Annex 2

CONCEPT NOTE ON THE MANAGEMENT OF THE REGULATORY FRAMEWORK

(Version 01.0)

I. Background

1. The development and revision of regulatory documents for the clean development mechanism (CDM) has taken place primarily on an as-needed basis through the history of the mechanism. This has been largely due to the "learning-by-doing" nature of this relatively new mechanism and the need to quickly operationalize, adapt and clarify the regulatory framework of the CDM. This has often led to the development and frequent revisions of individual documents, fragmentation into a large number of regulatory documents with very specific scopes, and sometimes inconsistencies among the documents.

2. The consolidation during 2011 of a vast range of separate regulatory documents to create the "Clean development mechanism project standard" (PS), "Clean development mechanism validation and verification standard" (VVS) and the "Clean development mechanism project cycle procedure" (PCP) marked a major step away from such former practices and allowed for a review of the consistency and clarity of their provisions. At the same time, these documents present new challenges by demanding a more structured, continuous management of their revisions.

3. For example, changing these consolidated documents every time a provision is found to be in need of amendment would be likely to result in these documents being in a constant state of flux. At the same time, the integrated nature of these documents increases the importance of examining the impacts of a change in one document on all of the other documents.

4. The Board, in adopting its management plan for 2012, decided to introduce a more structured management of the regulatory framework of the CDM. This concept note proposes a general approach to such management, building upon the approach already started with the consolidation of the PS, VVS and PCP last year, and the steps that should be taken to introduce it.

II. Objectives

5. The objectives sought in establishing a more structured, continuous management of the regulatory framework of the CDM are primarily to:

(a) Improve the stability and coherence of the regulatory framework, thereby creating a clearer and more predictable foundation on which stakeholders, the Board and its support structure may conduct their work;

(b) Enabling a longer term view to be taken by all actors in the CDM of the evolution required for the regulatory framework over time.

6. The scope of the regulatory framework managed under this approach should in principle cover most or all regulatory documents of the CDM. There may however be different implementations of the approach, depending on the specific needs of different documents, and this will need to be examined. It may also be possible to expand this approach to cover different document types in a staged fashion.

III. Proposal

A. Overview

7. The proposal builds on the principle of having fewer but more consolidated documents setting out the regulatory framework of the CDM. As has been seen in the consolidation of the PS, VVS and PCP, the greater consistency and clarity facilitated by this approach leads to greater coherence and synergy across the documentation. This work is now continuing with the development of a consolidated procedure for the development, revision and clarification of methodologies and methodological tools. The "holistic" approach to the revision of the standard and procedure for accreditation and the procedure for the performance monitoring of designated operational entities (DOEs) also has similar aims.

8. The approach to managing the regulatory framework proposed here has several characteristics:

(a) New versions of regulatory documents are released and become effective according to an announced **regular implementation cycle**. Amendments may still be considered by the Board on an individual basis but, unless they meet specified criteria for urgency, they are consolidated into periodic releases. This separates the "effective date" of new provisions from their date of adoption by the Board, which creates required space for stakeholders and the secretariat to prepare adequately to work with the new provisions;

(b) Specific attention is given to **needs identification and assessment**. Ideas may arise from numerous sources and are collected, assessed for impact and feasibility, elaborated as necessary, and prioritized. New elements of provisions can be grouped and staged in ways that fit sensibly together and match objectives set by the Board.

9. This approach to managing the regulatory framework of the CDM would reflect the growing maturity of the CDM system and its body of regulation. In doing so, it would answer stakeholder calls for less frequent changes to the CDM rules, supported by ample advanced notice, and set expectations for the implementation of IT systems, internal procedures and training by the secretariat.

B. Regular implementation cycle

10. It is proposed that the revision of all consolidated documents should initially occur on an **annual cycle**. As experience is gained, the Board should consider extending the interval. This period is considered to balance the needs of stakeholders, as well as of the Board and its support structure, to work with a stable regulatory framework against the need to be able to make changes periodically. It is worthwhile noting that revision intervals for many international and domestic legislative processes typically span several years or more.

11. As a general principle, it is proposed that new and revised provisions should be agreed at least **4 months** prior to their effective date. This should be seen as a "cut-off date" for agreeing new and revised provisions if they are to become effective in the next round. More complex changes may require longer notice and, in limited cases, simpler changes could require less time. However, the effective dates of the guidance would remain fixed and the different notice periods would be managed through scheduling the Board's consideration and adoption of regulatory provisions earlier or later.

12. There may be circumstances in which it is necessary to implement a new or revised provision immediately or very soon after it is agreed by the Board. Specific criteria should be defined for when such exceptions are allowed, such as significant threats to the environmental integrity of the mechanism.

13. In the case of revisions, the Board could consider proposed amendments via documents indicating only the paragraphs being changed and the nature of the changes. Such **"partial documents"** could be adopted as annexes to meeting reports as the formal record of the agreement. Changes contained in partial documents would be consolidated by the secretariat into a **"full document"** for purposes of periodic publication. The Board may also deem that these full documents would replace the partial documents agreed by the Board earlier, in order to keep up-to-date the formal version of the document.

14. For consistency, other regulatory provisions and documents, which have not been through a consolidation process, should generally be treated the same way as described above. However, individual baseline and monitoring methodologies should be excluded from such a process, given that there exist dedicated procedures for the approval and revision of such documents.

C. Needs identification and assessment

15. The regular implementation cycle would need to be supported by a process for identifying and assessing the future needs of the regulatory framework. The sources of ideas include:

(a) Analysis and reviews of the existing regulations by the secretariat and the Board. These top-down assessments would regularly examine gaps in the regulatory framework vis-à-vis the strategic objectives set by the Board. Stakeholders would be engaged in such assessment through public calls for input and other stakeholder activities;

(b) Ad hoc communications and mandates by actors within the CDM, including stakeholders, the Board, its panels and working groups, and the CMP.

16. The assessment of needs should take account of the expected impact of the changes on the CDM system and the full range of its regulatory documents. It would involve the further elaboration of the ideas and an initial assessment of the priority with which it should be treated. To ensure efficiency and a holistic approach, these ideas should generally be saved up and assessed together at regular intervals. The ideas could be publicly available to ensure full transparency of the process.

17. The results of the assessment would be populated into a preliminary schedule showing how the different areas of change can be allocated across different releases of the regulatory documents. These can be grouped and staged to put work on related issues together in specific releases and, if necessary, ensure that changes are sequenced to reflect appropriate priorities and objectives set by the Board. Urgent cases could also be given accelerated treatment. The schedule could be made publicly available.

18. The schedule itself would need to be confirmed or amended in the process to determine the business and management plans, as this is the process for giving ultimate approval on what work should be conducted and resourced. The timing of the assessment and scheduling would take this into account.

D. Transitional measures

19. The management plan for 2012 includes many items of work for the remaining Board meetings in 2012 which are envisaged to impact on the PS, VVS and PCP. It is therefore important, already now, to have a view on how revisions in these documents are to be treated as of the sixty-ninth meeting of the Board. For this reason, the following transitional measures are proposed:

(a) The draft revisions relating to the consolidated documents for the Board's sixty-ninth and seventieth meetings should be prepared by the secretariat as "partial documents", indicating only the paragraphs being changed and the nature of the changes;

(b) New or revised regulatory documents agreed by the Board between now and 30 November 2012 should have an effective date of 1 April 2013;

(c) The secretariat should consolidate the partial documents by 31 December 2012 and the resulting full document should be deemed to replace the earlier partial versions.

IV. Relationship to other documents and initiatives

20. This concept elaborates on section VI of the "CDM Executive Board decision and documentation framework" (decision hierarchy) on the control and limitation of documents issued by the Board.

21. The decision hierarchy was adopted in its version 4.0 at the sixty-seventh meeting of the Board. In adopting this document, the Board requested the secretariat to make further changes and consider the appropriate classification of the document. In the assessment of the secretariat, section VI of this document should be classified as a procedure and the remaining sections classified as a standard.

22. The approach outlined here would complement other initiatives already underway, such as:

(a) Staged consideration by the Board of regulatory documents, on an as-needed basis, by means of concept notes followed by either one or two drafts before the adoption of the document is expected;

(b) Consistent consultation by the secretariat teams developing regulatory documents with the relevant panels or working groups, as currently set out in their work plans;

(c) Structured but flexible options to conduct consultations with stakeholders, for example via comments on annotated agendas of Board meetings, especially for concept notes, and public calls on the first or second drafts of documents. Stakeholder events such as roundtables should be encouraged so as to complement such formal consultation routes. Options may be mixed and matched to suit the individual document circumstances;

(d) Greater recognition within the business and management plans of the continuity that is needed between activities of different years.

V. Expectations of the Board

23. The Board is requested to:

(a) Provide feedback on the proposal contained in section III above;

(b) Request the secretariat to prepare a draft procedure to incorporate and replace section VI of the decision hierarchy, for consideration by the Board at its sixty-ninth meeting, with a view to adopting a final version at its seventieth meeting;[1]

(c) Agree to the transitional measures contained in section III.D above.

- - - - -

[1] The remaining sections of the decision hierarchy are currently planned for consideration at the Board's seventieth meeting, taking into account the comments on their content and classification given at the sixty-seventh meeting.

History of the document

Version	Date	Nature of revision(s)
01.0	2 July 2012	Initial publication as an annex to the annotated agenda of EB68.
Decision Class: Operational **Document Type**: Information Note **Business Function**: Governance		