to surrender Eligible ICCs for the purposes of the Act.

¹ See <https://www.hfw.com/Does-the-Singapore-carbon-tax-help-facilitate-demand-for-international-carbon-credits-in-Singapore>

² The Carbon Pricing (Amendment) Act 2022 (Commencement) Notification 2023.

³ (i) Carbon Pricing (Registration and General Matters) (Amendment) Regulations 2023 which amends the Carbon Pricing (Measurement, Reporting and Verification) Regulations 2018, (ii) Carbon Pricing (Measurement, Reporting and Verification) (Amendment) Regulations 2023 which amends the Carbon Pricing (Registration and General Matters) Regulations 2018, and the (iii) Carbon Pricing (Carbon Tax and Carbon Credits Registry) (Amendment) Regulations 2023.

Eligibility Criteria

The Eligibility Criteria have been set out as 'principles' in an alert (**MSE Alert**) published by the Ministry of Sustainability and the Environment (**MSE**).⁴ In summary, the Eligibility Criteria for an ICC are:

No double-counting	2021 to 2030 vintage only	Additional	Real
Quantified and verified	Permanent	No net harm	No leakage

These terms are defined in the Amended Registry Regulation. An example of how they may be applied is set out in the MSE Alert. However, please note:

- Vintage:** The vintage requirements are presently tagged to 2021 to 2030, in line with the period of Singapore's nationally determined contributions (**NDC**) under the Paris Agreement. The vintage requirements should change for the next NDC period.
- No double-counting:** It remains unclear whether this means that the ICC must be correspondingly adjusted. Based on prior news releases and communication by the Singapore government (as discussed in the HFW Carbon Tax Alert), it seems that an Eligible ICC must be correspondingly adjusted. It is important for MSE or NEA to clarify this because obtaining a corresponding adjustment commitment from the host country of the ICC will come at a cost to investors.

ICC eligibility procedure

An Eligible ICC is an ICC that (i) meets the Eligibility Criteria, and (ii) is accepted as an Eligible ICC by NEA in accordance with the direction of the Minister for Sustainability and the Environment (the **Acceptance Procedure**).⁵

The Acceptance Procedure, as set out in the Amended Registry Regulation, will likely cause investor uncertainty, in particular, for market intermediaries looking to source ICCs for supply into Singapore via forward transactions with purchasing commitments longer than 18 months. The following factors illustrate the challenges of a market intermediary's supply of Eligible ICCs to Registered Persons:

- The Approval Process can only be done via a Registered Person:** Communications with, applications to and approvals from NEA are all as between NEA and the Registered Person⁶. In other words, (i) a market intermediary cannot get approval for use of that ICC, and (ii) the approval given by NEA to one Registered Person will not count as approval for another Registered Person. For the reasons discussed below (see the Surrender Procedure) the information given by the Registered Person at this stage is crucial. NEA can reject the 'evidence of retirement' if the information submitted as part of the Acceptance Procedure is inconsistent with what is ultimately stated in the 'evidence of retirement' when the ICC is used towards discharging the carbon tax liability.⁷
- The Approval Process is annual only:** The ICC approval application window for a Registered Person for each emissions year is from 1 July of that emissions year till 30 June of the year after that emissions year. The approval, once given, only lasts for a year. In other words, a Registered Person cannot make an application for emissions year 2026 in 2024, thereby reducing certainty on whether an Eligible ICC for one year will remain eligible for the next year. It is not clear as to why an annual assessment was adopted as opposed to approval for a particular period.

It may be the case that recent press criticism of carbon offset project activities from which ICCs could be supplied have made MSE nervous about granting eligible status to ICCs for more than a limited period. The shorter authorisation status increases MSE's discretion to reject ICCs that were eligible in a previous year. If so, this Eligible ICC status revocation risk isn't good for supply and investment certainty. Registered Persons will find their ability to source ICCs from market intermediaries constrained by this eligibility revocation risk because it is currently an uninsurable and unhedgeable risk.

- Status of proposed 'whitelist' activities:** We note that MSE has stated that there will be a 'whitelist' of, amongst others, host countries and methodologies (see MSE Alert). MSE has stated that "*as the administrator of the carbon tax regime under the Carbon Pricing Act, NEA will develop processes to determine which ICCs adhere to*

⁴ <https://www.mse.gov.sg/resource-room/category/2023-10-04-eligibility-criteria-for-international%20carbon%20credits>

⁵ Section 33A of the Act.

⁶ For example, the notice of ICC use and notification from NEA to the Registered Person under Reg. 10 of the Amended Registry Regulation.

⁷ See Reg. 11(7)(b) of the Amended Registry Regulation.

the Eligibility Criteria before carbon tax-liable companies use the ICCs to offset their taxable emissions. More details on these processes and a list of eligible host countries, carbon credit programmes and methodologies that adhere to the Eligibility Criteria will be released by the end of this year [i.e. 2023]⁸ (see MSE Alert). However, it remains unclear how this 'whitelist' will interact with the Acceptance Procedure or the Eligibility Criteria.

Does this mean that NEA's approval under the Acceptance Procedure will be deemed to be given if the ICC is issued in respect of a project on the whitelist, and therefore provide more comfort to Registered Persons intending to enter into forward sale and purchase arrangements? MSE or NEA should clarify whether the whitelist grants any additional certainty to investors.

Surrender of Eligible ICCs

The Amended Registry Regulation now provides that 'surrender' occurs through the Registered Person's submission of 'evidence of retirement' of Eligible ICCs on the EDMA system and "takes effect upon the acceptance by [NEA] of the evidence of retirement relating to that [Eligible ICC]"⁸ (the **Surrender Procedure**). In other words, market intermediaries should be able to retire Eligible ICCs for a Registered Person.

This helps resolve questions of delivery of Eligible ICCs from market intermediaries to Registered Persons but it still raises a number of questions. For example, how will certain information be reflected in the evidence of retirement (e.g., the Registered Person's 'Fixed-Price Carbon Credit' account number) given that presently the various carbon registries do not expressly provide for such a field to enter such information? Similarly, it is not clear how/when the Registered Person will specify the emissions year for surrender under arrangements that NEA may put in place with the relevant carbon standard/registry. The settlement mechanism of sale and purchase agreements for Eligible ICCs will remain uncertain until this is clarified. Given that NEA can reject the evidence of retirement if it is incomplete,⁹ this is significant issue for the risk allocation between the Registered Person and its supplier.

Conclusion

The Amended Registry Regulation helps to clarify the position relating to some of the issues flagged in the HFW Carbon Tax Alert. That said, some of the processes or procedures provided may make it difficult for Registered Persons and market intermediaries to structure forward sale and purchase arrangements. If the intention of MSE and NEA is to spur market activity relating to Eligible ICCs, then we anticipate the need for significant further clarification.

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⁸ Reg. 11(10) of the Amended Registry Regulation.

⁹ Reg. 11(7)(a) of the Amended Registry Regulation.

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