

Client Alert

NEW OPPORTUNITIES FOR PARTICIPATION IN JOINT IMPLEMENTATION PROJECTS

Rules of the selection of applications for Joint Implementation projects prepared by the Russian Ministry of Economic Development

January 2010

Notwithstanding the absence of clear results from the December 2009 Copenhagen conference, Russian legislation in the sphere of climate change and, more particularly, implementation of Kyoto Protocol legal mechanisms¹, seems to be progressing actively. Therefore, the Climate Doctrine of the Russian Federation, a general document containing the main trends and principles of climate change strategy, has been signed by the Russian President, D.Medvedev, on 17 December 2009.

According to the Climate Doctrine, participation in international mechanisms facilitating the reduction of greenhouse gases emissions constitutes one of the most important priorities of Russian climate policy.

In this context, a document providing for new opportunities for the realisation of Joint Implementation (referred to below as "JI") projects: the Government Decree "On the Measures of Implementing Article 6 of the Kyoto Protocol to the United Nations Framework Convention on Climate Change" No. 843 (referred to below as the "Decree"), was adopted on 28 October 2009. This document expedited the procedure for JI projects' implementation, changed the state bodies involved in the project approval procedure, modified the eligibility criteria for JI projects and introduced some other major changes to Russian legislation in the sphere of Kyoto Protocol mechanisms.

In accordance with the Decree, the procedure for obtaining JI project state approval now comprises the following stages:

1. Application for the approval of a JI project is lodged to Sberbank (one of the Russian major state-owned banks, which fulfils the functions of the "carbon units' operator") and examination of the application by Sberbank;
2. Expert review of the project by Sberbank;
3. Approval of the expert review results and preparation of recommendations for the Coordination Centre (represented by the Russian Ministry of Economic Development (referred to

below as "**MED**")) by a special expert council assigned by Sberbank; and

4. Approval of the project by the Coordination Centre.

However, the Decree² cannot be put into practice until the adoption of relevant decrees of application, including, in particular, the Rules of Selection of Applications Lodged for the Approval of Projects Realised in Accordance with Article 6 of the Kyoto Protocol to the United Nations Framework Convention on Climate Change (referred to below as the "**Selection Rules**") regulating the first three stages of a JI project approval.

The Selection Rules were prepared and **approved by MED in the beginning of December 2009** and have been submitted for registration (legal expertise) in the Russian Ministry of Justice. However, as this registration tends to be rather formal, we anticipate that no major changes will be introduced to the Selection Rules and the document will be enacted in the near future³.

¹ The Kyoto mechanisms include (i) Green Investment Scheme (GIS), (ii) Clean Development Mechanism (CDM), and (iii) Joint Implementation (JI).

² For more information on the Decree, please refer to our CMS Newsletter "Adoption of New Rules for the Joint Implementation Mechanism under Article 6 of the Kyoto Protocol in Russia" of November 2009.

³ According to the Russian Government Decree No. 1009 dated 13 August 1997, registration of documents of Russian ministries is

According to the Selection Rules, companies which are entitled to act as applicants⁴ for the approval of JI projects comprise six different groups depending on the greenhouse gas sources: **energy, agriculture, forestry, waste products, industrial processes and use of solvents and other products**. The filing of the application is free.

In addition, the Selection Rules provide for the following obligatory requirements concerning JI project application approval procedures:

Requirements of applications lodged to Sberbank for approval of the JI projects

According to the Selection Rules, the process of a JI project state approval starts with a publication on Sberbank's internet site of an announcement declaring that the tender is beginning. Applications are then lodged to Sberbank during the **25 days** following the date of such announcement's publication.

According to the Selection Rules, the application must consist of the following **documentation**:

- a) Project documentation, including:
 - project name and objectives, terms of the projects realisation,
 - project type (reduction of greenhouse gases emissions from the source and/or increase of their absorption),
 - sector (category) of the source and/or absorber chosen for the project implementation,
 - planned amount of emission reductions⁵,
 - business plan,
 - staged plan of the project realisation,
 - description of possible risks,
 - information on persons responsible for the project management,
 - description of the financial model of the project's realisation⁶, etc;
- b) Positive independent expert⁷ conclusions prepared in accordance with international requirements;
- c) Analytical material confirming that the project characteristics correspond with the objectives of increasing energy and ecology efficiency;
- d) Material confirming compliance by the applicant with obligatory requirements as set by the Decree, including:

- documents certifying the absence of unpaid taxes or other obligatory payments to the state or municipal budgets for the last calendar year,
- certified copies of documents confirming possession of assets on which the JI project may be implemented,
- statement confirming the absence of insolvency and/or liquidation procedures in respect of the applicant,
- documents including information on possession of technical devices and technologies and/or contracts concluded with competent companies as well as financial resources (both own and third-party) necessary for the projects realisation, and
- documents including information on the accordance of the planned project results with decisions of the Russian Government in the domain of the economy and social sphere innovative development, as well as with decisions of the Presidential Commission of economy modernisation and technological development.

As stipulated by the Selection Rules, an application must be initially examined by Sberbank within **5 days** from its filing. The object of such initial examination is the compliance of the application with formal requirements. On the expiry of this 5-day term, Sberbank notifies the applicant of the decision adopted (in cases where a negative decision is adopted, the refusal to accept the application must be formulated in a manner which allows the applicant to improve and complete its application). In cases where a positive decision is adopted, the application is transferred for expert review which is undertaken by Sberbank qualified experts (second stage of the JI project approval process).

Rules concerning the expert evaluation of the application

The object of the expert review is a **comparative evaluation of the accepted applications** according to three selection criteria fixed by the Selection Rules (as discussed below). As a result of expert evaluation, each application is awarded a number of **points** on each of three criteria, and the final result is calculated according to the following formula:

$$M=P1*P2*P3,$$

where M is the final valuation of the application, and P1, P2 and P3 are points earned on each criteria.

According to the Selection Rules, the expert review must be carried out during a period not exceeding **45 days** following the date of a positive decision adoption by Sberbank. On the expiration of this term the results are formalised in a **protocol** and submitted for the **approval of an expert council** created by Sberbank (which constitutes the third stage of a JI project state approval process). The expert council examines such protocol during a **10-day** period and prepares recommendations for the MED.

realised by the Ministry of Justice within 15 working days following the date of receipt of the document. This term may be extended to 25 working days, and in certain cases – to 1 month. However, as there is no liability for violation of such terms, they are sometimes not strictly observed.

⁴ Please note that according to the Decree only Russian companies have an opportunity to apply for a JI project.

⁵ According to the Selection Rules such amount may not exceed 30 mln. tonnes of CO2 equivalent per project. Previously, before the adoption of the Decree, possible emissions reduction amount was limited to **300 mln. tonnes of CO2 equivalent** per project.

⁶ Such description must be prepared in accordance with Methodical recommendations of the investment projects' efficiency estimation No. VK 477 approved by the Ministry of Economy, Ministry of Finance and Federal Agency of Construction and Housing Services of Russia on 21 June 1999.

⁷ The expert is chosen at the discretion of the applicant.

Selection criteria

The Selection Rules set out the following three main criteria according to which the applications must be compared:

- 1. Energy and ecology efficiency** (defined on the basis of information on the reduction of energy resource consumption and the reduction of environmental impact before and after project implementation). This criterion allows the applicant to earn from **1 to 5 points**;
- 2. Technical and financial potential** (defined on the basis of information on the possession of technical devices and technologies and/or contracts with competent companies as well as financial resources (both own and third party) necessary for project realisation by the investor). This criterion may also bring from **1 to 5 points** to the applicant; and
- 3. Economical and social effect** (defined on the basis of information relating to the degree of accordance of the planned project results with decisions of the Russian Government in the domain of economy and social sphere innovative development, as well as with decisions of the Presidential Commission of economy modernisation and technological development). This criterion offers from **0 to 3 points**.

In conclusion, the adoption of the Selection Rules demonstrates the intention of the Russian authorities to start, at last, the practical implementation of JI projects in Russia. The first tender for the selection of JI projects to be realised will be announced only once the Selection Rules have been registered by the Russian Ministry of Justice (as discussed above).

This being said, however, the selection criteria appear to be in practice rather subjective, undeveloped and may lead to a lack of transparency and "political" selection of projects.

Notwithstanding this fact, we believe that participation in JI projects represents real business opportunities for investors operating in one of the six sectors covered by the Selection Rules in Russia.

If you are interested in any matter arising out of this legislative development and/or are contemplating any investment in the sphere of JI projects' implementation, we would be pleased to meet and discuss this further with you.

If you have any questions on the matters referred to in this ALERT, please do not hesitate to contact *Dominique Tissot*, Partner, *Anastasia Prozor*, Associate or your regular contact at CMS, Russia.

DOMINIQUE TISSOT
DOMINIQUE.TISSOT@CMSLEGAL.RU

ANASTASIA PROZOR
ANASTASIA.PROZOR@CMSLEGAL.RU

CMS, RUSSIA

Gogolevsky Blvd, 11
119019, Moscow
Russia
T +7 495 786 4000
F +7 495 786 4001
www.cmslegal.ru

CMS in Russia is a representative office of CMS International B.V., a limited liability company registered in the Netherlands. For more information, please visit www.cmslegal.ru.

CMS member firms are: CMS Adonnino Ascoli & Cavasola Scamoni (Italy); CMS Albiñana & Suárez de Lezo, S.L.P. (Spain); CMS Bureau Francis Lefebvre (France); CMS Cameron McKenna LLP (UK); CMS DeBacker (Belgium); CMS Derks Star Busmann (The Netherlands); CMS von Erlach Henrici Ltd. (Switzerland); CMS Hasche Sigle (Germany) and CMS Reich-Rohrwig Hainz Rechtsanwälte GmbH (Austria).

CMS offices and associated offices: Amsterdam, Berlin, Brussels, London, Madrid, Paris, Rome, Vienna, Zurich, Aberdeen, Algiers, Antwerp, Arnhem, Beijing, Belgrade, Bratislava, Bristol, Bucharest, Budapest, Buenos Aires, Casablanca, Cologne, Dresden, Duesseldorf, Edinburgh, Frankfurt, Hamburg, Kyiv, Leipzig, Ljubljana, Lyon, Marbella, Milan, Montevideo, Moscow, Munich, Prague, São Paulo, Sarajevo, Seville, Shanghai, Sofia, Strasbourg, Stuttgart, Utrecht, Warsaw and Zagreb.

The members of CMS are in association with The Levant Lawyers (TLL) with offices in Abu Dhabi, Beirut, Dubai and Kuwait City.