



Carbon Credits Market in Korean PIL

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Substantive Law Aspects of Carbon Allowances/Credit Market in Korea

Key Facts

- Under the Korean Capital Markets Act, carbon emission allowances are not financial instruments. They are mere commodities; thus they are outside the realm of Korean financial laws and regulations.
 - The CMA classifies financial instruments into two categories, i.e. securities and derivatives. Securities are, in turn, classified into six types: equity securities, debt securities, trust beneficiary securities, investment contracts, depositary receipts and derivative linked securities.
 - However, voluntary carbon credits which are issued by private sectors and are traded for profits 'may' fall into securities (investment contracts) depending on their model.
 - I do not think that there would be many cases that VCCs are characterised as securities.
 - The Korean securities regulation applies to VCCs, if characterised as securities.
- In Korea, an emission allowances exchange, established in accordance with the Emission Allowances Trading Act, which is operated by the Korea Exchange.
 - The Emission Allowances Exchange is a exchange that enables only emission allowances tradable; therefore, carbon credits privately verified outside the public system under the Act cannot be traded on the Exchange.
 - This means that the Korean VCM is a compliance credit market (CCM).
 - Certain carbon credits can be, however, converted into emission allowances, only if they are officially verified by the public competent authority (EATA §29).

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Private International Law Aspects of Carbon Credits/Allowances Market in Korea

Key Facts and Questions

- The Korean PIL Act (KPILA) modernized by the 2001 and 2022 amendments.
 - › The 2001 amendment was to modernise choice of law rules that was mainly influenced by European PIL rules.
 - › The relatively recent 2022 amendments was to modernise choice of jurisdiction rules that was also mainly referred to the European rules.
- Under the methodology of the KPILA, the first task is to qualify the legal relation concerned and find appropriate connecting factors for the issue.
 - › Therefore, if the issue is proprietary, in principle, the KPILA specifies the *lex situs*. No party autonomy is allowed at all for proprietary issues under the KPILA.
 - › For Contractual issues, party autonomy is broadly allowed.
 - › Escape clause (KPILA §21) is also provided for to find out the closest connection to the issue.
- Carbon credits or allowances cause intricate questions especially for proprietary issues because they cannot be characterised as things.
 - › Therefore, it is the most important task to find out the closest connection to the proprietary issues involved in carbon credit/allowances transactions.
 - Under the current Korean law, carbon credits/allowances would be characterised as nominative claims.
 - › Do we have to take the same consideration as general digital assets into carbon credits? The place of relevant intermediary or the place of registrar for proprietary issues?