

ClientInsight

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Special update on the implementation of the Kyoto Protocol in Russia

New procedure for approving Joint Implementation projects in Russia

The approval process for joint implementation projects ("JI Projects") in Russia, in place in accordance with Article 6 of the Kyoto Protocol to the United Nations Framework Convention on Climate Change, has been changed for the third time. On 15 September 2011, the Russian Government issued Resolution No. 780 "On Measures for Implementing Article 6 of the Kyoto Protocol" ("Resolution No. 780"). This special update provides a brief overview of the amended legal framework for JI Projects in Russia introduced by Resolution No. 780.

Background to Russia's Kyoto Protocol participation

Having signed the Kyoto Protocol in 1999, Russia was the last country to ratify the agreement in early 2005, and it has been relatively slow in implementing the measures necessary to establish a national trading program. Between 2006 and 2008, to comply with its commitments under the Kyoto Protocol to be eligible to transfer and acquire emission and reduction units ("ERUs") generated by JI Projects, Russia adopted a number of regulations to develop a sufficient legal framework for the purpose. In particular, in May 2007 the Government issued key Resolution No. 332, which outlined a procedure for reviewing and approving JI Projects. More than 40 JI Projects have been submitted for approval under Resolution No. 332; however, none of them have been approved.

In October 2009, the Government made an effort to reinforce Russia's interest in implementing the Kyoto protocol by introducing significant changes to the approval procedure for JI Projects established under Government Resolution No. 843 on the same matter. It introduced a new tender procedure for selecting and approving JI Projects and invalidated Resolution No. 332. Public administration of JI Projects was primarily assigned to the largest bank, JSC "Sberbank of Russia" ("Sberbank"), which was appointed as the operator of carbon units, and the Ministry of Economic Development ("MED") acted as a coordination point. The JI Projects that were submitted under Resolution No. 332 could be resubmitted for approval through the tender procedure, at the request of the investor (only Russian companies). This change resulted in the approval of the first Russian JI Projects through a number of tenders held by Sberbank.

New legal framework for JIs in Russia

In June 2011, the Russian President announced the need to make full use of the possibilities offered by the JI mechanism before the end of the first Kyoto Protocol compliance period (2008 – 2012). The President also stressed the need to amend applicable law in order to simplify the procedure for approving JI Projects in Russia. Following the President's call to foster the development of the JI mechanism, in August 2011, Sberbank announced the third tender for JI Projects with the limit divided by

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industry sectors set for a total of 70 million tons (the previous two tenders were 30 million tons each). However, the third tender was cancelled after the Government issued new Resolution No. 780 designed to simplify the approval process for JI Projects.

Public administration of JI Projects

The new procedure is not only administered by Sberbank and MED but also involves the participation of the Ministry of Natural Resources and Environment (“MNR”). Sberbank remains the carbon units operator authorized to verify that the applicants observe the criteria of eligibility to carry out a potential JI Project and select the submitted applications. While the approval of the selected JI Projects is awarded by MED, MNR monitors the JI Projects implementation process with a right to request MED to annual the approval of a JI Project. The procedure also involves authorised independent expert organisations who provide expert reviews of, among other things, special project documentation and reports on JI Projects implementation.

Limits for ERUs

The new rules imply that there will be no more ERUs limit for JI Projects registration but only an aggregate amount of ERUs set for the first compliance period. In particular, under Resolution No. 780 the maximum amount of ERUs that could be generated by JI Projects until the end of 2012 is 300 million tons of equivalent carbon dioxide.

Selection procedure

The new legal framework no longer provides for a lengthy tender procedure for approving JI Projects. Instead of a tender, carbon units will be issued on an ongoing basis. To participate in the selection process, an applicant is to submit an application to Sberbank. Requirements with respect to an entity that may apply for participation in the selection procedure have not been changed.

Resolution No. 780 establishes a detailed list of documentation required for an application. In particular, it now requires an investment declaration, which reflects the applicant’s intention to, until 2020, reinvest the revenue earned from the implementation of the JI Project in projects to improve energy and environmental efficiency. This requirement will also apply to those investors whose JI Projects have been approved before Resolution No. 780 entered into force. For such JI Projects, the investment declaration should be submitted to MED and MNR within 90 days of the entry into force of Resolution No. 780.

Sberbank is to post on its website an announcement on the selection process. Sberbank has 20 days (previously, 45) from the date of acceptance of an application to ensure its compliance with the selection criteria. Legal entities and/or individuals whose rights or interests may be affected by the implementation of a proposed JI Project may submit their objections to Sberbank. Such objections are to be taken into consideration by Sberbank when selecting the applications.

Approval and implementation of JI Projects

Under Resolution No. 780, based on the applications selected by Sberbank, MED either approves the JI Project or notifies Sberbank, MNR, the applicants and the administrator of the national register of carbon units of its rejection. However, the grounds for MED’s refusal to approve JI Projects are not detailed in Resolution No. 780 but are simply limited to force majeure and human factor-related risks. Approved JI Projects are registered in the register of JI Projects maintained by Sberbank.

Approved JI Projects are to be implemented in compliance with special project documentation. Under Resolution No. 780, the investor has the right to make changes to the JI Project as long as such changes do not adversely affect the energy efficiency or the environmental impact of such JI Projects. Any such changes are to be approved by an independent expert organization and posted on Sberbank’s official website for the same reason, so that any third party whose rights or interests may be affected by the implementation of a proposed JI Project, may submit its objections to Sberbank.

Control over implementation of JI Projects

Under Resolution No. 780, the investor is to annually submit to Sberbank and MNR a report on the implementation of the JI Project; however, implementation of a JI Project is mainly monitored by MNR (previously, it was MED’s responsibility). MNR makes sure the reports are in compliance with the special project documentation, the investment declaration and applicable international requirements, before ERUs are issued. In certain cases, listed in Resolution No. 780, MNR has the right to request MED to annul the approval of a JI Project. However, some of the grounds for such a request appear to be ambiguous.

Issuance and transfer of carbon units

After a JI Project has been approved, the administrator of the national register of carbon units transfers the assigned amount units (“AAU”) to Sberbank’s carbon units account opened with such registrar to reserve them for the JI Project.

Subject to a positive expert review of the implementation of the JI Project, approval of the JI Project by an authorized foreign party (purchaser of ERUs) and no objections from MNR, Sberbank makes a decision to issue ERUs in the amount corresponding to the amount indicated in the expert review of the report on the implementation of the JI Project prepared by an independent expert organization. The issuance is made by converting the corresponding AAUs into ERUs and crediting the ERUs to the Sberbank’s carbon units account.

Resolution No. 780 expands Sberbank’s authority in relation to the implementation of JI Projects. In particular, Sberbank is to act as a third party to the agreement on the transfer of ERUs generated by the JI Project from an investor to a foreign purchaser. ERUs are transferred, against payment, to the carbon accounts of the foreign purchaser providing cash compensation to be credited to the investor’s income and its account with Sberbank. However, Resolution No. 780 is silent about carbon units transaction agreements that may have been concluded earlier.