



**UNIDROIT Working Group on the
Legal Nature of Voluntary Carbon Credits**

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ADDITIONAL DISCUSSION

A. Format of future instrument

1. UNIDROIT's fundamental statutory objective is to prepare modern and, where appropriate, harmonised uniform rules of private law.

2. The uniform rules drawn up by UNIDROIT may take the form of various types of international law instruments, depending on the characteristics of the particular project. For example, in keeping with the Institute's intergovernmental structure, legal instruments developed by UNIDROIT may take the form of international conventions, designed to apply automatically in preference to a State's domestic law once all the formal requirements of that State's domestic law for their entry into force have been completed. At the same time, however, alternative forms of harmonisation or modernisation have become increasingly popular in areas where a binding instrument is not felt to be essential. Such alternatives may include model laws which States may take into consideration when drafting domestic legislation or general principles which judges, arbitrators and contracting parties may decide whether to adopt. Where a subject is not judged ripe for uniform rules, another alternative consists in legal guides, typically addressing new business techniques or types of transaction, or the framework for the organisation of markets both at the domestic and the international level.

3. The DAPL Principles, for instance, were approved by the UNIDROIT Governing Council at its 102nd Session.¹ They are aimed at facilitating transactions in the types of digital assets often used in commerce by reducing legal uncertainty and providing guidance to legislators as well as adjudicators, practitioners and market participants. A practical and functional approach was adopted for the development of the DAPL Principles, meaning that they are technology, business model, and jurisdiction neutral. In other words, the DAPL Principles have not been drafted using the terminology of a specific jurisdiction or legal system and are intended to be applied by any legal system or culture. The Principles are also organisationally neutral, meaning they take no position as to what part of domestic law they should be included in; it is up to the jurisdiction in question to decide how to implement the Principles into its own law and system.

4. In the context of the present Project, it may be premature at this early stage for the VCCs Working Group to determine the most suitable future international instrument to be developed. In any event, the Working Group is encouraged to consider the below issues keeping in mind the potential form that any future instrument could take.

¹ UNIDROIT 2023 – C.D. (102) 25, paras 92-106.

Questions for the Working Group:

1. *The Working Group is invited to consider the most suitable international instrument to be developed in the context of the VCC Project.*
2. *Would it be appropriate for the future international instrument to take the form of a legal guidance document, including a set of best practices?*
3. *Would the practical and functional approach adopted in the DAPL Principles offer a suitable framework for future work?*

B. Target Audience

5. As consistent with all UNIDROIT instruments, the prospective international instrument should be relevant to all jurisdictions irrespective of the legal tradition (e.g., both common law and civil law jurisdictions) and should aim to reduce the legal uncertainty which practitioners, judges, legislators and market participants face in relation to VCCs, including issues pertaining to the issuance, ownership and transfer of VCCs. In particular, the Working Group is encouraged to consider the potential use of any future instrument by developing countries, including in aiding jurisdictions with limited resources develop relevant international law frameworks to better participate in the VCC market.

Question for the Working Group:

4. *Who should be the target audience for the instrument? Are there any specific stakeholders that would particularly benefit from any future instrument?*