

April 2011  
2011 四月China  
中国

# 清洁发展机制 (CDM) 在主要葡萄牙语系国家的 实行情况

## 一、政策、法律框架和配额交易

葡萄牙消耗的一次能源（主要是矿物燃料）有80%是进口的。近三年来，通过增加再生能源的生产，葡萄牙已经开始出口能源，并减少用于能源生产的矿物燃料的进口。

根据1997年京都协定书，在2008至2012年首个承诺期内，葡萄牙排放的温室气体总体增长量不得超过1990年总体温室气体排放量的27%。然而该限制规定在2005年就被突破，葡萄牙需要努力减少排放量以实现承诺。

依据京都议定书（经1997年12月11日联合国气候变化框架公约第三次缔约方大会通过）第6条和第12条，清洁发展机制（CDM）和共同履行（Joint Implementation, “JI”）可以在葡萄牙进行转让交易，采用的方式与其他碳排放交易机制——例如政府分配排放数额（AAUs）——的方式相同，主要依据第72/2006号2006年3月24日法令予以规范。

该类转让交易也需要在葡萄牙排放许可证注册处（RPLE）进行注册。

葡萄牙的清洁发展机制（CDM）和共同履行（JI）主要由葡萄牙碳基金（FPC）进行投资。为符合PNAC规划的排放限制，葡萄牙碳基金（由国家设立）在京都议定书的框架下进行了很多投资。

葡萄牙碳基金主要通过获取现有机制的排放配额和提升国内项目的减排数额来进一步履行葡萄牙在京都议定书中的义务。

葡萄牙的碳排放交易合同，一般包括一份典型的减少排放交易合同（合同一方拥有剩余排放配额，另一方购买对方的剩余排放配额）。该类交易还可在期货市场以期货交易合同形式进行。

PNALE II规划对承诺期内的排放量进行了明确的规定。法律作为调控手段，对减少温室气体的排放，落实、发展气候政策十分重要。另外，税收政策也鼓励用生物燃料动力车辆取代传统燃油车辆，减少温室气体的排放。

对立法者而言，其他因素例如市场各参与方、受影响方和市场供应链受到的压力，尽管日益重要的环境利益，温室气体排放限制，法律和政策还不是决定性因素，但也逐渐进入考虑范围。

任何持有温室气体排放许可证（TEGEE）的实体需根据第233/2004号2004年12月14日法令，在每年的3月31日，向葡萄牙环境局（APA）提交排放报告（REGEE），汇报上年度的排放情况。该REGEE报告由具备独立资质的审计员监督。

## 二、清洁发展机制CDM在安哥拉、巴西和莫桑比克的发展

安哥拉、巴西和莫桑比克都是葡语系国家，其清洁发展机制（CDM）的发展都很有潜力。葡萄牙与这三个国家在历史、语言和文化方面联系紧密。

如前所述，清洁发展机制的大致内容是：发达国家在发展中国家开发减少温室气体排放的工程，从而获得额外的核准减排量（CER-Certified Emission Reductions）额度，每单位的额度为一吨二氧化碳或其等效温室气体。核准减排量（CER）可以用来交易，也可由发达国家用来完成其京都议定书下的减排义务。

## BRIEF SUMMARY ON CDM PROJECT IMPLEMENTATION IN SOME PORTUGUESE SPEAKING COUNTRIES 清洁发展机制 (CDM) 在主要葡萄牙语系国家的实行情况

通常，减少温室气体排放买卖协议 (ERPA) 是在清洁发展机制下，交易通过履行清洁发展机制所产生的核准减排量 (CER)。

以下我们将分别介绍上述三个国家在清洁发展机制方面的情况：

### -安哥拉

安哥拉于2000年3月17日批准了框架公约，2007年5月8日批准了京都议定书（同年8起生效）。

但一直到近期，安哥拉一直没有指定清洁发展机制中所要求的国家主管机关 (Designated National Authority "DNA")，所以对该国的研究都还仅仅停留在理论阶段。直到2010年1月13日，通过第2/2010号法令，安哥拉设立了Autoridade Nacional Designada 机构以履行国家主管机关 (DNA) 的职责，这一问题才得以解决。

该机构的职责之一就是递交的清洁发展机制项目进行审查和批准。如此一来，政府才是界定项目的资质和可持续性的合格机构。

安哥拉在能源领域（水力发电厂）、石油天然气领域和林业等领域的清洁发展机制CDM项目都非常有发展潜力。

### -巴西

巴西于1994年2月28日批准了框架公约，2003年8月23日批准了京都议定书（于2005年2月16日生效）。

巴西是世界第5大国家（850万平方公里），海岸线长7,400公里，有丰富的矿产资源，拥有全球15%的淡水资源和2/3的亚马逊热带雨林，被称为“世界之肺”。

依据联合国气候变化框架公约的规定，巴西于2010年10月26日公布了其第二次国家信息通报文件 (National Communication)，其中包含本通讯涉及的信息。

巴西在清洁发展机制 (CDM) 项目方面很有经验，目前为止，已有233个清洁发展机制 (CDM) 项目申请注册。

### -莫桑比克

莫桑比克于1995年8月25日批准了框架公约，2005年1月18日批准了京都议定书（于2005年4月18日生效）。

莫桑比克在2006年6月2日首次提交国家信息通报 (National Communication)。

2006年6月15日的第12/2006号总理法令确立了国家主管当局 (DNA) 的结构和清洁发展机制 (CDM) 项目的审批标准。更详细的规定参见2007年12月25日第157/2007号总理法令。

另外，莫桑比克于2008年7月1日递交了莫桑比克国家适应行动计划 (National Adaption Programme of Action)。目前，莫桑比克有一个刚被莫桑比克国家管理当局 (DNA) 批准，正处于联合国批准阶段的清洁发展项目。该项目位于莫桑比克首都马普托 (Maputo) 外郊，主要改造将炼砖厂的回转窑，由煤炭窑改成天然气窑。项目的参与方包括CIMPOR公司 (葡萄牙从事水泥生产的一家集团公司)、砖厂和马托拉天然气公司 (Matola Gas Company)。

以上信息反映出巴西在清洁发展机制 (CDM) 项目引进、发展方面处于领先地位，无论是经验还是项目的数量上，都远远领先其他两国。当然我们也看到，安哥拉和莫桑比克的相关法律体制已经建立起来，所以两国的清洁发展机制 (CDM) 项目也非常具有投资潜力。

---

本通讯旨在向客户及同事介绍一些普遍和抽象的概述。它不应该被用来作为作出决策和专业法律意见的基础。本通讯的内容未经作者明确统一不得复制或全部内容。如果需要有关此主题的详细信息，请联系：Manuel Silva Gomes (manuel.silvagomes@plmj.pt) or Ana Oliveira Rocha (ana.oliveirarocha@plmj.pt)。

---

12/15F, Guohua Plaza, No.3 Dongzhimennan Avenue, Dongcheng District, Beijing 100007, PRC (headquarters)  
T. (+86) 10 5813 7799 . F. (+86) 10 5813 7788 (12/F) . www.dachenglaw.com

---

# BRIEF SUMMARY ON CDM PROJECT IMPLEMENTATION IN SOME PORTUGUESE SPEAKING COUNTRIES

## I – POLICIES, LEGAL FRAMEWORK AND CREDIT TRADING

Portugal imports around 80% of the primary energy it consumes (mostly fossil fuels). Through the increase of renewable energy generation the country has managed, during the last three years, to start exporting power and to decrease its imports of fossil fuel for energy generation.

Under the Kyoto Protocol 1997, Portugal was permitted an overall increase of greenhouse gas emissions of 27% compared to 1990 levels, during the first commitment period of 2008 to 2012. This limit was exceeded by the end of 2005, which requires a concerted effort to reduce its carbon emissions.

As per articles 6 and 12 the Kyoto Protocol (Protocol to the United Nations Framework Convention on Climate Change, adopted in the third conference of the Convention Parties, in Kyoto, on the 11 December 1997- respectively, the “Framework Convention” and the “Kyoto Protocol”), Clean Development Mechanisms (“CDM”) and Joint Implementation (“JI”) credits are traded in Portugal, using the same methods and schemes for other simple emissions trading titles, such as Assigned Account Units. Decree-Law 72/2006 of 24 March 2006, transposing the Amended Emissions Trading Directive, sets out the transfer of emissions credits obtained through CDMs and JI projects, in compliance with the Kyoto Protocol.

These transactions are subject to the same registration rules as those for simple emissions trading titles, and are subject to notification to the Registration of Portuguese Licences Emissions (RPLE).

The main investments in Portugal in CDM and JI projects are made by the Portuguese Carbon Fund (FPC). This state fund, driven by the need for compliance with the emissions limits in the PNAC, is currently investing in a variety of projects within the Kyoto Protocol flexible mechanisms.

This fund aims to contribute on a supplementary level to complying with the Kyoto Protocol in Portugal, through the acquisition of credit units under the defined mechanisms and strives for the promotion of additional emissions reduction through domestic projects.

As regards carbon trading agreements in Portugal, the usual legal agreement consists of a normal emissions reduction purchase agreement, between a seller with surplus credits and a buyer requiring credits to compensate its greenhouse gas surplus. The transaction may also be in the form of a futures contract, in the futures exchange market.

In order to reduce the greenhouse gas emissions and develop climate change strategies, legislation is a very important driver, since the PNALE II imposes maximum emission limits on undertakings. Further, certain tax incentives have been previously created to incentivise emissions’ reduction, by decommissioning old vehicles and using biofuels, with biofuel titles attributed as per the respective Petroleum Tone Equivalent pursuant to the characteristics of the biofuel.

Other factors such as pressure on market players, affected parties and supply chains, despite growing interest in the environment, greenhouse gas emission limits, laws and policies are not yet decisive factors, but are beginning to be defined and taken into account in Portuguese legislation.

All entities granted a title for emission of greenhouse gases (TEGEE) are to submit an emissions report (REGEE) to the APA, until 31 March of each year, with reference to the previous calendar year, in compliance with Decree Law 233/2004 of 14 December 2004, as amended. This report is subject to supervision by independent and certified auditors.

## II – RECENT NOTES CONCERNING CDM PROJECTS IN ANGOLA, BRAZIL AND MOZAMBIQUE

**Angola, Brazil and Mozambique, are Portuguese Speaking Countries, with a significant growth potential in terms of CDM projects,** with economies developing and maturing at full steam. Portugal has a historical, language, and somewhat cultural - and thus natural - bond with these countries.

As referred before, CDM projects allow the implementation and execution of emission-reduction projects in developing countries, enabling the promoter of the project to earn certified emission reduction (CER – Certified Emission Reduction) credits, each credit being earned and measured for one ton equivalent of CO<sub>2</sub>. These CERs can be traded and sold, and used by industrialised countries to meet a part of their emission reduction targets under the Kyoto Protocol.

Usually, ERPA (Emission Reduction Purchase Agreements) are used within the CDM projects. ERPAs are the carbon off-take contracts usually underlying the sale and purchase of CER's obtained as a result of implementation of CDM projects.

We shall turn herein after to some issues related to each of the three countries referred to above.

### - ANGOLA

Angola ratified the Framework Convention on 17 March 2000. On 8 May 2007 it ratified the Kyoto Protocol, which came into force on 6 August 2007.

Up until recently, the absence of a Designated National Authority (“DNA”) meant that any research carried out were mainly theoretical.

This important issue was addressed through the recent creation of the *Autoridade Nacional Designada* fulfilling the role and competences of the required DNA, created by Decree-law no. 2/2010, of 13 January 2010.

Among the competences of this Authority powers is the power to approve projects presented to it for perusal and approval. In turn, the Government is the competent entity for the definition of the eligibility and sustainability criteria, which will serve as basis for the Angolan DNA's work.

The potential for CDM projects in Angola has been pointed out, for example in the energy sector (hydro power plants), in the oil and gas sector, in the forestry sector and in the Programme of Activities (PoA)<sup>1</sup>.

### - BRAZIL

Brazil ratified the Framework Convention on 28 February 1994 and deposited its ratification of the Kyoto Protocol instrument on 23 August 2002, the latter coming into force on 16 February 2005.

Brazil is the fifth largest country in the world (8.5 million km<sup>2</sup>) and has a coastline of about 7.4 thousand km, extensive mineral reserves, 15% of all the surface freshwater on the planet with two thirds of the Amazon rainforest, known as the “World's Lungs”.

Pursuant to the commitments undertaken in the Convention on Climate Change, Brazil recently presented its Second National Communication (a document published on 26 October 2010)<sup>2</sup>, containing relevant data on this subject.

It is to be noted that the country has a significant level of experience regarding CDM projects. Up to the present date, 223 CDM projects have been submitted for registration<sup>3</sup>.

---

<sup>1</sup> The Programme of activities consists in the agglomeration project documents, defining the major guidelines, targets and sites where measures may or are to be implemented, even if not all of those sites are known and specifically identified in advance.

<sup>2</sup> Available at <http://www.mct.gov.br/index.php/content/view/326984.html>.

<sup>3</sup> Query dated 07.03.2011, see <http://cdm.unfccc.int/Projects/projsearch.html>.



- MOZAMBIQUE

Mozambique ratified the framework Convention on 25 August 1995 and ratified the Kyoto Protocol on 18 January 2005 which came into force on 18 April 2005.

Mozambique submitted its initial National Communication under the Framework Convention on Climate Change on 2 June 2006<sup>4</sup>.

Prime Ministerial Decree no. 12/2006, of 15 June 2006, provides the legal grounds for the structure of the DNA and the criteria to be used in the approval of CDM project activities. Ministerial Decree no. 154/2007, of 25 December 2007, sets forth the detailed regulations for CDMs in Mozambique.

Finally, the submission of Mozambique's National Adaptation Programme of Action (NAPA), on 1 July 2008, should be mentioned<sup>5</sup>.

Mozambique currently has one CDM project, at validation stage, which was recently approved by Mozambique's DNA. This project involves switching from coal to natural gas at the rotary kiln of a clinker manufacturing plant outside Maputo, the capital of Mozambique. The participants in the project are CIMPOR (a Portuguese Group with activities in the Cement industry), a plant owner and the Matola Gas Company (MGC).

Brazil is thus the winner of this race to CDM implementation and credit earning, with a large number of implemented CDM projects, and experience in this area. Angola and Mozambique seem to now have the necessary legal infrastructure for implementation of CDM projects, with a significant potential for new investment opportunities and credit earnings to be exploited.

---

<sup>4</sup> Available at <http://unfccc.int/resource/docs/natc/moznc1.pdf>.

<sup>5</sup> Available in <http://unfccc.int/resource/docs/napa/moz01.pdf>.

---

This Newsletter is intended for general distribution to clients and colleagues and the information contained herein is provided as a general and abstract overview. It should not be used as a basis on which to make decisions and professional legal advice should be sought for specific cases. The contents of this Newsletter may not be reproduced, in whole or in part, without the express consent of the author. If you should require further information on this topic, please contact **Manuel Silva Gomes (manuel.silvagomes@plmj.pt)** or **Ana Oliveira Rocha (ana.oliveirarocha@plmj.pt)**.