

# Legal Aspects of the Kyoto Protocol

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Association of European Businesses, 29 September 2009

# Legal aspects of the Kyoto Protocol

## Overview

- Legal mechanisms proposed for implementing Energy Efficiency Projects
- JI projects
  - Eligibility
  - Procedure of approval
- Contractual relationships between a project host and an investor
  - Contract structuring issues
  - Possible contractual scheme
- What's next?
  - Possible modifications to the Russian legislation
  - Post-Kyoto Protocol (Copenhagen, December 2009)



# Legal mechanisms proposed by the Kyoto protocol (1/2)

Emissions trading vs. CDM vs. JI

- GIS - Green Investment Scheme (art. 17 of the KP)
  - Allows inter-governmental emission trading and Assigned Allocation Units (**AAU**) trading
  - RF Government Decree No. 884-r of 27 June 2009:
    - Sberbank: participation in the implementation of pilot projects for GHG emission trading
    - MED/Ministry of Foreign Affairs/Sberbank: negotiations on conclusion of international treaties (MOU) relating to participation in emission trading for submission to the RF Government
- CDM - Clean Development Mechanism (art. 12 of the KP)
  - Project hosted in non Annex I countries
  - Project aim: assist non-Annex I countries to achieve sustainable development and to contribute to the objectives of the Convention
  - Generate Certified Emissions Reductions (**CERs**)
  - Not regulated by the Russian legislation in force

# Legal mechanisms proposed by the Kyoto protocol (2/2)

## Emissions trading vs. CDM vs. JI

- JI - Joint Implementation (art. 6 of the KP and Guidelines to article 6)
  - Project hosted in another Annex I country
  - Project aim: assist Annex I countries to achieve their targets under the KP through investment and development in other Annex I countries
  - Generate Emission Reductions Units (**ERUs**) by conversion from **AAUs**
  - Advantages
    - For investors: achieve emissions commitments at agreed costs and increase ties with host countries & local partners
    - For host countries: delivers investment, know-how and efficient technologies
  - RF Government Decree No. 332 dated 28 May 2007
  - RF Government Decree No. 884-r dated 27 June 2009
    - Simplification of approval procedure
    - Competence of Sberbank re receipt/transfer/acquisition of ERUs

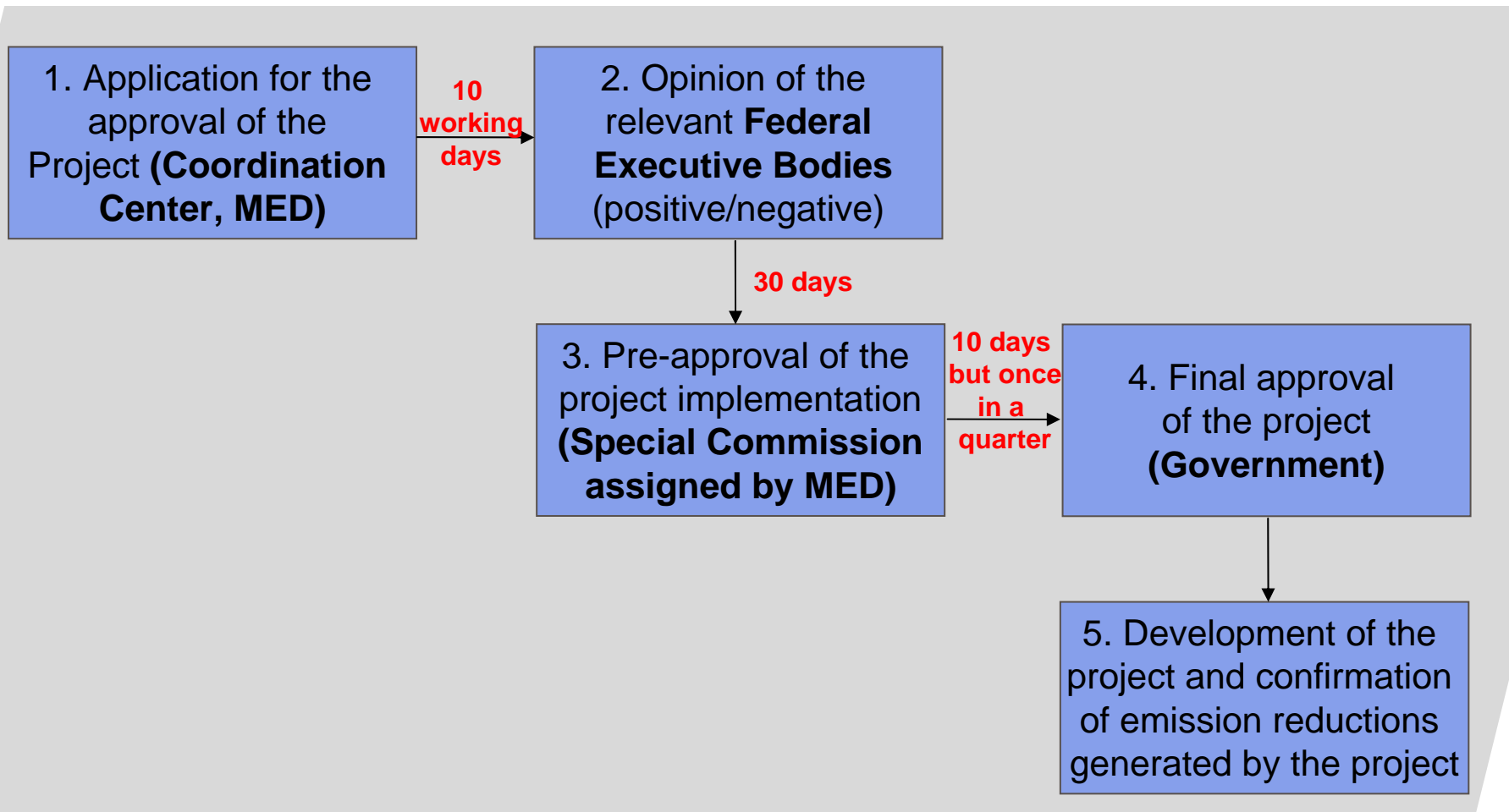
# JI projects (1/2)

## Eligibility criteria

- Project investor
  - Russian or foreign legal entity, individual entrepreneur or individual
- Territoriality
  - GHG emissions reductions to be achieved within the boundaries of host country
- Timeframe
  - Projects starting from year 2000 but ERUs creditable from 2008 until 2012
- Limitations
  - Summary amount of the specific project emission reductions and those to be generated in the relevant sector
  - Anticipated efficiency indexes
  - Upstream and downstream reduction effects
- Compulsory approval of the project
  - RF Government
  - Other Party to the Protocol within 12 months after the RF Government approval
  - Authorisation of the participants by all Parties involved

## Jl projects (2/2)

Main stages of the approval procedure



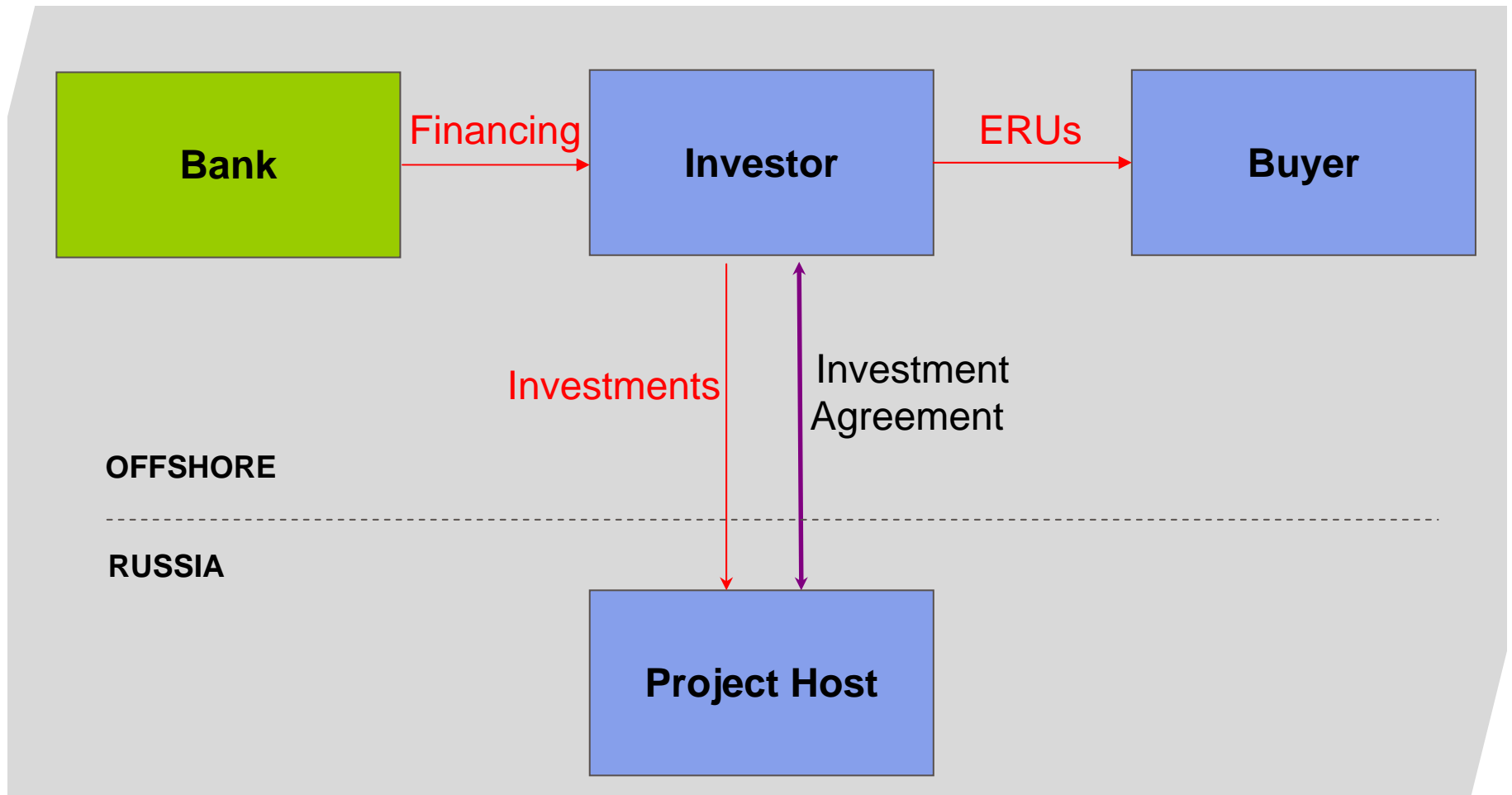
# Contractual relationships between a project host and an investor (1/2)

## Contract structuring issues

- Uncertain contractual framework
  - JI projects are investment projects implemented in accordance with applicable legislation, i.e. both domestic laws and international treaties (Decree No. 332)
  - ERPA vs. Investment agreement?
  - Unclear nature of ERUs under Russian laws
- Uncertain taxation regime of ERUs
  - The taxation regime may vary subject to
    - The legal qualification of ERUs
    - The terms and conditions of the investment agreement
    - The residency of the Investor and Buyer of ERUs

# Contractual relationships between a project host and an investor (2/2)

Possible contractual scheme





# What's next? Russia and post-2012 climate policy changes (1/2)

Possible modifications to the Russian legislation

- General
  - Adoption of relevant legislative rules on the CDM and GIS projects
  - Introduction of appropriate legal regimes
  - Clarification of the taxation regime / creation of tax incentives
- JI projects
  - Formulation of the JI projects eligibility criteria (list of energy efficiency projects and sectors appropriate for JI)
  - Simplification of the JI projects approval process (cf. Decree No. 332)
  - Possibility to allow internal turnover of ERUs

# What's next? Russia and post-2012 climate policy changes (2/2)

Post-Kyoto Protocol (Copenhagen, December 2009)

## – International

- New agreement with the participation of USA, China, Japan, etc.
  - 50-85% decrease in greenhouse gas emissions by 2050 compared to 1990 levels?
  - Establishment of transparent and fair criteria for differentiation of commitments across countries, and criteria for graduation to higher levels of commitment

## – Russia

- Seeks recognition as International actor - interested in participation of other large countries (especially USA)
- D. Medvedev: Russia ready by 2020 for emission reductions of 10-15% in comparison with today (i.e. 40-45% compared to 1990)
  - Combination of Post-Kyoto regime with Energy Efficiency policy
  - Russia's specifics to be taken into account

**Thanks for your attention!**

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## Jl projects (3/3)

### Key issues and risks

- General: unclear legislation in this sphere (tax legislation in particular)
- For the investor
  - Confirmation of emission reductions generated by the project
  - Documentation: must confirm sufficient funds in the amount equal or above the costs connected with the project implementation → proper indication of all costs is essential
  - Project monitoring: must provide a final report with a final estimation of the project results for review by the relevant Federal Executive Body
- For the project host
  - Unclear position of the law re. figure of the project host (“possessor of the site at which the project activity is to be implemented”)
  - Documentation: must provide a document confirming his consent to the realisation of the Jl project (format of the consent?)
  - Project monitoring: must provide an annual report on work in progress for review by the relevant Federal Executive Body