

Sberbank Powers under Article 6 of the Kyoto Protocol – Reality and Forecasts

By **Olga Sushinskih**
Senior Attorney,
Commercial Practice,
Vegas Lex Law Firm

October 2009

Pursuant to its Decree No. 884-r of 27 June 2009 (the “Decree No. 884-r”), the RF Government authorized the Joint Stock Commercial Savings Bank of the Russian Federation (the “Sberbank”) to secure implementation (take part in implementing) certain obligations of the Russian Federation fixed in the Kyoto Protocol to the United Nations Framework Convention on Climate Change (the “Kyoto Protocol”). These powers of the Sberbank of Russia relate, without limitation, to Article 6 of the Kyoto Protocol.

Article 6 of the Kyoto Protocol sets forth a mechanism known as “joint implementation projects” (the “JIP”) meant to provide for a possibility of transfer by a “receiving party”¹ of the emission reduction units (ERU) resulting from projects aimed at reducing anthropogenic emissions to the “investing party”.

For the purpose of implementing the mechanism envisaged in Article 6, respective regulations have been adopted in Russia.



¹ For countries in transition to market economy.

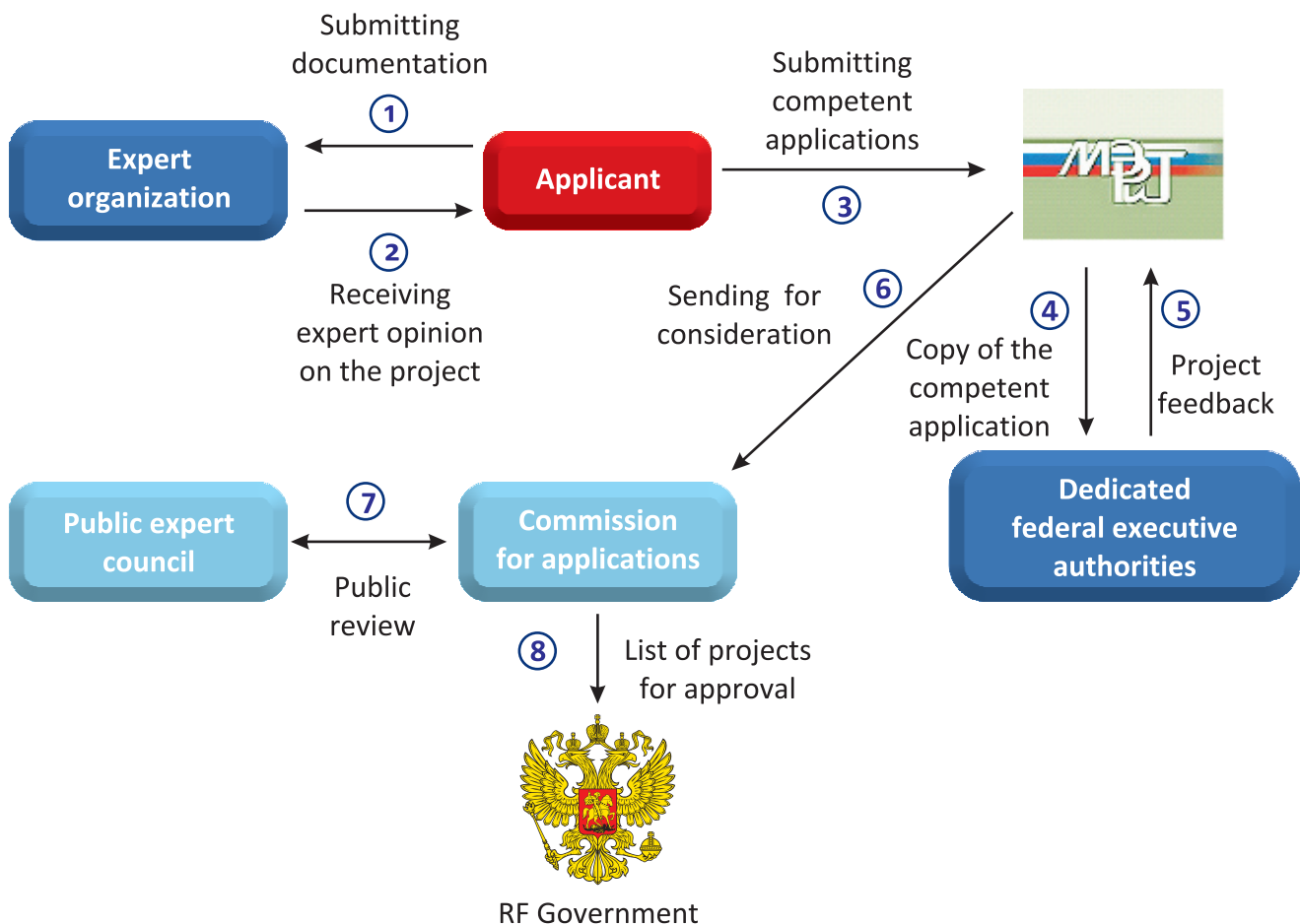
The analysis of regulations pertaining to Article 6 of the Kyoto Protocol shows that the main parties involved in approving (checking implementation of) the JIP are as follows:

- Coordination Center
- Expert organization
- Interested federal executive authorities
- Commission for project approval applications
- Public expert council
- RF Government

The working procedure for and respective powers of the above parties may be schematically outlined as follows:

Presently, the coordination center in charge of preparing projects for approval is operating within the Ministry for Economic Development of the Russian Federation (the “MED”), which is not only responsible for coordinating operations of other interested federal authorities, but ensures, also, the “viability” of the JIP approval mechanism in Russia in accordance with the above-outlined procedure.

Pursuant to Decree No. 884-r, with input from Sberbank, the MED is required to submit for consideration by the RF Government its proposals on amending the procedure for approving and checking implementation of the projects launched



under Article 6 of the Kyoto Protocol with respect to the powers granted to Sberbank to take part in the activities leading to receipt, transfer or acquisition of the emission reduction units of greenhouse gases.

In this context, Sberbank is required to take part in the above procedure for approving (checking implementation of) of the JIP. Yet, neither the specific procedures nor Sberbank functions are specified in Decree No. 884.

Given the above scheme and the fact that, in accordance with its Charter², Sberbank is a commercial organization, whose main objective is to attain profit from operations permitted by Russian legislation, it appears that Sberbank should be interested most in the activity associated with issuing expert opinions for the projects implemented under Article 6 of the Kyoto Protocol.

The powers of the Commission in charge of considering project approval applications under Article 6 of the Kyoto Protocol (the “Application Commission”) include selection of independent expert organizations on the basis of the criteria set by the given Article of the Kyoto Protocol, resolutions of the Conference of Parties serving as a session of Protocol Parties and/or international treaties on assistance to implementing the projects.

According to Protocol No. 1 of the Application Commission of 21 February 2008, independent expert organizations should be accredited under the **UN FCCC**³ (the “Protocol No. 1”).

² Publicly available information – clause 1.7 of the Charter of JSC “Joint Stock Commercial Savings Bank of the Russian Federation” at http://www.sbrf.ru/ru/investor_relations/disclosure/

³ United Nations Framework Convention on Climate Change (New York, 9 May 1992).

At the international level, independent organizations are required to receive accreditation with the Article 6 Supervisory Committee, while at the national level, including the level of the Russian Federation, it is required that a consent be obtained to issue expert opinions from an authorized national authority represented by the MED in Russia.

Pursuant to Protocol No. 1, the main approach contemplating compilation of a list of independent organizations in Russia requires that the candidates should be entitled to perform examinations on the basis of the criteria set forth in Article 6 of the Kyoto Protocol (i.e. accreditation with the UN FCCC) and have experience of Russian operations and qualified personnel to perform the required functions.

In this context, it appears quite difficult for Sberbank to exercise its powers of issuing expert opinions.

The probability of Sberbank being delegated with the powers of the interested federal executive authorities to review and provide feedback for a project appears to be very low, too. This conclusion results from the status of Sberbank as a commercial organization that is not part of the federal executive authorities empowered to engage in respective operations.

At the same time, it is possible that Sberbank might be included into the public expert council. The main purpose for creating the council is to provide information and analytical support to the Application Commission, which, in the author’s opinion, is not of much interest to Sberbank. Besides, the Public expert council is not listed as a mandatory participant in the procedure for approving projects launched under Article 6 of the Kyoto Protocol.

The right of final approval of projects under Article 6 of the Kyoto Protocol is available exclusively to the RF Government, as performance of Russia's obligations under the Kyoto Protocol and in accordance with the Federal Law "On International Treaties of the Russian Federation" is entrusted to the RF Government.

In light of the above, the main functions that may be delegated to Sberbank with respect to the activities resulting in receipt, transfer or acquisition of the emission reduction units of greenhouse gases, are the functions of the MED that include the following:

- collecting complete applications;
- submitting the applications with the dedicated federal executive authorities;
- building up the Application Commission;
- consideration of applications by the commission.

As regards the potential delegation of the coordination center's functions to Sberbank, the issue of finalizing the results of consideration of applications by the commission remains outstanding, i.e. it is unclear whether it is required to obtain additional approval of the selected projects by the RF Minister of Economic Development or whether these functions will be delegated to Sberbank, too.

This issue is due to the possibility of subsequent submission of the list of projects implemented under Article 6 of the Kyoto Protocol for approval with the RF Government in the prescribed manner.

In accordance with Resolution of the RF Government No. 260 of 1 June 2004 "On the Rules of Procedure of the RF Government and Regulations on the RF Government Office", the Government is to consider draft federal laws, orders and decrees

of the RF President, resolutions and directives of the Government and, when prescribed by federal laws, acts of the RF President and the Government, drafts of other regulations, as well as draft opinions, amendments and official feedback on draft federal laws.

The above draft regulations and other documents may be tabled before the Government only by government members and heads of other federal executive authorities headed by the RF President or RF Government or persons acting for them.

As mentioned above, Sberbank is not part of the federal executive authorities and is not, therefore, entitled to table the list of projects implemented under Article 6 of the Kyoto Protocol before the RF Government.

It is obvious that Sberbank's involvement in the project approval procedure under Article 6 of the Kyoto Protocol may drag out significantly the approval process for respective projects. This assumption is due to need of additional approval of projects by the MED (as noted above) for subsequent submission with the RF Government.

Besides, the future of the projects⁴ that are already considered by the MED remains unclear, as well as the role of Sberbank in these projects.

All the above issues should be reflected in an act (draft act) of the RF Government on amendments to Resolution No. 332 of the RF Government of 28 May 2007 "On the Procedure for Approval

⁴ The current projects number 38, with 33 of them already approved by the dedicated federal executive authorities. Consequently, the next stage for these projects is to be considered by the Application Commission of the MED.

Questions regarding this issue
may be addressed
to Olga Sushinskih
Senior Attorney,
Commercial Practice,
+7 495 933-08-00

and Control over the Implementation of the Projects Launched under Article 6 of the Kyoto Protocol to the **United Nations** Framework Convention on **Climate** Change”, which will ensure a final determination and legislative recognition of the status and functions of Sberbank under the Kyoto Protocol.



About Vegas Lex

Vegas Lex was founded in 1995 and, since 2000, has been one of the Top-3 leaders among Russian law firms. According to Russian and international ratings, Vegas Lex is one of the leading legal consultants in the sphere of litigation, law making on and support for PPP and infrastructure projects, corporate law, banking and finance, tax, energy and real estate. The Firm has offices in Moscow, Volgograd, Krasnodar, as well as a number of regional partners. Our clients are major Russian and international corporations, leaders in their market sectors. The Firm has 11 practices covering the main segments of the legal services market. More information about the firm can be found at www.vegaslex.ru