

## What you need to do to get ready for the Carbon Reduction Commitment

### What is the Carbon Reduction Commitment?

If your organisation spent more than £500,000 on electricity across its UK sites in 2008, you are likely to have to comply with a new regulation called the Carbon Reduction Commitment (CRC) which is aimed at curbing carbon emissions.

Some of our clients are preparing for an impact in the order of tens of millions of pounds over the next few years from the CRC, so having a clear understanding of the CRC and what it requires and by when are business critical issues.

The CRC is a mandatory carbon trading scheme under which affected organisations will have to buy carbon credits (or allowances) equivalent to their energy use. Money raised by the sale of the allowances is recycled back to participants by way of a cash sum, based on a number of metrics at the end of each emissions year, including action taken before the scheme comes into force in April 2010 and absolute emissions reductions.

From a compliance perspective, the scheme is complex, with hefty penalties for breaches, “naming and shaming” and even potential director liability.

The hospitality and leisure industry faces some very specific challenges arising from the CRC because it is a relatively energy-hungry business and also because of the legal structures under which the industry operates. In particular, the CRC has been heavily criticised for making landlords and franchisors liable to buy allowances in relation to energy use over which they may have little control.

### What do you need to do?

- 1. Do you qualify?** There’s a threshold for qualification for the CRC, but the key issue is: what is your “organisation” for the purposes of the CRC. The general rule is that parents and subsidiaries are aggregated together for the purpose of CRC compliance. However, the picture becomes much more complex where foreign parents are involved.

The normal consolidation rules for parents and subsidiaries are modified for the purposes of the CRC in a number of ways: for example, where hotels run on a franchise model, the franchisee’s business is aggregated with that of the franchisor.

There are special rules for joint ventures and even the normal definition of “parent” and “subsidiary” are amended, so that investors need to take care to make sure that they are not aggregated with the operating business under these rules.

- 2. Are there any ways to transfer risk/liability?**

There are opportunities to transfer risk under the CRC: not all energy use in buildings which you occupy is necessarily attributed to your business. A careful review of the exemptions available is an important first step in understanding what your carbon footprint is for the purposes of the CRC.

Alternative structures may be another option for excluding energy use from your obligations under the CRC. We are currently working with a number of clients on these issues.

- 3. Are there ways to maximise the money which the Government recycles at year end?** If you want to get rewarded under the CRC, “early action” needs to be planned now. Understanding the options and their impacts is likely to be a major task for some businesses.
- 4. How should you be covering the CRC risks in acquisition documents or hotel management or franchise agreements?** Analysing the potential impacts of the CRC on target assets is already important. In addition, we have been working with clients to draft a number of options for sharing risk and cost where wholesale risk transfer is not possible.

These are just some of the questions stakeholders in the hospitality and leisure sector should be looking at now. We would be happy to talk to you further about the CRC or any of your other legal needs.

Mayer Brown has been advising clients on the CRC for two years and we have developed a number of products to help clients divest or transfer their liabilities, as well as to comply in a cost effective way.

If you would like to talk to us about how your business might be impacted, please contact:

**Peter Sugden**

020 3130 3522

[psugden@mayerbrown.com](mailto:psugden@mayerbrown.com)

**Michael Hutchinson**

020 3130 3164

[mhutchinson@mayerbrown.com](mailto:mhutchinson@mayerbrown.com)

or speak to your regular contact at Mayer Brown.

---

Mayer Brown is a leading global law firm with approximately 1,000 lawyers in the Americas, 300 in Asia and 500 in Europe. We serve many of the world's largest companies, including a significant proportion of the Fortune 100, FTSE 100, DAX and Hang Seng Index companies and more than half of the world's largest investment banks. We provide legal services in areas such as Supreme Court and appellate; litigation; corporate and securities; finance; real estate; tax; intellectual property; government and global trade; restructuring, bankruptcy and insolvency; and environmental.

OFFICE LOCATIONS AMERICAS: Charlotte, Chicago, Houston, Los Angeles, New York, Palo Alto, São Paulo, Washington  
ASIA: Bangkok, Beijing, Guangzhou, Hanoi, Ho Chi Minh City, Hong Kong, Shanghai  
EUROPE: Berlin, Brussels, Cologne, Frankfurt, London, Paris

ALLIANCE LAW FIRMS Mexico, Jáuregui, Navarrete y Nader; Spain, Ramón & Cajal; Italy and Eastern Europe, Tonucci & Partners  
Please visit our web site for comprehensive contact information for all Mayer Brown offices.  
[www.mayerbrown.com](http://www.mayerbrown.com)

© 2009. Mayer Brown LLP, Mayer Brown International LLP, and/or JSM. All rights reserved.

Mayer Brown is a global legal services organisation comprising legal practices that are separate entities (the “Mayer Brown Practices”). The Mayer Brown Practices are: Mayer Brown LLP, a limited liability partnership established in the United States; Mayer Brown International LLP, a limited liability partnership incorporated in England and Wales; and JSM, a Hong Kong partnership, and its associated entities in Asia. The Mayer Brown Practices are known as Mayer Brown JSM in Asia. “Mayer Brown” and the “Mayer Brown” logo are the trademarks of the individual Mayer Brown Practices in their respective jurisdictions.