

CLIMATE CHANGE

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Russia Issues Rules for Joint Implementation Projects Under the Kyoto Protocol

The Russian Government has issued rules regarding the approval of proposed projects under the joint implementation mechanism (“JI”) under the Kyoto Protocol on 28 May, 2007. The rules (“JI Rules”) are set forth in Resolution No. 332: “On the Procedure for Adopting, and Checking the Development of Projects Implemented Under Article 6 of the Kyoto Protocol to the United Nations Framework Convention on Climate Change” and accompanying regulations. Although it is a welcome step in the development of JI projects in Russia, the procedures set out in the JI Rules are incomplete and require several potentially time-consuming bureaucratic processes.

The JI Rules involve the participation of separate government bodies, including:

- the Russian Government;
- the Russian Ministry of Economic Development and Trade (the “MEDT”);
- other appropriate government agencies, depending on the sector in which a project is to be implemented; and
- a special coordination Commission, to be established by the MEDT.

JI project applicants can be a Russian or a foreign legal entity, a “private entrepreneur” under Russian law, or an individual. The applicant must demonstrate that it has sufficient assets to cover the anticipated costs of the project.

Approval of a JI Project

Preliminary Approval

The Project Investor must apply to the MEDT for approval of the project as a JI project. The application requirements are detailed and must include a project proposal, including a description of the project and specific indicators of project efficiency measured against efficiency values to be established by the Commission for the relevant industry sector. The documentation must also include a report from an independent entity chosen from a list of organizations authorized by the Commission. It should be noted that this independent review is in addition to any determination by an Accredited Independent Entity of the project’s

compliance with the JI as contemplated by the Kyoto Protocol. Further, some documents in the application are to be prepared in accordance with requirements yet to be adopted by the MEDT. Therefore, it is not expected that JI projects will begin to be processed and approved in the imminent future.

The MEDT will reject applications that propose emission reductions before January 1, 2008 or after December 31, 2012. Therefore, unlike the Clean Development Mechanism, credits will not be issued by Russia for periods prior to the first commitment period of the Kyoto Protocol. If an application is not rejected within 10 days, it will be transferred to the relevant government agencies to focus on methodological aspects of the proposal. This review can take up to 30 days.

The government agencies are to consider the application and provide the MEDT with a positive or negative opinion on the application.

The Commission will consider the application independently, based on its own review of the proposal, the supporting documentation and the recommendation of the government agencies. The Commission must reject the project application if:

- the application does not meet the JI Rules;
- the estimated results of the project do not fall within thresholds established by the MEDT for the particular project sector or emitter category; or
- a report of an independent entity approved by the Commission is not provided.

The Commission has the discretion to reject the project application if:

- the JI project cannot be implemented by 31 December, 2012;
- the JI project was given a negative opinion by the relevant government agencies;
- the planned amount of emission reductions to be generated by the JI project will cause the limits established for the relevant sector or category of emitters to be exceeded.

Ultimately, the Commission makes a decision to “recommend” or to “not recommend” the JI project to the Russian Government.

Final Approval

Within ten days after the Commission’s decision, but only once per quarter, the MEDT will submit a list of recommended JI projects to the Russian Government for final approval. It is not clear how the ten-day and once-per-quarter timing will be implemented.

Project documentation is to be made available through the Commission’s yet-to-be-established website. After final approval, the Commission will reserve allowances attributable to the project in the Russian registry.

Contact Information

Tokyo

Anne Hung

anne.hung@bakernet.com

Samir S. Desai

samir.s.desai@bakernet.com

Moscow

Max Gutbrod

max.gutbrod@bakernet.com

Sergei Sitnikov

sergei.sitnikov@bakernet.com

www.bakernet.com

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Withdrawal of Approval

The Russian Government reserves the right to withdraw its approval for a JI project if:

- repeated failure of the project to meet its deadline for submitting implementation reports to the Commission by more than 30 days;
- the project does not meet the relevant efficiency parameters;
- another government whose approval is required has not approved the project within 12 months after approval by the Russian Government;
- another government whose approval is required has withdrawn its approval;
- the project sponsor is liquidated, dies, or discontinues its activities (in the case of a private entrepreneur);
- the project fails some other requirement as may be decided by the Russian Government.

The threat of withdrawal of approval adds significantly to investor concerns about JI projects in Russia because such a possibility discourages long-term investment and otherwise restricts the investor's ability to make emission credit sales or other transfer commitments.

Please contact any of the individuals identified in this Legal Alert if you have any questions.

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