HCCH Experts' Group on Carbon Markets:

Comments on and Intermediate Iteration of Principle 4 of the draft UNIDROIT Principles on Verified Carbon Credits (October 2025)

Comments from the HCCH Experts' Group on Carbon Markets on Draft Principle 4

The EG on Carbon Markets has prepared a draft iterated text of Principle 4 (enclosed in the Annex). This draft is a work in progress. It seeks to clarify certain aspects of draft Principle 4, in particular, the scope of proprietary issues that should be governed by the same applicable law rule, and the appropriateness of addressing expressly what the provision is not meant to cover.

Other areas will require more time for the EG to consolidate its views. They include (non-exhaustively):

(a) whether the connecting factor(s) should be anchored on the registry, or on a different and broader conception of party autonomy. In that regard, paragraph (2)(a) of the Annex, which is square bracketed, prioritises party autonomy as a connecting factor, and reflects concerns including that, in a market where holders of VCCs are free to choose where their credits are held, the former may risk concentrating registry use within a limited number of jurisdictions, which could risk wider development and distribution of registry infrastructure and services. It is intended to be a place-holder for questions on (i) whether a choice of law should be given effect as the relevant applicable law, (ii) what limits, if any, should be placed on such a choice, (iii) the safeguards required to protect the interests of third parties, (iv) the effect of a supervening choice of law; and (v) the law to govern issues relating to the existence, validity and interpretation of a relevant choice of law;

(b) if anchored on the registry, whether there should be only one connecting factor, or options for different connecting factors;

(c) what connecting factor(s) should apply to proprietary rights in VCCs held by a custodian;

(d) whether different applicable law rules are needed for the matters excluded under paragraph (5) of the proposed iterated text, and if so, what those should be; and

(e) whether to address in draft Principle 4 the situation where the impossibility of the project to achieve its intended carbon mitigation benefits for reasons related to the host State law may result in the cancellation of the relevant VCCs, and/or whether it should be addressed through other private international law techniques or whether it should/can be addressed through other methods. This includes whether the following text should be included as a specific provision:
"The proprietary rights in a VCC are deemed to exist subject to the condition that the underlying carbon mitigation project remains in compliance with the overriding mandatory rules of the host State concerning land tenure and indigenous rights, as applied under Principle 4(4).".

The EG puts forward a possible alternative to the draft text of Principle 4 of the UNIDROIT Principles in an attempt to clarify as well as simplify, while noting that the EG will continue to discuss and work on the applicable law rule or rules for proprietary issues in respect of carbon credits. These are important issues to not only get right, but also to get buy-in for from our Members and their stakeholders. This proposed iterated text is conveyed to UNIDROIT at this juncture so that UNIDROIT can take the preliminary suggestions into account in determining the way forward for its work on draft Principle 4.

Annex

Draft Iterated Text of Principle 4 – Intermediate Transmission from the HCCH Experts' Group on Carbon Markets to the UNIDROIT WG on VCCs

SECTION II: PRIVATE INTERNATIONAL LAW

Principle 4

Applicable law

(1) This Principle applies to relevant proprietary [law] matters relating [directly] to—

- a) the issuance (including its first creation or entry on the registry on which it is held) onto and the removal (through retirement or transfer) of that VCC from the registry on which it is held, including the content of proprietary rights in that VCC;
- b) the circumstances in which a person may hold or use proprietary rights in [such a] VCC, including the circumstances in which [those] proprietary rights in [such a] VCC may be validly transferred to another person; and
- c) the third-party effects of a transfer of such a proprietary right in a VCC.

(2) The relevant proprietary [law] matters are governed by—

- a) [the law of the State expressly chosen in the registry agreement for the account on which the VCC is held; the registry operator and the holder of the VCC may at any time agree to choose a law other than that which previously governed the above proprietary [law] matters, whether as a result of an earlier choice made under this subparagraph or in accordance with subparagraph (b);
- b) absent a choice in accordance with subparagraph (a),] [the law of the State where the registry operator for the registry on which the VCC held had its statutory seat or, in the absence of such a seat, its central place of administration, at the time of the issuance (*lex registri*).]

(3) This Principle is without prejudice to, and shall be applied in conformity with, the United Nations Framework Convention on Climate Change, the Paris Agreement, and their related instruments and outcomes.

(4) Courts [may][shall][must] refuse the application of a foreign law designated under this Principle where it violates their public policy (*ordre public*). Courts may also give effect to overriding mandatory rules of the forum, and [may][shall][must] give effect to overriding mandatory rules of other States, including, notably, the host State of the underlying carbon project, which apply independently of the otherwise governing law.

(5) The relevant proprietary [law] matters relating to a VCC subject to this Principle do not include—

- a) those related to the carrying on of any underlying carbon mitigation project, including land-use, community rights, indigenous rights, or human rights, [related directly to that VCC];
- b) the recognition of VCCs for compliance or regulatory purposes;
- c) [applicable law in insolvency proceedings];
- d) contractual rights and obligations arising from agreements relating to VCCs [, including sales or account agreements]; and
- e) other matters not directly relevant to proprietary matters.

(6) This Principle is subject to other applicable international and supranational frameworks, for example, in relation to the law applicable to security rights.

(7) For the purposes of this Principle, “law” means the law of a State or the law of a territorial unit of a State. The application of such a law means the application of the rules of that law other than its rules of private international law.

NOTE: The terms as used in the iterated text presented above is based on the following definitions contained in the 10 July 2025 text of the draft UNIDROIT Principles on the Legal Nature of Verified Carbon Credits:

“Principle 2

Definitions

(1) **'Verified carbon credit' or 'VCC'** means a unit that represents the achievement of a reduction in, or removal of, emission into the atmosphere of greenhouse gases equivalent to one tonne of CO2 equivalent as a result of a carbon mitigation project if

- (a) The achievement of the reduction or removal is verified by a positive verification statement;
- (b) The positive verification statement is approved by a CCB;
- (c) The unit is credited to an account in a VCC registry; and
- (d) The unit is individuated using a unique identifier.

(2) **'Unit'** means an intangible asset.
[…]

(6) **'Unique identifier'** means a number or other unique means of identification that relates to one VCC, or to a block of more than one VCC if a single record in a VCC registry relates to that block.

(7) **'Verified'** means, in relation to an achievement of a reduction or removal, that a VVB has carried out a verification process resulting in a positive verification statement.

(8) **'Verification statement'**, in relation to a VCC, can be either positive or negative. A positive verification statement means a statement that there has been an achievement of a reduction or removal as a result of the relevant carbon mitigation project in accordance with the applicable methodology. A negative verification report means a statement that there has not been such an achievement.
[…]

(10) **'VVB' (validation and verification body)** means a legal person that, in respect of a verification process, [is [approved][appointed] by the relevant CCB to carry out that verification process] and

- (a) is independent of any other natural or legal person
  - (i) who has undertaken the relevant carbon mitigation project or
  - (ii) who is to become or does become the first registered holder of the VCC and
- (b) produces a verification statement as a result of that verification process.

(11) **(a) 'Carbon mitigation project'** means a project aimed at the achievement of a reduction or removal operating under the rules of an ICCP.

- (b) **'Relevant carbon mitigation project'** means, in relation to a VCC, the carbon mitigation project from which the achievement represented by that VCC results.

(12) **'CCB' (carbon crediting body)** means a legal person, a governmental body or an inter-governmental body, that, in relation to a VCC, performs [one or more of] [most or all of] the following functions:

- (a) administration of the crediting programme under the rules of which the relevant carbon project operates;

(b) specification of the methodology applying to the relevant carbon mitigation project;
(c) [in relation to the relevant carbon mitigation project, registration of that project in [ ];]
(d) appointment of the VVB that carries out the verification process relating to that VCC;
(e) specification of the methodology to be applied by the VVB in the verification process relating to that VCC;
(f) approval of a positive verification statement resulting from the verification process relating to that VCC;
(g) [instruction of the VCC registry to credit the VCC in a registry account.

(13) **'ICCP' (independent carbon crediting programme)** means a programme of carbon mitigation activities governed by rules established by a CCB.
[...]

(15) In relation to **a transfer of a VCC:**
(a) 'transfer' of a VCC means the change of a proprietary right in the VCC from a transferor to a transferee;
(b) the term 'transfer' includes the acquisition of a proprietary right in a VCC;
(c) 'transferor' means a person that initiates a transfer of a proprietary right in the VCC;
(d) 'transferee' means a person to which a proprietary right in a VCC is transferred;
(e) the term 'transfer' includes the grant of a security right in favour of a secured creditor, and 'transferee' includes a secured creditor.
[...]

(16) **'Retirement'** means the voluntary cancellation of a VCC on the instruction of its registered holder.
[...]

(21) **'Insolvency-related proceeding'** means a collective judicial or administrative proceeding, including an interim proceeding, in which, for the purpose of reorganisation or liquidation, at least one of the following applies to the assets and affairs of the debtor:
(a) they are subject to control or supervision by a court or other competent authority;
(b) the debtor's ability to administer or dispose of them is limited by law;
(c) the debtor's creditors' ability to enforce on them is limited by law.

[...]."

"Principle 3
General principles

[...]
(2) **'Proprietary rights'** includes both proprietary interests and rights with proprietary effects.
[...]"

"Principle 5
Creation

(1) **A VCC comes into existence** when it is recorded in the VCC Registry that the VCC or a block of VCCs has been credited to an account in the VCC Registry.

(a) Subject to paragraph (b) the registered holder of a VCC at the moment it comes into existence has a proprietary right in that VCC;
(b) (b) If, at the moment that a VCC comes into existence, the registered holder maintains the VCC for a client, that client has a proprietary right in that VCC.

(2) After that moment, subject to Principle 7 the question of whether a person has a proprietary right in a VCC is a matter for other law."