

The World Bank

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CDM Executive Board
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Subject: Recommendations regarding the "Procedures for appeals in accordance with the CMP requests in paragraphs 42-43 of Decision 2/CMP.5" in response to the EB call for public inputs at its 53rd meeting.


Honorable Members of the CDM Executive Board,

We welcome the opportunity to contribute to the proposed procedures for appeals in accordance with the CMP request in paragraphs 42-43 of the Decision 2/CMP.5. We understand that the proposed call should also include views on how the procedures for appeals interrelate to revised procedures for registration, issuance and review currently under the Board's consideration in accordance with paragraph 37 of Decision 2/CMP.5.

Therefore in preparing these recommendations, the draft "Procedures for Requests for Registration of a proposed CDM Project Activity", the draft "Procedures for review for requests for registration", the draft "Procedures for Requests for Issuance of Certified Emission Reductions", the draft "Procedures for review for requests for issuance" were consulted.

We will be glad to provide any further information and clarifications as necessary.

With kind regards,



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Recommendations regarding the "Procedures for appeals" in response to the call for public inputs at EB53

1. Context

The implementation of an appeals process is an integral component in the procedures for registration and issuance since the appeals process by definition serves two functions. First, it is a mechanism for ensuring and maintaining due process, and second, it acts a mechanism to enhance the performance of DOEs, secretariat and EB.

If the appeals process is implemented effectively, the existing systems which apply time intensive and expensive multiple checking procedures and assessments involving the Registration and Issuance Team and Secretariat could be significantly reduced (details available in the World Bank's submission to the EB52 call for Inputs on the Registration and Issuance, dated 5th March 2010). An effective appeals process could greatly improve efficiency in terms of lowering administrative costs to the UNFCCC and transaction costs associated with requests for reviews of projects to the project participants. (Currently 70% of all projects receive a request for review although less than 10% of projects are finally rejected¹).

This submission presents the role of appeals process; establishment of appeal process; and its implementation and establishment of procedures to address the issues outstanding from the appeals process.

Terms used in outlining the appeal process Include:

- Appeal - a process for requesting a formal change to an official decision.
- Appellant – a person who appeals
- Respondent – the body which was responsible for the decision.
- A notice of appeal form: document used to begin an appeal

2. Role of the appeal process

The role of the appeals process is to maintain integrity of the system by introducing a mechanism that allows changes to official decisions by the regulatory bodies. As such, the appeals procedure could be triggered by any of the events listed below.

- Non-conformity of DOEs with CDM modalities and procedures and EB guidelines

¹ Insights from working with carbon markets for development and GHG mitigation – draft version to be published in 2010. World Bank publication.

- Breach of the procedures followed by the UNFCCC secretariat.
- Disagreement with CDM EB decisions

3. Operational structure of an appeals process

(a) Appeal committee and its constitution.

An appeals committee (AC) has the right to review and revoke decisions of the CDM EB, (which includes the Panels, Secretariat and DOEs). It is therefore critical that the members selected to represent on the appeal committee are selected on the grounds of their expertise and independence. To achieve this objective it is recommended that the COP/MOP establish an independent committee of experts with responsibility to establish procedures for functioning of the appeals committee and for appointing AC members. AC members should be selected in accordance with transparent criteria to ensure representation of members with most appropriate backgrounds. The AC could be constituted with 5 members initially, which could be expanded depending on demand for the services it provides. AC candidates should not be an EB or panel members but should have appropriate technical and or regulatory and or financial experience and have no conflict of interest.

Currently it is the prevailing practice that committees established within the CDM are ad hoc and rely on consultants or the good will of organizations that permit their staff to participate on a part-time basis in panels, the Registration and issuance team (RIT) or as expert reviewers to provide inputs to the regulatory process. It is clear that there is currently a shortage of experts or those willing to work on an ad hoc basis. Therefore, to ensure effectiveness of appeals process, it is suggested that the positions of the appeals body be on a full time basis and appointed for a term of 3 to 5 years. The permanency of the AC will ensure that due process is followed and that the AC is able to effectively and efficiently fulfill its role of establishing a transparent appeals criteria, institutionalizing due process and providing communication channels for appellants and respondents.

The goal of the EB to implement the appeals process in tandem with new registration and issuance procedures before the end of 2010 is welcomed. Since it will not be possible for the COP/MOP to establish an appointment committee for the AC before 2011, it is recommended that as a temporary interim measure, the EB could select up to 5 members with expertise in technical, regulatory, and financial aspects. These members would then be subject to the approval of the independent committee to be established by the COP/MOP to frame the procedures of appeals committee and to appoint its members.

(b) Appellants

The appellants and jurisdiction of appeal committee could be decided ensure congruence with modalities and procedures of CDM. On receipt of the notice of appeal the appeal committee should confirm receipt of the notice of appeal and inform the appellant and respondent of the procedure that will be followed. Additionally the appeal procedure and identification that a request for an appeal has been submitted to the appeals committee should be clearly presented on the UNFCCC website.

(c) Respondents

The respondents in a CDM appeal process are part of the CDM regulatory body. They could be the representatives of the DOE, the UNFCCC Secretariat and the CDM EB. As decisions of working groups, meth panels, or expert advisory bodies (RIT and Roster of Experts) are not final and are subject to EB approval, the representatives of these bodies are not considered respondents.

4. Implementing the appeals process

(a) Nature of appeals under the jurisdiction of the appeal committee

The benefit of introducing appeal as a right is that due process will be available to all. The potential difficulty will be in terms of capacity to process all appeals received by the committee. To reduce the risk of the submissions of inane notices of appeals a fee for the administration of the appeal could be charged. Appellants from least developing countries could be exempt from this fee. The appeal process is officially recognized as starting on receipt of the payment fee and/or a notice of appeal

(b) Opportunities to appellants and respondents

The Appeals Committee's jurisdiction to review an appeal may be challenged by the Respondent within fourteen (14) calendar days after receipt of the notice of Appeal. The Appellant is then given an opportunity to respond to this challenge also within fourteen (14) calendar days. The designated appeal panel members will then review the submissions from both the Appellant and the Respondent. At the end of the AC review, a written decision will be communicated to the parties. If the AC does not have jurisdiction, the appeal process ends. Otherwise, the appeal process continues and the starting date is taken as the point when the AC confirms the validity of the appeal.

(c) Operation of the appeal process

Once the notice of appeal has been received or the AC has confirmed the validity of an appeal in the event that the respondent challenged the jurisdiction of the AC, the appeal committee should be given a specified period of time (e.g., 30 days) to process the appeal. Appeal procedures require that a minimum number of appeal committee members (a minimum of 3 members) evaluate the response from the respondent and appellant before making a decision in written form. The nature of interaction between the appeals committee and the respondent and appellant could be in the form of a hearing or via video conferencing or in writing. The timeline for completion of the appeal process should be adopted so as to ensure the resolution of appeals in a specified time.

(d) Publication of results of the appeal process

The result of the decision made by the appeals committee should be made known first to the respondents and appellant and made public on the UNFCCC website.

5. Opportunities to address complaints about the appeal process

In the event that an appellant has cause to question the objectiveness of the appeal process the COP/MOP may consider establishing appropriate procedures to enable appellants to resolve issues outstanding from appeal process or to clarify the decisions of the AC. Such a procedure could be considered after gaining reasonable experience in functioning of the AC.

6. Effective integration of appeals into CDM procedures

The existing CDM decisions and guidance documents need to be revised to reflect the appeals process and the application of the decisions of appeals committee to the CDM procedures.

7. Overview of appeals process and concluding comments

The outcome of this stepwise approach to defining an appeals process is presented in Figure 1 below. For each stage of the process realistic timelines should be defined according to the capacity of the AC.

The agreement of EB members at their 53rd meeting to implement the appeal process by the end of the year is welcome. It is recommended that after one year the procedures should be reviewed by an independent body, to see how the process can be improved based on the experiences gained from its implementation.

Figure 2: Appeals Process Overview

