

Client Alert

7 NOVEMBER - 18 NOVEMBER 2016

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COP22 / CMP12 | Marrakech 2016

Marrakech Preview

The 2016 United Nations Climate Change Conference will soon begin in Marrakech.

For further background information on the meetings, expected outcomes and our team's involvement, please read our client alert below.



What is COP22

The Conference of Parties (COP) to the United Nations Framework Convention on Climate Change (UNFCCC) and the Meeting of Parties (CMP) to the Kyoto Protocol are convened annually between the months of November and December. This year marks the 22nd COP and 12th CMP and is the first Meeting of Parties (CMA) to the Paris Agreement which will enter into force on 4 November 2016. The conference will take place in Marrakech, from 7 November to 18 November, 2016.

For further information on the UNFCCC, the Kyoto Protocol and Paris Agreement, the structure and function of the meetings, the make-up and positions of the main negotiating groups and some of the key issues that will be on the agenda and sources of more information, please visit the official conference website [here](#) and the host city website [here](#).

Who will be attending?

The COP 22 sessions of the UNFCCC are open to Parties of the Convention and Observer States (governments), the United Nations System and observer organisations duly admitted by the COP (for example WMO, UNEP, IPCC, World Bank, GCF). In addition, accredited press are allowed to cover the proceedings of the Convention and accredited business and environmental non-governmental organisations (NGOs) can attend the broader proceedings and official side events.

It is expected that around 20,000 registered participants will attend the meeting, with many more people participating in events outside of the formal negotiations.

Baker & McKenzie will be represented at the conference by Martijn Wilder AM, Richard (Rick) Saines, Paul Curnow, Marisa Martin, Ilona Millar and Kamal Nasrollah. Please get in touch with our team members directly to arrange a meeting. Contact information is provided below.

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Expected outcomes

The Marrakech climate change meetings are expected to be an important step forward in laying the foundations for implementation of the Paris Agreement.

They come at a time when we are seeing increased international cooperation on fighting climate change, with the recent decision by the International Civil Aviation Organisation (ICAO) to limit growth in greenhouse gas emissions in the aviation sector and the recent agreement of parties to the Montreal Protocol reach agreement on amendments to accelerate the phasedown of hydrofluorocarbons (HFCs). This spirit has also been seen with the unprecedented number of countries that have ratified the Paris Agreement following its opening for signature in April this year, allowing the Agreement to enter into force well before many expected.

It is highly significant that the Paris Agreement will enter into force on 4 November 2016, less than a year after it was agreed, and that this will be the first meeting of the parties (CMA) to the Paris Agreement. Early entry into force maintains the momentum amongst all countries to pursue ambitious action on climate change and work towards the goal of limiting global warming to well below 2 degrees Celsius.

However, there is considerable work that needs to be done to elaborate rules and procedures to support the mechanisms established by the Paris Agreement and facilitate implementation of the Agreement. This will now be a critical part of the agenda for Marrakech.

The Moroccan COP Presidency has stated that it wants to see concrete action in Marrakech. Under the goal of focussing on enhanced ambition, promoting implementation and providing support, it has identified the following priorities:

- Strengthening action on mitigation and adaptation by all Parties before 2020.
- Supporting domestic action to give effect to nationally determined contributions.
- Pursuing collaborative initiatives as part of an intensified action agenda.
- Mobilising finance, technology and capacity-building support before and after 2020.

The Moroccan government has itself decided to set an example on ambition, revising its greenhouse gas emissions reduction goal from 32% to 42% by 2030. It is expected that some other countries will follow this lead and enhance the ambition of their NDC commitments.

At a practical level, the following issues are expected to be the focus for negotiators.

CMA1

There are a number of matters related to the implementation of the Paris Agreement which were being undertaken by the Ad-hoc Working Group on the Paris Agreement (APA) and which were intended to be completed before CMA1 (see below). Early entry into force of the Paris Agreement raises the question of how these matters will be negotiated. Parties to the CMA will need to decide whether to continue the work of the APA (either by suspending CMA1 or delegating the work programme back to it) or to pursue those matters itself. Although sufficient ratification has been made to allow the Agreement to enter into force, there are still a large number of countries that have not yet ratified the agreement. Whilst these countries can participate in CMA1 negotiation on matters related to implementation, they will not be able to participate in the making of formal decisions on those matters. In order to promote inclusion in the process of developing the rules that will govern implementation of the Paris Agreement, there appears to be increasing support for the opening and suspension of CMA1.

Rules to Support Implementation of the Paris Agreement

The APA's current work programme includes a number of agenda items related to the provision of guidance to parties on how to implement the Paris Agreement. Briefly, these include:

- **Guidance in relation to mitigation features** - APA is required to develop further guidance on information to be provided by Parties to facilitate clarity, transparency and understanding of NDCs. Parties will be considering what information should be included in NDCs, in particular what should be mandatory and what should be encouraged or optional. This will require balancing the nationally determined nature of contributions with the need for common frameworks to enable assessment of progress. An important element of this guidance will relate to accounting for mitigation contributions (which also links to transparency of action).
- **Guidance in relation to adaptation communications** - APA is expected to consider the minimum elements for adaptation communications (whether in NDCs or National Adaptation Plans). For developing countries this is important as it can facilitate the coordination of priority actions and the support needs and finance required for those actions. Key considerations are likely to relate to the purpose, content, frequency and mode of communications.
- **Transparency Framework** - the APA is required to develop recommendations, modalities, procedure and guidance on the enhanced transparency framework established under Article 13 of the Paris Agreement. This framework is intended to address both transparency of action and transparency of support provided to and received by Parties. Key issues are expected to relate to the development of reporting guidelines (including GHG inventories and tracking of progress); the modalities for technical expert review and consideration of progress.
- **Global Stocktake** - the CMA is required to undertake the first global stocktake of implementation of the Paris Agreement in 2023 and every five years thereafter. The APA is required to make recommendations on the sources of input for the global stocktake and to develop modalities for the global stocktake. Key issues will be determining who will undertake the stocktake, whether it will be done in a phased way and what are the likely information needs, inputs and outputs will be.
- **Compliance Mechanism** - modalities and procedures for the compliance mechanism established under Article 15 of the Paris Agreement are expected to be adopted at COP22. The compliance mechanism is intended to both facilitate implementation and promote compliance (in a non-punitive way). Accordingly, key issues being explored by the APA relate to how the compliance committee will differentiate between these two functions.

In addition to the work of the APA, other bodies, such as the Subsidiary Body on Scientific and Technological Advice (SBSTA) and the Subsidiary Body on Implementation (SBI) will also work on matters related to implementation of the Paris Agreement. These include:

- **Article 6** - Article 6 of the Paris Agreement provides for the voluntary transfer of mitigation outcomes between Parties through (i) a mechanism to allow the international transfer of mitigation outcomes; (ii) a "sustainable development mechanism" under the authority and guidance of the CMA; and (iii) a non-market mechanism. SBSTA is required to:
 1. provide guidance to cooperative approaches to carbon markets under Article 6.1
 2. identify rules, modalities and procedures for the SDM under Article 6.4
 3. develop a work programme for non-market approaches under Articles 6.8 - 6.9.
- There are a number of areas which require detailed consideration and careful design to ensure that international carbon markets will function in an efficient and transparent way and enable active private sector participation. Critical to this will be the development of accounting rules to prevent double counting of emission reductions.
- **Finance** - Finance is likely to be a key issue for COP22. Significant attention will be paid to the commitments being pledged by developed country parties to support implementation of NDC commitments. SBSTA is required to prepare accounting modalities for the reporting of finance provided and mobilised by developed country parties. Key issues will be defining what are considered to be public finance interventions and how to ensure financial contributions are not double counted. In addition the bodies responsible for the financial mechanisms under the UNFCCC and Kyoto Protocol will report on their efforts to mobilise climate finance and support mitigation and adaptation activities. Of particular interest is likely to be the progress being made by the Green Climate Fund.
 - **Technology Transfer** - SBSTA is required to elaborate on the technology framework established under Article 10 of the Paris Agreement. Relevantly this framework is intended to facilitate further action to undertake technology needs assessments (TNAs), enhanced financial support for implementing actions identified in TNAs, assessment of technologies ready for transfer and creating enhanced enabling environments to address barriers to development. Key issues for Parties will be the design of the new framework and how to better integrate technology with the financial mechanisms under the UNFCCC and Paris Agreement.
 - **Loss and Damage** - SBSTA and SBI will both review the report of the Warsaw International Mechanism's Executive Committee(WIM ExComm) at COP 22 and assess progress against the WIM ExComm's two-year work plan. Loss and damage is a critical issue for developing countries and its express reference in Article 8 of the Paris Agreement is significant, this COP is likely to see developing countries seek to pursue a more comprehensive and detailed work plan for the WIM ExComm for its next 5 year cycle.

NDC Implementation

As Parties ratify the Paris Agreement, their pre-Paris intended nationally determined contributions will become formalised into NDCs. This means that attention will now shift to focus upon how the targets, commitments and actions will be implemented. A number of governments and organisations (for example the Green Climate Fund, the WRI led NDC Partnership and GNIplus) are beginning to work with developing country governments to develop implementation plans and strategies to enable finance to flow to mitigation and adaptation actions. These activities will be showcased at COP22 with a view to scaling up implementation activities in 2017.

Non-State Engagement

A key pillar of the Moroccan Presidency of COP22 is to mobilize non-state actors with the goal of institutionalizing their actions under the Global Climate Action Agenda. This will include a special focus on the important contributions of civil society which will include a stocktaking session to hear from civil society and chart a common agenda together.

COP21 in Paris saw a number of significant announcements by business willing to play a role in scaling up ambition to address climate change. For example:

- The We Mean Business Coalition, made up of 363 companies which made a number of commitments, including internal carbon pricing and conversion to renewable energy.
- The Science Based Targets initiative which enlisted 114 global companies, with the aim of setting strict science based emissions targets.
- The Paris Green Bonds Statement of representing USD 11.2 trillion worth of assets under management which put out a statement on how they would support policies that drive the development of long term, sustainable global markets in green bonds.

The business sector is again expected to play an important role at COP 22 by reaffirming their support for the Paris Agreement goals and their willingness to partner in NDC implementation at the national level.

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Baker & McKenzie involvement

Baker & McKenzie has a long history of participation in international climate change meetings. We regularly attend the COP and COP/MOP meetings and closely follow the development of negotiating issues arising out of those meetings.

Many of our lawyers have participated in the negotiations as members of country delegations, and we are actively involved in working with government's industry groups and non-governmental organisations seeking to achieve global outcomes on climate change. In particular our team is this year will attend COP in a number of additional capacities that include:

- Our team as special legal advisers to the COP Presidency of the Kingdom of Morocco.
- Our team as a partner in GNIplus, a new global initiative to enhance INDC implementation.
- Martijn Wilder AM in his role as both Chair of the Australian Renewable Energy Agency and Deputy Chair of the Asia Pacific Rainforest Partnership Private Sector Roundtable.
- Howard Bamsey AM PSM as the designated Executive Director of the Green Climate Fund (GCF).

This year our team will be participate in a number of forums at the COP, including the following public events.

Tuesday 8 November

10:40-12:00	Asia-Pacific Rainforest Partnership (APRP) - Roundtable Panel Discussion - Financial Investment in Sustainable Landscape Management, Martijn Wilder moderating - Indonesia Pavilion.
13:30-15:00	Asia-Pacific Rainforest Partnership (APRP) - Roundtable Panel Discussion - Scaling up climate finance for the land-use sector, Martijn Wilder moderating - Indonesia Pavilion.

Wednesday 9 November

11:30-13:00	IETA side event: Aviation and carbon markets: The ICAO deal and the way forward - IETA Business Hub, Rick Saines speaking.
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Friday 11 November

15.30-17.00	REPP side event #1: What is Really Holding Back Renewables in Sub-Saharan Africa? - IETA Business Hub, Rick Saines speaking.
17.00-18.30	REPP side event #2: Innovative Solutions, Private Finance and the Future of Renewables in Africa - Building the Toolbox, IETA Business Hub - Paul Curnow speaking.

Saturday 12 November

10.00-13.00	Climate Law and Governance for Sustainable Development Special Event, Session II: Mobilizing Climate Finance - Martijn Wilder chairing, Innovation Hall, COP22 Green Zone.
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Sunday 13 November

11:30-12:30	World Climate Summit: Corporate Sourcing. Paul Curnow speaking.
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Monday 14 November

18:30-20:00	IRENA side event: Realising Renewable Energy Potential in Africa through NDC Implementation - Paul Curnow speaking, Austral Room (blue zone).
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Tuesday 15 November

17:00-18:30	Rapid Real and effective Financing and Implementation of NDCs - The GNIplus Approach, Morocco Pavilion - Martijn Wilder and Howard Bamsey speaking.
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Wednesday 16 November

13.30-15.00	IETA side event: Optimising Australia's Position in International Carbon Markets, IETA Business Hub - Martijn Wilder speaking.
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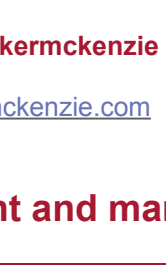

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Interview

Baker & McKenzie Partner and Environmental Markets Head, Martijn Wilder was recently interviewed by Boardroom Radio to discuss BHP's forest bond and what the next few weeks at COP22 may hold and what it all means for businesses.

[Watch Martijn's interview.](#)

Team attending COP22 in Marrakech

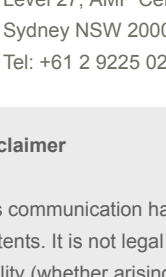
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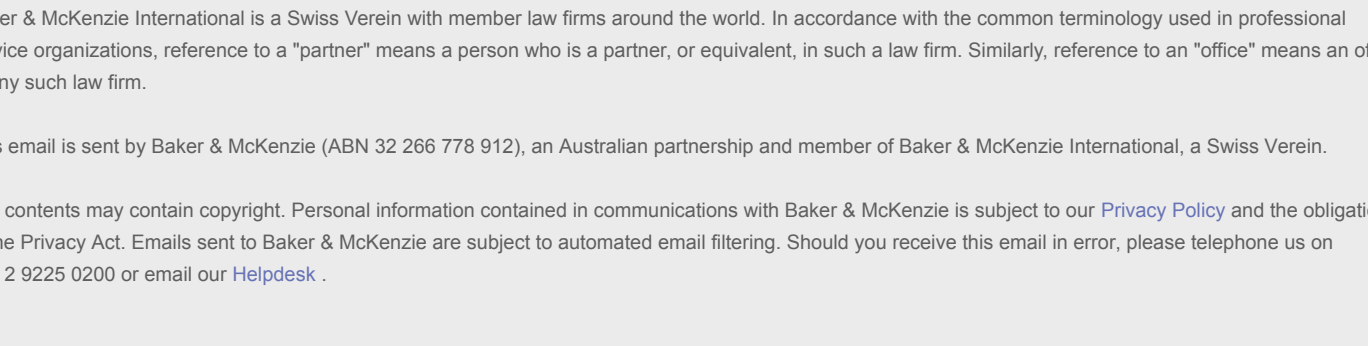
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