

The Chairman and the Members of the CDM Executive Board
c/o UNFCCC Secretariat
P. O. Box 260124
D-53153 Bonn, Germany

Ref: Practical suggestions for reforming the PoA rules to attract greater investment in PoAs

Dear Madam/Sir,

This input in reference to the call for public input for “Issues included in the annotated agenda of the sixty-sixth meeting of the CDM Executive Board and its annexes. The comments made are submitted in response to the items raised in Para 56 (f) (g) (h), Para 57, Para 76 including Annex 31. This submission is made **on behalf of the members of the PoA Working Group**.

The PoA reforms introduced in 2011 have removed many operational barriers towards developing PoAs. We congratulate the EB for the work done to date and for their willingness to consider recommendations made by the PoA working group in a submission made on 14.11.2011 to consider *i)* applying SSC/micro thresholds to the units under a CPA and not to the CPA itself *ii)* project start date definition *iii)* fast track for some small/ microscale PoAs and *iv)* identification of CERs from multiple country PoAs. With workable solutions in place for most CDM-related challenges in setting up PoAs, attention is shifting to the structure of ERPAs and other forms of investment in such PoAs. Under closer scrutiny and consideration of Annex 31 to the annotated agenda, additional bottlenecks have been identified by the PoA working group and are briefly described below.

Since investors can only provide project finance to a bounded project, investments in PoAs typically take place at the level of individual CPAs. Yet, investments in CPAs are hindered by some rules and procedures that apply to the PoA as a whole. As a result many PoAs are struggling to structure carbon finance solutions. The PoA working group has identified two principal problems that need to be addressed so that PoAs can attract the level of financing needed to scale up emission reduction efforts:

1. Verifications

Issue: With regards to the verification of PoA/CPAs the PoA-DD template mentions “...*In case the coordinating/managing entity opts for a verification method that does not use sampling but verifies each CPA (whether in groups or not, with different or identical verification periods) a transparent system is to be defined and described that ensures that no double accounting occurs and that the status of verification can be determined anytime for each CPA*”. This could be understood as meaning that the verification/request for issuance should be done for each CPA independently. However, the VVS is ambiguous on the interpretation. In the VVS it states on the one hand in §292 that the DOE shall identify those CPAs that it consider for verification; in §294 it states that the request shall relate to all CPAs included in the PoA during the specified monitoring period.

Currently many investors/ PoA developers are of the opinion that according to the rules it is required that all CPAs are verified at the same time by the same DOE. This requirement, if correct, means that if a monitoring report for one CPA is delayed or of poor quality, the entire verification process can be pushed back resulting in losses for all CPA implementers and their respective investors.

A good example illustrating how unworkable this interpretation of the current verification rule would be (i.e. assuming that verification would always require to verify all CPAs included in a PoA at the same time), are CFL PoAs developed according to AMS-II.J. Emission reductions are monitored based on independent monitoring surveys that have to be conducted within a specified period after the start of distributing CFLs within each CPA activity. The survey defines the emission reduction volume for a set number of years (monitoring period). The surveys would only make sense once the CFLs are distributed. However, a CPA may be included already without all CFL distributed. In practice it is therefore impossible to carry out such monitoring surveys at exactly the same point in time for an annual PoA verification (including all CPAs).

This would impose substantial counterparty risks on any investor or carbon buyer interested in contracting a particular CPA:

- The counterparty risk associated with the implementers of other (current or future) CPAs not contracted by the investors and who may not be controlled by the CME.
- The DOE counterparty risk associated with asking one DOE to verify all CPAs at once.

Recommendation: The PoA rules, the VVS and any guidance for POA-DD completion needs further clarification and consistency on how the verification should be implemented.

These barriers to investing in PoAs can be overcome through the following clarifications and changes to the VVS and PoA rules:

- Allow CMEs to choose between one annual verification or several verifications per year (this could be capped at a quarterly basis to reduce the administrative workload).
- Allow for CPA specific verification or at least a verification for a pre-defined group of CPAs (to be defined by CME)
- The sampling plan of a PoA should accommodate the multiple verification approach for a PoA and take into consideration implications for cross CPA sampling.
- Allow CMEs to contract one or more DOEs for each verification to ensure their timely completion.

2. Modalities of Communication

Issue: To secure their carbon purchases from traditional stand-alone CDM projects, investors typically require joint communication rights to ensure that project owners cannot transfer CERs without the investor's consent. The UNFCCC guarantees that communication rights are applied as agreed by the project participants (according to EB45 Annex 59). This arrangement has been very successful in lowering risks and transaction costs for investors, which in turn has permitted large volumes of carbon

finance to flow to CDM projects, particularly in low-income countries with weak legal frameworks.

Yet, the MOC rules for PoAs hinder investments in PoAs: Project participants and communication rights can only be established at the level of an entire PoA, and CMEs are required to have at least joint focal point status but only the CME has CER forwarding rights. As a result the UNFCCC does not guarantee communication rights, and the investor who will only purchase carbon credits from a limited number of CPAs to reduce risks and the CPA implementer will face the following unpalatable options:

- *Make all investors and/or CPA implementers PP's at PoA level and issue joint communication rights:* Apart from the mere difficulty of getting communication forms signed by a large number of stakeholders, the investor and CPA implementer would then face the counterparty risk of all other investors/CPA implementers in the same PoA (e.g. what happens if one investor goes bankrupt and the liquidator refuses to sign instructions for CERs to be forwarded?). As a result, investors will be unable to secure their investments, and CPA implementers cannot be sure that they will receive the CERs their CPAs generate.
- *Grant no communication rights to investors or CPA implementers:* This arrangement is unacceptable unless the CME can issue credible guarantees to investors and CPA implementers that they will receive their CERs. In practice, such guarantees can only be issued by well-resourced government entities and therefore do not apply to the overwhelming number of PoAs.

Since current PoA rules require the CME to have at least joint communication rights for all CPAs and since it will distribute CERs to individual CPAs, both investors and CPA implementers are exposed to the CME counterparty risk. In most PoAs we have seen the CME counterparty risk become a substantial barrier towards structuring ERPAs and other investments in individual CPAs.

Recommendation: These barriers to investing in PoAs can be overcome through the following changes to the PoA rules:

- Remove requirement that CME must have at least joint communication rights under a PoA.
- Assign CERs to each CPA based on the monitoring report submitted by the DOE. (i.e. need to change Annex 31 to annotated agenda)
- Perhaps against an additional share of proceeds payable to the UNFCCC, allow "CPA Participants" to be created at the level of each CPA (akin to Project Participants at project or PoA level), and allow these "CPA Participants" to submit modalities of communication for that CPA to the UNFCCC. By guaranteeing the application of such MOCs at CPA level, the UNFCCC will reduce counterparty risks within a PoA.

Together these extensions of the existing PoA rules can greatly increase the flow of finance into PoAs. If required, the PoA working group would be happy to further work out how these recommendations can be incorporated into existing PoA procedures. Furthermore the PoA working group in consultation with PoA stakeholders (DNA, DOEs, project participants) will further work on the development of a more comprehensive document on the remaining recommendations for regulatory issues concerning current PoA rules.

Many thanks for your kind consideration on behalf of the members of the PoA Working Group.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'M. Marr', with a stylized flourish at the end.

Marc André Marr, Co-Chairman of the PoA Working Group

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