IETA LIVE:

Carbon Market Virtual Series

IETA LIVE

Inside the UNIDROIT Principles on Verified Carbon Credits

Wednesday 19th August: 15:00 BST

Moderator

BELINDA ELLINGTON
Senior Advisor
IETA

LISA DEMARCO
Senior Partner and CEO
Resilient LLP

MEGUMI HARA
Professor of Law
Chuo University, Tokyo

ANDREW BERNSTEIN
Senior Counsel
Cleary Gottlieb Steen & Hamilton LLP

UNIDROIT & The Legal Working Group on Verified Carbon Credits

What is UNIDROIT?

Overview

- Independent intergovernmental organisation based in Rome; established in 1926, re-established in 1940 under the UNIDROIT Statute

Purpose

- Modernise, harmonise and coordinate private and commercial law between States and groups of States

Membership

- 65 Member States across five continents, representing diverse legal, economic and political systems

Working Group on Verified Carbon Credits

Background

- Established Dec 2022 following ISDA's Jan 2022 proposal, supported by the Government of Paraguay

Objective

- Provide private law guidance to build confidence in VCC markets, supporting the UNFCCC, Paris Agreement and UN Sustainable Development Goals

Membership

- Legal academics, international institutions (UNCITRAL, ADB, FAO, IADB, IOSCO, OPEC, UNFCCC) and carbon market stakeholders and experts (ACR, CAR, GCMU, Gold Standard, ICVCM, Kita, Puro, S&P, Verra, Resilient, HFW)

Introduction

- **Q for UNIDROIT** working Group
  - **Can a VCC be treated as ‘property’** across multiple jurisdictions?
  - And if Yes, **Why**?
  - Then what law may need changing?
- Legal nature is still uncertain e.g. **England & Wales Property (Digital Assets etc) Act 2025**
- **UNIDROIT Principles are a softlaw** instrument with explanatory commentary
- **Guidelines for States** to align their private laws with best practice and international standards
- Requirement to be **flexible** to support scaling of carbon markets across **multiple jurisdictions**
- **Process**
  - Public Consultation and a targeted consultation open until 21 September 2026
  - Completion end of 2026

e.g. England & Wales Property (Digital Assets etc) Act 2025

A thing (including a thing that is digital or electronic in nature) is **not prevented from** being personal property merely because it is neither:

a) a thing in possession, nor
b) a thing in action

Scope Principle 1

- **Private law** – not Regulation
- Governing **relations between private entities**
  - Sale and purchase
  - Lending and security
  - Registry Accounts – ownership and custody
  - Treatment on insolvency
  - Leading to greater clarity on accounting and tax treatment
- **Post issuance** only
  - **Not** issues relating to the **project** or **integrity** of activities or methodologies

What Is Capable of Being the Object of Proprietary Rights

- If a State passes legislation saying that a VCC **is capable** of being the object of proprietary rights, then it **has to be possible** for the property law of that State to apply to a VCC
- VCC has to have some, if not all, of **the characteristics that property** has in that State
- Most States are similar at a general level

1
Individuation/ identification ✓ Unique serial number

2
Transferable/ Alienability – ✓ can be moved between accounts and not change nature

3
Excludability ? The *thing* is capable of being controlled, possessed and *used* by one party to the exclusion of others. ✓ Is held in an account.

But what is the *Thing* and what does *Use* mean?

4
Enforceability owner may assert and enforce the right against third parties. Rights in rem (rights against the world) as opposed to rights in personam (rights against a particular person e.g. contractual rights).

What Is the Thing and what does Use mean?

Information that a mitigation has occurred? Information alone cannot be property

A tonne of CO2 minus?

An ‘environmental asset’? – Is a label but what is the substance?

A right to make a statement? Where does the right derive?

A bundle of contractual rights? Between who? Not conducive to a market mechanism

Proof that certain activities have been achieved?

What is ‘use’? Retirement? Making a statement?

It Reifies the Mitigation Outcome

Definitions

Principle 2

- Functional definition - for the purposes of interpretation of the Principles
- Snapshot approach (1) '**Verified carbon credit**' or 'VCC' means a unit that represents the fact that, *as at the time of creation* of the VCC, a mitigation outcome of the equivalent to one tonne of CO_2 as a result of a GHG mitigation project *has been achieved*, if
  - (a) A **positive verification** statement verifies that the mitigation outcome has been achieved;
  - (b) The positive verification statement is **approved by a Crediting Body**;
  - (c) The unit is **credited to an account** in a VCC registry;
  - (d) The unit is **individuated** using a unique identifier.

  = Point of Existence of the Thing
- **Balances** commercial requirements with legal parameters.
- **Allows** for the VCC to *still exist if there is reversal* and
- **Recognises** the ability to *backfill environmental* deficit

  Requirement that there is a carbon standards body? Not impossible just out of scope.

Principle 3

A VCC can be the subject of proprietary rights BUT whether a person has a proprietary right in a VCC or whether such has been transferred is a matter of other law

Applicable Law & Creation

Applicable Law Principle 4

- For tangible property the applicable law is where the property is situated.
  - For intangible property it exists in the registry - so which jurisdiction
    - Where the registry operator is incorporated
    - **the law of the State in which the registry operator has its statutory seat**
    - Where the registry operator has its central place of administration
    - Where the registry is maintained

Creation Principle 5

- A VCC comes into existence when it is recorded in a VCC registry

Choice may be made in the general rules of the VCC registry or in the account agreements

In the absence of a choice, the law of the State in which the registry operator has its statutory seat

Transfer of Property & Innocent Acquisition

Transfer Principle 6

- A person can transfer only the proprietary rights that it has in a VCC, if any, and no greater proprietary rights

Works with

Innocent acquisition Principle 7

- An innocent acquirer takes a VCC free of conflicting proprietary rights

These provisions are designed to balance the protection of original owners with the need for transactional certainty

Retirement, Cancellation, & Revocation

Retirement — Principle 8

- **A VCC that is retired ceases to be capable of being the subject of a proprietary right**

Cancellation — Principle 9

- Cancellation because it has been **revoked**, when it is **voluntarily cancelled**, or in accordance with **other law**
- Or as a matter of contractual rights, which are a matter for other law

Revocation — Principle 10

- A VCC can be cancelled for revocation where it is subsequently demonstrated that:
  - the VCC was created as a result of **deliberate wrongdoing** in the verification, approval, crediting, or individuation of the VCC, with or without deception; or
  - the creation of the VCC was a **complete nullity**

A VCC cancelled for revocation is treated as having been void from the outset and as never having been a VCC

Risks allocated in contract and mitigated with insurance

Over Issuance & Voluntary Cancellation

Over Issuance — Principle 11

- Subsequently demonstrated, **without deliberate wrongdoing**, that the mitigation outcome represented by the VCC had not, at the time of the creation of the VCC, been achieved to the extent represented.
- A VCC is not cancelled where over issuance is demonstrated.

Voluntary Cancellation — Principle 12

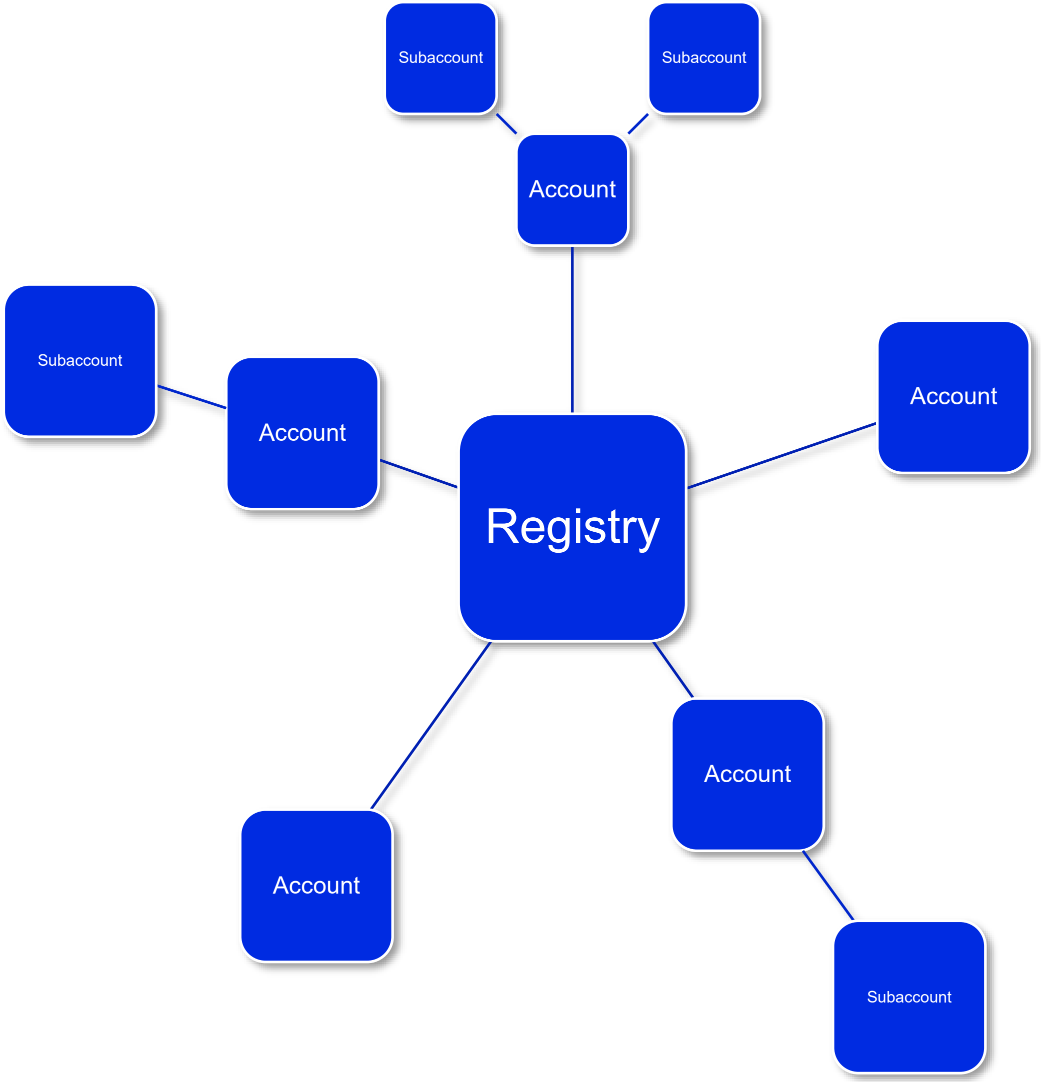
- Retirement — the VCC ceases to exist

Does not prevent or affect any arrangement between Crediting Bodies, registries, or other market participants as to how over issuance may be addressed, nor any consequence under other law

Others

Registry Guidance on rules and obligations
Principles 14 & 15

Minimum Private law rules



Increased Confidence for Investors:

Custody — **Principles 16, 17, 18 & 19**

Secured Transactions — **Principles 20-24**

Insolvency — **Principle 25**

Next Steps

Timeline:

- **13 July 2026:** Draft Principles published, consultation opens
- **19 August:** IETA LIVE – public webinar to discuss the principles
- **21 September 2026:** Consultation closes
- **14 - 16 October 2026**: Tenth Session of the UNIDROIT Working Group to consider the feedback received during the public consultation
- **December 2026**: UNIDROIT Governing Council considers final approval of the Principles
- **H1 2027**: Addition of a Tokenisation Annexe to align the VCC Principles to UNIDROIT's Principles on Digital Assets and Private Law

IETA LIVE:

Carbon Market Virtual Series