

CDM DNA Legal Issues – International Rules and Practice



The Objective of CDM – Article 12 of the Kyoto Protocol

The three-fold objectives of CDM:

- to assist developing countries in achieving sustainable development
- to assist developing countries in contributing to climate change mitigation
- to assist developed countries meeting their emission reduction obligations under the Kyoto Protocol

International rules on host country for CDM projects

- Being a Party to the UNFCCC and the Kyoto Protocol
- Established a Designated National Authority (DNA) capable of approval proposed CDM projects
- Developed CDM project approval criteria
- DNA issues Letter of Approval (LoA) for projects as evidence of host country approval

DNA institutional arrangement

- No international rules on the establishment and functions of DNAs. Subject to decision by individual host countries
- The information communicated to the UNFCCC is a person name and contact information
- DNAs have been structured by countries in different ways:
 - Ø Units within existing government departments or ministries;
 - Ø inter-ministerial committees
 - Ø new and independent offices

Important Functions of DNA

- Elaborate its decisions and administrative procedures based on a sound legal foundation and institutional mandate
- Act as a clear point of contact for entities wishing to invest in CDM projects in the country
- Approve proposed CDM projects fairly, effectively and efficiently
- Facilitate intergovernmental coordination and decision-making for appropriate CDM policies realise a country's CDM potential

Contents of host country Letter of Approval (LoA)

The LoA must confirm:

- Participation in the proposed CDM project is voluntary
- Implementation of the proposed CDM project will contribute to the host country's sustainable development

CDM approval criteria and LoA

- Each country decides its own sustainable development criteria for CDM project approval
- Typically the sustainable development criteria cover following aspects:
 - ü contribution to economic growth, environment protection, social equity
 - ü contribution to technology transfer
 - ü contribution to skills transfer, learning and employment
- Once a DNA determines a proposed CDM project satisfies the national sustainable development criteria for CDM project approval, it issues the Letter of Approval (LoA), which is a precondition that the project's international registration as a CDM project,

Additional Functions for DNAs – CDM Promotion

DNAs can actively promote CDM project implementation by:

- Assist in the identification of investment opportunities or in prioritisation of investment sectors
- Coordinate the development of a portfolio of priority projects, network information for marketing CDM activities, and promote CDM opportunities with trading partners
- Link local CER sellers with foreign buyers
- Facilitate and coordinate CDM capacity building to enhance local knowledge and interest in CDM

Additional Functions for DNAs – Monitoring, Facilitating, and Negotiation

- Monitor sustainable development impacts of CDM projects and report on national CDM programs to national policy makers
- Work with other government agencies to remove domestic legal and regulatory barriers to CDM projects, to ensure the transparency and quick CDM project approval (publishing emission factors of grids)
- Coordinate internal climate change policy and develop positions for international climate change negotiations

Domestic laws affecting the CDM

The laws about:

- Normal regulatory assessment and approvals for projects implemented for CDM
- Title to land
- Investment in CDM projects
- Resource use (renewable energy, fossil fuel, vegetation)
- Securities and financial products
- Public sector transparency and efficiency
- Employment and labour
- Use and trade of project outputs

Remove domestic legal barriers to CDM projects

- Clear and robust domestic laws can facilitate CDM project implementation
- Existing domestic laws may inadvertently create barriers to CDM project implementation
- Identification of barriers by host country DNAs
 - ∅ identify relevant existing domestic laws with the potential to significantly impact CDM processes and/or underlying investment projects
 - ∅ assess the likelihood and magnitude of the impacts
 - ∅ formulating solutions and recommendations for remove the barriers
- Target domestic law reform to remove the barriers

Conclusions

- The establishment and operationalisation of CDM DNA is a precondition for CDM project implementation in a country
- Clear, transparent and effective CDM project approval is important
- CDM projects are also governed by various other national laws, policies and regulations, which can affect CDM project implementation
- CER sales revenue can only form a small part of the project revenue, supportive fiscal subsidies and taxation policies as higher feed-in-tariff for renewables are needed to make potential CDM projects economically viable

THANKYOU