THE BOTTOM LINE ON GREENING: Proposed Regulatory Framework and Legal Risk Perspective

GOWLINGS

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Outline of Presentation

- **Canadian Federal System.**
- **Certain Provinces.**
- **Comments on the US draft legislation.**
- **Why Should We Care?**
- **What Should We Do?**

Canadian Federal System

- **Goal:**
  - **Reduce, GHG emissions 20% below 2006 levels by 2020.**
  - **Long term goal is 60 to 70% reduction by 2050**
- **Method:**
  - **Federal Government actions [Turning the Corner]**
  - **Clean electricity measures**
  - **Provincial Government actions**

Canadian Federal System

- **Intensity Based Emissions Reduction Targets with Cap & Trade System Complemented by Offsets**
  - Start date is January 1, 2010.
  - The last action from the Federal Government was the release in August of 2008 of the Guide for Protocol Developers.
  - **Most recent news**: Minister Prentice has indicated that Canada's plan will be set out in detail before the global talks in Copenhagen in December but will need to dovetail with the US plan, whatever that turns out to be.
  - It is likely that the start date will be pushed back to at least 2012, which is the start date for reductions obligations under the WCI which the provinces of QC, ON, MN and BC are shooting for.

Regulated Industries

- **Who?**
  - **Electricity**
  - **Oil and gas**
  - **Pulp and paper**
  - **Iron and steel**
  - **Iron ore pelletizing**
  - **Smelting and refining**
  - **Cement**
  - **Lime**
  - **Potash**
  - **Chemicals and fertilizer**

Reductions

- Existing facilities: 18% reduction in production intensity beginning in 2010 over 2006 baseline and 2% every year thereafter.
- New facilities (2004 or later): 3 year commissioning period + 2% continuous improvement. For new plants in key sectors emission intensity will be set based on a clean fuel standard to drive adoption of cleaner fuels and technology.
- Oil Sands and Coal Power Facilities (2012 or later): Emissions target will be based on carbon capture and storage.

Compliance

- Purchase of Reductions:
- Technology Fund: 2010 to 2017 decreasing percentage contribution limit from 70% down to 0 with a fixed price of $15 until 2012, $20 in 2013 and escalating with GDP thereafter. The fund will invest in projects that will produce GHG reductions.
- 5Mt/yr for research and development: across the board.
- Credit for early action: one-time allocation of 15 Mt for reductions achieved between 1992 and 2006.
- Pre-certified projects: Up to 100% of compliance requirements.
- Clean Development Mechanism : CERs may be used for up to 10% of compliance requirements.
- Offset Credits : For up to 100% of compliance requirements.

British Columbia

- **Greenhouse Gas Reduction Targets Act (GGRTA), came into force on January 1, 2008:**
  - reduce greenhouse gas emissions (GHGs) by at least 33 per cent below 2007 levels by 2020. Long-term target of an 80 per cent reduction below 2007 levels by 2050;
  - the public sector must become carbon neutral by 2010.
- **Greenhouse Gas Reduction (Cap and Trade) Act given Royal Assent on May 29, 2008 (not in force):**
  - Puts in place the framework for a cap on emissions and an emissions trading system;
  - Mandatory Reporting of Greenhouse Gas Emissions Regulation (GHG Reporting Regulation) Policy Paper:
    - Reporting at 10,000 tCO_2E;
    - Regulation at 25,000 tCO_2E (sectors slightly broader than Fed).

Alberta

- **Climate Change and Emissions Management Act**
  - Reduction by December 31, 2020 of specified gas emissions relative to Gross Domestic Product to an amount that is equal to or less than 50% of 1990 levels;
  - Intensity based cap with an emissions trading and offset program.
- **Specified Gas Emitters Regulation**
  - Large Final Emitters (facilities that emit more than 100,000 tons) applied for the establishment of a "baseline emissions intensity" by December 31, 2007. The baseline was calculated based on the ratio of total annual emissions to production;
  - A Large Final Emitter must not exceed 88% of its baseline emissions intensity (i.e. 12% below the facility-specific baseline);
  - New facilities are subject to gradual reductions starting the fourth year of operation, reducing emissions by 2% per year until a 10% reduction is achieved.

Ontario

- **Action Plan on Climate Change**
  - 6% reduction in emissions below 1990 levels by 2014, 15% below 1990 levels by 2020 and 80% below 1990 levels by 2050.
  - Proposed framework for cap & trade system was posted for a 35 day public review. Comments were to be received by March 03, 2009
    - Proposed regulation threshold is 100,000t CO_2E but was up for discussion;
    - Regulated sectors would align with those set out in the federal government's proposed framework.
    - Cap would be absolute and reductions would be on linear basis but staggering is up for discussion.

Québec

- **Action Plan:**
  - **6% reduction below 1990 levels;**
- **An Act to Amend the Environment Quality Act and other legislative provisions in relation to climate change:**
  - Confirms the baseline of 1990;
  - Creates the framework for a provincial Cap and trade with a fixed cap on emissions;
  - Expressly opens the door for harmonization with other systems.
- **NB: "applies to a person or municipality (the "emitter") who carried on or operates a business, facility or establishment that emits greenhouse gases, <u>that distributes a product whose production or use entails the emission of greenhouse gases</u> or that is considered to be such an emitter by regulation of the Government"**

Comments on the US Draft Legislation

- **Waxman Markey draft bill:**
  - 20% reduction below 2005 by 2020 (reports are that it is being knocked down to 17%);
  - 85% reduction below 2005 by 2050;
  - Creates framework for emission trading, complemented by an offset program;
  - Threshold for reporting is 10,000t CO_2E;
  - Threshold for reductions is 25,000t CO_2E;
  - Regulated Emitters : electricity sources, stationary sources in various industries (includes oil & gas, coal, chemicals, steel, pulp & paper, food processing), fossil fuel-fired combustion device, local natural gas distributor that delivers more that 460,000,000 cubic feet to non regulated emitters.

Why Finance Should Care

- **Some or all of the preceding regulatory schemes are coming. The discussion is not about if, it is about when and how much.**
- **All of these systems create potential for carbon value and carbon risk.**
- **Carbon risk and value exist now and can be created now and this is only going to increase.**
- **How Now?**
  - Carbon Value can be created now in the voluntary market and with some degree of certainty within the coming regulated markets;
  - Carbon risk exists now because of the future regulation.

Why Should We Care?

- **Carbon risk :**
  - The thresholds look to be heading lower (10K and 25K), as a result, businesses may have a direct obligation are not preparing themselves.
  - Businesses are not taking into account the potential carbon risk in areas such as (M&A, Financing, Technology Transfers). This leads to incorrect pricing of assets and failure to maximise their carbon potential;
- **Carbon Value:**
  - This can exist whether a company is to be regulated or not. Recognising it requires developing a set of reflexes, which financial officers must develop. Good tools can help.

What Should We Do?

- **Recognise that the carbon economy is here.**
- **Get and stay informed.**
- **Train financial officers and staff to recognise where to look for and find carbon risk and value.**
- **Embed within finance departments the processes and tools that are required to discover carbon risk and value.**
- **Plan and execute a carbon strategy (not just a carbon footprint, although that is a good start).**