POWER AND ENERGY REGULATION

Indian Carbon Market and Article 6: Does Entitlement to a Domestic Carbon Credit Certificate Permit an International Transfer?

AUTHORED BY

Shourya Vir Das
Senior Associate

R. Jatin Katiyar
Associate

Introduction

The Bureau of Energy Efficiency's ("**BEE**") adoption of Methodology BM EN01.003, concerning electricity and heat generation from biomass, brings a practical ownership question into focus. The methodology provides that the heat or power producer, as a non-obligated entity, is eligible to claim Carbon Credit Certificates ("**CCC**"), and contemplates agreements where CCC-sharing with other parties is involved to avoid double counting. That language will matter to project developers, asset owners, lenders, offtakers and foreign buyers. It should not, however, be read as giving the producer an automatic right to transfer the underlying mitigation outcome outside India. Entitlement to claim a domestic CCC, contractual allocation of its economic value, and an Article 6-authorised international transfer are related but legally distinct questions.

Domestic CCC Entitlement Under The CCTS Offset Mechanism

The domestic starting point is the Energy Conservation Act, 2001. A CCC is a certificate issued by the Central Government, or an authorised agency, under section 14AA. The Act permits a registered entity that meets the Carbon Credit Trading Scheme ("**CCTS**") requirements to purchase or sell a CCC in accordance with that scheme. The CCTS, in turn, creates an Indian framework for pricing greenhouse-gas reductions, removals and avoidance through CCC trading. It provides for issuance by BEE following the National Steering Committee's recommendation and Central Government approval. The statutory and scheme architecture is therefore concerned with the conditions for domestic issuance and trading of an instrument within the Indian carbon-market framework.

The 2023 amendment to the CCTS introduced the offset mechanism. It permits non-obligated entities to register projects that account for greenhouse-gas reductions, removals or avoidance for the issuance of CCCs, while requiring BEE to identify sectoral scope and develop methodologies and standards. BM EN01.003 is a recent operational expression of that framework. It covers specified biomass-based electricity and heat-generation activities, establishes technical eligibility and monitoring conditions, and limits accounting for retrofit or replacement activities to the remaining technical lifetime of the relevant equipment. Its claimant provision identifies the heat or power producer as the eligible claimant and permits CCC-sharing agreements where necessary to prevent double counting.

That provision is significant, but narrow. It answers the domestic question of which non-obligated entity may claim CCCs from a qualifying project. The methodology does not create a freestanding proprietary title to all present and future carbon attributes arising from the project. Nor does it state that a contractual beneficiary, fuel supplier, financier or foreign buyer may cause the same reduction to be issued, transferred or used under another crediting system. A well-drafted agreement may allocate proceeds, specify who will apply for domestic CCCs, and require each party to assist with verification and registry processes. Those are private-law arrangements. They cannot displace the methodology's eligibility criterion, expand the scope of a methodology, or convert a domestic certificate into an internationally transferred mitigation outcome ("**ITMO**").

The CCTS Framework For Trading CCCs Outside India

The CCTS itself recognises the distinction. It anticipates that the National Steering Committee may recommend guidelines concerning trading of CCCs outside India. It also empowers the Registry to establish linkages with national or international registries only when approved by the Central Government. These provisions show that the scheme is not conceptually closed to international trading. Equally, they demonstrate that cross-border functionality is subject to a further public-law process. A domestic CCC is therefore not, merely because the project has generated a verified reduction or is subject to a foreign offtake contract, an ITMO authorised for international transfer under Article 6.2. Article 6.4 involves a separate mechanism.

Article 6 Authorisation And Corresponding Adjustments

Article 6 of the Paris Agreement adds a separate layer of requirements. Article 6.2 permits voluntary cooperative approaches involving ITMOs, but requires robust accounting to avoid double counting. Article 6.3 further provides that use of ITMOs towards nationally determined contributions ("**NDCs**") must be authorised by the participating Parties. The Article 6.2 guidance adopted by the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement ("**CMA**") requires a participating Party to have arrangements for authorising the use of ITMOs and for tracking them. It also requires corresponding adjustments for ITMOs, including those first transferred by the host Party.

An Article 6 authorisation is thus a sovereign act, not an incident of private contractual ownership. It identifies the mitigation outcome that may be used for an NDC or another authorised international mitigation purpose and connects that use to the host Party's accounting. The corresponding adjustment is central to that result: where India authorises and first transfers an ITMO, the amount must be reflected in India's NDC accounting so that India and the acquiring Party do not both count the same mitigation outcome. A CCC issued under the domestic offset mechanism may evidence a verified domestic reduction, but issuance alone does not establish an Article 6 authorisation, a first transfer, or a corresponding adjustment.

Contractual Allocation And The Risk Of Double Counting

The methodology's reference to credit-sharing agreements should consequently be understood as an integrity measure within the domestic project structure. A biomass project may involve a plant owner, operator, waste supplier, steam purchaser, lender or technology provider, each of whom may assert an economic interest in the project's environmental attributes. The agreement should identify the project proponent, the party entitled to submit the CCC claim, the agreed allocation of proceeds, and the information and audit rights required for validation and verification. It should also prohibit the parties from making inconsistent claims over the same quantified reduction. This addresses the risk that two private parties seek to monetise the same domestic CCC entitlement.

Article 6 raises a different form of double counting. The concern is not merely whether two contracting parties claim the same CCC; it is whether the same mitigation outcome is credited domestically and transferred internationally without appropriate authorisation and accounting. A contract can allocate the commercial risk of that event, but it cannot cure it. Parties should not assume that a project can generate domestic CCCs and separately supply the same quantified reductions to an overseas buyer. If a project is intended to support an Article 6 transaction, the agreement should make governmental authorisation, applicable registry treatment and the necessary corresponding adjustment conditions precedent to the buyer's right to use the mitigation outcome as an ITMO.

This allocation should be reflected expressly in project and offtake documentation. The agreement should state whether the project is intended for domestic CCC issuance, an Article 6 transfer, or another specified pathway. It should prohibit registration, issuance, sale, retirement or voluntary claims that conflict with that choice, and require disclosure of all prior and proposed environmental-attribute transactions. It should also deal with the consequences of delayed, refused, modified or withdrawn authorisation. In particular, the parties should agree whether the buyer may terminate, whether the project may instead retain or sell domestic CCCs, and how any price adjustment, replacement obligation or liability is to operate. These provisions do not create an Article 6 right. They instead ensure that commercial expectations remain aligned with the regulatory route ultimately available.

Why An Article 6.4 Route Is Legally Distinct

Article 6.4 should not be conflated with either route. It establishes a separate mechanism under the Paris Agreement, supervised at the international level. Its rules require host-Party approval of an activity and separate authorisation for the use of Article 6.4 emission reductions towards NDCs or other international mitigation purposes. A CCC issued under the CCTS is therefore not, without more, an Article 6.4 emission reduction. The methodologies, registration, authorisation, registry and accounting consequences must be assessed against the particular mechanism proposed.

The legal answer is accordingly no, as eligibility to claim domestic CCCs under BM EN01.003 establishes a domestic claim to participate in the CCTS offset mechanism; it does not itself permit an international transfer. The CCTS contemplates guidelines on trading CCCs outside India and registry links with international registries, each subject to further governmental action or approval. Article 6 imposes an additional and independent requirement of participating-Party authorisation and accounting. Private credit-sharing arrangements are important for domestic allocation and the avoidance of conflicting or duplicate claims, but cannot substitute for either.

What This Means In Practice For Clients

Clients should determine the intended market for a project's mitigation outcomes before project registration and before agreeing financing, supply or offtake arrangements. Domestic CCC documentation should allocate claimant status and proceeds consistently with the relevant BEE methodology. International offtake documentation should not promise Article 6 eligibility solely by reference to domestic CCC entitlement. It should instead make authorised transfer, registry treatment and corresponding adjustment conditions of the relevant governmental process. Until those elements are in place, a domestic CCC and an Article 6-authorised mitigation outcome should be treated as distinct instruments with distinct legal consequences.