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MEETING OF THE PARTIES TO THE KYOTO PROTOCOL**
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Other matters

**Privileges and immunities for individuals serving on constituted bodies under
the Kyoto Protocol: implementation of decision 9/CMP.2**

Note by the secretariat*

Summary

This document contains a report by the Executive Secretary to the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol (CMP) on the actions taken by the secretariat in accordance with decision 9/CMP.2 on privileges and immunities for individuals serving on constituted bodies under the Kyoto Protocol. The report summarizes actions taken to minimize the risks of disputes, complaints and claims against individuals serving on constituted bodies established under the Kyoto Protocol, as well as actions taken in response to concerns and issues raised by legal entities involved in the clean development mechanism established under the Kyoto Protocol. This is the second report by the Executive Secretary on this issue, and covers the period January to September 2008. The CMP is invited to consider the report and provide further guidance to the Executive Secretary.

* This document was submitted late owing to the need for internal consultations.

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I. Introduction

A. Mandate

1. The Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol (CMP), by its decision 9/CMP.2, requested the Executive Secretary to take a number of actions, especially in response to concerns and issues raised by private or public legal entities involved in the mechanisms established under the Kyoto Protocol, to minimize the risks of disputes, complaints and claims against individuals serving on constituted bodies established under the Kyoto Protocol.¹ The CMP also requested the Executive Secretary to report to it, as deemed necessary, in particular in the light of any concerns or issues that may arise in relation to the constituted bodies.

B. Scope of the note

2. This document is the second report by the Executive Secretary that summarizes actions taken in accordance with decision 9/CMP.2 and covers the period January to September 2008.² It contains a summary of actions taken by the secretariat: (1) to minimize the risks of disputes, complaints and claims against individuals serving on constituted bodies established under the Kyoto Protocol; and (2) in response to concerns or issues raised by private or public legal entities involved in the mechanisms established under the Kyoto Protocol.

C. Possible action by the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol

3. The CMP is invited to consider the report and provide guidance on further actions that should be taken by the Executive Secretary.

II. Implementation of decision 9/CMP.2

A. Background

4. In decision 9/CMP.2, the CMP requested and authorized the Executive Secretary to take a number of actions aimed at minimizing the risk of legal action against individuals serving on constituted bodies established under the Kyoto Protocol, namely:

- (a) To take action, including through his good offices, where practicable, especially in response to concerns or issues raised by private or public legal entities involved in the mechanisms established pursuant to Articles 6, 12 and 17 of the Kyoto Protocol, to minimize the risks of disputes, complaints and claims against individuals serving on constituted bodies established under the Kyoto Protocol;
- (b) To provide advice and assistance to any individual serving on a constituted body established under the Kyoto Protocol with regard to any concerns or issues raised in connection with the exercise of his or her official functions;
- (c) To consult, as appropriate, the chair of the relevant constituted body on any concerns or issues raised;

¹ Constituted bodies in this context include the Executive Board of the clean development mechanism, the Joint Implementation Supervisory Committee, the Compliance Committee, the Adaptation Fund Board, and the expert review teams established under Article 8 of the Kyoto Protocol.

² The first report, covering the period November 2006 to August 2007, is contained in document FCCC/KP/CMP/2007/2.

- (d) To contact, as appropriate, the national focal point and the competent authorities of the Party or Parties concerned to discuss the concerns or issues raised;
- (e) To incur necessary expenses, subject to the availability of resources, and within his overall budgetary authority, to cover the activities outlined in decision 9/CMP.2;
- (f) To include the resource requirements for the activities outlined in decision 9/CMP.2 in the proposed programme budget for the biennium 2008–2009;
- (g) To provide reports to the CMP, as deemed necessary, in particular in the light of any concerns or issues that may arise in relation to constituted bodies established under the Kyoto Protocol.

B. Actions taken to minimize the risks of disputes, complaints and claims against individuals serving on constituted bodies under the Kyoto Protocol

5. During the period under review, the Executive Secretary took the following actions:
- (a) Convening meetings of constituted bodies at the seat of the UNFCCC secretariat, where individuals serving on these bodies have privileges and immunities for acts performed by them in their official capacity in accordance with the provisions of the Headquarters Agreement of the secretariat, as amended;³
 - (b) Where meetings of constituted bodies were convened at venues other than the seat of the UNFCCC secretariat, ensuring that the host country agreements or memorandums of understanding for the meeting contained provisions for privileges and immunities for individuals serving on these bodies;
 - (c) In response to requests from the chairs of the constituted bodies, providing information to the members and alternate members of the constituted bodies on the issue of privileges and immunities, and on the status of negotiations by the CMP on this issue. This information was presented at meetings of the Executive Board of the clean development mechanism (CDM), the Adaptation Fund Board and the Compliance Committee;
 - (d) Providing advice and guidance to the newly established Adaptation Fund Board and the Adaptation Fund secretariat on the privileges and immunities accorded to members and alternate members of the Adaptation Fund Board for their official functions.
6. During 2008, the Executive Secretary continued his efforts to recruit highly qualified staff to support the work of the constituted bodies, and to assist in ensuring that the decisions and activities of these bodies are in accordance with the decisions of the CMP. A new Director of the Sustainable Development Programme joined the secretariat in September 2008, to oversee the secretariat's support to the Executive Board and the Joint Implementation Supervisory Committee.
7. The secretariat continued to implement the training programme for members of the expert review teams to ensure that they are adequately prepared to conduct reviews in accordance with Article 8 of the Kyoto Protocol and relevant decisions of the CMP. The continued implementation of the training

³ The Agreement among the Government of the Federal Republic of Germany, the United Nations and the secretariat of the United Nations Framework Convention on Climate Change concerning the Headquarters of the Convention secretariat, signed on 20 June 2006; and the Protocol amending the Agreement, signed on 7 December 2005.

programme is dependent upon supplementary funds, and Parties are encouraged to provide contributions to support this activity.

C. Actions taken in response to concerns or issues raised by private or public legal entities with regard to project activities under the clean development mechanism

8. During the period under review, five legal entities sent letters to the secretariat expressing concern or raising issues regarding project activities under the CDM. The main issues or concerns raised in the letters were:

- (a) That issues raised in a previous letter to the Executive Board about the decision by the Board to reject a project activity had not received adequate consideration;
- (b) That a desk reviewer may have had a conflict of interest with respect to the project activity reviewed;
- (c) That a decision by the Board to reject a request for registration of a project activity violated the rights of the legal entity because it was based on a wrong interpretation by the Board of the relevant CMP decisions;
- (d) Delays in the approval of a proposed methodology;
- (e) That two approaches used in parallel by the Methodologies Panel to evaluate a project activity were not in accordance with the CDM modalities and procedures.⁴

9. One legal entity stated that as a result of a decision of the Executive Board, it would suffer considerable economic losses; another legal entity stated that it had suffered consequential damages. Another legal entity requested that a dispute resolution mechanism be established to resolve the concerns raised, and in particular that the Executive Board apply either the Arbitration Rules of the International Chamber of Commerce or of the United Nations Commission on International Trade Law. The legal entity also stated that in the absence of an appropriate dispute resolution mechanism, it reserved the right to initiate judicial proceedings to protect its rights.

10. The legal entities requested the Executive Board to review certain decisions or to request the Methodologies Panel to review certain of its recommendations to the Executive Board.

11. Each letter was forwarded to the Executive Board for its consideration, together with an analysis of the issues raised and recommendations on how the Chair and the Board may wish to proceed.

12. On behalf of the Chair of the Executive Board, the secretariat sent responses to each letter to clarify the decisions of the Board or the recommendations of the Methodologies Panel, or to provide an update of actions taken by the Board in response to the letter:

- (a) In one case, the Executive Board provided clarification of the decision of the Board;
- (b) In one case, the Board requested the Methodologies Panel to review its recommendation, taking into account the views of an additional desk reviewer;
- (c) In one case, where three letters were received from one legal entity, the secretariat, on behalf of the Board, provided a response to the legal entity that clarified the reasons for the decision of the Board to reject a request for registration of a project activity;

⁴ The CDM modalities and procedures are contained in the annex to decision 3/CMP.1.

- (d) In one case, the Board provided clarification on the reasons for the delay in the approval of the proposed methodology;
- (e) In one case, the Board noted that additional information provided by the private legal entity to the Methodologies Panel was taken into account in the recommendation from the Methodologies Panel.

III. Conclusions

13. The Executive Secretary has continued his efforts to take action to minimize the risk of disputes, concerns and claims against individuals serving on constituted bodies. The secretariat has also provided information to the members and alternate members of constituted bodies on the privileges and immunities accorded to them under the Headquarters Agreement of the secretariat, or under agreements or memorandums of understanding concluded with host governments for meetings convened away from the seat of the secretariat.

14. Additional and substantive support was provided by the secretariat to the work of the constituted bodies, which has resulted in a reduction in the number of letters received by the secretariat raising concerns or issues, in particular with regard to the CDM. The secretariat has also taken immediate action to inform and provide advice to the Executive Board on the concerns or issues raised by legal entities, and provide responses to the legal entities on behalf of the Chair of the Executive Board. The implementation of the training programme for members of the expert review teams continued during 2008, and has helped to ensure that members are adequately prepared to conduct the reviews in accordance with Article 8 of the Kyoto Protocol and relevant decisions of the CMP.

15. The Executive Secretary will continue to provide high-quality support to constituted bodies, and to promptly address any concerns or issues raised with respect to activities and decisions of the constituted bodies or complaints and claims against individuals elected by the CMP to serve on these bodies.
