

Malaysia’s comments on draft guidance documents developed by the committee administering the mechanism for promoting implementation and compliance

The following are the suggestion for the information requested by its Decision BC-13/9 (Comment is in *italic*):

Objective	Comments
1. Committee Administering the Mechanism for Promoting Implementation and Compliance: revised guidance on improving national reporting (UNEP/CHW.13/INF/59)	<i>Malaysia agreed with the revised guidance on improving national reporting.</i>
2. Committee Administering the Mechanism for Promoting Implementation and Compliance: guide for the development of national legal frameworks to implement the Basel Convention (UNEP/CHW.13/INF/27)	<p><i>Malaysia agreed with the guide for the development of national legal frameworks to implement the Basel Convention. This guidance document is a useful tool for the newly Parties to the convention on transposing the provisions of the Basel Convention into their national legal framework.</i></p> <p><i>Furthermore, this guidance document could also guide the existing Parties for the clarity of the article in the convention (e.g. Table 1 in the guidance documents). This guidance also provides useful example to implement and understand the relevant article in the convention.</i></p>

Objective	Comments
<p>3. Committee Administering the Mechanism for Promoting Implementation and Compliance: guidance to improve the implementation of paragraph 11 of Article 6 of the Convention on insurance, bond and guarantee (UNEP/CHW.13/INF/24).</p>	<p>Who required to obtain the financial guarantee?</p> <ul style="list-style-type: none"> - <i>For the TBM of hazardous wastes it is suggested that the exporter/importer/waste generator is responsible to obtain the financial guarantee.</i> - <i>No third party is allowing to apply/provide the financial guarantee on behalf of the exporter/importer/waste generator.</i> <p>What forms of financial guarantee (insurance, bond or other guarantee) instruments may be used, and who may issue them?</p> <ul style="list-style-type: none"> - <i>For the TBM of hazardous wastes it is suggested that both financial guarantee such as bank guarantee and insurance are required to be provided by the exporter/importer/waste generator.</i> - <i>The bank guarantee shall be issued with the bank to the beneficiary which is the Competent Authority (CA) of the Basel Convention.</i> - <i>The insurance shall be issued with the insurance company. The purpose of the insurance to cover claims arising out of damage to human health, property and the environment which may result from TBM of hazardous wastes.</i> - <i>The definition of the financial guarantee (by type of financial guarantee) should be inserted in the Article 2 of the convention and also clarify the activities that will be covered under the financial guarantee in the para 11 of Article 6 of the convention in order for the exporter/importer/waste generator to understand the purpose of the financial guarantee.</i> <p>Issuance and effectiveness of financial guarantee?</p> <ul style="list-style-type: none"> - <i>It is agreed with the financial guarantee e.g. bank guarantee “shall be effective at the time of the notification” to the importing country. However, the effectiveness of insurance should be at the latest when the shipments start.</i> <p>What amount of funds need to be guaranteed?</p> <ul style="list-style-type: none"> - <i>In Malaysia, the funds/cost for the financial guarantee e.g. bank guarantee has been set at the fixed amount which are RM 25,000 for export and 10,000 for import.</i> - <i>However, after going through this document it seems that the above fix amount is not sufficient enough to cover in the case if any incidents or problems arise during the TBM of hazardous wastes. The needs to have a baseline formula is to calculate the funds is useful in order to make sure the funds/cost is sufficient to cover the situation when TBM and disposal of hazardous cannot be carried out as intended, as well as costs associated with illegal traffic.</i>