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Legal Issues for Implementing the Clean Development Mechanism in China

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The Clean Development Mechanism under the Kyoto Protocol was implemented in China several years ago. In spite of the significant benefits the CDM has brought to China, legal research on the CDM is relatively weak and there are many legal problems with the implementation of CDM projects in Chian. This article clarifies the legal problems of implementing the CDM in China by exploring and analyzing how to implement CDM projects, the legal relationships involved, CDM-related contracts and various key legal issues. The conclusions drawn from the above discussions could have implications for the future carbon reduction activities in China beyond 2012.

Keywords

CDM, UNFCCC, Climate Change, Legal Relationship, Carbon Reduction

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I. Introduction

Climate change is one of the highly topical issues of today's world. The international community has been working together to minimize climate change risks through the 1992 United Nations Framework Convention for Climate Change ("UNFCCC")[1] and its innovative 1997 Kyoto Protocol.[2] According to the Kyoto Protocol, industrialized countries are assigned legally binding reduction targets for Greenhouse Gas ("GHG") emissions by an average of 5.2 percent during the first commitment period 2008-2012 below 1990 levels, while developing countries whose paramount task at present stage is economic development and to get rid of poverty are free of emission obligation during this period.

The Clean Development Mechanism ("CDM") is a 'market-based' performing system defined in the Kyoto Protocol as part of the Kyoto response towards mitigation of global warming. With the dual aim of fostering sustainable development in developing countries and helping industrialized countries meet their mandated GHG emission reduction targets cost-effectively, the CDM is the only mechanism under the Kyoto Protocol open to industrialized and developing countries. It allows industrialized countries to buy the Certified Emission Reduction ("CER") credits[3] from emission reduction projects undertaken in developing countries by providing financial assistance or clean technology transfer to offset a part of their emission reduction targets under the Protocol.

Since it was initiated, thousands of CDM projects have been carried out.[4] China, especially with its large carbon emission potentials and favorable investment environment, has dominated the global carbon market through participating in CDM projects and has become its largest beneficiary. Despite the significant benefits the CDM has brought to China, there are legal problems pertaining to implementing CDM projects in China due to the fact that the CDM is an extremely complex, technical and legal mechanism which is implemented under both international and domestic legal frameworks. In addition, legal research on the CDM is relatively minimal as it is a new mechanism with the first project registered in 2004. Thus, there is a dearth of literature that seriously or thoroughly explores the legal issues surrounding the CDM in China.

Against this background, it is necessary to explore the various legal issues

1 U.N. Doc. FCCC/INFORMAL/84 GE.05-62220 (E) 200705 (June 12, 1992).

2 UNFCCC, KYOTO PROTOCOL TO THE UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE ("Kyoto Protocol") (Dec. 11, 1997), *available at* http://unfccc.int/resource/docs/convkp/kpeng.pdf (last visited on Mar. 20, 2011).

3 CERs, each equal to one tonne of CO_2 and generated from a CDM project activity, can be transferred under the rules of Kyoto Protocol.

4 *See* the official website of CDM, *available at* http://cdm.unfccc.int (last visited on Mar. 20, 2011).