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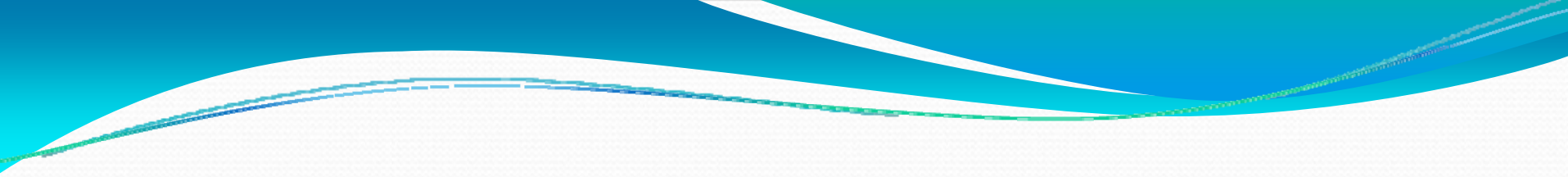
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Improvement of Regulatory Structures for CDM Botswana

Legal Recognition and Institutional Set up

- The NMS Act has stated that the one function of DNA which is broad is to ‘implement the CDM under Art 12 of the Kyoto Protocol’;
- This approach whilst it may be argued to be in order leaves room for other ‘inappropriate’ interpretations of its functions;
- What do the words ‘amongst others’ in the same section mean;
- It is implied that it means that there are some functions that the DNA may perform which are left out of the Act;

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- It may refer to registration and approval of projects as the illustration of the types of tasks and activities flowing from the one identified function or objective;
 - The Act should indicate the objective of the DNA, its organisational structure, its functions, key priorities and procedures then details left to regulations.

Existence of Related Laws

- The legislation should consider other existing laws that may affect the level of participation in CDM or transfer of CER's

Ownership and title of CERS

- If DNA holds property, then they are public assets and the disposal of them is done through the Public Procurement and Asset Disposal Act, therefore the tendering procedures should be done through this Act, where there is conflict with the Kyoto Protocol, the Protocol shall prevail over the Act;
- There is the issue of their classification, which raises questions such as – they may be held as limited real rights, if they are classified as securities;
- If they are classified as goods will the Control of Goods, Prices and other Charges Act be applicable?

Ownership and title continued..

- Do the principles governing possession of a thing (movables) apply – e.g. proceedings such as spoliation proceedings to recover possession without ownership title being raised;
- Should they be appurtenant to an existing right – e.g. should the CER's be mentioned in the same way mineral rights are mentioned (retention of State in transfer of land)?;
- In the event that Banks accept them as collateral security should they be registered at the Deeds Registry in form of limited real rights;

Ownership and title continued..

- There should be clarity in vesting CER's to a project developer and certainty regarding its permanent nature;
- Fixed Leases may be affected (upon expiration, the land with its improvements reverts to the State), but free hold land would remain unaffected.

Transfer of CER's

- Transfers of real rights and limited rights are registered at the Deeds Registry;
- The Act refers to registration of project proposals and not registration of CER's;
- The DNA and Deeds Registry should open and maintain a CER's deeds system which should assume integrity and be reliable;
- Would transfer duty be payable for CER's as is the case with immovable property under the Transfer Duty Act, it is recommended that in order to foster CER's, transfer duty should not be payable or be tax rebated;
- Taxation laws must be amended to accommodate CER's.

Environmental Management

- Existing Environmental Laws should legally recognise CDM to be linked to the environment, its regulation should be tied up to them;
- The EIA Act and the Town and Country Planning Act are of crucial importance;
- CDM projects should be included in the list of activities that undergo EIA in the regulations;
- The Zoning of areas for conservation of natural resources should be considered;
- Where the CDM is waste related the Waste Management and Sanitation Act is relevant, in the Act 'polluter pays' principle is key and damages may be paid that flow from the environmental damage of managing waste.

Foreign Direct Investment

- The BEDIA Act gives powers to the Authority in terms of advisory services of investment locally, regionally and overseas;
- The DNA should be best suited to advise on the CDM investment climate and undertake export promotion missions;
- The investment activity shall be guided by the sustainable development criteria which should be laid down in the Act as a key guideline



Taxation

- With time Botswana Unified revenue Service shall determine whether CER's are taxable;
- The question is whether or not income is earned
- CER revenues may attract tax or exemptions or deductions may be imposed
- To persuade BURS, DNA should demonstrate that CDM shall promote local private sector investment

THANK YOU

- Yvonne Kose Chilume
- 7th September 2011
- Gaborone Botswana
- Tlotlo Conference Centre