

# Recommendations for developing legal framework for the CDM

Zambian case study

# Providing a sound legal basis for the DNA

Legalize the institutional set up of the DNA as well as the project approval procedure and the evaluation criteria

Legislative procedure:

Enacting a specific piece of legislation

OR

Amending the EPPCA and incorporating DNA Regulations)

# Providing a sound legal basis for the DNA

The amendment provision or instrument for legalizing the

DNA should include clear statements indicating:

- Rationale for creating the DNA and its legal authority
- Objectives, organizational structure
- Functions, priorities and procedures

Take into account existing laws and regulations that may influence participation in CDM and the transfer of CERs

# Foreign Direct Investment Law

CDM project development in its infancy in Zambia

Zambia keen to promote the development of CDM projects

- Amend the list of priority sectors the ZDA Act to include CDM projects
- Target incentives at CDM projects in sectors and areas that are in line with the country's SD goals (e.g. poverty reduction in rural areas)

# Addressing Title to CER's

- Use existing Zambian property law to govern the allocation of title and ownership of CER's
- Amend the Lands Act to:
  - Specifically recognize GHG reductions, property and title in the reductions and associated CER's
  - Make provision for passing of property and risk
- Incorporate provisions into the lands and deeds miscellaneous registry to deal with property aspects of CER's
- Government to act as a clearing house for CER's from all CDM projects in Zambia before project participants deal with them

# Addressing Title to CER's

- Government to clarify through the DNA whether CERs are sovereign or private rights
- If GHG reductions are a natural resource and government property:
  - CDM project developers to enter into concession arrangements for management of the resources and generation of CER's from them
  - **In such case:** Government could charge fees for the concession **or** take a proportion of the CER's generated by the project

# Addressing Title to CER's

Use Letters of endorsement as an additional tool for addressing legal title to GHG reductions and related CER's

Incorporate extra language:

- Confirming that legal title to GHG reductions and CER's vest in a particular project participant;
- Approving the transfer or allocation of CERs
- Stating that government will not object to future allocations of CERs by the project participant

# Recognition of rights to GHG's

- Amend Lands Act to recognize and incorporate GHG reductions and CER's as proprietary rights
- The Act should clarify whether rights to GHG reductions will be part of or distinct from other proprietary land rights



# Classification of CERs

Government to classify CER's as commodities:

- to avoid them being subjected to rigorous regulatory requirements
- to be able to trade them for profit easily

In such case:

Amend the Control of Goods Act to incorporate CERs as commodities or goods

# Tax laws

- As the CDM pipeline grows government must determine whether or not CER's will be taxed
  - If so, what type of tax will be imposed
- The Zambian government may declare that CER revenues will not be taxed due to its infancy
- Exempting CER revenues from taxation is a powerful means of promoting CDM projects private sector investment
- E.g. South Africa offers tax concessions and fiscal incentives like
  - Import duty exemptions or reductions
  - Income tax exemptions or reductions
  - Accelerated depreciation

# Environmental management

- Recognize lengthy International and CDM procedures and approvals to which CDM projects are subjected
  - specifically provide for CDM projects in the EPPCA and EIA regulations
  - streamline EIA requirements for these projects with CDM project approval processes
  - ‘fast track’ EIA procedures for CDM projects
  - Reduce application fees for CDM projects
- Streamline applications and issuing processes for licenses required by other authorities

# Expropriation

This is adequately provided for under the  
Zambian Constitution the Zambia Development  
Agency Act and the Lands Act

No need for recommendations