



Status of the Negotiations related to the future of the market based mechanisms

COP17, 9 December 2011, Kosi Palm

Presentation prepared & presented by Andrew Gilder

This presentation does not constitute legal advice



Warburton Attorneys

Sustainability Law Specialists

IMBEWU and Warburton Attorneys

- Specialist South African environmental, health & safety climate change (*sustainability*) legal consultancy and attorneys firm.
- Johannesburg-based / Eastern Cape satellite office.
- Wide range of South African environmental, climate change health & safety and sustainability legal advice, electronic legal registers, legal training; issues pertaining to implementation of climate change mitigation projects, e.g., CDM projects; climate change business, strategy and policy advice.
- Climate change and carbon markets law.

Sustainability Law?

- “Sustainability law“:
 - encompasses a variety of inter-related legal disciplines;
 - common theme: the constitutional imperative of securing "ecologically sustainable development and use of natural resources while promoting justifiable economic and social development".
- Taking its direction from the Constitution Act (106 of 1996):
 - South African law is evolving to meet the country’s contemporary needs.
 - Paramount among these:
 - provide for legitimate social and economic development,
 - while considering the sensitivity of the natural environment to the effects of such development; and,
 - including the consideration and protection of employee health and safety.

To consider

- Status of the negotiations relating to:
 - CDM and new market mechanisms (yes)
 - Mitigation (yes)
 - Adaptation (no)
 - Climate finance for developing countries (yes)

Initial thoughts

- Final phase of COP17.
- Can anything happen?
 - What the next 12 hours will bring (24 hours?).
 - It is the final text that really counts.
- Leadership from the front, e.g., COP13 (Bali Action Plan).
- Identify (and celebrate) real progress / apply the converse to lack of progress.

CDM & new market mechanisms (1)

- CDM - continuation:
 - New market mechanisms (old market mechanisms?):
 - Purpose of new mechanisms.
 - Design of new mechanisms.
 - Kittens and baby with bathwater.
 - The CDM will continue but not in *ye olde* CDM form.
 - Innovations to the CDM are likely to take some time to come online.
 - CDM and NAMAs?
 - Credited NAMAs
 - Ownership issues.

CDM & new market mechanisms (2)

- CDM refinements under discussion:
 - EU – further restrictions eligible projects (alternative markets for CERs)
 - Maximum access to mechanisms should be a percentage of a party's commitment under a second Kyoto Protocol Commitment Period.
 - Share of proceeds: increase to 50%.
 - DNA's right to intervene in a request for issuance, in order to help host countries to ensure that sustainable development goals are being met.
 - Review of modalities and procedures.
 - Guidelines on stakeholder engagement.
 - Improvement of additionality assessment (“improvement” depends on your perspective).

CDM & new market mechanisms (3)

- Carbon Capture and Storage in the CDM:
 - Agreement on Modalities.
 - Agreed text to be submitted to the COP.
 - South African position on CCS.
 - Implications of EU policy.

Mitigation

- Based on the science:
 - Process to agree targets of between 25 to 40% for developed countries by COP18:
 - Shadows of Bali – “agreed outcome” as opposed to legally binding agreement.
 - NAMA registry is in place, supported and populated with developing country NAMAs.
 - Process including: submissions, technical papers and dedicated high level negotiations.

Climate finance for developing countries

- Agreement on the Green Climate Fund.
- Dynamic between AI and NAI:
 - Allocation of funds.
 - Management of funds.
 - Access to funds:
 - South African view.
- The best chance for meaningful progress out of COP17?

eThekweni Solid Waste Landfill Gas to Power Generation CDM Project

- CDM Project Activity:
 - The active extraction of landfill gas.
 - The generation of up to 8 MW (Bisasar) plus 0.5 MW (Mariannahill) of electrical power to feed the Durban Municipal grid.
 - Excess landfill gas to be burned in flares.
 - Emissions reductions attributed to the destruction of methane gas and the displacement of carbon dioxide from coal-derived electrical power.





Bisasar Road

Bisasar Road



Bisasar Road



**LANDFILL
GAS BLOWER
AND
FLARE STATION**



This Station Licensed Gas-to-Electricity (GTE) project is licensed by the Department of Energy and Natural Resources (DENR) and the Department of Environment and Natural Resources (DENR) and the Department of Energy and Natural Resources (DENR).

DTI []
(Department of Trade and Industry's Central Administration Management (CAM) and Issue Handling Team)

AFD []
(Agency Provided by the Government)

Mariannahill



Mariannahill



CONTACT DETAILS

Thank You

Andrew Gilder

53 Dudley Road, Cnr Bolton Avenue
Parkwood, Johannesburg.

Tel: 011 447 6848/0

Fax: 011 447 6868

Mobile: 082 962 2520

Andrew@imbewu.co.za

Andrew@warburtons.co.za

<http://www.imbewu.co.za>

<http://www.warburtons.co.za>