

Annex 3**DRAFT MODALITIES AND PROCEDURES FOR THE IMPLEMENTATION OF ARTICLE 6
OF THE KYOTO PROTOCOL****COVER NOTE****I. Background**

1. The Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol (CMP) at its seventh session took note of the Joint Implementation Supervisory Committee's (JISC) "Recommendations on options for building on the approach embodied in joint implementation" (FCCC/KP/CMP/2011/9) and requested the JISC to draft a revised set of key attributes and transitional measures dealing with possible changes to the joint implementation guidelines and present it to the CMP at its eighth session.

2. The JISC at its twenty-eighth meeting agreed, in addition to revising its recommendations, to further provide a draft revision of the joint implementation (JI) guidelines to the CMP in order to illustrate the implementation of the key attributes and transitional measures. The JISC requested the secretariat in collaboration with a group of JISC members (Mr. Beck, Mr. Chyzhenko, Mr. Dombrowicki, Mr. Kudo, Mr. Lansana, Mr. Leguet, Mr. Pluzhnikov, Mr. Sokolov, Ms. Wollansky, and Ms. Voitekhovitch) to prepare draft materials for consideration by the JISC at its twenty-ninth and thirtieth meetings.

3. Following its twenty-ninth meeting, the group of JISC members, supported by the secretariat, prepared the draft modalities and procedures for the implementation of Article 6 of the Kyoto Protocol (hereinafter referred to as the draft revised JI guidelines) and, based on this draft, the secretariat launched a call for public inputs that was open from 26 July 2012 to 31 August 2012. The JISC also held round-table consultations with stakeholders and interested Parties on 9 August 2012 in Bonn, Germany, where the draft JI guidelines and transitional measures between the first and second commitment period were discussed.

II. Purpose

4. This cover note summarizes the inputs received during the round-table consultations and call for public inputs mentioned above and presents a revised draft of the JI guidelines for consideration by the JISC.

III. Summary of inputs from public call for inputs

5. In general, the submissions expressed support for the JISC's efforts to revise the guidelines and the submissions broadly support the new draft JI guidelines.

6. Public inputs were received through five submissions from CDM Watch, the International Emissions Trading Association (IETA) together with the Project Developers Forum (PDF), the Joint Implementation Action Group (JIAG), the World Bank and one independent submission from Mr. Manohar Lal Baharani. The complete inputs are publicly available on the UNFCCC JI website at <<http://ji.unfccc.int/CallForInputs/index.html>>. Key suggestions from the public inputs are summarized below:

- (a) Two submissions suggest that the standard-setting function of the governing body could be separated from the oversight of the implementation of the mechanism, either by creating a separate subordinate group or panel under the governing body or by separating the governing body into two committees;



- (b) One submission encourages strong international oversight of the mechanism to ensure the transparency and integrity of the mechanism and recommends that the governing body should be responsible for monitoring and enforcement of non-conformities among host Parties;
- (c) Two submissions consider the possibility of the governing body reviewing individual projects as a duplication of functions since accredited independent entities already provide this function. On the other hand, one submission suggested that limiting the review of individual projects to the verification stage is too limiting and that the possibility of review should be added at the validation stage;
- (d) One submission recommends that registration by the host Party should be automatic unless the host Party requests a review of the project;
- (e) One submission considers local stakeholder consultations superfluous as this is a local concern that should be considered addressed once the host Party provides approval and registration for the project;
- (f) All submissions are supportive of allowing nominations of governing body members by UNFCCC-admitted non-governmental observer organizations;
- (g) One submission proposes that the concept of materiality should be applied during verification of emission reductions, in line with decision 9/CMP.7;
- (h) One submission suggests that discounting of ERUs relative to actual emission reductions should only be done as a matter of policy by the host Party and should not be allowed on a project-by-project basis;
- (i) Two submissions emphasize the need to update the baseline at regular intervals. One of these submissions also proposes to ensure that updates of baselines also reflect technology developments and are set in such a way that emissions are lower than the historical emissions of the proposed project;
- (j) On additionality, the submissions expressed somewhat differing views ranging from one submission suggesting that additionality be treated in the same manner as under the clean development mechanism, to another submission suggesting that the only additionality criteria needed is that defined in the Kyoto Protocol;
- (k) One submission suggests adding a monitoring requirement that the procedure and methodology for establishing the project's baseline, project emissions, leakage, and emission reductions be consistent with methodologies applied for establishing the host Party's national greenhouse gas inventories.

7. Where possible, the secretariat has added further material in the text to reflect the public inputs and further advance the document to be considered by the JISC.

**DRAFT****DRAFT MODALITIES AND PROCEDURES FOR THE IMPLEMENTATION OF ARTICLE 6
OF THE KYOTO PROTOCOL****(Version 01.0)****I. Definitions**

1. For the purpose of these draft modalities and procedures, the definitions contained in the Kyoto Protocol shall apply. Furthermore, an “emission reduction unit” or “ERU” is a unit issued pursuant to Article 6 of the Kyoto Protocol and requirements thereunder, as well as the relevant provisions in these modalities and procedures as amended or replaced from time to time, and is equal to one metric tonne of carbon dioxide equivalent.
2. “Joint implementation” refers to the mechanism defined in Article 6 of the Kyoto Protocol.
3. A joint implementation project is an activity pursuant to Article 6 of the Kyoto Protocol that reduces anthropogenic greenhouse gas emissions by sources or enhances anthropogenic removals of greenhouse gases by sinks.

**II. The Conference of the Parties serving as the meeting
of the Parties to the Kyoto Protocol**

4. The Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol (CMP) shall have authority over and provide guidance to the governing body on joint implementation (hereinafter referred to as the governing body).

III. Governing body**A. Functions**

5. The governing body shall supervise joint implementation, under the authority and guidance of the CMP, and be fully accountable to the CMP. In this context, the governing body shall be responsible for, inter alia:
 - (a) Elaborating its rules of procedure for consideration by the CMP and subsequently recommending to the CMP any revisions to such rules;
 - (b) Setting mandatory standards and procedures for joint implementation, including for implementation by host Parties, including in collaboration with host Parties and stakeholders, in relation to, inter alia:
 - (i) The registration of joint implementation projects;
 - (ii) Baselines, the demonstration of additionality, and validation of joint implementation projects;
 - (iii) The monitoring, reporting and verification of reductions in anthropogenic emissions by sources or enhancements of anthropogenic removals by sinks;
 - (iv) The accreditation of independent entities to validate joint implementation projects and/or verify reported reductions in anthropogenic emissions by sources or enhancements of anthropogenic removals by sinks;
 - (v) Issuance of ERUs;

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- (vi) The collection of fees to cover the administrative costs of the governing body and its support structure;
 - (c) Setting non-mandatory guidelines for joint implementation in relation to, inter alia, the items referred to in paragraph A. (b) above;
 - (d) Accrediting independent entities;
 - (e) Administering a joint implementation registry and issuing ERUs;
 - (f) Assessing the conformity of the processes implemented for joint implementation in host Parties with the mandatory standards and procedures referred to in paragraph A. (b) above, through initial assessments of the implementation by Parties followed by two-yearly assessments to monitor ongoing implementation [and informing the Compliance Committee of any non-conformities found];
 - (g) Suspending the issuance of ERUs for projects hosted by a Party [upon instruction by the Compliance Committee], where the Party has been found, based on the assessment referred to in paragraph 5(f) above, to not conform with the mandatory standards and procedures of joint implementation;
 - (h) Undertaking reviews of projects and, where appropriate, withholding the issuance of ERUs;
 - (i) Promoting awareness of joint implementation;
 - (j) Reporting on its activities to each session of the CMP;
 - (k) Performing any other functions assigned to it by the CMP.
6. Decisions of the governing body shall be taken by consensus, whenever possible. If all efforts to reach a consensus have been exhausted and no agreement has been reached, decisions shall as a last resort be adopted by a two-thirds majority vote of the members present and voting at the meeting. Members abstaining from voting shall be considered as not voting.
7. The full text of all decisions of the governing body shall be made publicly available.
8. The working language of the governing body shall be English.
9. The governing body shall conduct its work in such a way as to ensure the transparency and impartiality of its processes and decision-making and to safeguard itself from any conflict of interest.
10. Meetings of the governing body shall be open to attendance, as observers, by all Parties and UNFCCC-admitted observer organizations and stakeholders, except where otherwise decided by the governing body on the grounds of confidentiality.
11. The governing body may delegate functions to the secretariat and panels and otherwise draw on technical expertise to perform its functions, as needed.
12. The secretariat shall service the governing body and its panels.

B. Membership

13. The governing body shall comprise 16 members from Parties to the Kyoto Protocol, as follows:

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- (a) [Ten][Twelve] members nominated by Parties¹ with quantified emission limitation or reduction objectives inscribed in Annex B to the Kyoto Protocol for the relevant commitment period;
 - (b) [Six][Four] members nominated by Parties not referred to in subparagraph (a) above.
14. Members shall be nominated by the relevant constituencies [and UNFCCC-admitted non-governmental observer organizations] referred to in paragraph 13 above and be elected by the CMP. For the first year of operation of the governing body, the CMP shall elect to the governing body eight members for a term of two years and the other eight members for a term of one year. Thereafter, the CMP shall elect, every year, eight new members for a term of two years. Members shall remain in office until their successors are elected.
15. Members shall be eligible to serve a maximum of three consecutive terms.
16. The governing body shall elect annually a chair and vice-chair from among its members.
17. The governing body shall meet at least two times each year.
18. Each member shall:
- (a) Serve in her/his personal capacity;
 - (b) Have experience and competence in developing policy and strategy frameworks within regulatory processes, including in the development or implementation of greenhouse gas market mechanisms, and possess an understanding of business perspectives regarding investment in the environmental field;
 - (c) Refrain from participating in the consideration and decision-making on subjects where she/he has a real or perceived conflict of interest, including in relation to specific host Parties or joint implementation projects;
 - (d) Subject to her/his responsibility to the governing body, not disclose any confidential or proprietary information coming to her/his knowledge by reason of her/his duties for the governing body, either during or after her/his term of office on the governing body;
 - (e) Be bound by the rules of procedure of the governing body;
 - (f) Take a written oath of service witnessed by the Executive Secretary of the UNFCCC or her/his authorized representative before assuming her/his duties.
19. The governing body may suspend and recommend to the CMP the termination of the membership of a member on grounds including, inter alia, breach of conflict of interest provisions, breach of confidentiality provisions, and failure to attend two consecutive meetings of the governing body without proper justification.
20. If a member of the governing body resigns or is otherwise unable to complete the assigned term of office or to perform the functions of that office, the governing body may, bearing in mind the proximity of the next session of the CMP, appoint another member nominated by the same constituency to replace the said member for the remainder of that member's term.
21. At least two-thirds of the members of the governing body must be present to constitute a quorum.

¹ In the context of this annex, "Party" refers to a Party to the Kyoto Protocol, unless otherwise specified.

**DRAFT****IV. Host Parties**

22. A Party participating in joint implementation shall make publicly available and maintain up-to-date all of the following:

- (a) The contact details of the designated focal point responsible for approving and registering joint implementation projects hosted by the Party;
- (b) Its national standards, procedures and guidelines for approving and implementing joint implementation projects [and the timelines in which decisions are taken by the designated focal points];
- (c) Its national procedures for appealing decisions by the designated focal point regarding the registration of a JI project;
- (d) An annual summary of its activities in relation to joint implementation.

23. A Party participating in joint implementation shall provide the information specified in paragraph 22 above to the secretariat in English [within 90 days of the adoption, revision or update thereof] [without delay].

24. A Party participating in joint implementation shall make publicly available, through the secretariat, information on all projects it has approved or registered, or has under consideration for approval or registration.

25. A Party found not to be in conformity with the mandatory standards and procedures of joint implementation shall immediately take action to rectify the identified non-conformities and shall provide written evidence to the [governing body] [Compliance Committee] to demonstrate that the identified non-conformities have been rectified. Such evidence shall be made publicly available by the secretariat and shall be used by the [governing body] [Compliance Committee] as a basis for deciding whether to lift the suspension of ERU issuance.

26. A Party may authorize legal entities to participate in joint implementation projects. The Party shall remain responsible for the fulfilment of its obligations under the Kyoto Protocol and shall ensure that such participation is consistent with these modalities and procedures. Legal entities may only transfer or acquire ERUs if the authorizing Party is eligible to do so at that time.

V. Eligibility to transfer

27. A Party is eligible to transfer and acquire ERUs, and use ERUs for compliance purposes, where it has *[insert here the general eligibility requirements agreed for the use of the mechanisms in the second commitment period]*.

VI. Validation process

28. Project participants shall prepare and submit to an accredited independent entity a project design document that contains all information needed for validating that the project:

- (a) Has an appropriate baseline and monitoring plan in accordance with the criteria set out in the appendix below and further elaborated by the governing body and, as applicable, by the host Party;
- (b) Would result in a reduction of anthropogenic emissions by sources or an enhancement of anthropogenic removals by sinks that is additional to any that would otherwise occur, in

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accordance with the criteria set out in the appendix below and further elaborated by the governing body and, as applicable, by the host Party;

- (c) Has been made publicly available for local stakeholder inputs in accordance with requirements elaborated by the governing body and, as applicable, by the host Party.

29. The baseline shall be approved by the host Party [and validated by an accredited independent entity] no later than during the registration of the project and shall be reviewed and, if necessary, updated at [the start of each new crediting period] [regular intervals that shall not exceed [five] [10] years].

30. To the extent possible, each host Party shall establish common baselines for projects within the same sector in order to ensure that projects in the same sector also achieve comparable reductions in anthropogenic emissions by sources or enhancements in anthropogenic removals by sinks.

31. Project participants seeking to register a project after 31 December 2012 for emission reductions after the first commitment period shall select a crediting period for the project that shall not exceed 10 years. The crediting period shall start at project registration or thereafter, may be renewed up until the end of the project's lifetime subject to approval by the host Party, provided that, for each renewal, an accredited independent entity validates that the original project baseline is still valid or has been updated taking account of new data where applicable.

32. An independent entity accredited by the governing body shall validate that a project and the ensuing reductions of anthropogenic emissions by sources or enhancements of anthropogenic removals by sinks meet the relevant requirements of Article 6 of the Kyoto Protocol, these modalities and procedures and additional guidance provided by the governing body and the host Party, as applicable.

33. The accredited independent entity shall make the project design document publicly available through the secretariat, subject to confidentiality provisions set out in paragraph 45 below, and receive comments from Parties and stakeholders on the project design document and any supporting information for 30 days from the date the project design document is made publicly available.

34. The accredited independent entity shall make its validation report publicly available through the secretariat, together with an explanation and justification of its findings, including a summary of stakeholder comments received and a report of how due account was taken of these.

35. The host Party may register the project if it meets all requirements set out in these modalities and procedures and any additional or elaborated standards developed by the governing body and, as applicable, by the host Party. The host Party shall decide whether to register the project within 30 days of receiving the validation report and supporting project information from the accredited independent entity and shall make its decision publicly available through the secretariat. If the host Party declines to register a project, it shall make the reasons for its decision publicly available through the secretariat.

36. Upon receipt of the notice of registration from the host Party, the secretariat shall issue the project with a unique and publicly available identifier through the international transaction log.

VII. Verification and issuance process

37. Project participants shall monitor reductions in anthropogenic emissions by sources or enhancements of anthropogenic removals by sinks that have already occurred in accordance with the monitoring plan of the registered project and shall prepare a monitoring report.

38. Project participants shall submit the monitoring report to an accredited independent entity. The accredited independent entity shall make the monitoring report publicly available through the secretariat.

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39. The accredited independent entity shall, upon receipt of the monitoring report, verify that the reductions in anthropogenic emissions by sources or enhancements of anthropogenic removals by sinks reported by the project participants has been conducted in accordance with the appendix below, as further elaborated by the governing body and, as applicable, by the host Party.
40. [The accredited independent entity may in its verification apply the clean development mechanism materiality standard as contained in decision 9/CMP.7.]
41. The accredited independent entity shall make its verification publicly available through the secretariat together with an explanation of its verification opinion.
42. The governing body shall issue ERUs based on the verification of reductions in anthropogenic emissions by sources or enhancements of anthropogenic removals by sinks, unless the host Party or at least three members of the governing body request a review within 15 days after the verification is made publicly available through the secretariat. If such a review is requested, the governing body shall:
- (a) Decide on its course of action [at its next meeting but] [no later than 30 days after the formal request for review]. If it decides that the request has merit, it shall conduct a review;
 - (b) Complete its review within 30 days following its decision to conduct the review;
 - (c) Inform the project participants of the outcome of the review, and make its decision public, including an explanation of the reasons for the decision.
43. The issuance of ERUs shall be subject to the accounting, issuance and transfer rules and definitions set out in decision 13/CMP.1, as amended or replaced.
44. The host Party may determine that a lower amount of ERUs shall be issued than the actual reductions in anthropogenic emissions by sources or enhancements of anthropogenic removals by sinks for the project. Any such limitations shall be elaborated at the time of registration of the project, be identified as a condition for the project's approval, be made public through the secretariat and be taken into account and explained by the accredited independent entity during the verification. [Any such limitations shall be elaborated in the host Party's national procedures and may be determined on the basis of, inter alia, project type or business sector but shall not be determined on a project-by-project basis.]
45. Information obtained from project participants marked as proprietary or confidential shall not be disclosed without the written consent of the provider of the information, except as required by applicable national law of the host Party. Information used to determine whether reductions in anthropogenic emissions by sources or enhancements of anthropogenic removals by sinks are additional, to describe the baseline methodology and its application, and/or to support an environmental impact assessment shall not be considered proprietary or confidential.
46. [Any provisions relating to the commitment period reserve or other limitations to transfers under Article 17 of the Kyoto Protocol shall not apply to the first transfer of an ERU out of a Party's national registry.]
47. The issuance of ERUs shall be subject to appeal in accordance with provisions for appeal to be determined by the [governing body] [Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol].

**DRAFT****VIII. Accreditation of independent entities**

48. The governing body, in elaborating standards and procedures for accrediting independent entities, should take into account and seek to align its standards and procedures with those under Article 12 of the Kyoto Protocol, and shall ensure that the standards and procedures for accreditation cover, inter alia, the areas of:

- (a) The ability of the entity to assume obligations under national [or international] laws;
- (b) Legal and financial liabilities;
- (c) Management and decision-making structure;
- (d) Competence;
- (e) Validation and verification processes;
- (f) Impartiality and prevention of conflict of interest;
- (g) Safeguarding confidentiality;
- (h) Appeals and complaint processes.

49. The governing body shall suspend or withdraw the accreditation of an independent entity that no longer meets the accreditation standards. The accredited independent entity shall have the opportunity of a hearing prior to the suspension or withdrawal of accreditation. The suspension or withdrawal shall be effective immediately and the affected entity shall be notified in writing of the decision immediately. The decision shall be made public. In the case of suspension, the decision shall also explain the reasons for suspension and conditions for reinstating accreditation. Validated projects and verified reductions of anthropogenic emissions by sources or enhancements of anthropogenic removals by sinks shall not be affected by the suspension or withdrawal of the accreditation of an independent entity.

**DRAFT****APPENDIX****CRITERIA FOR BASELINE-SETTING, ADDITIONALITY AND MONITORING****I. Baseline-setting**

1. The baseline for a joint implementation project is the scenario that reasonably represents the anthropogenic emissions by sources or anthropogenic removals by sinks of greenhouse gases that would occur in the absence of the proposed project. A baseline shall cover emissions from all gases, sectors and source categories listed in Annex A to the Kyoto Protocol, and anthropogenic removals by sinks, within the project boundary.
2. A baseline shall be established:
 - (a) On a project-specific, programmatic or sectoral basis;
 - (b) In a transparent manner with regard to the choice of approaches, assumptions, methodologies, parameters, data sources and key factors;
 - (c) Taking into account relevant national and/or sectoral policies and circumstances, [such as sectoral reform initiatives, local fuel availability, power sector expansion plans, and the economic situation in the project sector];
 - (d) In such a way that emission reduction units (ERUs) cannot be earned for decreases in activity levels outside the project or due to force majeure;
 - (e) Taking account of uncertainties and using conservative assumptions.

II. Additionality

3. A project is additional if [at least one of] the following conditions [is] [are] met:
 - (a) The project participant can demonstrate that joint implementation was seriously considered in the decision to implement the project;
 - (b) The greenhouse gas emissions from the project are lower or the removals from the project are higher than the baseline;
 - (c) The project participants provide evidence that demonstrates that the project would not have been implemented in the absence of joint implementation.
4. Host Parties may utilize positive lists of project types that are automatically deemed additional as long as the criteria for baseline-setting and additionality set out in this appendix are fulfilled. These lists shall be made publicly available by the host Party.

III. Monitoring

5. Project participants shall include, as part of the project design document, a monitoring plan that provides for:
 - (a) The collection and archiving of all relevant data necessary for estimating or measuring anthropogenic emissions by sources and/or anthropogenic removals by sinks of greenhouse gases occurring within the project boundary during the crediting period;

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- (b) The collection and archiving of all relevant data necessary for determining the baseline of anthropogenic emissions by sources or anthropogenic removals by sinks of greenhouse gases within the project boundary during the crediting period;
- (c) The identification of all potential sources of, and the collection and archiving of data on increased anthropogenic emissions by sources and/or reduced anthropogenic removals by sinks of greenhouse gases outside the project boundary that are significant and reasonably attributable to the project during the crediting period. The project boundary shall encompass all anthropogenic emissions by sources and/or removals by sinks of greenhouse gases under the control of the project participants that are significant and reasonably attributable to the project;
- (d) The collection and archiving of information on environmental impacts, in accordance with procedures as required by the host Party, where applicable;
- (e) Quality assurance and quality control procedures for the monitoring process;
- (f) Procedures for the periodic calculation of the reductions of anthropogenic emissions by sources and/or enhancements of anthropogenic removals by sinks by the project, and for leakage effects, if any. Leakage is defined as the net change of anthropogenic emissions by sources or removals by sinks of greenhouse gases, which occurs outside the project boundary and is measurable and attributable to the project;
- (g) [Calculation of baseline emissions, of the reductions of anthropogenic emissions by sources and/or enhancements of anthropogenic removals by sinks, and leakage, using methods that are consistent with the host Party's calculation of its greenhouse gas inventories, where applicable;]
- (h) Documentation of all steps involved in the calculations referred to in subparagraphs (b) and (f) above.

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