

**DRAFT****Annex 2****DRAFT PROCEDURES FOR AN APPEAL PROCESS AGAINST  
DOES BY PROJECT PARTICIPANTS****I. Mandate**

1. The Board, at its forty-ninth meeting, requested the secretariat to prepare a proposal for establishing an appeal process against Designated Operational Entities (DOEs) by Project Participants (PPs) for the consideration of the Board at its fifty-first meeting. The proposal shall address possible policy options and the associated implications.

**II. Background**

2. In accordance with the CDM modalities and procedures (CDM M&P) (paragraph 26), DOEs shall be accountable to the COP/MOP through the CDM Executive Board and shall comply with the CDM M&P. The CDM M&P also stipulates that DOEs shall comply with standards for accreditation for operational entities as contained in the appendix A of the M&P.

3. In performing validation and verification/certification functions a DOE, in terms of contractual arrangements with a PP, may issue a positive validation/verification opinion indicating that a project activity meets all the requirements and is eligible for registration/issuance. A DOE may also issue a negative validation/verification opinion, which indicates that a project does not comply with the requirements and is therefore not eligible for registration/issuance. In both cases, and in accordance with the CDM validation verification manual (CDM-VVM), a validation/verification report shall be sent to the Executive Board by the DOE.

**III. Options under current regulations**

4. Under the CDM modalities and procedures (CDM M&P) and guidance adopted by the Board, there is no provision currently for a PP to appeal against the validation/verification work undertaken for it by a DOE. In accordance with the CDM accreditation standard however, DOEs, shall have a management structure with overall responsibility for the implementation and subsequent performance of the entity including quality assurance procedures, and all relevant decisions relating to validation, verification and certification. The same standard requires that DOEs shall establish an independent appeal panel and documented procedures relating to receiving complaints, handling disputes and appeals and these procedures shall be made available to the CDM secretariat and the PPs.

5. In case of appeals, paragraph 131 of the CDM accreditation standard specifically stipulates that a DOE shall inform an appellant, in the case where it is not satisfied with the decision of an appeal panel established by the DOE, that it has the option of complaining to the CDM Executive Board.

6. It should also be noted that these documented procedures and their level of implementation and effectiveness are assessed by the assessment teams as part of the assessment process. The assessment includes the reviewing of the records of complaints, disputes and appeals by PPs, as well as other stakeholders, and evaluates whether any recorded cases of complaints, disputes and appeals were handled in accordance with the documented and established procedures of the DOE. Furthermore, the “Guidelines for the preparation of the annual activity reports by a DOE to the Executive Board”, adopted by the CDM Executive Board at its nineteenth meeting, requires DOEs to include information in their annual reports on complaints, disputes and appeals on CDM-related activities.

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7. Based on the previously mentioned requirements for the DOEs, the Board may wish to note that following aspects relating to the possibilities for the PPs to file a complaint and/or appeal against the validation/verification work of a DOE are already available:

- (a) Documented procedures to receive and process complaints already required of a DOE;
- (b) Documented procedures for handling disputes already required of a DOE ;
- (c) Documented procedures for appeals already required of a DOE ; and
- (d) The possibility already exists for PPs to submit complaints directly to the Board in the case where it is not satisfied with the decision of an appeal panel of a DOE.

**IV. Proposed Options**

8. The Board may wish to note that the likelihood of a PP appealing against the decision of a DOE is in the case where a DOE had issued a negative validation/verification opinion. Under the VVM requirements, the DOE shall send such reports to the CDM Executive Board. Although this provides an opportunity to the Board to ascertain the opinion of the DOE, no specific procedures have been established by the Board to address such cases.

9. The Board may therefore wish to consider allowing for appeals directly to the Board by PPs regarding validation/verification opinions from a DOE under following conditions:

- (a) Allow a PP to file an appeal to the Executive Board against the validation/verification decision of a DOE on its project activity where the PP is not satisfied with the related decision of an appeal panel of the DOE. The scope of the appeal shall, however, be limited to the technical aspects with respect to the application of requirements of the CDM agreed by the Board, and /or the independence and/or qualification of the appeal panel constituted by the DOE for the specific case(s);
- (b) An appeal shall only be submitted together with the decision in question of the appeal panel of the DOE ;
- (c) An appeal shall only be submitted after a PP has exhausted those opportunities already provided by the DOE's system of complaints, disputes and appeals.

**V. Policy/procedural implications**

10. In order to establish such an appeal process, possible procedural implications have been identified as follows:

- (a) There is a need to determine who would be authorised to consider such an appeal: i.e. the Board or an independent body established by the Board, created as a standing committee or constituted on a case by case basis;
- (b) A specific procedure for submission of such an appeal shall have to be established, that addresses issues such as fees to be paid by PP and/or DOE;
- (c) The implications on the accreditation status of a DOE in the case of a positive outcome of an appeal shall also need careful consideration.

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