

Implementing CDM projects

Guidebook to Host Country Legal Issues



BAKER & MCKENZIE

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A Guidebook to Host Country Legal Issues

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Editors

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1 Introduction

Participants in CDM projects face many risks. In addition to political and economic risks associated with investments in emerging markets, participants face new and unfamiliar risks linked to the Kyoto Protocol and its implementation, such as carbon price volatility, the risk that CERs will lose their value after the first Kyoto commitment period, and the need to obtain all necessary CDM project approvals. Likewise, the CDM Executive Board has identified weak domestic legal regimes as both a key barrier to CDM investment, in general, and as a contributing factor to the unequal regional distribution of CDM project activities. This underscores the need to strengthen domestic CDM regulatory structures in order to facilitate delivery and scale-up of the CDM, as well as the need for related capacity building, "in order to make the CDM function..."

This Guidebook addresses a wide range of legal and regulatory issues arising from the domestic laws, regulations and policies of CDM Host Countries that can affect the development and implementation of CDM projects. Host Country domestic laws interact – both negatively and positively – with the international rules that underpin the CDM. At this critical juncture of change and uncertainty surrounding the evolution of the carbon markets and the flexible mechanisms under

a capacity building tool, the primary audience of this Guidebook is therefore climate change policymakers and CDM project developers in developing countries; however, carbon investors will find it of equal interest. The Guidebook illustrates some Host Country laws that specifically address the CDM, as well as how general domestic legal regimes may impact or inhibit CDM project implementation, such as:

- property rights;
- environmental and planning laws;
- investment and taxation laws; and
- financial services regulations.

The Guidebook further seeks to demystify the myriad, complex issues surrounding the domestic implementation of CDM, such as:

- project approval processes;
- CER ownership; and
- taxation.

Development economists and policymakers have long recognized that predictable legal regimes are a foundation for economic growth and investment, a supposition demonstrated through numerous empirical country studies. As the World Bank notes, "no matter what factors are included in the analyses and what measures of property rights security are used, all report a close

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