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Vietnam's legal framework for the carbon emissions trading scheme

Marco jurídico del régimen de comercio de derechos de emisión de carbono en Vietnam

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Abstract

Vietnam is a member of at least three basic international treaties on climate change, including the Framework Convention on Climate Change, the Kyoto Protocol, and the Paris Agreement. To implement international commitments, Vietnam has issued the 2020 Environmental Protection Law as the legal foundation for operating the domestic carbon market. The Decree also sets out a roadmap for implementing the domestic carbon market as planned, leading to pilot construction in 2025 and official operation in 2028. During the pilot market construction phase, the focus will be on building, developing market regulations, implementing capacity-building activities, and establishing and operating pilot markets in potential areas. The article focuses on general research on the Vietnamese legal system in managing carbon and determining the legal nature of the right to carbon emission allowances. The article recommends vital content to use in the carbon market in the initial stages. At the same time, the articles suggest ways to determine the nature of emission rights to ensure the stability of the carbon trading market.

Keywords: carbon emission allowances, emission rights, carbon market

Resumen

Vietnam es miembro de al menos tres tratados internacionales básicos sobre cambio climático, entre ellos la Convención Marco sobre el Cambio Climático, el Protocolo de Kioto y el Acuerdo de París. Para cumplir los compromisos internacionales, Vietnam ha promulgado la Ley de Protección del Medio Ambiente de 2020 como base jurídica para el funcionamiento del mercado nacional del carbono. El Decreto también establece una hoja de ruta para implementar el mercado nacional de carbono según lo previsto, lo que llevará a la construcción piloto en 2025 y a la operación oficial en 2028. Durante la fase de construcción del mercado piloto, la atención se centrará en la construcción, el desarrollo de la normativa del mercado, la puesta en marcha de actividades de capacitación y el establecimiento y funcionamiento de mercados piloto en zonas potenciales. El artículo se centra en la investigación general sobre el sistema jurídico vietnamita en la gestión del carbono y la determinación de la naturaleza jurídica del derecho a los derechos de emisión de carbono. El artículo recomienda contenidos vitales para utilizar en el mercado de carbono en las fases iniciales. Al mismo tiempo, los artículos sugieren formas de determinar la naturaleza de los derechos de emisión para garantizar la estabilidad del mercado de carbono.

Palabras claves: derechos de emisión de carbono, derechos de emisión, mercado del carbono

Introduction

Vietnam is a member of at least three basic international treaties on climate change, including the Framework Convention on Climate Change, the Kyoto Protocol, and the Paris Agreement. Vietnam signed the Framework Convention on Climate Change on June 11, 1992, and ratified it on November 16, 1994. Vietnam signed the Kyoto Protocol on December 3, 1998, and approved it on September 25, 2002. Although there is no obligation to commit to reducing carbon emissions under the Kyoto Protocol, Vietnam and other developing countries have several everyday obligations to contribute to combating climate change. Regarding the Paris Agreement, along with more than 170 countries, Vietnam joined in April 2016 and committed to implementing the NDC (Ministry of Natural Resources and Environment of Vietnam, 2020).

Vietnam's NDC includes two main components: carbon emission mitigation and climate change adaptation. Vietnam's carbon emissions reduction target is 15.8% unconditionally (with domestic resources) and 43.5% conditionally (with international support) by 2030 compared to the business-as-usual development scenario. Based on this national target, specific carbon emission reduction targets and measures were developed for five main sectors: energy, transport, industrial processes, construction, and waste. Accordingly, large-emitting enterprises in these five industries must inventory carbonates and implement measures to reduce carbon emissions (WTO Center, 2023).

Vietnam sent the UNFCCC Secretariat the NDC in 2015; the first updated it in 2020, and the second edited it in 2022. At the 26th Conference of the Parties to the Framework Convention of the United Nations on climate change at the end of 2021 (COP26), Vietnam committed to reducing methane emissions by 30% by 2030 compared to 2020. Vietnam also joined the Global Declaration demand for transitioning coal power to clean energy, the Glasgow Declaration of Forest and Land Use Leaders to stop and reverse deforestation and land degradation by 2030, Joined the Global Adaptation Action Alliance to mobilize resources for climate

change adaptation and expect to achieve "zero" emissions by 2050 (Nguyen Van Minh, 2023).

At the 27th Conference of countries participating in the United Nations Framework Convention on Climate Change at the end of 2022 (COP27), Vietnam identified the carbon market as one of the practical carbon pricing tools for climate change. With the implementation of activities to reduce carbon emissions, contributing to the commitment to reduce carbon emissions (Nguyen Van Minh, 2023).

Vietnam's policy and legal framework on the Carbon Emissions Trading Scheme

Vietnam's policy on the emissions trading market

Vietnam's policies related to carbon emission mitigation are expressed in the following documents:

- Resolution No. 24-NQ/TW in 2013 of the Central Executive Committee of the Communist Party of Vietnam on proactively responding to climate change, strengthening resource management, and environmental protection. One of the essential tasks of the resolution is to *"investigate, inventory, and develop a roadmap and implementation plan to mitigate carbon emissions appropriate to each industry, field, and locality"* and *"Promote activities to reduce carbon emissions suitable to our country's conditions based on financial and technological support from other countries and international organizations. Develop the domestic carbon credit exchange market and participate in the global carbon market"*.
- Conclusion No. 56-KL/TW of 2019 of the Politburo on continuing to implement the Resolution of the 7th Central Committee, term XI on promoting proactive response to climate change, strengthening resource management and environmental protection. The conclusion points out the need to *"minimize the wasteful use and ineffective exploitation of natural resources by industries, fields of production, business, and economic development projects, and the emission of many pollutants, carbonates, destroy landscapes and ecology, causing*

environmental pollution, increasing natural disaster risks, especially in watershed areas, residential areas, and coastal areas" and "implementing international commitments on reducing carbon emissions."

- Resolution No. 55-NQ/TW 2020 of the Politburo on the strategic orientation of Vietnam's national energy development to 2030, with a vision to 2045. The resolution requires the implementation of environmental protection policies. The energy sector is associated with reducing carbon emissions, promoting a circular economy and sustainable development, completing the policy framework, and building and supplementing a system of national standards and regulations on emissions.

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Vietnamese law on the emissions market

The issue of the domestic carbon market was first regulated in Decision No. 1775/QD-TTg dated November 21, 2012, of the Prime Minister on approving the Carbon Emissions Management Project; Managing carbon credit business activities to the world market. Decision 1775/QD-TTg assigns the Ministry of Finance to preside over and coordinate with the State Bank of Vietnam, the Ministry of Natural Resources and Environment, and relevant specialized ministries to build financial mechanisms and policies.

Regulations on the domestic carbon market according to the policy of Resolution No. 24-NQ/TW dated June 3, 2013, of the XI Central Executive Committee were officially legalized at Point dd, Clause 41, Law on Protection Environment 2014, expressing the requirement to *"form and develop the domestic carbon credit market and participate in the world carbon credit market."*

The plan to implement the Paris Agreement on climate change was approved by the Prime Minister in Decision No. 2053/QD-TTg dated October 28, 2016, on the plan to implement the Paris Agreement on climate change. The plan sets out 68 tasks, including *"building and developing a domestic carbon market and other cooperation mechanisms on carbon emissions mitigation, according to Article 6 of the Paris*

Agreement. Implement pilots in potential areas." This task is assigned to the Ministry of Natural Resources and Environment, Ministry of Finance, Ministry of Planning and Investment to coordinate with relevant ministries to implement.

Previously, the Prime Minister issued Directive No. 35/2005/CT-TTg dated October 17, 2005, on organizing the implementation of the Kyoto Protocol, Decision No. 130/2007/QĐ-TTg dated October 2, 2005, of the Prime Minister on several financial mechanisms and policies for investment projects under CDM and several Circulars guiding CDM implementation. In addition, by 2015, the Ministry of Natural Resources and Environment chaired and organized the Joint Credit Mechanism (JCM) between Vietnam and Japan and issued a Circular guiding the implementation of the JCM.

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In particular, the Law on Environmental Protection No. 72/2020/QH14 issued on November 17, 2020, stipulates issues of organizing and developing the carbon market as a tool to promote the reduction of carbon emissions and domestically, contributing to implementing contributions to reducing carbon emissions committed by Vietnam when participating in the Paris Agreement. Establishments that emit carbon must conduct an inventory of carbonates in the allocated carbon emission quotas list and have the right to exchange, buy, and sell on the domestic carbon market.

The Environmental Protection Law 2020 is the legal basis for developing and issuing detailed documents, regulations, and instructions for building a carbon market towards reducing carbon emissions. To implement the Law on Environmental Protection 2020, the Government issued Decree No. 06/2022/ND-CP dated January 7, 2022, guiding the organization and development of the domestic carbon market. It stipulates the subjects that need to conduct carbon inventories. The carbon inventory is the basis for the allocation of emission quotas. The Decree also sets out a roadmap for implementing the domestic carbon market as planned, leading to pilot construction in 2025 and official operation in 2028. During the pilot market construction phase, the focus will be on building, Developing regulations and regulations to operate the market, implementing capacity-building activities, and establishing and managing pilot markets in potential areas.

The roadmap to develop the domestic carbon market includes two stages:

(i) The period from 2022 to the end of 2027: This is the period focusing on developing regulations to manage trading activities; piloting the carbon credit trading platform from 2025; developing rules for operating the carbon credit exchange; Implementing capacity building and awareness-raising activities; regulating the principles of trading activities on the market as well as the organization and operation of the domestic carbon market.

(ii) The period from 2028: This is the period of organizing and operating the official carbon credit exchange-regulated activities connecting and exchanging domestic carbon credits with carbon markets of regional countries and the world's carbon market.

On January 18, 2022, the Prime Minister issued Decision No. 01/2022/QĐ-TTg on the fields and establishments emitting carbonates that must conduct a carbon inventory. Accordingly, sectors that must conduct carbon inventories include energy, transportation, construction, industrial processes, agriculture, forestry, land use, and waste.

Using energy efficiently is also important to limit energy supply and demand and reduce Vietnam's carbon emissions. To improve energy use efficiency in manufacturing industries, the Ministry of Industry and Trade has issued Circulars regulating specific standards on energy consumption (SEC) per production unit for several sectors. Key areas include iron and steel, pulp and paper, plastics, beverages, and food processing. A roadmap for mandatory application of energy consumption standards for the above industries has also been issued. Companies in these industries that do not meet standards will be fined or suspended from operations. Introducing specific energy consumption standards for the above sectors aims to eliminate outdated production technologies and equipment produced domestically or imported into Vietnam.

2.3. Vietnam's policy on emissions markets

Vietnam has previously deployed financial support for the Renewable Energy industry through FIT prices for wind power, solar power, and biomass. Feed Tariffs (FIT) is a policy mechanism built to encourage the development of renewable energy sources and increase the competitiveness of these sources compared to traditional energy sources. In Vietnam, FIT prices exist for solar, wind, and biomass electricity. For solar power projects, the FIT is set at 7.69 US\$ cents/kWh for floating solar power projects, 7.09 US\$ cents/kWh for surface-mounted solar power projects, and 8.38 US\$ cents/kWh for rooftop solar power projects (2020). For wind energy projects, the FIT is 8.5 US\$ cents/kWh for offshore projects and 9.8 US\$ cents/kWh for onshore projects. For combined heat and power (CPH) plants using biomass, the FIT is 7.03 US\$ cents/kWh, and for non-CHP power generation projects, the FIT is set at 8.47 US\$ cents/kWh /kWh. However, no new FIT price mechanism was issued after the deadline of December 31, 2020, so investment in wind power and solar power projects is highly uncertain for investors. The Ministry of Industry and Trade proposed that the Government switch to a bidding mechanism for determining electricity prices purchased from wind and solar power projects.

Recently, the Ministry of Finance has presided over the development of a project to establish the carbon market in Vietnam with the following principal contents: Perspectives, targets, market model, tasks, solutions, and implementation organization. The market model's content will clarify i) Goods on the market, ii) Subjects participating in the market, iii) Market organization, and iv) Managing, monitoring, and supervising the market. Tasks and solutions include three groups: i) Group of tasks and solutions related to building and perfecting the legal framework; ii) Group of tasks and solutions related to the organization and operation of the domestic carbon market; iii) Group of tasks and solutions related to raising awareness and strengthening capacity. Attached to the Decision approving the Project is a List of tasks and solutions for implementing the Carbon Market Development Project in Vietnam.

Thus, Vietnam has a legal basis for developing the carbon market and also has a basis for identifying participants in the carbon market, including crucial energy users, low emission units (such as renewable energy power plants). This is a good starting point to build readiness for carbon market development in Vietnam.

Vietnamese law on allowances trading market

Determine the total carbon emission allowances

Clause 3, Article 91, Law on Environmental Protection 2022 stipulates the authority of the Prime Minister to promulgate a list of fields and establishments emitting carbonates that must conduct a carbon inventory, updated every two years—once based on the proportion of carbon emissions, conditions, and socio-economic development situation.

The Prime Minister has issued, together with Decision No. 01/2022/QĐ-TTg dated January 28, 2022, a list of fields and facilities that must inventory carbonates. The list is updated every two years according to the criteria specified in Decree No. 06/2022/NĐ-CP. These facilities have annual carbon emissions of 3,000 tons of CO₂ equivalent or more. Based on the goals and roadmap for reducing national carbon emissions and the results of the carbon inventory of carbon-emitting facilities in the most recent inventory period, the Ministry of Natural Resources and Environment submits to the Prime Minister. The Government issues total carbon emission quotas by period and annually (as prescribed in Clause 8, Article 141, Law on Environmental Protection 2020).

The basis for determining carbon emission quotas includes (i) National strategy on climate change and other related development strategies and plans; (ii) Results of national, sectoral, and facility-level carbon inventories on the list that must be inventoried; (iii) Roadmap and methods to reduce carbon emissions by the country's conditions and international commitments, according to Clause 3, Article 139, Law on Environmental Protection 2020.

3.2. Allocation and recovery of emission allowances

Subjects allocated emission quotas are carbon emitters on the list that must conduct a carbon inventory (and have the right to exchange, buy, and sell on the domestic carbon market). Carbon emission establishments may only emit carbonates within the allocated quota. If emissions are needed to exceed the allocated quota, the quota must be purchased from another entity through the domestic carbon market, according to Clause 3, Article 139, Law on Environmental Protection 2020.

The authority to allocate carbon emission allowances belongs to the Ministry of Natural Resources and Environment, based on the total carbon emission quota approved by the Government, according to Clause 8 and 10, Article 139, Law on Environmental Protection 2020.

The Ministry of Natural Resources and Environment will automatically recover the allocated carbon emission quotas when facilities stop operating, dissolve, or go bankrupt. The state encourages establishments to voluntarily pay back unused carbon emission quotas, contributing to achieving the national carbon emission reduction goal.

At the end of each commitment period, facilities must pay for carbon emissions exceeding the allocated emission quotas after applying auctions, transfers, and loans. Borrow and use carbon credits to offset. In addition to payment, carbon emissions exceeding the allocated quota will be deducted from the allocated quota for the following commitment period, according to Clause 3, Article 19, Decree No. 06/2022/ND-CP of the Government.

Trading carbon emissions allowances

Carbon emissions allowances, once allocated, will be traded on the domestic carbon exchange. Each unit of allowance equals an equivalent of 01 ton of CO₂. The Ministry of Natural Resources and Environment must confirm carbon emissions allowances to switch on the exchange. Allowances certification is the basis for

carrying out the transaction, according to Clause 2, Article 18, Decree No. 06/2022/ND-CP of the Government.

Activities performed on the trading floor include auction, transfer, borrowing, payment of allowances, and using carbon credits to offset carbon emissions. Facilities can bid for additional carbon emissions quotas in addition to the carbon emissions quotas allocated during the same commitment period. Facilities can carry over unused carbon emissions allowances from the previous year to subsequent years within the same commitment period. Facilities can borrow allowances allocated for the following year for use in the last year within the same commitment period. Facilities can use carbon credits from projects under carbon credit exchange and offset mechanisms to compensate for carbon emissions exceeding the allocated emission quotas for a period - commitment paragraph. The carbon credits to offset emissions must be at most 10% of the total given allowances, according to Clause 3, Article 19, Decree No. 06/2022/ND-CP of the Government.

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Authority to manage allowances trading markets

The Ministry of Finance is responsible for building and establishing a carbon credit exchange and promulgating a financial management mechanism for carbon market operations. Meanwhile, the Ministry of Natural Resources and Environment presides and coordinates with relevant ministries to organize the pilot and official operation of the carbon credit exchange and manage, monitor, and supervise the market; regulate activities connecting the domestic carbon credit exchange with regional and world carbon markets; regulate the implementation of carbon credit exchange and offset mechanisms; Develop propaganda materials and carry out capacity-building activities for carbon market participants.

Ministries, ministerial-level agencies, and Provincial People's Committees are responsible for coordinating with the Ministry of Natural Resources and Environment and the Ministry of Finance to implement regulations and activities to promote carbon market development; Organize dissemination and propaganda on mass media to raise community awareness about the carbon market.

Comments and recommendations on the emissions market in Vietnam

First, the allowances trading system should be implemented in stages, with each stage clearly defining the relevant parties' respective goals and responsibilities. In the first phase, emissions quota trading should only be implemented for industries with significant emissions in certain areas. This will help Vietnam accumulate experience to move towards a complete emissions quota trading market.

Second, in the early stages of implementing emission quota transactions, free allocation is appropriate and necessary to incentivize businesses to proactively comply with emissions limit regulations.

Third, the total emission quota should not be allocated; a certain proportion should be retained. This retained portion is used as a market regulation tool.

Fourth, simplify emission quota trading procedures to increase market efficiency and flexibility.

Fifth, develop regulations to regulate the following issues: (i) Principles and rules related to the emission allowances market, including emission quotas, emission quota transactions, and subjects eligible for emission quotas. Participate in transactions. (ii) Instructions for measuring and inventorying actual emissions of emitting organizations; (iii) Emission quota valuation and trading margin; (iv) Build a carbon market database system and establish transaction, post-transaction, and financial infrastructure. (v) There is a need for accounting methods for emission quotas that clearly define the issue of whether accounting for emission quotas through free allocation is any different from through auctions or transactions on the carbon market. ISO 14064 is a globally recognized standard used as the primary basis for assessing or verifying corporate carbon compliance (Cao Tan, 2023). Việt Nam có thể tham khảo tiêu chuẩn này để đánh giá mức độ tuân thủ của doanh nghiệp trong việc phát thải khí nhà kính phù hợp với hạn ngạch phát thải đã được phân bổ.

Vietnamese law on determining the legal nature of emission rights

Vietnamese law on determining the legal nature of emission rights

In the Law on Environmental Protection 2020, the right to emit carbon is mentioned according to the regulations on carbon credits in Clause 35, Article 4 as follows: "*Carbon credits are certificates that can be traded commercially and represent the right to emit carbon credits.*" emitting one ton of carbon dioxide (CO₂) or one ton of carbon dioxide (CO₂) equivalent". Carbon credits are a form of expression of the right to emit carbon.

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According to the provisions of Clause 2, Clause 3, and Clause 4, Article 139, Environmental Protection Law 2020, carbon emission rights will be allocated by the state to carbon emitters. Then, if the emissions facility does not use up its allocated quota, carbon emission rights will be traded on the domestic carbon market. Article 139 of Decree No. 06/2022/ND-CP on Carbon Emission Reduction and Ozone Layer Protection stipulates that the domestic carbon market is expected to officially launch in 2028 after undergoing several activities. Therefore, determining the legal nature of carbon emission rights is very important to ensure the enforcement of transfer regulations and determine how to account for them and tax obligations.

However, according to current legal regulations, confirming the legal nature of the right to emit carbon in Vietnam is impossible. Article 105 of the 2015 Civil Code stipulates that assets are objects, money, valuable papers, and property rights. Assets are classified as real estate and movable property. According to the provisions from Article 110 to Article 114 of the 2015 Civil Code, emission rights cannot be objects. Emission rights are also not money according to the requirements of the Law of the State Bank of Vietnam.

Emission rights are also not valuable documents because they need to meet the criteria of Clause 1, Article 2, Circular 01/2012/TT-NHNN dated February 16, 2012, of the State Bank of Vietnam regulating rebates. Discount of valuable papers of the State Bank of Vietnam for credit institutions and foreign bank branches issued by the

State Bank of Vietnam. Accordingly, valuable papers confirm the debt repayment obligation between the valuable paper issuer and the valuable paper owner within a certain period, as well as interest payment conditions and other conditions. Emission rights certificates only record the ability of the emitting entity to legally emit a certain amount of emissions and do not involve any debt repayment obligations. Therefore, emission rights are not valuable documents.

Emission rights are also not securities. According to the provisions of Clause 1, Article 4, Securities Law 2019, Securities are assets, including the following types: (i) Stocks, bonds, and fund certificates; (ii) Warrants, covered warrants, share purchase rights, depository certificates; (iii) Derivative securities and other types of securities regulated by the Government. In there:

- Stock is a type of security that confirms the legal rights and interests of the owner of a portion of the share capital of the issuing organization;
- Bonds are securities that confirm the legal rights and interests of the owner of a portion of the debt of the issuing organization.
- Fund certificates are securities that confirm an investor's ownership of a portion of the capital contribution of a securities investment fund.
- Warrants are securities issued along with the issuance of bonds or preferred stocks, allowing the warrant holder the right to buy a certain number of common shares at a predetermined price in the contract-specified period.
- Covered warrants are securities with collateral issued by securities companies, allowing the owner the right to buy (buy warrant) or sell (sell warrant) the underlying securities at a price. The issuer of such covered warrants at a predetermined price, at a predetermined time, or before a predetermined time, or receives the difference between the exercise price and the underlying security price - implementation point.
- Share purchase rights are a type of security issued by a joint stock company to give existing shareholders the right to purchase new shares under determined conditions.

- Depository certificates are securities issued based on securities of organizations legally established and operating in Vietnam.
- Options contracts are derivative securities, confirming the buyer's right and the seller's obligation to perform one of the following transactions: (i) Buy or sell a certain amount of the underlying asset according to the exercise price has been determined at a time before or at a specified future date; (ii) Payment of the difference between the value of the underlying asset determined at the time of entering into the contract and the value of the underlying asset at a time before or on a determined date in the future.
- Futures contracts are listed derivative securities, confirming the commitment between the parties to perform one of the following transactions: (i) Buy or sell a certain amount of the underlying asset at a set price at a specified future date; (ii) Payment of the difference between the value of the underlying asset determined at the time of entering into the contract and the value of the underlying asset at a determined date in the future.
- A futures contract is a type of derivative security negotiated, confirming the commitment between the parties to buy or sell a certain amount of the underlying asset at a determined price on a determined date in the future.

According to the above definitions, emission rights cannot be classified as ordinary securities (stocks, bonds, fund certificates, warrants, stock purchase rights). For derivative securities (option contracts, futures contracts, forward contracts), the Securities Law requires it to be determined based on the underlying asset. Clause 10, Article 4, Securities Law 2019 stipulates that *the underlying asset of derivative securities must be securities, stock indexes, or other assets according to Government regulations to be used as the basis for determining prices - derivative securities value*. Therefore, emission rights are not confined to derivative securities according to current legal rules because the underlying asset is not a stock or stock index.

Although it is unclear whether emission rights are property, they can be traded on the carbon market. The transferable characteristic of emission rights creates a

situation where emission rights are considered a type of commodity because "*buying and selling goods is a commercial activity, whereby the seller is obliged to deliver the goods, transfer ownership own the goods to the buyer and receive payment; The buyer must pay the seller, receive the goods and take ownership of the goods according to the agreement*" (Clause 8, Article 3, Commercial Law 2005). Clause 2, Article 3 of the 2005 Commercial Law stipulates that goods include: (i) All types of movable property, including movable property formed in the future; (ii) Objects attached to land. This makes it difficult for emission rights to be recognized as a commodity.

In addition, there is no basis to confirm that emission rights are tangible or intangible assets. Although, in essence, emission rights are something that can be traded but do not exist in physical form, they are more similar to intangible assets than tangible assets, as determined in Section 3.1 Valuation Standards Intangible assets issued together with Circular No. 06/2014/TT-BTC. Accordingly, intangible assets are assets that simultaneously satisfy the following conditions: (i) Have no physical form or can be contained in or on a physical entity, but the value of the physical entity is insignificant compared to the value of intangible assets; (ii) Can be identified and has tangible evidence of the existence of intangible assets (for example contracts, certificates, registration documents, computer floppy disks, customer lists, newspapers) financial statements); (iii) Ability to generate income for owners; (iv) The value of intangible assets can be quantified.

However, the right to emit carbon may also be just a type of administrative permit granted by a state agency and, therefore, not subject to ownership. If the emission right belongs to a type of administrative license, the competent state agency can change and revoke this license. At that time, changing and revoking administrative licenses is not a change or revocation of assets.

Recommendations on determining the legal nature of emission rights in Vietnam

There is yet to be a consensus in determining the international legal nature of emission rights. Due to the intersection between administrative relations and

economic relations, determining the legal nature of emission rights will be based on consideration of the following needs:

First, the goal of reducing emissions. Emission reduction targets affect the establishment of emission ceilings for allocation to emitters and the need to adjust emission norms. Each country can estimate emission reduction targets over different periods, and, combined with actual emission reductions, authorities can predict the need for changes to the regulatory nature of emission rights.

Second, a degree of flexibility is needed in regulating emission rights. How the legal nature of emissions rights is held in different countries reflects different degrees of flexibility in the state's regulatory capacity. In cases with a strong need for policy flexibility, authorities will be more likely to choose a legal nature of flexible mechanisms so that the state can proactively adjust carbon emissions allowances.

Third, there is a need to develop an emissions trading market. Deciding the legal nature of emissions rights is a balance between the state's authority's flexibility and market participants' stability needs. If we choose the legal nature of emission rights as property subject to ownership, it will encourage market development rather than flexible regulation.

Although there remains uncertainty regarding determining the legal nature of emission rights, there is still a need to provide a clear legal position for holders. In this aspect, defining emission rights as assets subject to ownership is appropriate because this helps increase the stability of the emissions market, thereby promoting the market for trading emission rights.

In essence, emission rights have characteristics that meet the requirements of an asset in economics. Economics suggests that assets must fully satisfy competitiveness, durability, and connectivity. The following example succinctly expresses these three counts: "*If I pick up a pen, I have it, and you do not... If I put the pen down and leave the room, it is still there... Moreover, finally, you can all interact with the pen...*" (Fairfield, 2005). These characteristics were initially assigned to traditional tangible assets. Then, it is attached to intangible assets such as intellectual property rights. Over time, these characteristics are used to consider

ownership of virtual assets. These characteristics can also be referenced to consider the asset nature of emission rights in the current period.

First, emission rights are competitive. Competitiveness is a characteristic of traditional assets, allowing control of assets at any given time to just one person. For example, a shoe can only be worn by one person; therefore, the shoe is competitive. By wearing shoes, the person wearing the shoe excludes all others from using it. They may ensure competitiveness. When an emissions quota is granted to entity A, entity B cannot use these allowances.

Second, emission rights are durable. Durability is also an inherent characteristic of traditional assets. Persistence keeps an asset unchanged, even when it is not in use. "*A parked car continues to exist, and at the end of the day, the owner will find the car where he parked it*" (Fairfield, 2005). A user of remotely hosted email services, such as Gmail, may find messages stored in the "Inbox" persist for a long time, even though the email account is only used for a few minutes. If no emission activity is carried out, the emission rights holder remains the owner of that emission quota.

Third, emission rights are interconnected. *Connectivity allows one asset to influence or be affected by another person/asset* (Fairfield, 2005). The interconnectedness of emission rights is shown in the fact that the holder can carry out transaction activities on the carbon market.

Legally, emission rights also meet the characteristics of an asset, specifically:

First, properties are objects that can be owned (Vu Thi Hong Yen, 2005). If they are intangible assets, people will have ways to manage and control their existence. In this case, it establishes the holder's rights by allocating emission quotas by a competent state agency.

Second, the assets must be worth money (Standing Committee of the National Assembly, 2023). The emission rights of a specific emitter can be valued in money according to valuation methods. This valuation is essential for accounting, tax-related activities, and operating carbon trading markets.

Third, that property can become the subject of a civil transaction. Article 116, 2015 Civil Code stipulates that "*a civil transaction is a contract or unilateral legal act that creates, changes or terminates civil rights and obligations.*" Emission rights can become an object of civil transactions, demonstrated through trading emission quotas on the carbon market.

Fourth, property is a concept with economic, social, and legal content to meet human needs. The development of science and technology causes more and more new types of assets that differ from traditional ones. Therefore, recognizing emission rights as a type of asset is consistent with the laws of development.

Categorically, emission rights can be viewed as property rights. Article 115 of the 2015 Civil Code stipulates that property rights can be valued in money. Article 450 stipulates that in the case of buying and selling property rights, the seller must transfer documents and carry out procedures to transfer ownership rights to the buyer. The buyer must pay money to the seller. The time of transfer of ownership of a property right is when the buyer receives documents on ownership of that property right or from the time of registration of transfer of ownership if prescribed by law. Emission rights can be valued in money and transferred to carbon trading markets. Therefore, it is appropriate to classify emission rights as property rights.

Property law has long divided legal protections for tangible and intangible assets (Merges, Menell & Lemley, 2000). This division is traditionally based on the fact that tangible assets derive value from their exclusivity and material usefulness. Meanwhile, intangible assets have value according to the information value they represent (Worthington, 2007). Emission rights in carbon markets should be classified as intangible assets. On the one hand, the right to emit carbon does not exist in physical form. On the other hand, it is developed, owned, and traded to serve the operation of the carbon market. Licensing by a competent state agency is not simply an administrative permit but an essential aspect for emission rights to become an asset protected by law (Patterson & Lindberg, 1991). Licensing is a popular way to form and manage intangible assets, not just for carbon emission rights (Brauman, 1997).

Viewing carbon emission rights as a property right helps owners become more aware of using and trading emission rights in the market. During the transaction, the owner has the right to possess, use, and dispose. This dynamic is consistent with the overall goals of carbon markets.

Conclusion

Creating and allowing the trading of carbon emission allowances helps the state reduce regulatory and enforcement costs, relying mainly on the motive of profit to encourage the reduction of external impacts by bringing benefits for the emitter. This tool has an outstanding advantage in allowing a flexible approach to reduce pollution instead of a rigid enforcement mechanism with heavy administrative imposition.

Carbon cap-and-trade programs have become a prominent policy tool for reducing carbon and are preferred over other methods. First, state agencies will set overall emission limits based on calculations of the earth's absorption capacity and actual emissions. After establishing the overall limit, the state will allocate emission quotas to emitters according to two main methods: the free allocation method and the allocation method through auction. In the initial stages of operating the emissions quota trading market, most countries will choose to allocate free quotas. Although there is still debate about whether the free allocation is contrary to the polluter pays principle, this method has gained favor because it ensures that the emissions trading program is more widely accepted than other methods, thus closest to the goal of reducing emissions.

The emergence and operation of the emissions quota market have led to the need to define the nature of emissions quotas. Each different jurisdiction will have other determination methods. The legal nature of emission quotas has yet to be agreed internationally.

In Vietnam, the Environmental Protection Law 2020 is the legal basis for developing and promulgating documents, regulations, and detailed instructions for building a carbon market towards reducing carbon emissions. To implement the Law on

Environmental Protection 2020, the Government issued Decree No. 06/2022/ND-CP dated January 7, 2022, guiding the organization and development of the domestic carbon market. It stipulates the subjects that need to conduct carbon inventories. The carbon inventory is the basis for the allocation of emission quotas. The Decree also sets out a roadmap for implementing the domestic carbon market as planned, with pilot construction in 2025 and official operation in 2028.

According to the Law on Environmental Protection 2020 provisions, the Prime Minister has the authority to issue total carbon emission quotas by period and annually based on the Ministry of Natural Resources and Environment request. The Ministry of Natural Resources and Environment will allocate carbon emission quotas based on the total given carbon emission quotas. Subjects allocated emission quotas are carbon emitters who must conduct a carbon inventory and have the right to exchange, buy, and sell on the domestic carbon market. Carbon emission establishments may only emit carbonates within the allocated quota. If emissions are needed to exceed the allocated quota, they can buy quotas from other subjects through the domestic carbon market. Vietnam has formed a legal basis for establishing and operating a carbon trading floor. However, there still needs to be a basis to determine the legal nature of emission rights according to current legal regulations.

From an economic perspective, emission rights are fully competitive, durable, and interconnected. From a legal standpoint, the right to emit carbon is an object that can be owned, valued in money, and become the object of civil transactions. Emission rights are also a concept with economic, social, and legal content to meet human needs. Therefore, emission rights deserve to be recognized as property rights. Viewing carbon emission rights as a property right helps owners become more aware of using and trading emission rights in the market. During the transaction, the owner has the right to possess, use, and dispose. This dynamic is consistent with the overall goals of carbon markets.

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