



International Chamber of Commerce
The world business organization

Discussion paper

The Role of Companies in Kyoto Mechanisms

An Update of ICC's views for the UNFCCC COP 13, COP / MOP 3, 3–14 December, Bali

The International Chamber of Commerce is the largest, most representative business organization in the world. Its thousands of member companies in over 130 countries have interests spanning every sector of private enterprise. A world network of national committees keeps the ICC International Secretariat in Paris informed about national and regional business priorities. More than 2000 experts drawn from ICC's member companies feed their knowledge and experience into crafting the ICC stance on specific business issues. The United Nations, the World Trade Organization, and many other intergovernmental bodies, both international and regional, are kept in touch with the views of international business through ICC

This paper provides a business perspective on the role of companies in Kyoto Mechanisms (KMs). In light of CDM's operation since its establishment by the Marrakesh Accords, the JI Supervisory Committee's developing modalities and procedures for January 2008, the EU Emissions Trading Scheme completing its 3 year "pilot phase" and with other national and regional trading schemes being established, this paper reviews issues that have or may arise concerning company participation (or non-participation) in market-based instruments, such as the Kyoto Mechanisms.

Recommendations

The International Chamber of Commerce believes that:

- Countries should recognize equally all valid credits and allowances acquired by companies through Kyoto Mechanisms, without imposing selective criteria based on their national source or the final owner of those credits.
- Investors and project participants should be assured that the Kyoto Mechanisms will have an important role to play in any post-2012 agreement and that credits generated through existing projects will remain a viable "currency".
- Nations should not apply export/import limits on exchanges, transfer or use of valid credits through Kyoto Mechanisms. Such limits would inevitably result in arbitrary restrictions on companies that may wish to transfer credits across borders and use them where they make maximum economic sense.
- Internal transfers of credits between affiliated companies of multinational corporations should not be subject to taxes or other restrictions.

- Transparent procedures to issue and exchange credits from national allocation procedures and project activities should be established so that companies will be able to undertake transactions confidently based on readily available information.
- Nations should not establish procedures concerning eligibility, compliance and liability that would retroactively affect transfers undertaken in good faith by companies under the Kyoto Mechanisms.

Background

The Kyoto Mechanisms allow firms to acquire, exchange and utilize greenhouse gas emissions "credits" from both developed and developing countries. Such credits could be of economic and competitive value to any firm from small and medium-sized enterprises to affiliates of multi-national corporations, from businesses that operate in a single developed or developing country to those operating in many countries.

Consequently, obligations and risks of companies concerning greenhouse gas emissions and opportunities to acquire and exchange emissions credits and allowances via the Kyoto Mechanisms have important consequences for all businesses, not just those that operate in countries that have ratified the Protocol.

The International Chamber of Commerce takes note of governmental proposals and enacted legislation to implement national and regional frameworks for the Kyoto Mechanisms, for example, the European Union's Emissions Trading Scheme (ETS), which is currently completing its first phase. The objective of these policies and proposals should be to provide frameworks and procedures that enable markets to credibly reduce GHG emissions, minimize societal costs, and stimulate investment, innovation and trade. The experiences of companies with the ETS, and other pilot emissions trading programs, should be taken into account to improve the functioning of those programmes and reduce unnecessary costs and bureaucracy.

Although such policy decisions are taken at the country or regional level, decision-makers should bear in mind their broader international repercussions for Kyoto Mechanism markets, as well as for complicating the negotiation of any post-2012 agreement. ICC already notes with concern that some proposals related to Kyoto Mechanisms appear to be at odds with the presumed intent of UNFCCC decisions. For example, legislation has placed ceilings on the extent that credits derived from JI and CDM projects, as well as banning credits from certain types of projects, that can be utilized to meet a company's commitments, or as well as discussing whether there should be restrictions on credits from non-CO2 projects or on the use of allowances from some countries.

ICC believes that national and regional programmes should work harmoniously in concert to stimulate the use of markets in order to meet Kyoto commitments at least cost. It is vital that investments in CDM projects in developing countries are encouraged and that the Kyoto Mechanisms remain flexible and market-based without burdensome bureaucracy. Additional rules and regulations or layers of bureaucracy risk placing unnecessary burdens on businesses and society at large, negatively impacting competitiveness, needlessly increasing compliance costs and

putting national reduction obligations out of reach.

The ICC believes that the following general points should be considered in discussions and in the development and implementation of government policies concerning the role of companies in Kyoto Mechanisms:

- Obligations under the Kyoto Protocol apply to nations, not companies.
- Obligations, risks and opportunities for companies -- operating in each nation that ratifies the protocol -- will depend on national implementation policies.
- Companies operate in various countries under a variety of forms that are recognized as legal entities. For example, a company conducting business in a given country may be:
 - an affiliate of a multi-national corporation,
 - a joint venture or partnership owned by more than one parent corporation from more than one country,
 - a small, medium or large-sized enterprise operating solely within a single country.

Companies are subject to the laws and regulations of the countries in which they operate and do business.

- All companies doing business in a given nation will be subject to its national climate change procedures, including obligations, risks and opportunities, regardless of the nationality or nationalities of the company's owners, parent corporation or parent corporations.
- As recognized legal entities in each country where they operate, affiliated companies of multinational corporations will be eligible to participate in Kyoto Mechanisms to the same extent that any other company operating in that nation may do so, regardless of the status of ratification in the nation (or nations) where their parent corporation (or corporations) reside, i.e. the critical test is the status of ratification in the country where a company does business, not the status of ratification in the country of a company's owners.
- National obligations of companies depend on practices, legislation and regulations that may prescribe emissions limits, efficiency standards, taxes or other measures. As well, it is likely that national provisions will govern participation by companies in any international mechanisms, such as project activities and emissions trading. As noted earlier, arbitrary constraints could increase national and global compliance costs, harm economic growth and competitiveness, and cause broader market effects that will be felt internationally.
- In Annex 1 countries, such provisions will determine how companies:
 - acquire domestic allocations of emissions "allowances"
 - participate in domestic emissions trading, if available
 - transfer domestic "credits" or "allowances" to foreign destinations through international emissions trading or other exchanges

- utilize "credits" from international sources (projects or trades) to satisfy domestic obligation.
- In non-Annex 1 countries, such provisions will determine how companies:
 - undertake CDM projects and acquire credits from project activities
 - transfer such credits to other countries.
- Companies will acquire "credits" for use to satisfy domestic obligations where they operate, to be banked for potential future use or for exchange through emissions trading.
- Depending on national frameworks, small and medium-sized enterprises that currently operate in a single country may choose to restructure or to form new legal entities that enhance their ability to participate in project activities and international emissions trading.

With regard to project-oriented Kyoto Mechanisms, such as CDM and JI:

- It is vital that investors and project participants are given assurance that the Kyoto Mechanisms will have an important role to play in any post-2012 agreement and that credits generated through existing projects will remain a viable "currency."
- It is important that project approval processes, such as those of the CDM Executive Board and the JI Supervisory Committee, are designed to work in concert with the investment and approval processes within companies. This applies, in particular, to the need for timely analyses and decision-making of project proposals under clear and transparent rules. Improvements in the operation of the CDM Executive Board have been very apparent since CoP/MoP-1 and must continue to enable the CDM to effectively encourage investment.
- New developments, such as sector-based CDM and programmatic CDM, must be encouraged to enable the CDM to encourage projects throughout regions, nations and society.
- In non-Annex 1 countries, local affiliates of multi-national corporations that choose to undertake CDM projects could do so as "host country" CDM projects, rather than as companies resident in the Annex 1 country or countries of their parent corporation or corporations.