

# The Kyoto Protocol: three steps to take under the legal framework



**LAVERY, DE BILLY**  
BARRISTERS AND SOLICITORS

# New obligations for businesses

*Adopted on February 16, 2005, the Kyoto Protocol requires Canada to reduce its CO<sub>2</sub> emissions by 270 MT between 2008 and 2012 relative to the reference year, 1990.*

In order to comply with its international obligations, Parliament has adopted and amended Canada's domestic legislation to regulate greenhouse gas emissions. How does it impact your business?

The coming into force of the Kyoto Protocol results in new obligations for businesses which release greenhouse gases. Although only large final emitters are covered by the application of the Kyoto Protocol between 2008 and 2012, any other business may implement new technologies for reducing greenhouse gas emissions in order to earn recognized CO<sub>2</sub> credits, which it can subsequently sell on the domestic market.

*Lavery, de Billy's* climate change team can advise large final emitters and other businesses impacted by the Protocol. Our multidisciplinary team members offer you their services in matters pertaining to the environment, commercial transactions, intellectual property, access to information and drafting construction agreements. In short, three steps are required.

## **Obtain a specific authorization**

Our **environmental law specialists** can advise you in determining whether the implementation of any new greenhouse gas reduction technology requires a specific authorization. In this respect, we can also support you in having any related **intellectual property rights** recognized.

Large final emitters who exceed their greenhouse gas reduction targets will have the opportunity to earn recognized CO<sub>2</sub> credits. Our specialists can determine whether the new emission levels resulting from the implementation of a new reduction technology actually exceed the reduction targets contained in the Regulations.

Of course, our climate change team can thereafter support your steps to have your CO<sub>2</sub> credits recognized by government authorities.

On the other hand, our specialists can assess the regulatory consequences of any failure by your business to meet its specific greenhouse gas reduction targets.

## **Sell or buy CO<sub>2</sub> credits**

Our **transactional law** specialists can draft and negotiate contracts to be entered into between large final emitters and consulting firms to determine who will own the CO<sub>2</sub> credits resulting from the implementation of any greenhouse gas reduction technology.

For instance, in the event that large final emitters have CO<sub>2</sub> credits recognized, our specialists can advise them with respect to the sale of these credits on the domestic market.

However, in the event that large final emitters fail to meet their greenhouse gas reduction

targets, they must acquire CO<sub>2</sub> credits. Our specialists can then support them, both at the domestic and international levels, in the acquisition of CO<sub>2</sub> credits which, in fact, constitute rights to emit greenhouse gases.

In the context of mergers or acquisitions of businesses, our transactional law specialists will be able to determine whether it is the buyer or the seller who will be responsible for reporting the data on the production and emissions for the entire calendar year and for meeting the environmental reduction targets.

## **Register your business in the public registry**

Our specialists in **access to information and protection of personal information** can advise businesses who will be required to report information respecting their CO<sub>2</sub> emissions and their CO<sub>2</sub> credits (emission rights) in a public registry.

# Our professionals



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■ Advice to various parties interested in trading GHG credits or investing in or promoting GHG emission reduction projects. Drafting and negotiation of related documents and upcoming agreements. Investments or transactions may be effected through the Canadian GHG Offset System or the Clean Development Mechanism as well as through other mechanisms provided for the Kyoto Protocol, including through an organized market such as a stock exchange.



**H el ene Lauzon**

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■ Environmental, energy and natural resources law: Obligations of and compliance by large final emitters, presentation of greenhouse gas emissions reduction projects, required authorizations for greenhouse gas reduction, negotiation of CO<sub>2</sub> credit transactions, recognition of CO<sub>2</sub> credits and technology investment units, administrative or equivalence agreements, the Climate Fund and the Technology Investment Fund.

## Large final emitters: the first to be affected

The first affected businesses are:

- Aluminum smelters
- Mining ventures
- Paper mills
- Cement factories and lime producers
- Chemical production plants
- Iron and steel plants
- Oil and gas businesses
- Thermal electricity generation plants

## The role of consulting engineering firms

Consulting engineering firms have an important role to play in many respects, particularly in the research and implementation of greenhouse gas emissions reduction technologies, the preparation of the documentation required to obtain recognition of CO<sub>2</sub> credits, and the verification of CO<sub>2</sub> credits.

Our team can provide them with the necessary legal support, including the drafting and negotiation of construction contracts as part of the implementation of a new reduction technology.



**Mathieu Quenneville**

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■ Environmental, energy and natural resources law: Domestic and international CO<sub>2</sub> credit creation projects, compliance obligations of large final emitters, negotiation and trading of CO<sub>2</sub> credits.



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■ Protection of intellectual property rights. Acquisitions and transfers of intellectual property rights. Financing of intellectual property rights. Drafting and negotiation of licence, distribution and technology transfer agreements, turnkey agreements, co-development partnerships and agreements, agreements with universities and research centres. Trademark protection.



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■ Energy and natural resources law. Drafting and negotiation of partnership agreements. Public calls for tenders in the energy sector. Representations before regulatory authorities. Aboriginal law.



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■ Construction and procurement law: Drafting of project and services contracts, private and public calls for tenders, issuance of permits, civil and commercial litigation.

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