

**CONFERENCE OF THE PARTIES SERVING AS THE
MEETING OF THE PARTIES TO THE KYOTO PROTOCOL
Fourth session
Poznan, 1–12 December 2008**

**Agenda item 8
Report of the Adaptation Fund Board**

**Submission by the Government of Tuvalu with respect to conveying legal
personality and authority to sell certified emission reductions (CERs) upon
the Adaptation Fund Board**

The Government of Tuvalu wishes to offer a proposal with respect to conveying legal personality and authority to sell CERs upon the Adaptation Fund Board.

Recent discussions within the Adaptation Fund Board suggest that it will be necessary to create legal personality for the Adaptation Fund Board. It also appears necessary, due to certain conflicts of interest with the Trustee of the Adaptation Fund to create a legal right to allow the Adaptation Fund Board to sell Certified Emission Reductions for the purpose of providing funds for the Adaptation Fund.

To help facilitate an expeditious consideration of this issue, Tuvalu has prepared two draft decisions. These documents are only provided as a guide and are not intended to pre-empt appropriate negotiation and development processes by Parties. The following is a brief summary of each of these decisions and the covenant:

1. Decisions by the Conference of Parties Serving as the Meeting of Parties and Conference of Parties Conferring Legal Capacity to Certain Institutions

These decisions are modelled on the Decision VI/16 of the Multilateral Fund for the Implementation of the Montreal Protocol. They have three key elements:

1. To afford legal personality to a number of bodies constituted under the Kyoto Protocol;
2. To extend the country agreement between the UNFCCC Executive Secretary and the Federal Republic of Germany to include privileges and immunities to persons serving on bodies constituted under the Kyoto Protocol;
3. To provide an annex whereby institutions can added or removed from a list.

2. Decision conferring authority on the Adaptation Fund Board legal capacity to acquire, hold, transfer and sell any certified emission reductions as defined within the Kyoto Protocol

This decision gives authority to the Adaptation Fund Board the authority to sell CERs.

Decision conferring legal capacity to certain institutions establishing under the Kyoto Protocol

The Conference of Parties serving as the meeting of Parties to the Kyoto Protocol,

Recalling the provisions of Articles 6, 12 and 18 of the Kyoto Protocol,

Noting decision 7/CMP.1 regarding the establishment of the Executive Board of Clean Development Mechanism Executive Board;

Noting decision 9/CMP.1 regarding the establishment of the Joint Implementation Supervisory Committee

Further recalling decision 27/CMP.1, with respect to the establishment of the Compliance Committee under the Kyoto Protocol;

Noting decision 1/CMP.3 regarding the establishment of the Adaptation Fund Board;

Noting decision 4/CMP.3 concerning the scope and content of the second review of the Kyoto Protocol pursuant to its Article 9;

1. Decides that the institutions listed in the Annex to this decision shall enjoy legal capacity as necessary for the exercise of their functions and the protection of their interests, in particular capacity enter into contracts, to acquire and dispose of movable and immovable property and to institute legal proceedings in defence of their interests;
2. Decides that the Conference of Parties serving as the meeting of Parties may, by any subsequent decision, add or remove institutions to the list in the annex to this decision

ANNEX

The following institutions shall enjoy legal capacity as prescribed in paragraph 1 of this decision:

- (a) The Clean Development Mechanism Executive Board
- (b) The Joint Implementation Supervisory Committee
- (c) The Compliance Committee
- (d) The Adaptation Fund Board

Decision conferring legal capacity to various institutions establishing under the UN Framework Convention on Climate Change

The Conference of Parties,

Recalling the relevant provisions of the United Nations Framework Convention on Climate Change,

Noting decision 8/CP.5 concerning the establishment of a Consultative Group of Experts on National Communications from Parties not included in Annex I to the Convention,

Further recalling decisions 4/CP.7, regarding the establishment of an Expert Group on Technology Transfer;

Recalling its decisions 29/CP.7 regarding the establishment of the Least Developed Country Expert Group;

1. Decides that the institutions listed in the Annex to this decision shall enjoy legal capacity as necessary for the exercise of their functions and the protection of their interests, in particular capacity enter into contracts, to acquire and dispose of movable and immovable property and to institute legal proceedings in defence of their interests;
2. Decides that the Conference of Parties may, by any subsequent decision, add or remove institutions to the list in the annex to this decision

ANNEX

The following institutions shall enjoy legal capacity as prescribed in paragraph 1 of this decision:

- (a) Consultative Group of Experts on National Communications from Parties not included in Annex I to the Convention
- (b) Expert Group on Technology Transfer
- (c) The Least Developed Country Expert Group

Decision conferring authority on the Adaptation Fund Board legal capacity to acquire, hold, transfer and sell any certified emission reductions as defined within the Kyoto Protocol

The Conference of Parties serving as the meeting of Parties to the Kyoto Protocol,

Recalling the provisions of Articles 6, 12 and 18 of the Kyoto Protocol,

Noting decision 1/CMP.3 regarding the establishment of the Adaptation Fund Board;

1. Decides that, without being restricted by financial controls, regulations or moratoria of any kind, the Adaptation Fund Board may freely acquire, hold, transfer and sell any certified emission reductions as defined within the Kyoto Protocol.
2. Decides that any acquisition, holding, transfer and selling of certified emission reductions, as defined within the Kyoto Protocol, by the institutions listed in the Annex shall be undertaken to the extent necessary to the exercise of their respective functions.
3. Further decides that the Adaptation Fund Board, in exercising their rights under paragraph 1 and 2 of this decision, shall pay due regard to any representations made by the Government of any Party to the Kyoto Protocol insofar as it is considered that effect can be given to such representations without detriment to the interests of the Adaptation Fund Board.
