

Legal Alert

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Swiss Emissions Trading Registry linked to the ITL

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This Legal Alert provides a short overview of the procedures for the opening of an account in the Swiss national emissions trading registry (the “Registry”).

Introduction

The Registry was established in November 2007, as Switzerland’s platform for the implementation of its national emissions trading system. The Registry is used for the allocation of emission allowances, the surrender and transfer of emission credits and the assessment of compliance within the national emission trading system.

Like the Swiss allowances, the Registry is managed by the Federal Office for the Environment (the “FOEN”), being the competent body and lead agency for the implementation of (i) the requirements under the Kyoto Protocol, and (ii) the relevant national legislation in Switzerland.

An interesting and attractive aspect of this Registry lies in the fact that it is only the fourth in line and the first national registry in Europe to be already linked to the international transaction log (the “ITL”) that has been established by the United Nations.¹ The link to the ITL is necessary for the transfer of carbon credits from other national registries in the context of the Kyoto project mechanisms. As of 10 March 2008,

Switzerland is deemed eligible to participate in the Kyoto mechanisms.

How to open an account

An account can be opened (i) by any Swiss company accepting a reduction target under the Federal Law on the reduction of CO₂ emissions (the “CO₂ Act”), i.e. undertaking a legally binding commitment to energy-related CO₂ emissions, and (ii) by any other Swiss or foreign natural or legal person.

There are several options to open an account in the Registry:

- a. Operator Holding Account: for Swiss companies with a commitment to reduce emissions under the CO₂ Act and its implementing ordinances;
- b. Person Holding Account: for Swiss or foreign natural persons; and
- c. Person Holding Account: for Swiss (not falling under (a)) or foreign legal persons.

The Registry provides for the following types² of account:

- i. Holding Account: the valid emission credits are entered in the holding account;
- ii. Surrendering Account: the emission credits duly expended to meet the commitment are

¹ The other three linked registries are Japan, New Zealand and the CDM Registry.

² For more information see the User Guide - National Emissions Trading Registry that can be found at www.bafu.admin.ch/emissionshandel.

- transferred from the holding account to the surrendering account;
- iii. Cancellation Account: if emission credits are to be voided, they are transferred from the holding to the cancellation account where they are blocked and cannot be returned to the market; and
 - iv. Retirement Account: to complete the retirement process, the state transfers the emission credits deposited in the surrendering account to the retirement account (this transaction does not concern users).

Applying for an account

The general conditions of use and various application forms can be found on the website of the Registry under the chapter "Login, opening an account, forms for the National Emissions Trading Registry". Prior to the opening of an account in the Registry, two or three authorised representatives need to be appointed.

A natural or legal person wishing to obtain, acquire or trade emission rights, must file an application for an account (*Antrag auf Kontoeröffnung*) with the FOEN. The applicant can download the relevant application form and complete it electronically. One copy has to be sent by e-mail to national-registry@bafu.admin.ch. A second copy of the completed form must (i) be printed out, signed by the account holder and the authorised representatives and (ii) be sent by registered mail, together with the necessary documents (proof of identity for the account holder and the authorised representatives or an extract from the relevant commercial register in case of legal persons) to the address indicated on the form. A form is to be completed for each account or installation. Upon receipt of the completed form and the required documents, the Registry will issue a unique personal user name for each authorised person. The user name is sent directly to the authorised person by e-mail, using the address specified on the form. The password is sent to the authorised person by registered mail. However, the FOEN opens the relevant account(s) only once the fees have been paid (see below).

The opening of the account(s) qualifies as authorisation granted by the FOEN to the relevant person(s) to participate in the national emission trading scheme and, thus, to transfer carbon credits

(within the same registry or to another national registry).

The account holder is obliged to notify the Registry as soon as possible of any changes in the details of the authorised persons.

Costs

The costs attached to the opening of an account are estimated at CHF 280, with an annual account management fee of CHF 140.

Management of the Registry

The management of the Registry is the responsibility of the FOEN. Details about the Registry and further guidance can be obtained from the website www.bafu.admin.ch/emissions-trading. The FOEN helpdesk can be contacted by telephone (+41 31 322 05 66) or e-mail (national-registry@bafu.admin.ch).

How to obtain a Letter of Approval

In principle, all CDM and JI projects that are in accordance with the Kyoto Protocol may be considered.

A Letter of Approval from the Swiss Designated Focal Point ("DFP") could initially only be issued to Swiss-based entities and persons, which posed a restriction for market participants domiciled outside Switzerland. However, this policy has now been changed, and foreign (i.e. non-Swiss) entities and project participants may now apply for an authorization from the DFA for already existing projects.

Application procedure

A party can file an application for a Letter of Approval in respect of a CDM project by submitting the latest version of the Project Design Document, the draft final validation report and the letter of approval issued by the host country, if available.

For JI projects, depending on whether a party meets the eligibility criteria listed in the Joint Implementation Guidelines, a party may follow the so-called "track 1" or "track 2" procedure. The track 1 procedure is simplified and does not include validation and verification under the UNFCCC rules. The track 2 procedure is similar to the procedure that applies to CDM projects. The application under track 1 rules requires that the latest version of the Project Design Document and a Letter of Endorsement issued by the host country are provided. For the track 2 procedure,

also a draft of the final determination report of the relevant accredited independent entity is required.

The application documents will be checked by the Swiss DFP against the national rules and the requirements of the Kyoto Protocol. In case all criteria are satisfied, the Letter of Approval will usually be issued within 15 working days.

Issuance of Letter of Approval

A climate unit called Swissflex has been established within the FOEN. This unit can be contacted by e-mail (swissflex@bafu.admin.ch) or by phone (+41 31 324 71 84).

Costs

No fees are payable for the issuance of a Letter of Approval.

Contact information

If you have any questions on the subject of this Legal Alert, please get in touch with one of the following persons.

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