

Climate-Related Business & Technology Group

Climate change – and the measures required to address it – raise fundamental business, legal and risk management issues. Working in this evolving arena requires a keen understanding of the complex interaction between energy and environmental regulation, tax, intellectual property, and government contracts, and a firm grasp of trends in the venture capital, private equity and commercial capital markets. Sullivan & Worcester LLP's Climate-Related Business & Technology Group brings together practitioners with expertise in each of these fields, thus enabling the firm to provide solution-oriented representation and facilitate opportunities for clients to participate in climate-related programs, businesses and markets. The Group has helped clients in matters ranging from approval of the first carbon-offset credits under California's new program to assistance with energy-technology projects, including the development of new clean-energy generation facilities, and accounting for future climate-change legislation in the negotiation of long-term power purchase agreements.

BIG FIRM TALENT AND INTERNATIONAL RESOURCES

Sullivan & Worcester has the resources, experience and know-how to handle significant domestic and international and cross-border climate change matters. With strategic locations in Boston, New York, and Washington, D.C., Sullivan & Worcester has built its international capability carefully, developing non-traditional arrangements with the best law firms, cutting-edge international joint ventures, and closely-monitored international referral relationships in Israel, Ireland, Italy and China. Sullivan & Worcester is the only U.S. law firm with a joint venture with an Israeli law firm: ZAG/S&W LLP. ZAG/S&W LLP and its strategic partners include American, Israeli, Chinese and European lawyers, and our network of alliances very recently expanded to encompass a prominent Romanian law firm. There is no *one-size-fits-all* model for the many countries in which we conduct business. We focus on finding the arrangement that works best for our clients and partners within the economic and cultural context of the country and the particular project on which we are working.

OUR INTERNATIONAL AND CROSS-BORDER EXPERIENCE

ZAG/S&W LLP's lawyers have worked on projects around the world, including in China, Africa, Canada, Mexico, Latin America, India, Israel and Europe.

We advise our clients regarding policy, regulatory, and legal developments including the risks, uncertainties and business opportunities inherent in climate change matters. We have worked with clients

internationally on a variety of climate-related issues, including:

- Assisting in the development of national and international performance assessment standards for geologic storage of carbon dioxide
- Assisting a company in China involved in waste-to-energy projects in developing emissions reduction credits
- Advising an Israeli clean-energy technology company regarding the addition of a carbon component to its waste-to-energy technology
- Advising a Mexican company seeking to pre-sell carbon emission reduction credits to an international compliance trader
- Assisting an Israeli client in the sale of emission credits to a United States company
- Assisting a Canadian landfill owner in negotiating contract terms with a U.S. purchaser of voluntary credits
- Assisting an Israeli chemical company regarding qualification of proposed fuel switch projects to generate eligible carbon emission reduction credits under Kyoto Protocol's CDM program

We routinely assemble project teams to address the specific challenges that a business is facing internationally. Our Group provides creative problem solving and comprehensive advice, not merely standard legal solutions. We are pragmatic and cost-effective in our approach, recognizing that climate-related projects often must be completed within tight timeframes.

We can help companies address a range of diverse issues, including:

- Carbon trading under the Kyoto Protocol
- Participating in or benefiting from clean development mechanism (CDM) and joint implementation (JI) projects under the Kyoto protocol, including financing and technology development
- Managing the evolving disclosure requirements applicable to publicly-traded companies and the demands of consumers, institutional investors and shareholder activists

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- Conducting due diligence to evaluate climate-related risk in business acquisitions or expansion plans
- Buying and selling carbon emissions credits and offsets
- Structuring of carbon funds including tax, securities, accounting and disclosure requirements
- Understanding grant and tax incentive programs available for renewable energy projects
- Structuring of investments to take advantage of research and development, production and incentive tax credits
- Advising regarding the climate-related aspects of environmental laws and regulations
- Understanding cap and trade systems and mandatory and voluntary carbon trading markets worldwide
- Participating in cross-border North American cap and trade systems, including the Western Climate Initiative (WCI), the Regional Greenhouse Gas Initiative (RGGI), and the California Climate Change Draft Scoping Plan
- Advising regarding natural resource and sustainability issues
- Assisting with the regulatory requirements applicable to "green" marketing initiatives

MULTI-DISCIPLINARY FOCUS ON KEY BUSINESS ISSUES

Amid the myriad legal and business considerations that arise from today's heightened emphasis on sustainability, energy efficiency and addressing greenhouse gas (GHG) emissions, our Group is focused on the following:

- Counseling clients concerning potential climate-related impacts on corporate governance, risk management and corporate transactions
- Counseling clients concerning the potential effects of future climate change legislation on the construction of new power plants
- Developing emissions offset programs while considering the securities laws related to structuring and marketing GHG, renewables and energy-efficiency credits
- Advising climate-related energy and technology companies and their investors regarding financing, corporate formation, tax, licensing, environmental and other ongoing business issues
- Advising clients regarding the market opportunities offered by participation in the Leadership in Energy and Environmental

Design (LEED) Green Building Rating Systems and other green construction programs

- Advising clients regarding adherence to requirements governing the marketing of green products and services
- Advising clients in various transactions involving waste-to-energy and renewable-energy projects
- Developing energy efficiency and conservation initiatives, including financing mechanisms

EMISSIONS TRADING

S&W has experience advising clients regarding the development and marketing of GHG and similar credits. Our multidisciplinary group of environmental, project and structured finance, corporate, securities and tax lawyers gives us the essential depth of knowledge to advise our clients on legal issues related to carbon credits as well as the newly emerging areas of renewable energy and energy efficiency credits. Our team recently worked with a California client in negotiating one of the country's first contracts for the sale of carbon credits from a forest trust. Moreover, our securities lawyers have unique experience focusing on the securities laws that may regulate the structure and sale of climate-related credits.

Other work performed by our lawyers includes:

- Identifying possible carbon offsets for a proposed coal-fired generation facility subject to RGGI and analyzing the likely impact of the RGGI rules and anticipated federal carbon emissions regulations on approval of the proposed plant
- Examining particular transactions involving carbon emissions credits to determine whether securities regulations are invoked
- Assisting a client involved with the sale of emissions reduction credits with respect to insurance and liability issues

CLIMATE-RELATED ENERGY AND TECHNOLOGY COMPANIES

The current opportunities and incentives for investment in the climate-related energy and technology sectors are broad and diverse. The incentives range from tax credits to loan guarantees to R&D funds, and the technologies range from safeguards against major blackouts to breakthroughs in renewable forms of energy and energy conservation. Our multidisciplinary Climate-Related Business & Technology Group assists emerging technology companies in this sector, as well as investors who recognize the sector's potential.

Our attorneys have substantial experience with the complex regulatory and transactional issues inherent in climate-impacting technologies. Our structured finance, corporate, securities and tax lawyers are at the forefront of exploring new technologies and

opportunities in this sector, and our experienced environmental team is well-versed in handling project-permitting requirements, environmental due diligence, and providing general regulatory advice. We also assist with government contracts, grants, loan guarantees, export support and other programs that can provide companies with market advantages for their climate-related products and services.

Recent representative work includes:

- Advising a major developer of photovoltaic technologies in a number of corporate and transactional matters
- Developing a due-diligence plan for the financier and developer of clean-fuel technology for a transaction with an electric utility company
- Assisting a client with an innovative renewable energy technology in obtaining a grant from the United States Department of Energy
- Assisting a company in performing the environmental due diligence associated with the siting and construction of a "clean coal" power generating facility
- Complying with existing and proposed Safe Drinking Water Act regulations regarding the geologic storage of carbon dioxide
- With regard to geologic storage of carbon dioxide, addressing liability issues as well as issues relating to pore space ownership

ENERGY EFFICIENCY/CONSERVATION INITIATIVES

The United States government, state legislatures and governments around the world are reacting to the climate change crisis by developing significant incentives for public entities, private businesses, non-profits and consumers to reduce energy consumption and GHG emissions, and increase available offsets. Our lawyers are well-versed in the opportunities presented by these programs. Projects have included:

- Working with the City of New Orleans, Louisiana in establishing its energy efficiency program, "Energy Smart New Orleans" by helping to evaluate the feasibility of options, including renewable credits, distributed generation from local solar and other renewable energy sources, green-building initiatives, consumer education and incentives, and the full range of available funding mechanisms, while working closely with the United States Department of Energy's National Renewable Energy Laboratory
- Providing advice regarding the structuring of a financing by a city-sponsored non-profit organization that created a program to significantly reduce energy and water use and GHG emissions in Cambridge,

Massachusetts. The non-profit organization is seeking to raise more than \$100 million to provide loans to city residents, businesses and institutions to finance the installation of energy-efficient measures in their residences and buildings in order to reduce energy and water consumption by a significant percentage on a city-wide basis

- Advising a manufacturer of new energy-efficiency and conservation products regarding opportunities to enhance product marketing through existing incentive and consumer-education programs, and regarding legislative and regulatory opportunities to gain marketplace advantages

GREEN BUILDING

S&W counsels businesses seeking to meet the guidelines of green-building programs, including the LEED Green Building Rating Systems; drafting appropriate construction contracts; and assisting clients to obtain the incentives earned by meeting these guidelines.

Recent representative green building-related projects have included:

- Representing a client in the development of a new casino in Las Vegas, Nevada to be built pursuant to LEED standards, which involved negotiation of contract terms to require that contractors fulfill LEED green-building standards
- Gaining inclusion in LEED for Homes credits for a manufacturer of energy-efficient faucets and shower heads
- Gaining inclusion in LEED for Existing Buildings credits in the operations and maintenance category for a manufacturer of battery-powered, non-GHG or particulate-emitting outdoor power equipment
- Advising a tool manufacturer of new marketing opportunities in the green-building field

MARKETING OF GREEN PRODUCTS AND SERVICES

The heightened focus on climate change issues has led to the proliferation of products and services marketed on the basis of their environmental attributes or benefits.

Recent representative matters have included:

- Advising clients regarding the lawful parameters within which green marketing claims can be asserted in product advertising, promotional materials and packaging under the United States Federal Trade Commission Act and the FTC's Environmental Marketing Guides
- Evaluating our clients' competitors' green-product claims and pressing for

investigations by regulatory authorities for
claims lacking substantiation

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Our understanding of the complex interface of energy and environmental regulation and policy, and our solid grasp of trends and expectations in the venture capital, private equity and commercial banking arenas allow S&W's Climate-Related Business & Technology Group to provide comprehensive, cost-effective, solution-oriented representation to participants in climate-related programs, businesses and markets.

For further information about our Climate-Related Business & Technology Group, please visit our website at www.sandw.com or contact:

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