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## Annex 2

### **DRAFT RULES OF PROCEDURE OF THE EXECUTIVE BOARD OF THE CLEAN DEVELOPMENT MECHANISM**

#### **Note by the secretariat**

1. Decision 17/CP.7 on modalities and procedures for a clean development mechanism as defined in Article 12 of the Kyoto Protocol requests the executive board to “develop and agree on its rules of procedure and recommend them to the Conference of the Parties (COP) for adoption, applying draft rules until then” by the eighth session of the COP (paragraph 6, subparagraph (a)).
2. In order to facilitate the work of the executive board, the attached draft rules of procedure were prepared by the secretariat for consideration by the executive board at its second meeting. They build on rules of procedure already contained in the Annex to decision 17/CP.7 on modalities and procedures for a clean development mechanism.
4. In considering the attached draft rules of procedure, the executive board members may wish to pay particular attention to the following issues:
  - (a) “Amendments to the rules of procedure”: The executive board may consider developing the rules of procedure in a way to avoid that many amendments are necessary in the case the Conference of the Parties meeting as the Parties to the Protocol (COP/MOP) endorses the Annex on modalities and procedures for a clean development mechanism without amendments.
  - (b) “Scope of the rules of procedure”: The executive board may wish to decide on whether the rules of procedure should be developed in a manner to be applicable to any activities/decisions of the board, including communications through “list serve” of the executive board and the possibility of taking decisions without a meeting.
  - (c) “Extent of participation of alternates”: The executive board may wish to consider whether alternate members can comment on the provisional agenda, the schedule of meetings and substantive issues, and on whether there are any restrictions to their participation in the proceedings.
  - (d) “Panels or working groups”: In accordance with paragraph 18 of the Annex to decision 17/CP.7 on modalities and procedures for a clean development mechanism, “the executive board may establish committees, panels or working groups to assist it in the performance of its functions. The executive board shall draw on the expertise necessary to perform its functions, including from the UNFCCC roster of experts. In this context, it shall take fully into account the consideration of regional balance.” The executive board may wish to consider whether its rules of procedure shall include rules for the operation and selection of experts for panels and/or working groups or on whether such provisions should be described separately, e.g. in the terms of reference for panels.
  - (e) “Documents”: The executive board may wish to decide on how to report on its meetings and what information should be publicly disclosed.

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## **DRAFT RULES OF PROCEDURE OF THE EXECUTIVE BOARD OF THE CLEAN DEVELOPMENT MECHANISM**

### **I. SCOPE**

#### Rule 1

1. These rules of procedures shall apply to any activity of the executive board of the clean development mechanism undertaken in accordance with the Annex to decision 17/CP.7 on modalities and procedures for a clean development mechanism as defined in Article 12 of the Kyoto Protocol.

### **II. DEFINITIONS**

#### Rule 2

For the purpose of these rules:

1. “Decision 17/CP.7” means the decision taken by the Conference of the Parties to the United Nations Framework Convention on Climate Change at its seventh session on the modalities and procedures for a clean development mechanism as defined in Article 12 of the Kyoto Protocol, as contained in document FCCC/CP/2001/13/Add.2;
2. “Modalities and procedures” means modalities and procedures for a clean development mechanism contained in the annex to decision 17/CP.7, as contained in document FCCC/CP/2001/13/Add.2;
3. “UNFCCC” means the United Nations Framework Convention on Climate Change;
4. “COP” means the Conference of the Parties to the United Nations Framework Convention on Climate Change;
5. “COP/MOP” means the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol;
6. “CDM” means the clean development mechanism as defined in Article 12 of the Kyoto Protocol and subsequent decisions of COP and/or COP/MOP;
7. “Executive board” means the executive board of the clean development mechanism as defined in Article 12 of the Kyoto Protocol;
8. “Chair” and “vice-chair” mean the members of the executive board selected as chairperson and vice-chairperson by the executive board of the clean development mechanism;
9. “Member” means member of the executive board of the clean development mechanism;

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10. “Alternate member” means alternate member of the executive board of the clean development mechanism;

11. “Secretariat” means the secretariat, as defined in article 14 of the Kyoto Protocol, of the executive board of the clean development mechanism, unless the context indicates otherwise.

Paragraph 1 subparagraph (e) of the modalities and procedures provides:

“Stakeholders” means the public, including individuals, groups or communities affected, or likely to be affected, by the proposed clean development mechanism project activity.

## III. MEMBERS AND ALTERNATE MEMBERS

### A. Nomination, election and re-election

#### Rule 3

Paragraph 7 of the modalities and procedures provides:

The executive board shall comprise ten members from Parties to the Kyoto Protocol, as follows: one member from each of the five United Nations regional groups; two other members from the Parties included in Annex I; two other members from the Parties not included in Annex I; and one representative of the small island developing States, taking into account the current practice in the Bureau of the Conference of the Parties.

#### Rule 4

Paragraph 8, subparagraphs (a) to (d) of the modalities and procedures provides:

Members, including alternate members, shall:

(a) Be nominated by the relevant constituencies referred to in paragraph 7 of modalities and procedures for a clean development mechanism, and elected by the COP/MOP. Vacancies shall be filled in the same way;

(b) Be elected for a period of two years and be eligible to serve a maximum of two consecutive terms. Terms as alternate do not count. Five members and five alternate members shall be elected initially for a term of three years and five members and five alternate members for a term of two years. Thereafter, the COP/MOP shall elect, every year, five new members, and five new alternate members, for a term of two years. Appointment pursuant to paragraph 11 of the modalities and procedures shall count as one term. The members, and alternate members, shall remain in office until their successors are elected;

(c) Possess appropriate technical and/or policy expertise and shall act in their

personal capacity;

- (d) Be bound by the rules of procedure of the executive board.

Rule 5

Paragraph 9 of the modalities and procedures provides:

The COP/MOP will elect an alternate for each member of the executive board based on the criteria in paragraphs 7 and 8 of the modalities and procedures. The nomination by a constituency of a candidate member shall be accompanied by a nomination for a candidate alternate member from the same constituency.

2. Any reference in these rules to a member shall be deemed to include his/her alternate when such alternate acts for the member.

**B. Suspension, termination and resignation**

Rule 6

Paragraph 10 of the modalities and procedures provides:

The executive board may suspend and recommend to the COP/MOP the termination of the membership of a particular member, including an alternate member, for cause including, *inter alia*, breach of the conflict of interest provisions, breach of the confidentiality provisions, or failure to attend two consecutive meetings of the executive board without proper justification.

2. Any motion calling for the suspension and recommendation to the COP/MOP to terminate the membership of a member, or an alternate member, shall immediately be put to the vote in accordance with the voting rules in section V below. When the motion concerns the suspension and recommendation to the COP/MOP to terminate the membership of the chair, the vice-chair shall act as chair until the voting is conducted and its result announced.

Rule 7

Paragraph 11 of the modalities and procedures provides:

If a member, or an alternate member, resigns or is otherwise unable to complete the assigned term of office or to perform the functions of that office, the executive board may decide, bearing in mind the proximity of the next session of the COP/MOP, to appoint another member, or an alternate member, from the same constituency to replace the said member for the remainder of that member's mandate.

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## **C. Conflict of interest and confidentiality**

### Rule 8

Paragraph 8, subparagraph (f) of the modalities and procedures provides:

Members and alternate members shall have no pecuniary or financial interest in any aspect of a CDM project activity or any designated operational entity.

### Rule 9

Paragraph 8, subparagraph (e) of the modalities and procedures provides:

Members and alternate members shall take written oath of service witnessed by the Executive Secretary of the UNFCCC or his/her authorized representative before assuming his or her duties.

2. The written oath of service shall read as follows:

“I solemnly declare that I will perform my duties as a member of the executive board of the clean development mechanism pursuant to Article 12 of the Kyoto Protocol, honourably, faithfully, impartially and conscientiously.”

“I further solemnly declare and promise that I shall have no financial interest in any aspect of the clean development mechanism, including accreditation of operational entities, registration of CDM project activities and/or the issuance of related certified emission reductions. Subject to my responsibilities to the executive board, I shall not disclose, even after the termination of my functions, any confidential or proprietary information which is transferred to the executive board in accordance with the modalities and procedures for the clean development mechanism, or any other confidential information coming to my knowledge by reason of my duties for the executive board.”

“I shall disclose to the Executive Secretary of the United Nations Framework Convention on Climate Change and to the executive board any interest in any matter under discussion before the executive board which may constitute a conflict of interest or which might be incompatible with the requirements of integrity and impartiality expected of a member of the executive board and I shall refrain from participating in the work of the board in relation to such matter.”

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## Rule 10

Paragraph 8, subparagraph (g) of the modalities and procedures provides:

Members, and alternate members, shall, subject to their responsibilities to the executive board, not disclose any confidential or proprietary information coming to their knowledge by reason of their duties for the executive board. The duty of the member, including alternate member, not to disclose confidential information constitutes an obligation in respect of that member, and alternate member, and shall remain an obligation after the expiration or termination of that member's function for the executive board.

Paragraph 6 of the modalities and procedures provides:

Information obtained by members, and alternate members, from CDM 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 the national law. Information used to determine additionality as defined in paragraph 43 of the modalities and procedures, to describe the baseline methodology and its application, and to support an environmental impact assessment referred to in paragraph 37 (c) of the modalities and procedures, shall not be considered proprietary or confidential.

## **D. Officers**

### Rule 11

Paragraph 12 of the modalities and procedures provides:

The executive board shall elect its own chairperson and vice-chairperson, with one being a member from a Party included in Annex I and the other being from a Party not included in Annex I. The positions of chairperson and vice-chairperson shall alternate annually between a member from a Party included in Annex I and a member from a Party not included in Annex I.

2. At the last meeting of each calendar year, the board shall elect a chair and a vice-chair from among its members.
3. The elected chair and vice-chair shall remain in office until their successors are elected.

### Rule 12

1. The chair and vice-chair shall serve in their respective capacity at any meeting of the executive board.
2. If the elected chair is not able to serve in that capacity, the vice-chair shall serve as chair.

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3. If the chair or vice-chair ceases to be able to carry out his or her functions or ceases to be a member, a new chair or vice-chair shall be elected for the remainder of the term.

## Rule 13

1. The chair shall preside over the meetings of the executive board as provided for under this rule.
2. In addition to exercising the powers conferred upon the chair elsewhere by these rules, the chair shall declare the opening and closing of the meeting, preside at the meetings, ensure the observance of these rules, accord the right to speak, put questions to the vote and announce decisions. The chair shall rule on points of order and, subject to these rules, shall have complete control of the proceedings and over the maintenance of order thereat.
3. The chair may propose to the executive board a limitation on the time to be allowed to speakers and on the number of times each member may speak on a question, the adjournment or the closure of the debate and the suspension or adjournment of a meeting.
4. The chair, in the exercise of the functions of that office, remains under the authority of the COP/MOP.
5. The chair, or any other member designated by the executive board, shall represent the board in that capacity in the COP/MOP and, at the invitation of the COP/MOP, shall respond to questions when a matter of particular relevance or complexity relating to the work of the board is under consideration by the COP/MOP.

## IV. MEETINGS

### A. Dates

#### Rule 14

Paragraph 13 of the modalities and procedures provides:

The executive board shall meet as necessary but not less than three times a year, unless otherwise decided, bearing in mind provisions of paragraph 41 of the modalities and procedures for a clean development mechanism.

#### Rule 15

1. The chair shall convene and give notice of the date of each meeting of the executive board not less than eight weeks prior to the date of such meeting.

#### Rule 16

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1. At the last executive board meeting prior to the start of each calendar year, the chair shall propose for approval of members a schedule of meetings for the calendar year to come. To the extent possible, these meetings shall be held in conjunction with sessions of the COP, the COP/MOP or their subsidiary bodies.

2. If changes to the schedule or additional meetings are required, the chair shall, after consultations with members, give notice of any changes in dates of scheduled meetings, and/or of dates of additional meetings.

## Rule 17

1. The secretariat shall promptly notify all those invited to the meeting in accordance with section IV E of these rules of procedure.

## **B. Place**

### Rule 18

1. Meetings of the executive board held in conjunction with meetings of the COP, the COP/MOP or their subsidiary bodies shall be held in the same location as the meetings of these bodies. Other meetings of the executive board shall take place at the seat of the secretariat, unless the executive board decides otherwise or other appropriate arrangements are made by the secretariat in consultation with the chair.

## **C. Agenda**

### Rule 19

1. The chair, assisted by the secretariat, shall draft the provisional agenda of each meeting of the executive board and transmit a copy of such provisional agenda, together with the notice of the meeting, to all those invited in accordance with section IV E of these rules.

### Rule 20

1. Additions to the provisional agenda of a meeting may be proposed to the secretariat by any member, and/or alternate member, and incorporated in the proposed agenda provided that the member, and/or alternate member, shall give notice thereof to the secretariat not less than four weeks prior to the date fixed for the opening of the meeting. The proposed agenda for the meeting shall be transmitted by the secretariat to all those invited to the meeting in accordance with section IV E of these rules of procedure three weeks prior to the date fixed for the opening of the meeting.

### Rule 21

1. The executive board shall, at the beginning of each meeting, adopt the agenda for the meeting.



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## Rule 22

1. Any item included on the agenda for a meeting of the executive board, consideration of which has not been completed at that meeting, shall be included automatically on the provisional agenda for the next meeting, unless otherwise decided by the executive board.

## **D. Documentation**

### Rule 23

1. All documentation for executive board meetings shall be made available to members and alternate members.
2. The chair shall transmit, through the secretariat, the documentation relating to items on the provisional agenda to all those invited to the meeting in accordance with section IV E at least three weeks before the start of a meeting.

### Rule 24

Paragraph 5, subparagraph (j) of the modalities and procedures provides:

The executive board shall make any technical reports commissioned available to the public and provide a period of at least eight weeks for public comments on draft methodologies and guidance before documents are finalized and any recommendations are submitted to the COP/MOP for their consideration.

2. “Technical reports commissioned” refers to reports commissioned to obtain outside expertise other than that specified in section VII of these rules of procedure.

## **E. Attendance**

### Rule 25

1. Meetings of the executive board shall be open to all members, alternate members, and the secretary of the meetings of the executive board as well as staff of the secretariat as appropriated.

### Rule 26

1. Alternate members may participate without the right to vote. An alternate member may cast a vote if acting for the member.

### Rule 27

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Paragraph 16 of the modalities and procedures provides:

Meetings of the executive board shall be open to attendance, as observers, by all Parties and by all UNFCCC accredited observers and stakeholders, except where otherwise decided by the executive board.

2. Attendance, as observers, by all Parties and by all UNFCCC accredited observers and stakeholders, shall be effected by recording the proceedings and making the recording available via world wide web cast.

3. Such observers may, upon invitation of the chair, participate without the right to vote in the proceedings of any meeting in matters of direct concern to the body, agency or organization they represent, unless at least one third of the members present at the meeting object.

## Rule 28

Paragraph 8 (c) of the modalities and procedures provides:

The cost of participation of members, and alternate members, from developing country Parties and other Parties eligible under UNFCCC practice shall be covered by the budget for the executive board.

2. Funding for participation shall be provided according to the financial regulations of the United Nations and the financial procedures of the UNFCCC.

## F. Quorum

### Rule 29

Paragraph 14 of the modalities and procedures provides:

At least two thirds of the members, representing a majority of members from Parties included in Annex I and a majority of members from Parties not included in Annex I, must be present to constitute a quorum.

## V. VOTING

### Rule 30

Paragraph 15 of the modalities and procedures provides:

Decisions by the executive board shall be taken by consensus, whenever possible. If all efforts at reaching a consensus have been exhausted and no agreement reached, decisions shall be taken by a

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three-fourths majority of the members present and voting at the meeting. Members abstaining from voting shall be considered as not voting.

2. The chair shall ascertain a consensus.
3. Each member shall have one vote. For the purpose of this rule, the phrase “members present and voting” means members present at the meeting at which voting takes place and casting an affirmative or negative vote.
4. If a vote is equally divided, a second vote shall be taken. If this vote is also equally divided, the proposal shall be regarded as rejected.

## Rule 31

1. Whenever, in the judgment of the chair, a decision must be taken by the executive board which cannot be postponed until the next meeting of the executive board, the chair shall transmit to each member a proposed decision with an invitation to approve the decision on a no objection basis. The proposed decision shall be transmitted in the form of an electronic message through the list serve of the executive board. Members shall confirm receipt of the message. Such message shall also be transmitted to alternate members for information.
2. Comments from a member, and/or alternate member, on the proposed decision shall be sent to the chair during such period as the chair may prescribe, provided such period is not less than two weeks.
3. At the expiration of the period prescribed for comments, the decision shall be considered approved unless there is an objection by any member. If there is an objection raised by any member or if replies are not received from at least two-thirds of the members, the chair shall include consideration of the proposed decision as an item on the agenda for the next meeting of the executive board. The chair shall notify all those that received the communication referred to in paragraph 1.

## VI. LANGUAGES

### Rule 32

Paragraph 17 of the modalities and procedures provides:

The working language of the executive board shall be English. The full text of all decisions of the executive board shall be made publicly available. Decisions shall be made available in all six official languages of the United Nations.

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## VII. OUTSIDE EXPERTS/EXPERTISE

### Rule 33

Paragraph 18 of the modalities and procedures provides:

The executive board may establish committees, panels or working groups to assist in the performance of its functions. The executive board shall draw on the expertise necessary to perform its functions, including from the UNFCCC roster of experts. In this context, it shall take fully into account the consideration of regional balance.

### Rule 34

1. The executive board may establish standing and ad-hoc panels. Each panel shall be composed of an appropriate number of members determined by the executive board. Selected panel members shall have demonstrated and recognized technical expertise in the relevant field of work.
2. In establishing a panel, the executive board shall determine its terms of reference. Terms of reference shall include a work plan, deadline for submission of documents, criteria for selection of panel members as well as necessary budgetary provisions.

### Rule 35

1. The executive board may further draw on technical experts to review and/or comment on the work undertaken by panels.

## VIII. SECRETARIAT

### Rule 36

Paragraph 19 of the modalities and procedures provides:

The secretariat shall service the executive board.

### Rule 37

1. The head of the secretariat of the UNFCCC shall arrange for the provision of staff and services required for the servicing of the executive board, within available resources. The head of the secretariat of the UNFCCC shall manage and direct such staff and services and provide appropriate support and advice to the chair and other officers of the executive board.

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## Rule 38

1. An official of the secretariat designated by the head of the secretariat of the UNFCCC shall serve as secretary to the executive board.

## Rule 39

1. In addition to the functions specified in the annex to decision 17/CP.7 on modalities and procedures for a clean development mechanism and/or any subsequent decision by the COP/MOP, the secretariat shall in accordance with these rules, and subject to the availability of resources:

(a) Receive, reproduce and distribute to members and alternate members the documents of a meeting;

(b) Receive and translate decisions in all six official languages of the United Nations and make available the full texts of all decisions of the executive board;

(c) Assist the executive board in fulfilling tasks related to the collection, processing, maintenance of files and public availability of information;

(d) Perform all other work that the executive board may require.

## Rule 40

1. Financial regulations of the United Nations and the financial procedures of the UNFCCC shall apply.

## **IX. CONDUCT OF BUSINESS**

### Rule 41

1. The executive board shall undertake any tasks assigned to it by decision 17/CP.7, the modalities and procedures for a clean development mechanism and any subsequent decision by the COP/MOP.

## **X. RECORD OF THE MEETING**

### Rule 42

1. Before the end of each meeting, the chair shall present conclusions and decisions of the meeting. Any written records of the executive board or recordings of proceedings shall be kept by the secretariat in accordance with United Nations rules and regulations.

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## **XI. AMENDMENTS TO THE RULES**

### Rule 43

Paragraph 5, subparagraph (b) of the modalities and procedures provides:

The executive board may make recommendations to the COP/MOP on any amendments or additions to rules of procedure for the executive board.

Paragraph 3, subparagraph (a) of the modalities and procedures provides:

The COP/MOP shall provide guidance to the executive board by taking decisions on the recommendations made by the executive board on its rules of procedure.

## **XII. OVERRIDING AUTHORITY OF THE MODALITIES AND PROCEDURES FOR A CLEAN DEVELOPMENT MECHANISM**

### Rule 44

1. In the event of any conflict between any provision of these rules and any provision of decision 17/CP.7, the modalities and procedures and relevant decisions by the COP/MOP, the provisions of decision 17/CP.7, the modalities and procedures and relevant decisions by the COP/MOP shall prevail.