

Our carbon offsetting and
nature-based climate
change solution experience





Sustainable finance is an area of strength for the firm, including work on green funds, green bonds and sustainable finance disclosure requirements.

Legal 500, Global Green Guide 2022

Our carbon offsetting and nature-based climate change solution experience

In recent years, there has been a continued strong interest in voluntary-based carbon offset projects and the development of nature-based climate change solutions (“**NbS**”). Whether it is stimulated by the fantastic, industry-uniting work of the Taskforce on Scaling Voluntary Carbon Markets (the “**TSVCM**”) or through the developments on Article 6 of the Paris Agreement (“**Article 6**”) at the 26th United Nations Climate Change Conference of the Parties, we are seeing more and more of our clients take an interest in this industry.

CMS sees great potential in the voluntary carbon offset and NbS space, with NbS having the potential to deliver up to one-third of global net emission reductions by 2030. Whether you are a bank, corporate, project developer or fintech founder, we can help you navigate the NbS space. Our holistic approach to NbS and carbon offsetting will draw on specialists from across the firm to advise you.

Here, we detail CMS’s global experience, focusing on the following themes which cover the key challenges and concerns faced in the carbon offsetting and NbS industry:

1. **project development and commercial contracts** – including dealing with issues in respect of Article 6 and developments in the standardisation of legal documents, as advocated by the TSVCM;
2. **climate change finance and investment** – as in order to stimulate liquidity, it is going to be crucial for developers to apply innovative and bankable finance and investment structures to their carbon offsetting and NbS projects, whether in the form of project financing, green bonds or funds-based investments;
3. **litigation, reputational and supply chain risk** – as environmental, social and governance (“**ESG**”) litigation is increasing and NbS projects must be mindful of these risks. Inaccurate statements can lead to greenwashing litigation in particular from NGOs and claimant law firms. Companies must audit their supply chains to avoid being associated with breaches by third parties;
4. **insurance** – given that permanence is a continuous concern for the NbS market, developers and financiers need to consider how to use insurance products to manage project risk;
5. **derivatives and structured products** – as participants in the carbon markets increasingly utilise derivative products to manage their emissions reduction obligations and risk exposure in cost effective ways; and
6. **blockchain and fintech** – as new forms of technology are particularly amenable to being applied to carbon offsetting and NbS projects. We have a longstanding history of advising organisations on an array of issues relating to blockchain and fintech.

Should you require further examples of our experience in any of the areas or the geographies detailed in this brochure, please do not hesitate to contact any of the CMS key contacts.



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Project development and commercial contracts

Across our international network of offices, we have wide ranging experience advising large corporates and financial institutions (both in the voluntary and compliance markets) on their carbon offsetting projects. We therefore are very familiar with common project development and commercial contract concerns in respect of these projects and regularly advise on how to mitigate such issues from a legal perspective. Along with this, we advise in line with Article 6, the UN Convention on Biological Diversity and the TSVCM, to ensure that your carbon offsetting documentation is as up-to-date as it can be.

Highlights of our experience includes advising:

- in relation to the sale of voluntary carbon certificates resulting from farming and reforestation;
- **EasyJet** on greenhouse gas emission trading under the new UK greenhouse gas emissions scheme which replaced the EU ETS scheme;
- **a confidential client** on the structuring of a carbon offset project in the Republic of Congo;
- **a major Japanese bank** on the risks relating to implementation of a climate project in Russia, within the framework of its registration in the voluntary international standard carbon credit trading system;
- **Pannonpower (subsidiary of Dalkia)** with respect to the negotiations of a new Emission Reduction Units Trading Agreement with the World Bank acting as trustee for the so-called Carbon Fund and on a HUF 8,365m project finance agreement and related security documents;
- **a confidential client** on land rights for reforestation and enhanced weathering programmes in Scotland;
- **the Government of Peru** on its compliance commitments made under the Paris Agreement including in relation to greenhouse gas emissions;
- **various clients, including BP Gas Marketing and the Government of Luxembourg** on audits for the development of Clean Development Mechanism projects in Mexico and Latin America (Dominican Republic, Colombia, Chile, Bolivia and Argentina);
- **an international major power company** in relation to the Kyoto Protocol, Russian legislation on carbon credits and energy efficiency projects;
- **BP Gas Marketing Limited** on (1) how carbon credit purchases are regulated under Colombian law, and (2) how the purchased credits may be used to offset the carbon national tax imposed by means of Colombian Law 1819 of 2016, and regulated under Decree 0926 of 2017;
- **a confidential client** with the implementation of a Clean Development Mechanism compensation scheme for clients' GHG emissions;
- **a confidential client** on the negotiation of a contract aiming at offsetting the GHG emissions generated by a global sport competition;
- on the plant concept and emissions trading law classification of compressor stations for natural gas storage facilities, compressors for oil and gas extraction and ground flares;
- **an international company** in the ceramics industry on emissions trading law issues in connection with a large plant expansion;
- on the allocation of emission allowances for self-consumption plants following a European Court of Justice June 2019 ruling; and
- **various clients (including Encavis/SolarCentury and McDonald's Restaurants)** on corporate PPAs partnering between project developers and corporations seeking to reduce their carbon footprint through the purchase of renewable energy as well as advising FANG companies on their corporate PPAs generally.



Top Ranked in the area of Europe-wide Projects and Energy in 2022 Chambers rankings.



Recommended Firm Legal 500, Global Green Guide 2022



Their outstanding ability to understand the client's business and address risks before the client knows those risks even exist.

Chambers Europe 2022

Financing and investing in carbon offsetting and NbS projects

The application of financing and investment structures to the carbon offsetting and NbS industry is going to be crucial in terms of stimulating liquidity in the space and developing projects beyond the USD 10m to 20m mark. Given our in-depth knowledge of project and corporate finance (especially in respect of energy and infrastructure), capital markets and investment fund finance, CMS can immediately begin advising on the financing of and investment in carbon offsetting and NbS projects as needed.

Recently we acted for a borrower company on a secured financing for the acquisition of a portfolio of UK property assets to be used for the purposes of rewilding to gain eligibility for carbon and/or biodiversity credits. These sorts of NbS projects are becoming the norm, as nature is increasingly being seen as a form of infrastructure, and a necessary part of our journey to net zero. Our finance, capital markets and investment funds teams bring their wealth of expertise to support developers and financiers in this process.

Our finance, capital markets and investment funds teams already have a long history of advising on large scale financings and investments, including advising:

Finance:

Europe

- **Santander, NordLB, UniCredit, Rabobank and SMBC** as lenders, and **Crédit Agricole** as agent, security agent and account bank, in reaching financial close on the EUR 310m project financing of the wind power company, Nordic Renewable Power AB;
- **Zenobe** on a new project-financed 104MW battery energy storage project in Merseyside;
- **a Dutch investor and Luxembourg-based fund** on the project financing of an acquisition of a photovoltaic plant located in Albacete (Spain), including due diligence and drafting of the shareholders' agreement, the corresponding SPA and the financing agreements;

Africa

- **a consortium of developers** in relation to their bid to design, finance, build, operate and maintain a solar power complex with a capacity exceeding 500MW in Morocco;
- **a multinational developer** with the negotiation of projects and financing for the setting up mini-grids in several Lusophone countries;
- **NOTS Solar Lamps** on the development and financing of a USD 70m solar lamp project in South Africa;

Asia

- **BayWa r.e. Wind Pte. Ltd.** in relation to a potential development of two onshore wind farms each with an installed capacity of up to 50 MW and one onshore wind farm with an installed capacity of up to 100 MW in Quang Tri province in Vietnam;
- **International Finance Corporation** on its debt and equity investment into a water treatment (concession based) project in Tangerang, Indonesia;
- **International Finance Corporation** on its debt and equity investment into RenewGen Enviro Ventures' waste to energy power plant project in Sri Lanka;

Latin America

- **Government of Mexico** on Tren Maya, a privately financed project to develop (USD 4bn) 1000km of railway in north-east Mexico;
- **OHL** on the financing of "Ruta 60 CH (Camino Internacional)" road project from Mendoza, Argentina to Valparaís, Chile;
- **International Finance Corporation** in financing the main Colombian Pacific port, Buenaventura Container Terminal, for USD 90m;



Capital markets:

- **Agence Française de Développement** as sole subscriber on the EUR 200m Green Bond issued by The Development Bank of Southern Africa;
- **Imerys** as issuer on its EUR 300m Sustainability-Linked Bond listed in Luxembourg;
- the managers on the issuance by **BPCE SFH** of its EUR 1.25bn Green Bond;
- the managers on the issuance by **Ceetrus** of its EUR 300m Green Bond;
- the managers on the issuance by **Korian** of its EUR 230m Sustainability-Linked Bond;
- the lead manager on the issuance by **Akuo Energy** of five Green Bonds in an aggregate amount of EUR 200m;
- **Crédit Mutuel Arkéa** on its offer to retail investors of two Green Bonds in an aggregate amount of EUR 200m;
- **Région Pays de la Loire** on its EUR 100m Green Bond;
- **Caisse des Dépôts et Consignations** on its two inaugural Green Bonds in an aggregate amount of EUR 1bn;

Funds:

- on the establishment of **Aviva Investors** GBP 425m flagship climate transition fund. The structure comprised a UK regulated fund investing into climate transition focused real estate, infrastructure and forestry assets in the UK and Europe, through a range of specialist Luxembourg funds;
- **the Colombian Ministry of Mines and Energy** in the structuring of the Fund for Non-Conventional Energy and Efficient Energy Management (“FENOGE” in Spanish), the first public fund for the investment and financing of renewable energy projects and efficient management of energy in Colombia. The Firm’s advice covered the design of the fund, the selection system, the operational manual, and the drafting of the required contractual documents; and
- **BK Partners** on the successful bidding to become the operator of a Mexican Capital Fund to Support the Environment, created by the National Infrastructure Fund (NIF) and BANOBRAS to promote environmental conservation during the development of infrastructure projects.

Litigation, reputational and supply chain risk

ESG litigation risks are increasing and this impacts on NbS initiatives. The main actors in ESG litigation are NGOs/activists and claimant law firms. The former mainly seek corporate and governmental behavioural change, through seeking injunctions and drawing media attention to practices they contend are improper. The latter have financial motives and mainly seek damages through group litigation (class actions). Activist/NGO litigation is better developed at present, but damages claims are due to increase in the coming years.

NbS projects can lead to claims of greenwashing. Claimants may seek a declaration from the courts that the claims are inaccurate or an injunction requiring the company to change its behaviour. Companies are also increasingly being held to account for their supply chains. Active investor and peer scrutiny will also expand following proposed regulatory changes in disclosure and sustainable due diligence.

Mitigations are available. To mitigate allegations of greenwashing, companies must ensure they can justify claimed benefits. Companies should also carefully audit their supply chains. NGOs can enter into pre-litigation dialogue with companies, requesting them to justify their conduct and claims. They may also seek access to internal company documentation including through disclosure.

The developing legal and regulatory framework combined with heightened market expectations, create fertile ground for a growth in litigation risk. Carbon credit financiers, purchasers and developers should be cognisant of these risks in the coming years. CMS can help. Our regulatory and disputes specialists have over 25 years of experience advising clients on ESG issues. They also have extensive experience of ensuring clients stay ahead of risk and regulation to enhance their reputations and the resulting opportunities that arise.

Highlights of our experience includes advising:

- on the defence of whistle blowing claims **on behalf of employers** arising out of alleged greenwashing, including successfully defending a **media client** where the claimants had blown the whistle relying on the environmental damage strand of the whistleblowing legislation, a previously much ignored leg of statutory whistleblowing protection;
- **a 'big four' accountancy firm** in relation to a complaint that the firm breached OECD Guidelines for Multinational Enterprises during an audit, specifically the sections referring to General Policies, Disclosure and Human Rights;
- **a client in the renewable energy sector** in reviewing an anti-corruption policy to ensure compliance with South Africa’s Prevention and Combating of Corrupt Activities Act No 12 of 2004, the United States of America’s Foreign Corrupt Practices Act, 1977 and the United Kingdom’s Bribery Act, 2010;
- **a retail outlet operator** on the transparency in supply chain aspects of its project to review its entire supplier base as part of an overhaul of its procurement arrangements;
- **numerous clients in a variety of sectors**, including consumer products, hospitality and leisure, real estate and energy on modern slavery statement requirements, the drafting of modern slavery statements and publishing requirements;
- **a multinational service provider to the petroleum industry** on anti-bribery, corruption and money laundering policies; and
- **clients based outside the UK** on transparency in supply chain requirements for groups of companies, including their modern slavery reporting obligations.

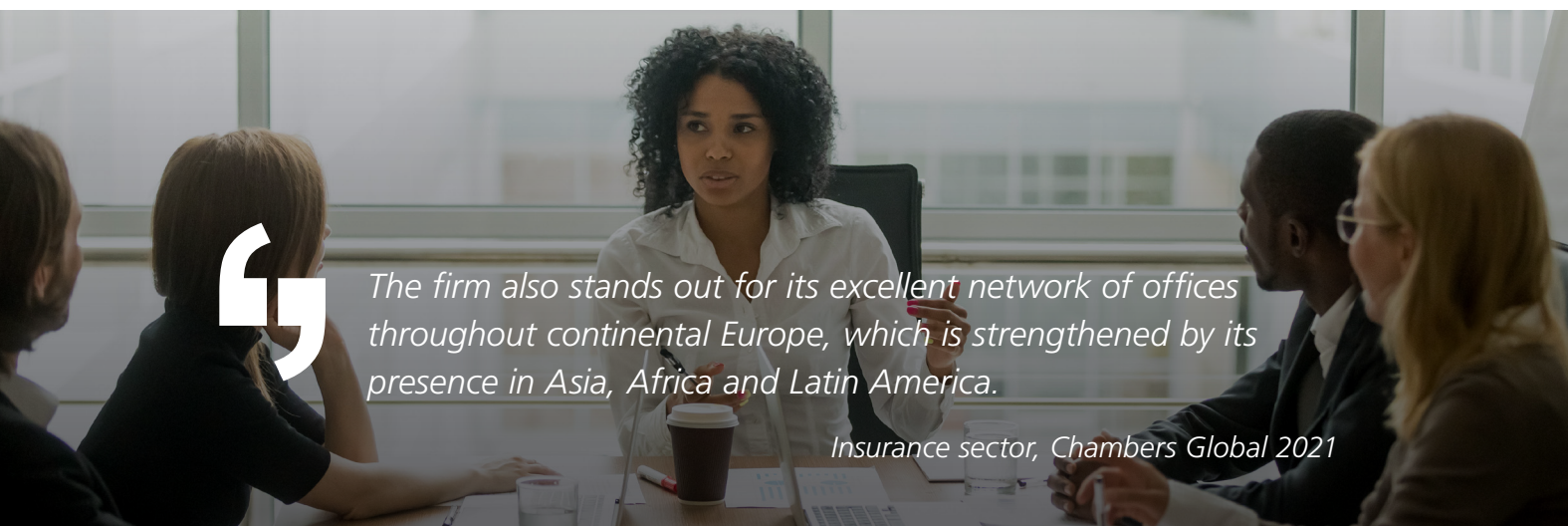
Insurance

NbS projects face the significant challenge of sequestered carbon emissions being released following fires, disease or drought affecting forests and soils. The geographical areas in which NbS projects may be sited can also carry enhanced political risks and natural catastrophe risks. These risks can undermine the integrity of longstanding projects and cause disputes between purchasers and suppliers of carbon credits. The NbS industry has developed insurance products and buffer mechanisms, so as to mitigate such risks. Whilst these insurance structures facilitate project development, they do add a layer of complexity with distinct legal issues to consider.

CMS has a specialist insurance team which works with our project finance team to provide insurance and risk support across a range of types of projects. Drawing on their deep knowledge of the insurance industry and their extensive experience of the issues that can arise at the claims stage, our team can provide input on insurance and risk allocation provisions and can work with brokers to help them to find the right solutions for novel risks. Our team also assists funders in reviewing proposed insurance arrangements and identifying and mitigating residual risks.

Highlights of our experience includes:

- advising on insurance arrangements for a tidal power project (including environmental liability exposures);
- advising on insurance arrangements for offshore and onshore wind farms;
- drafting policy wordings for solar, wind and hydroelectric combined material damage and business interruption covers;
- advising on civil unrest insurance claims on renewables projects;
- advising on disease-related business interruption;
- advising banks on the adequacy of insurance covers following insolvencies;
- advising banks lending on properties and other assets as to the insurance covers in place and the insurance requirements to be put in the relevant loan agreements;
- advising on obligations in respect of terrorism insurance in the context of property portfolio insurances and transfers; and
- advising on insurance arrangements and requirements for a number of PFI/PPP and power projects.



The firm also stands out for its excellent network of offices throughout continental Europe, which is strengthened by its presence in Asia, Africa and Latin America.

Insurance sector, Chambers Global 2021

Derivatives and structured products

The derivatives market has already standardised its approach to documenting over-the-counter (“**OTC**”) trades related to the compliance carbon markets (for example, in respect of forward and option trades linked to emission allowances trading). As market participants increasingly turn to carbon offsetting and NbS solutions to achieve their net zero goals, the demand for OTC derivatives products linked to the voluntary carbon markets increases in tandem. Accelerated demand for OTC derivatives solutions in this space has led to increased industry efforts to standardise terms and increase transparency in the voluntary carbon markets. For example, the International Swaps and Derivatives Association (“**ISDA**”) participates in the TSVCM and has published several papers related to both the compliance and voluntary carbon markets.

Our capital markets and derivatives team acts for participants across the market in respect of both OTC and exchange-traded derivatives. We also advise on the issuance of many securities linked to emissions trading allowances including in the form of certificates, notes and repackagings. We would be happy to discuss further any potential structures.

Highlights of our experience includes advising:

- **a world leader in the mining sector** based in France on carbon derivatives under ISDA Master Agreements;
- **the Hungarian JI Project** on Kyoto compliance units flowing from renewables projects, including negotiating Emissions Reductions Purchase Agreements (“**ERPAs**”) and project finance documentation;
- **a major EU-based banking institution** on the negotiations and execution of a multimillion EUR ERPA for carbon units (ERU and AAUs) with a Ukrainian seller;
- **an energy generation arm of a major Ukrainian oil and gas company** on the execution and negotiations of an ERPA with a major German utility company;
- **NIE Networks** on a full range of their gas electricity and netting arrangements under EFET, ISFA, FEMA and other industry standard documentation, their ISDA and CSA documentation and the implementation of EMIR and REMIT;
- **the National Grid** on a large range of ISDA/CSA/GMRA negotiations with a variety of counterparties (including emissions trading) and the implementation of EMIR;
- **Statnett** on all of the negotiations of its ISDA/CSA documentation;
- **Northern Ireland Electricity and Viridian** (now Energia) on a large range of ISDA/CSA/GMRA negotiations with a variety of counterparties (including emissions trading) and the implementation of EMIR;
- **PowerNI** on its energy trading arrangements under FEMA and other market documentation;
- **Conoco Phillips** on its gas and electricity trading and netting arrangements under EFET and ISDA documentation; and
- **Npower** on its gas and electricity trading and netting arrangements under EFET and ISDA documentation.



Clients are impressed by the team's "deep understanding of the business and industry, and its extraordinary commitment."

Chambers & Partners

Blockchain and fintech

We have seen a distinct interest in organisations looking to apply innovative technologies to the carbon offsetting and NbS space. Notably, the World Bank is working with the Chia Network on creating an international carbon credit registry and Climate Impact X is looking to use blockchain to enhance the transparency, integrity and quality of carbon credits. Applying blockchain and fintech to carbon offsetting and NbS projects will help to smooth out issues on international carbon accounting, as well as reduce money laundering risk.

CMS has over 100 cryptoasset clients and is consistently advising in the blockchain and fintech space. We believe that this is unmatched and provides valuable knowledge as carbon offset companies look to apply blockchain and fintech technologies to their business models.

Our experience includes advising on about 35 initial coin offerings and security token offerings across Europe, over 40 NFTs, on regulatory authorisations and regulatory affairs, and on numerous trading transactions, M&A and corporate finance transactions. We also work for blockchain investment funds as well as family offices. We are recommended by the Commonwealth Office for digital assets work and are members of the Financial Markets Law Committee and participate in several working groups on the development of blockchain law and regulation.

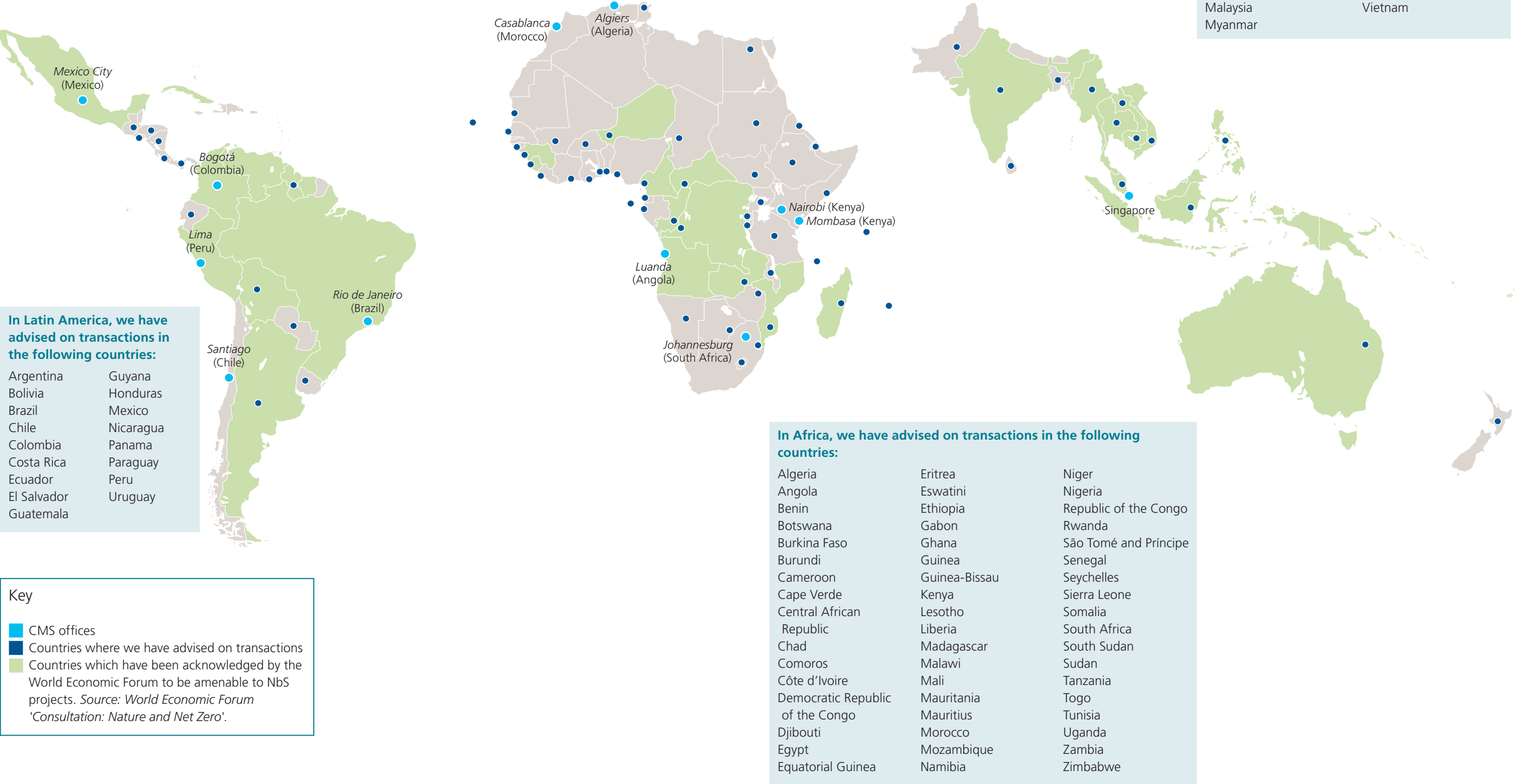
We are often involved in crypto integration projects and act for tech businesses developing products in the payments and crypto space. Combined with our extensive experience acting for and closely with regulators such as the FCA, BAFin, FINMA and the Commission de Surveillance du Secteur Financier in Luxembourg, we can analyse new financial products and businesses from a variety of jurisdictional perspectives.

Further highlights of our experience includes advising:

- on the establishment and regulation of over **10 cryptocurrency exchanges** in the UK and globally, including Binance, Bitstamp, Exmo, Paybis, Dacxi, Suprafin, VALK and Tokeny;
- an FCA-authorized crypto-currency derivative investment platform, **Crypto Facilities t/a Kraken**, on its FCA authorisation application and associated advice;
- **numerous firms** on applications to the FCA for registration under the MLRs. We are very familiar with the FCA's approach and the points that they focus on during this process; and
- a provider of AML services, **Blockpass**, that are structured using blockchain technology.

Global reach in key regions for NbS

The land which is most amenable to NbS needs to be both affordable in terms of its acquisition costs and have high levels of biodiversity. As such, the equatorial regions of the world, particularly in Africa, South America and Southeast Asia, have the most NbS potential. Much of the demand for and capital available to develop NbS, however, is focused in the global north. This geographical divide in NbS land availability and demand presents a challenge for the industry, which can be mitigated, in part, by having the support of a truly global law firm.




Global reach in key regions for NbS

With more than 70 offices in over 40 countries and 4,800+ lawyers worldwide, CMS offers deep local market understanding with a global perspective. Our international network of offices allows for a seamless provision of services in meeting your carbon offsetting and NbS needs.

Other CMS offices					
Europe					Middle East
Aberdeen	Bucharest	Kyiv	Monaco	Skopje	Abu Dhabi
Amsterdam	Budapest	Leipzig	Munich	Sofia	Beirut
Antwerp	Cologne	Lisbon	Oslo	Stavanger	Dubai
Barcelona	Duesseldorf	Liverpool	Paris	Strasbourg	Muscat
Belgrade	Edinburgh	Ljubljana	Podgorica	Stuttgart	Tel Aviv
Bergen	Frankfurt	London	Poznan	Tirana	
Berlin	Funchal	Luxembourg	Prague	Utrecht	
Bratislava	Geneva	Lyon	Reading	Vienna	Asia-Pacific
Bristol	Glasgow	Madrid	Rome	Warsaw	Beijing
Brussels	Hamburg	Manchester	Sarajevo	Zagreb	Hong Kong
	Istanbul	Milan	Sheffield	Zurich	Shanghai

CMS practice areas and sector groups

- Antitrust, Competition & Trade
 - Banking & Finance
 - Commercial
 - Construction & Engineering
 - Corporate/M&A
 - Dispute Resolution
 - Employment & Pensions
 - ESG
 - Financial Services & Regulation
 - Intellectual Property
 - Public Procurement
- Real Estate
 - Tax
 - Consumer Products
 - Energy & Climate Change
 - Funds
 - Hotels & Leisure
 - Insurance
 - Infrastructure & Projects
 - Life Sciences & Healthcare
 - Private Equity
 - Technology, Media & Communications

 CMS are devoted to high-quality work and can provide leverage through their international presence.

Chambers Global 2022



Key contacts

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Climate change finance and investment



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Litigation, reputational and supply chain risk



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Blockchain and fintech



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