Hogan & Hartson:
Global Strength in Climate Change

Presentation at the
Western Climate Policy Form

Denver, CO
February 26, 2009

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Hogan & Hartson and its Climate Practice Overview

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- Full-service “Top 10” global law firm founded over 100 years ago in Washington, D.C.
- Over 1,200 lawyers in 29 offices throughout the U.S., Europe, Middle East, Asia and Latin America
- Representing over half of the *Fortune 500* companies and more than 65% of the *Fortune 250*
- *The Legal Times* described Hogan & Hartson as being among the “International Elite,” observing that “with size, Hogan is able to offer . . . one-stop shopping.”
- Operating at the intersection of government and business, with strength in highly regulated industries –Energy, Technology, Life Sciences, Food, Media & Telecoms, Aerospace & Defense
- Integrated global climate change practice (U.S., Europe, Asia, Americas)

Hogan & Hartson and its Climate Practice Global Reach

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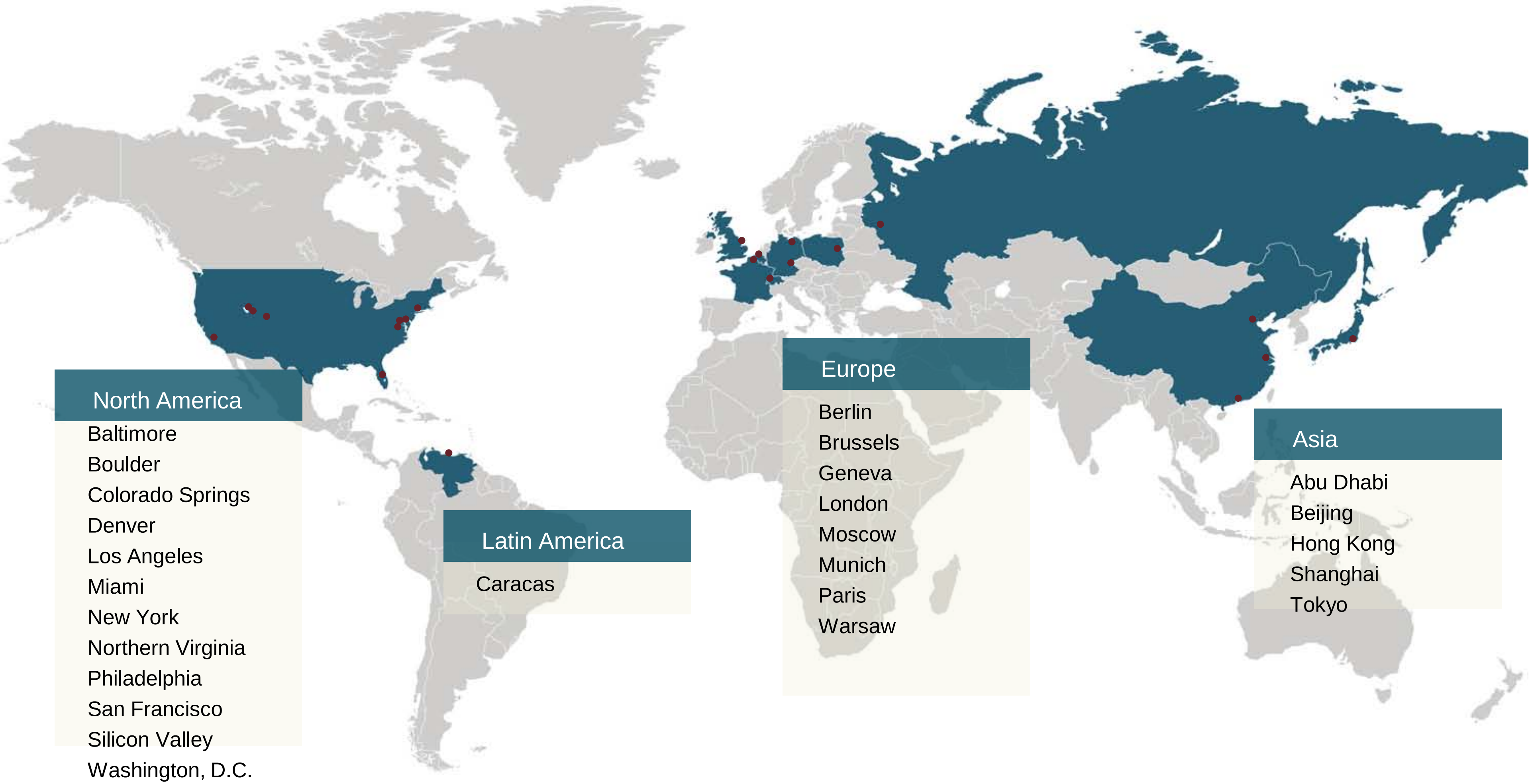
Countries with Hogan & Hartson Offices



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- Colorado Springs
- Denver
- Los Angeles
- Miami
- New York
- Northern Virginia
- Philadelphia
- San Francisco
- Silicon Valley
- Washington, D.C.
- West Palm Beach

Latin America

- Caracas

Europe

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- Brussels
- Geneva
- London
- Moscow
- Munich
- Paris
- Warsaw

Asia

- Abu Dhabi
- Beijing
- Hong Kong
- Shanghai
- Tokyo

Hogan & Hartson's Climate Change Practice: Kyoto Protocol Experience

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- Hogan & Hartson established a preeminent Kyoto Protocol practice with global reach. Experience in field of Kyoto Protocol implementation and CDM includes
  - **Carbon manager** for MCCF, a multilateral carbon credit fund (approx. 165 Mio. € first commitment) for EBRD/EIB, in a consortium with ICF
  - Advise to the **Russian Federation** in the implementation of Kyoto Protocol, especially on registry and inventory issues (EU TACIS project), in a consortium with ICF
  - Advise on numerous CDM projects, including the representation of private clients in the **contractual acquisition** and divestiture **of CERs** with a current fair market value of over $350 million from various CDM projects around the world

Hogan & Hartson's Climate Change Practice: EU ETS Experience - Overview

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- Hogan & Hartson's European offices have broad experience with all legal aspects of the European Union Emission Trading Scheme (**EU ETS**), the biggest carbon trading scheme in the world:
  - Policy Advice
  - Allocation Issues / Strategic Consulting
  - Trading Issues

Hogan & Hartson's Climate Change Practice: EU ETS Experience – Policy Advice

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- Hogan & Hartson has advised major European **energy companies** with regard to the amendment of the European Union **Emissions Trading Directive** (Directive 2003/87/EC), which sets the regulatory framework for the EU ETS; work included
  - Liaising with European Commission
  - Liaising with European Parliament offices
- Hogan & Hartson has advised energy companies with regard to the implementation of the Emissions Trading Directive in EU member states through **National Allocation Plans** and national **legislation**, particularly in Germany, the biggest national market under the EU ETS, and in Eastern Europe

Hogan & Hartson's Climate Change Practice: EU ETS Experience – Allocation of Credits

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- **Strategic Advice regarding Project Development**: Hogan & Hartson advises future operators of installations which are subject to the EU ETS with regard to the structuring of their projects (esp. power plants) in order to optimize credit allocation prospects
- **Allocation Decisions**: Hogan & Hartson advises numerous operators of EU ETS installations (industrial installations, power plants) with regard to the allocation decisions taken by national authorities:
  - **Application** for allocation decisions
  - **Legal review** of allocation decisions
  - **Appeal** of allocation decisions, representation vis-à-vis authorities and courts

Hogan & Hartson's Climate Change Practice: EU ETS Experience – Certificate Trading

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- **Design of Form Contracts**: Hogan & Hartson advises companies engaged in EU ETS trading (esp. utilities, energy traders) with regard to the design of standard form agreements
  - EU Allowance (EUA) Trade Agreements
  - EUA/CER/ERU Swap Agreements
- **Transactional Advice**: Advice regarding transactions and the conclusion of framework agreements on the basis of individual agreements and standard agreements (IETA, EFET, ISDA)

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Definition of Linking:

"…two national emissions trading schemes are linked if one country's allowance can be used, <u>directly or indirectly</u>, by a participant in the other country's scheme for compliance purposes."

(OECD, Harmonisation between National and International Tradable Permit Schemes, March 2003)

Direct Linking of ETS: Legal Challenges
Linking - a Legal Problem?

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- The **challenges** regarding (both direct and indirect) linking are **legal issues**, as well as economic, trade, and policy-related issues
- What is feasible from an economic, trade, and policy perspective, can generally somehow be implemented as a legal design
- **Carbon markets** are "**legal creatures**", entirely created by legal provisions (different from commodities or even securities markets)
- All **linking scenarios require legal (re-) design**
- If the design becomes **too complicated**, the success of linking is **questionable** (e.g. resulting in too high transaction costs)

Direct Linking of ETS: Legal Challenges

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- **Definition**: Mutual recognition of allocated credits in each ETS for compliance

- Specific problems of **direct linking** that need to be addressed legally (harmonized):

  - Inventories must be harmonized and linked
  - Reduction target harmonization (fixed, indexed)
  - Allocation harmonization (e.g. issues within EU on NAPs)
  - Non-compliance consequences (penalties)
  - Registry/platform harmonization
  - Banking and borrowing
  - Monitoring, reporting and verification harmonization

- **Legal steps** and **forms** to address issues:

  - **International agreements** (formal or informal) necessary - require long negotiations (and can be difficult with regional schemes, as formal agreements often require national approval – see U.S. constitution)
  - **National legislation** is necessary

Indirect Linking through Off-Sets: Overview

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- **Definition**: Indirect linking through off-sets means that there is no mutual acceptance of allocated cap-and-trade credits for compliance under each ETS, but common acceptance of credits generated under certain off-set mechanisms

- **Advantages**:

  - Much **less harmonization** required, as linkage only on a limited field (e.g. no allocation rules)
  - Still harmonize inventory, registry, credits
  - extended **market place**

- From a regulatory perspective, 2 fundamentally different scenarios:

  - Indirect Linking between ETS from KP party states (Scenario 1)
  - Indirect Linking between ETS from KP party states and non-party states (Scenario 2)

Linking Impacts

- GHG reduction & impacts of linking through off-sets are **difficult to predict**, as linking makes ETS (even) more complicated
- **International trade** implications
- **UN** as final arbiter
- Global financial implications
- **Prices** of certificates accepted under different ETS would subject to more complex demand, and are therefore harder to predict (e.g. already true for CERs in KP trading period – looser tie to EUA prices)

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