

Client Alert

November 2010

New Circular on Certification and Approval Letters for CDM Projects

The Ministry of Natural Resources and Environment (“**MONRE**”) issued new Circular No. 12/2010/TT-BTNMT (the “**New Circular**”) on 26 July 2010, which regulates the procedures for certification and approval letters for projects under the Kyoto Protocol’s Clean Development Mechanism (“**CDM**”). In addition, the New Circular implements the Government’s plan set out in Decision No. 130/2007/QĐ-TTg, dated 2 August 2007, on a number of financial mechanisms and policies applicable to investment projects under CDM (“**Decision No. 130**”). The New Circular’s provisions address appropriate investment fields for CDM projects, application dossiers for PIN certification letters, approval procedures, and the duration of PIN certification letters, amongst other issues.

1. Applicability

The New Circular applies to domestic and foreign organizations and individuals investing in projects under CDM in Vietnam (“**CDM project developers**”). When developing and implementing investment projects under CDM, the relevant parties, in addition to following the provisions set out in the New Circular, must observe provisions on construction domain, construction form and conditions on CDM investment projects specified in a number of financial mechanisms and policies applicable to CDM investment projects, and regulations on investment, environmental protection, and other relevant provisions of Decision No. 130.

2. CDM Project Preparation

Based on the investor’s requirements, CDM project participants must develop CDM project documents by either of the following methods:

- (a) Develop Project Idea Note (“**PIN**”), submit it to the competent authority for grant of endorsement letter, and then continue to formulate Project Development Documents (“**PDD**”) or Program

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of Activities – Design Document (“**PoA-DD**”) together with general CDM Program Activity – Design Document (“**CPA-DD**”) and practical CPA-DD; or

- (b) Formulate PDD or PoA-DD together with general CPA-DD and practical CPA-DD, then submit them to the competent authority for grant of approval letter.

When developing the PDD of PoA-DD together with general CPA-DD and practical CPA-DD, CDM project participants must, in coordination with foreign investors and designated professional organizations, assess projects before submitting them to the CDM International Executive Board (“**CDM EB**”) for registration. Within six (6) months from the starting date of the project operation commencement, CDM project participants must send a written report of the CDM project commencement date or the CDM project implementation plan in Vietnam to the Hydrometeorology and Climate Change Department (i.e., DNA). At least six (6) months before applying for the CDM project, CDM project participants must send a written notice on their plan of developing a CDM project to the Hydrometeorology and Climate Change Department.

3. Procedures and Timeline for Grant of PIN Certification Letter

Within three (3) working days after receiving a valid PIN, the Hydrometeorology and Climate Change Department will collect comments and assessments from the CDM National Consultative and Executive Board (“**CNCEB**”)’s members before submitting them to the Minister of MONRE for consideration and a decision on the grant of a PIN endorsement letter. CNCEB’s members must provide their comments and assessments in writing within six (6) working days.

If two-thirds of the CNCEB’s members reach agreement, the Hydrometeorology and Climate Change Department will summarize the comments and assessments within three (3) working days and submit them to the Minister of MONRE for grant of the PIN endorsement letter for the project developers.

If it is necessary to modify the PIN or two-thirds of the CNCEB's members cannot reach an agreement, the Hydrometeorology and Climate Change Department will update the project participants on the PIN's status within two (2) working days (the time allowed for the project participants to modify the PIN is not counted in the total time for considering and granting the PIN endorsement letter).

The Minister of MONRE will decide to grant the PIN endorsement letter within three (3) working days. Thus, the total time for considering and granting the PIN endorsement letter is 15 working days. The PIN endorsement letter will be valid for 18 months from the date of grant.

4. Procedures and Timeline for Grant of PDD or PoA-DD Letter of Approval ("LoA")

Within five (5) working days after receiving a valid PDD or PoA-DD dossier, the Hydrometeorology and Climate Change Department will collect comments and assessments from the CNCEB's members. The CNCEB's members will then provide written comments and assessments within 16 working days. In not more than three (3) working days, the Hydrometeorology and Climate Change Department will summarize the comments and assessments of the CNCEB's members and send them to the CDM project participants (if further detailed explanations are required from the CDM project participants, such time is not counted in the total time for considering PDD or PoA-DD LoA). After receiving detailed explanations from the CDM project participants, CNCEB will organize a meeting with the CDM project participants to go over the relevant content and conduct a polling of PDD or PoA-DD.

If two-thirds or more of the CNCEB's members reach an agreement, the Hydrometeorology and Climate Change Department, within six (6) working days, will ask the Minister of MONRE to grant a PDD or PoA-DD LoA.

If modification is required, the Hydrometeorology and Climate Change Department will within two (2) working days ask the CDM project participants to modify the relevant content (the time limit for such modification is not counted in the total time limit for the consideration and grant of PDD or PoA-DD LoA).

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The Minister of MONRE must decide to grant a PDD or PoA-DD LoA within six (6) working days. The total time limit for considering and granting a PDD or PoA-DD LoA will not exceed 45 working days. A LoA is valid for 24 months from the date of issuance.

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