

September 3, 2008

CDM Executive Board
UNFCCC Secretariat
Martin Luther King Strasse 8
P.O.Box 260124
D-53153
Germany

Dear Mr. Sethi,

I write to you on behalf of the International Emissions Trading Association (IETA) and in response to the invitation by the Board at EB 41 to comment on the **“draft standardization of the format of the modalities of communication between project participants and the Board.”**

IETA welcomes the move to standardize the format for the Modalities of Communication (MoC) between Project Participants (PPs) and the Board. In particular, IETA applauds the differentiation of the focal point role between (1) matters related to registration and issuance purposes, (2) requests for forwarding of CERs, and (3) requests for addition and/or voluntary withdrawal of project participants. This type of flexibility represents exactly what is necessary if the format for the MoC is to be aligned with commercial realities.

IETA believes, however, that there are a number of very important changes that should be made to the current draft to improve its clarity, increase its flexibility, and bring it more in-line with the nuances of the commercial relationships related to CDM project development. Amending the draft standardization to include the changes outlined in the remainder of this letter will provide a secure environment for investors, no matter their contractual relationships, and in so doing will encourage an increased flow of private investment into developing countries.

Below, IETA provides a number of comments and views that will allow the Secretariat to further refine the current draft.

MARKET SOLUTIONS FOR GLOBAL ENVIRONMENTAL PROBLEMS



1. The nomination of a Focal Point (FP) who is not a Project Participant (PP)

The draft MoC does not clarify that an FP can be an entity that is not a PP. While the draft does not specifically prohibit this practice (which is not uncommon), IETA suggests that in the “definition of terms” (see para 2 of the notes to the draft MoC) where "focal point" is defined as an entity, or entities, nominated through the MoC by all PPs,” the underlined section should be amended to read: "any entity, or entities (whether or not project participants) nominated...".

2. Requirement to use the new standardized MoC

It is already suggested in the guidance that projects requesting registration will be required to sign the new form of standardized MoC, however, the Secretariat should confirm that a standardized MoC will only have to be submitted with respect to projects *already* registered (i.e. with an existing non-standardized MoC in place) in the event that the old MoC of those previously registered projects is revised/replaced.

3. Consistency in Wording and Use of Powers of Attorney

IETA would like to note that neither the draft MoC nor accompanying notes deal formally with the fairly common practice of having an entity/person authorised by a power of attorney to act on behalf of PPs or the FP. IETA would like the standardized MoC guidance to clarify that certain definitions are defined widely enough to cater for the circumstances in which PPs or an FP have given another entity/person a power of attorney to act on its behalf.

In addition, IETA has noted that there are certain definitions that are used inconsistently in the standardised MoC guidance, and this inconsistency should be amended to avoid confusion. For example, the definition of a "signature" is *defined* as relating only to project participants, but it is *used* when referring to focal points as well, e.g. the reference in paragraph to 'joint or single signature' and the reference in paragraph 5 to 'certified signature'.



The definition of "authorised signature" is also used inconsistently; although it is defined as being the person who represents the focal point, it is also used with reference to project participants, e.g. in paragraph 12 where 'the DOE is required to validate the authorised signature...each PP.'

In addition there are a couple of references to 'signing authority' which is a term that has not been defined at all, e.g. in paragraph 3 and paragraph 11, which introduces an additional concept relating to signing and is confusing.

With respect to recognition of the practice of using power of attorneys and to correct the inconsistencies relating to 'signature' and 'signing authority,' IETA recommends the following amendments to the notes of the draft MOC:

- the definition of "Authorised signature" should be renamed "Authorised signatory" and be replaced in the 'Definition of Terms' as follows:
"3. **Authorised signatory** is defined as (i) the person who represents the focal point entity (which may include a person who is authorised by way of power of attorney) and whose signature and contact details are to be registered in the MoC statement for any communication with the Board and the secretariat, or (ii) the person who represents a project participant entity (which may include a person who is authorised by way of power of attorney) and whose signature and contact details are to be registered in the MoC statement, as the context requires. The secretariat will perform the required due diligence and authentication process for each authorised signatory.";

In keeping with this change, all references to "authorised signature" should be replaced by "authorised signatory";

- The words "signing authority" in para 11 should also be changed to "authorised signatory";



- The definition of "*Signature*" (para 7) should be amended by adding the words "or a focal point, as the context requires" after the words "statement by a project participant." It should refer only to the written or electronic "signature," not to a person.

4. Requirement for DOE Validation of Signatures

Paragraph 12 stipulates: "The DOE is required to validate the authorised signature corresponding to each project participant before these details are submitted to the secretariat in the MoC form." First, in order to remain consistent with the suggestions made just above, the word "authorised" should be removed from that sentence, as it is the *signature*, not the *person*, that the DOE is validating. Second, to add a degree of clarity to what is required for a signature's validation, IETA suggests that the following sentence be added to the end of this paragraph: "The notarization of the signature by a notary public will be an acceptable proof to the DOE that the signature is authentic, though proof of authenticity shall not be limited to such notarization."

5. Inclusion of a Primary and Alternate for each focal point/project participant

As written now, the draft MoC allows for the provision of the name of one individual as the authorised signatory for each PP and FP. IETA would like to point out that this limitation will result in substantial delays in the case that an individual cannot be reached or is incapacitated. IETA suggests, therefore, that each PP and each sole/joint FP include the names of two individuals, a primary and alternate, *either of which* may serve as the authorised signatory for that entity.

6. Incorporation of the CDM Project Activity ID Number

In section B, "Structure and Contents of a statement of Modalities and Communications", it is stated in 9(a) that the MoC should incorporate the "ID number" of the CDM project activity, where available. IETA suggests that the term "ID number" be replaced with "UNFCCC reference number" and that the inclusion of the reference number is made mandatory. The UNFCCC reference number is more suitable since the first signed MoC will be submitted to the



CDM EB/Secretariat at a time prior to the registration of the project and therefore the granting of an ID number.

7. Clarification of “Joint Focal Point”

IETA would like to suggest that the wording in para 4 (below points a,b and c), which reads now, “In case more than one entity is nominated as a focal point for a given scope of authority, project participants shall state whether a joint or single signature will suffice” be altered to state that the choice to have more than one focal point per scope requires the signatures of all focal points listed for any given scope. IETA suggests, therefore, that the following wording be used instead: “In cases where more than one authorised signatory is nominated as a focal point for a given scope of authority, the signatures of all nominated focal points shall be required for each communication related to that scope.”

8. Inconsistency of paragraph 11 and paragraph 13 of the notes

IETA would like to point out that paragraph 11 provides, *inter alia*, that changes in PPs will require an updated MoC to be submitted. It further provides that any new MoC will need to be "signed by the signing authority from each project participant" (emphasis added). Para 11 is arguably inconsistent with para 13 of the notes, which provides that an updated MoC merely needs to be signed by the "nominated focal point...". Further, in respect of the addition of a new PP, the requirement for a new MoC to be signed by 'all project participants' is inconsistent with current common practice where FPs, who have full delegated authority to add new PPs, can submit an addendum to an existing MoC indicating this addition without the signatures of all project participants.

Therefore, IETA suggests that paragraph 11 be split into two parts:

- Part (a) of para 11 should deal with the case where the PPs are (i) amending the scope of FP authority, (ii) nominating a new FP, or (iii) where PPs have not delegated authority to the FP to add or remove PPs (see below). In these scenarios, all PPs should be required to sign the new MoC, including the removed PP in the case of a voluntary withdrawal. To



the extent that the FP is not already a PP, in all cases (i) to (iii) above, the signature of the FP will also be required.

- Part (b) of para 11 should deal with the case where an FP (i) has full-delegated authority to add/withdraw PPs (upon election of the PPs, see below), and (ii) needs to make minor amendments to the details of PPs or itself, e.g. contact details. In these cases, the FP should be able to amend the MoC accordingly through the submission of an update to the previous MoC, without requiring the signatures of all other PPs. IETA suggests that a pro-forma addendum be added to the draft MoC, which would deal with the addition of a PP, voluntary withdrawal of a PP, or change to contact details. This addendum could follow the attached format (see Annex 1 to this letter) and will require the signature of the removed PP in the case of a voluntary withdrawal.

In line with these changes, we would suggest the following:

- The addition of a new section in the MoC form— preferably as point 4 in “Section 2: Nomination of Focal Points”— which gives PPs the opportunity to elect to delegate the authority to add and remove PPs to the focal point/joint focal points. Next to the following statement (see directly below), a box should be added, which the PPs will check if the delegation of authority in relation to the adding/withdrawal of PPs is agreed:

"By marking the adjacent box, the project participants agree and acknowledge that the focal point/joint focal points may add or remove project participants as an update to the F-CM-MOC form, in the manner prescribed by the CDM Executive Board, without obtaining the signature of each project participant."

- The MoC form should also contain an additional section entitled 'Removal of existing project participants' preferably after the section 'List of project participants', relating to the removal of existing PPs. This additional section would be identical to the section of the same name set out in the “Form of Update” (see attached addendum). A similar addition in the MoC form itself will allow for a situation where PPs do not agree to delegate the authority to



add/remove PPs to the focal point and are required to complete and submit a new MoC indicating this withdrawal.

- In line with the suggestions above, the “Definition of Terms” should also include the following new definitions:

[#]. A “new MoC” refers to the case where the project participants are (i) amending the scope of FP authority, (ii) nominating a new FP, (iii) adding or removing a PP and have not delegated authority to the FP to add or remove PPs as contemplated by paragraph [11(a)].

[#]. An “updated MoC” refers to the case where the focal point has full-delegated authority to add or withdraw project participants, and/or needs to make minor amendments to the contact details of project participants or itself as contemplated by paragraph [11(b)].

- As currently written, (4)a, b, c in the ‘Definition of Terms’ are not matching with Section 2, (3)a,b,c. The wording in the ‘Definition of Terms’ as now written is aligned with the views set out in this letter (i.e. the requirement of all signatures for addition/withdrawal of PPs *unless* this authority has been specifically delegated by the PPs to the focal point), and IETA would like to suggest that the wording in Section 2, (3)a,b,c be re-written exactly as in (4)a, b, c in the ‘Definition of Terms.’

In closing, IETA greatly appreciates the chance to share our comments on this very important issue, and we hope to see the changes suggested herein incorporated in the final draft of the standardized MoC.

Henry Derwent
President



ANNEX 1
Modalities of Communication - Form of *Update*

This form is to be used by the focal point to add and or remove project participants where it has full-delegated authority to do so by all project participants and to update contact details of project participants and/or the focal point.

Date of submission:

Title of CDM project activity:

Please state UNFCCC project reference number if available:

Addition of project participants:

The following project participant/entity is hereby added as a project participant in respect of the above CDM project:

Official name (Primary):	
Representative:	
Phone number:	
Fax number:	
Email:	
Address:	
Specimen signature:	
Party (country that authorised participation):	

Official name (Alternate):	
Representative:	
Phone number:	
Fax number:	
Email:	
Address:	
Specimen signature:	

Removal of existing project participant:

The following project participant/entity is an existing project participant in respect of the above the CDM project and is hereby voluntarily consenting to being removed as such:

Official name:	
Address:	



Signature:	
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Change of project participant contact details:

The following project participant is an existing project participant in respect of the above CDM project and is hereby requests the following changes to its contact details:

Official name:	
Representative:	
Phone number:	
Fax number:	
Email:	
Address:	
Specimen signature:	
Party (country that authorised participation:	

Change of focal point contact details:

The following focal point is an existing project participant in respect of the above CDM project and is hereby requests the following changes to its contact details:

Name of focal point entity:	
Contact details:	[Mr.]/[Ms.]/[Mrs.]
Last name	
First name	
Telephone:	
Fax:	
Email:	
Address:	

Statement of agreement:

This statement shall bind all project participants and shall be valid until a superseding or updated statement is submitted to the CDM Executive Board and the UNFCCC Secretariat at the address below.

By signing this statement the focal point/joint focal point confirm that it is authorised by project participants to make this update.

Focal point/Joint focal point signature: _____
