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1 September 2008

CDM Executive Board

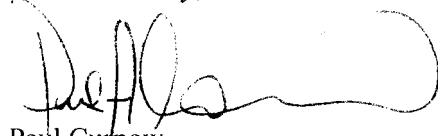
Dear Sir/Madam,

**Submission regarding draft standardized modalities of communications**

- 1.1 We refer to the Executive Board's call for public input on the draft standardized modalities of communications at its 41<sup>st</sup> meeting. This letter provides Baker & McKenzie's views on the draft standardized modalities of communication. Baker & McKenzie is also a participant in the Carbon Markets and Investors Association (CMIA) and supports the position paper submitted by that body.
- 1.2 At the moment, section 2 of the draft standardized modalities of communication only provides for the situation where project entities are either sole or joint focal points. It does not address the situation where a project participant is the sole focal point (or say two project participants are joint focal points), but must still obtain the consent of the other project participants before submitting communications to the Executive Board with respect to matters of registration and issuance, allocation and forwarding, and adding/removing project participants. In our experience, there are typically many occasions in CDM projects where this intermediate step arises.
- 1.3 Under the current proposal, in order to restrict the delegated authority of a focal point (or joint focal points), participants would need to add ALL project participants as joint focal points with joint authority on the relevant area. In practice, this means that each of the project participants will be able to communicate directly with the Secretariat/Executive Board. So, while this enables project participants to restrict the authority of the focal point, it complicates the system in that each project participant has the right to communicate with the Secretariat/Executive Board.
- 1.4 Our view is that this will make it a much more complicated process for the Secretariat/Executive Board in having to accept communications from so many different project participants where they have all been added as focal points. Moreover, in the absence of the ability to ensure that project participants who are not focal points can still exercise a level of control over the actions that flow from particular communications (e.g. adding/removing project participants), there is a risk that the process may become open to fraud and contractual provisions which do require that consent from other project entities may be breached.

- 1.5 In light of these issues, we suggest that the Executive Board add a third column of boxes in section 2 entitled "consent required from other project participants". This third column would overcome the problems that we see arising in relation to delegated authority. For example, if there is a single focal point with full delegated authority on matters a) and b), the project participants would tick the sole focal point box for a) and b) and leave the other boxes in the row blank. If the focal point requires the signature of the other project participants for matter c), then they would tick the sole focal point box as well as the "consent required from other project participants" box in that row. This allows the system to recognise only a single focal point while also allowing project participants to convey to the Secretariat/Executive Board their own private arrangements with respect to the delegation authority without each of them having to be added as a focal point.
- 1.6 Thank you for the opportunity to provide these comments to the Executive Board and please do not hesitate to contact us if you require further information or clarification about the matters raised above.

Yours sincerely,



Paul Curnow  
Partner  
+61 2 8922 5173  
paul.curnow@bakernet.com

Ilona Millar  
Senior Associate  
+61 2 8922 5710  
ilona.millar@bakernet.com

Other Contact:  
Karen Gould  
Associate  
+61 2 8922 5721  
karen.gould@bakernet.com