



THE COMMUNITY EMISSIONS TRADING SCHEME (ALLOCATION OF ALLOWANCES) SCHEME (NO. 2) 2009 GUIDANCE NOTE TO APPLICANTS FOR COMPLETION OF PRIMARY PARTICIPANT APPLICATION FORM

References in this Guidance Note to the “Regulations” are references to the Community Emissions Trading Scheme (Allocation of Allowances for Payment) Regulations 2008 S.I. 2008/1825 (as amended by the Community Emissions Trading Scheme (Allocation of Allowances for Payment) (Amendment) Regulations 2008 S.I. 2008/1939).

References in this Guidance Note to the “Scheme” are references to the Community Emissions Trading Scheme (Allocation of Allowances) (No 2) Scheme 2009 made by HM Treasury on 14th September 2009¹.

SECTION 1: APPLICANT DETAILS

Please note that all applicants must hold an EU ETS Registry Account. If you do not have an EU ETS Registry Account your application will automatically be rejected.

Question 1

Please indicate which of the following categories your organisation falls into; UK Limited Company, Non-UK Company, Limited Liability Partnership, Partnership without Limited Liability or Sole Trader.

Question 2

If you represent a corporate body please enter the name and postal address of your organisation. If you are an individual please enter your trading name (if different to your own name) and the postal address where your business is based.

Question 3

You only have to answer this question if you represent a corporate body. Please indicate the group structure of which your organisation is part. For example, the name of the parent company your organisation belongs to, and details of any relevant subsidiary bodies that may be relevant to this application.

¹ This replaces the Community Emission Trading Scheme (Allocation of Allowances) Scheme 2009 which replaced the Community Emission Trading Scheme (Allocation of Allowances for Payment) Scheme 2008

Question 4

Please enter your EU ETS Registry Account number that you choose as your nominated holding account (as defined in regulation 2 of the Regulations). Note that you may find it beneficial to use a UK Registry Account if possible. This is because the UK Registry Administrator (the Environment Agency for England and Wales) will be able to track the auctioned allowances and ensure correct delivery into each UK Registry account, giving you assurance that the transfer has been successful. For other EU Registry accounts, allowances cannot be tracked by the UK Registry administrator in this way.

Question 5

Please enter the contact details of the people in your organisation who will be responsible for submitting bids in the auction. Note that the names of the representatives provided in this section will be the only people authorised to submit bids for your organisation in the auction. Please indicate if the named individuals are a Primary or Secondary Account Representative (PAR or SAR) of a UK Registry account. (The UK Registry Administrator will already have relevant information on PARs and SARs of UK Registry accounts). You can give the contact details of further representatives if you wish to have more than two people registered to be able to submit bids in the auctions. Ideally, no more than an additional four people should be registered.

Question 6

i) „Legal Form“ means, for example, „Public Limited Company (PLC)“, Private Limited Company (Ltd)“, „Limited Liability Partnership (LLP)“, „Partnership without Limited Liability“ or „Sole Trader“, or the equivalent in the jurisdiction in which you are based.

ii) „Governing Law“ means the national law governing your organisation.

Question 7

Indicate the currency in which you intend to pay for any allowances you win at auction. If you do not indicate a choice it will be assumed that you will settle in euros. Note that if you are successful in your application to become a Primary Participant, and you have elected to pay in either euros or sterling, you can in future change your choice of settlement currency provided you inform the person conducting the auction up to five working days before the start of an auction.

SECTION 2: ELIGIBILITY CRITERIA FOR SELECTION OF PRIMARY PARTICIPANTS

Question 8

An Applicant must have its registered office, or its head office if it does not have a registered office, in a state within the European and Economic Area (EEA). This includes Member States of the European Union and Member States of the European Free Trade Association (EFTA) e.g. Norway, Iceland and Liechtenstein. Please provide the address of the office and, if an Applicant is registered, the corporate registration number, given in a relevant register.

A „relevant register“ is that register of businesses established and maintained by the government of the state in which your organisation is based or maintained by an agent of that state. If you are not based in an EU Member State, but have a registered office in an EEA state you will still be eligible to apply for Primary Participant status. Examples of such „relevant registers“ include *Companies House* (UK), *L'Institut National de la Propriété Industrielle* (France) and the *Handelsregister* and appropriate *Amstgericht* (Germany). If the office in an EEA state is the same as that given in Section 1 (Question 2) of the application form, just enter your registration number within the box.

Question 9

In accordance with Paragraph 16(3) of the Scheme the person conducting an auction must be satisfied that your organisation is able to meet its financial commitments and current liabilities as they fall due.

Your current credit rating, including an indication of where the rating may be heading will be considered appropriate evidence for the purposes of assessing your ability to meet this eligibility criterion. You should provide credit ratings given by at least two independent, reputable credit rating agencies. DECC currently consider Standard & Poor“s, Moody“s, and Fitch to be independent and reputable.

Where your organisation does not have a credit rating, the Debt Management Office will undertake appropriate credit reference checks and this will be used as alternative evidence to assess your ability to satisfy paragraph 16(3) of the Scheme.

Question 10

In accordance with Paragraph 16(4)(a) of the Scheme the person conducting an auction must be satisfied that your organisation has (or will have in good time for the first auction in which it wishes to act as a Primary Participant) adequate internal systems and procedures in place to participate effectively in the auction. Information in the following list will be useful for the purposes of assessing your ability to meet this eligibility criteria:

- What procedures will be in place to manage requests for your organisation to act as an agent?
- How you will manage client funds; for example, would there be a dedicated client account to keep client and company monies separate?
- What procedures will be in place to capture and submit bids from indirect bidders?
- How will you collect payment from clients?
- Do you have access to a trading terminal, such as a Bloomberg Terminal?
- What systems do you have or will you have in place, to effect transfers of allowances promptly to indirect bidders following the auction?

Please provide any other information you think is relevant to the assessment of your ability to satisfy Paragraph 16(4)(a) of the Scheme.

Question 11

In accordance with Paragraph 16 (4)(b),(5) and (6) of the Scheme the person conducting an auction must be satisfied that your organisation has (or will have in good time for the first auction in which it wishes to act as a Primary Participant) adequate internal systems and procedures in place to prevent the disclosure of confidential information (as defined in the Regulations and set out below) provided by your clients during the bidding process. Please describe how your organisation will prevent the disclosure of information from the part of your organisation responsible for i) handling requests from account holders to bid on their behalf and ii) submitting bids on behalf of indirect bidders to the part of your organisation responsible for preparing and submitting bids on its own behalf.

Regulation 2 of the Community Emissions Trading Scheme (Allocation of Allowances for Payment) Regulations 2008 (as amended) contains the following definition:

“confidential information” means—

- (a) the contents of a bid;
- (b) the contents of a bid instruction;
- (c) information which discloses or from which can be deduced either—
 - (i) the number of allowances which an account holder wishes to acquire in an auction; or
 - (ii) the price which an account holder is willing to pay for those allowances, and the identity of that account holder.
- (d) information about or derived from a bid instruction or bid instructions or a bid or bids or any of them together which would be likely to—
 - (i) give an indication as to the demand for allowances at any auction;
 - (ii) give an indication as to the auction clearing price at any auction;
 - (iii) have an effect on the auction clearing price at any auction.” 5

SECTION 3 : FURTHER INFORMATION (OPTIONAL)

Question 12

Please note there is **no** requirement for applicants to be regulated by the UK's Financial Services Authority (FSA), and it will have no bearing on whether or not you are judged suitable to be a Primary Participant. However, if you are FSA regulated it may allow for your application form to be processed more quickly. If regulated by an equivalent EU financial authority you are asked to identify that body.

Question 13

You may provide any further information relevant to your application for Primary Participant status, provided that it offers evidence to support the eligibility requirements of the Scheme.

SECTION 4: DUE DILIGENCE

In accordance with Paragraph 19(6) of the Scheme, the person conducting the auction must reject an application for Primary Participant status if it cannot be satisfied that an applicant has not been involved in money laundering or terrorist financing activities.

The application form lists information that will help the person conducting the auction address these issues. The information listed varies slightly depending on your organisation type.

“Evidence of signing authority” means evidence of your organisation’s List of Authorised Signatories (that will show all the signatures of persons authorised to sign documents on behalf of the organisation and any limits to those powers) or a Certificate of Incumbency (that will bear the name and signature of an individual and a description of the types of documents they may sign on behalf of the company).

Where your organisation is a Partnership with Limited Liability or a Sole Trader the evidence of signing authority will comprise a copy of the signatory’s passport or driving licence, clearly showing both the name and signature of the signatory that has been certified by a lawyer.

If your organisation is non-UK company, in order to avoid the necessity for you to forward considerable number of translated documents, you will need a qualified lawyer (either in-house or from a firm that represents your organisation) to provide a Legal Opinion in the following format to accompany the completed Application form:

Dear Sirs,

COMMUNITY EMISSIONS TRADING SCHEME

I/We refer to the Primary Participant Application Form dated as of [•] (the "**Application**") submitted by [] (the "**Applicant**") to the Department of Energy etc

1. I/We have examined -

(a) the completed Application; The Community Emissions Trading Scheme (Allocation of Allowances) Scheme (No. 2) 2009 ("**the Scheme**"), The Community Emissions Trading Scheme (Allocation of Allowances for Payment) Regulations 2008 S.I. 2008/1823 (as amended by The Community Emissions Trading Scheme (Allocation of Allowances for Payment) (Amendment) Regulations 2008 S.I. 2008/1939)(collectively referred to in this letter as "**the Regulations**") and

(b) the following constitutional documents of the Applicant:

[list those considered]

2. The Applicant was incorporated in [jurisdiction] on [] 19.../20...[] [as.... provide a description of the body] and is a separate legal entity, Having considered the documents listed in paragraph 1 above and having regard to the Scheme and the Regulations and all applicable governing laws I/we can advise that in my/our opinion the Applicant -

(a) is subject to suit in a court of law in its own name, is not a Government body, and no steps have been, or are being, taken in relation to any receivership, administration, liquidation, winding up or analogous proceedings under the laws of [...jurisdiction...] in relation to the Applicant or a material part of its undertaking;

(b) has the necessary power and authority, (all necessary corporate and other action has been taken), to enable it to participate in the Scheme as a Primary Participant and perform the necessary obligations under the Regulations;

(c) to the best of my/our knowledge can execute and perform its obligations under the Scheme in such a way that will not cause -

(i) any limit on the Applicant or its directors (whether imposed by its constitution, any legislation, agreement or otherwise) to be exceeded;

(ii) any applicable law, rule, legislation or order to which the Applicant is subject to be contravened;

3. In my/our opinion, the Application has been properly signed and the obligations on the part of the Applicant contained in the Scheme and Regulations will be enforceable against the Applicant;

Yours faithfully,

Signed by a qualified lawyer

SECTION 5: TERMS FOR PRIMARY PARTICIPANTS & DECLARATION STATEMENT

Applicants should ensure they have read and understood the Terms for Primary Participants as set out in the Annex to the Scheme (appended to Section 5 in the form).

Please ensure your application has been signed by someone who has the authority to do so.