



**PROJECT  
DEVELOPER  
FORUM**

**Significant deficiencies in validation,  
verification and certification reports**

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## Guidance from CMP

- 12. *Welcomes* the work undertaken by the Executive Board to address liability in the context of the draft procedure on significant deficiencies in validation, verification and certification reports;
- 13. *Requests* the secretariat and the Executive Board to further investigate the impact of potential approaches to address significant deficiencies in validation, verification and certification reports and to prepare a report on its findings;
- 14. *Also requests* the Executive Board, in consultation with stakeholders, to revise the draft procedure based on its findings, taking into account conclusions, if any, on the appeals process in the Subsidiary Body for Implementation, with the aim of avoiding duplication and promoting efficiency, for adoption at the eighth session of the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol;

# Rejection of existing draft procedures

- CMP has rejected the EB's draft procedures for dealing with significant deficiencies. PDF supported this decision.
- In addition, it has also become apparent that the significant deficiency procedures are a sub-set of the appeals process
  - restricted only to positive decisions made by the EB and raised by any stakeholder,
  - whilst at the same time, the Parties are negotiating the terms of an appeal process and whether it is restricted to negative decisions only or all decisions and who can raise an appeal.
- So the issue of significant deficiencies is closely linked to the appeals process and should rightly be negotiated in conjunction with the appeals.

# Some Practical Considerations

- Using the surrender of CERs as a means of penalizing DOEs for bad decisions is totally ineffective. The magnitude of an over-issuance is related to the size of the project in question and the date at which the error was made, not the nature of the error.
  - For example, a fundamental error caused by a systematic failure within a DOE's control systems on a recent small scale project issuance may incur a penalty of a few thousand CERs whilst an arithmetic error in a validation report of an HFC project registered 7 years ago could incur a penalty of millions of CERs – hence the penalty is not proportional to the nature of the failure.
  
- In the event that a DOE is requested to surrender a significant number of CERs, the DOE may simply decide to withdraw from the CDM.
  - This would be unfortunate for a number of reasons, but not least because it means the whole objective of the significant deficiency procedures would not be fulfilled – i.e. the system would NOT be made whole

# Some More Practical Considerations

- Is it practical or necessary to attempt to make good any historic over-issuance of CERs?
  - The CDM is already demonstrably conservative, far more so than reported over-issuance to date (study required?)
- A statute of limitations is required – introduction of the VVM has been proposed
- Care must be taken over the implementation of any such procedures so that they do not become retrospective in nature
  - Does the statute apply to the identification of original significant deficiency or also to the calculation of the extent of the over issuance?
- PPs must not be penalized through e.g. suspension of issuance (cash flow) because a DOE has made a mistake – its not our fault (and if it is, that's a contractual matter between DOE and PP)

# Proposal for the inclusion of significant deficiencies in the appeals process

- Adopt a broad appeals process covering any decision by the EB raised by any stakeholder
- Implement a carefully designed process (see next slide)
- If any stakeholder becomes aware of a significant deficiency, they may raise an appeal
- In the event that the appeal is upheld and CERs were found to be over-issued, these are netted off against the known conservative factors in the CDM
- DOEs are financially penalized at a rate proportional to the error
- If the CDM's conservative status was threatened, alternative sources of CERs could be considered e.g. purchase CERs using accumulated DOE penalties; increase SOP Admin fee to 3% or purchase CERs using registration and issuance fees

# Clear need for an appeals process

PDF supports the introduction of a full appeals process with careful design and specific checks and balances including, *inter alia*:

- Appeals against positive and negative decisions by the EB
- Appeals may be raised by any stakeholder on the basis of factual evidence
- Appeals to be reviewed by a panel before they are accepted
- Cost of appeal: \$50,000 deposit, refunded if appeal is successful; used to contribute towards defendants costs if appeal is not successful
- Appeals considered by an independent panel including technical experts drawn from both within and outside the existing Secretariat, Panels and Teams
- PPs given the chance to defend their project in person / through direct communication
- Decisions from the Panel to create binding precedent for EB decisions and a persuasive precedent for future appeals

# Establishment of an appeals process is fundamentally important

- The CDM lacks any means to defend its environmental credibility.
  - Its open season on CDM projects and sectors
  - Without a means of defending the integrity of our projects, in a transparent and factual manner, markets will gradually undermine the whole mechanism
  - Impossible to exclude projects which are not what they claim to be
  - This is no basis on which to build a future for the CDM
- Non-Annex 1 host countries want to be able to challenge projects which fail to deliver on SD benefits
  - This matter cannot be left to host countries to implement unilaterally. It must be undertaken in a fair and transparent manner
- CERs trade at a very significant discount to EUAs despite their much greater environmental qualities
  - This is at least in part due to the threat of future “broad brush” qualitative restrictions which would threaten an entire sector. A means of challenging individual projects would reduce this risk.



## Thank you for listening

The Project Developer Forum (PD-Forum) is a collective voice to represent the interests of companies developing greenhouse gas (GHG) emission reduction projects in international markets under the Clean Development Mechanism (CDM), Joint Implementation (JI) and other carbon emission reduction schemes and programs.

See our members at: [www.pd-forum.net](http://www.pd-forum.net)