# DOE/AE Forum

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Subject **Call for public input on "Issues included in the annotated agenda of the sixty-ninth meeting of the CDM Executive Board and its annexes"**

Honourable Members of the CDM Executive Board,

This input has been prepared by the Chair of the DOE/AIE Forum after inviting all members of the DOE/AIE Forum to provide feedback on their experiences, concerns and to make suggestions for improvement.

The following focuses on those aspects within the annotated agenda with specific relevance for DOEs.

Third analysis report to the CDM Executive Board on the result of the DOE performance monitoring (Annex 3)

We appreciate the fact that an improvement of DOE performance could be reported within the analysis report while most DOE representatives still question the appropriateness and informative value of the underlying procedure. While it is also reported that the main reasons for this improvement are seen in revised, improved guidance and more interactions and joint training measures, the variation of indicator values for individual DOEs are rather assumed to be randomly than being caused a systematic correlation to a DOE's performance. The values are strongly linked to a DOE's actual engagement in specific sectors and markets. As the published results will subjectively be interpreted by the clientele of DOE's we request to keep these values confidential and for solely use by the accreditation panel. Furthermore the statement under paragraph 9 is questioned that the PCP and VVS will have any impact on these figures, as these documents are a compilation of previously existing guidance to a large extent.

Draft standard for sampling and surveys for CDM project activities and PoAs (Annex 8)

Regarding paragraph 12b more clarity is requested as the provisions regarding the “target value” do not elaborate on requirements for conservativeness.
Within the DOE section it is welcomed that the requirements for the verifier have been largely changed from "shall" to "should" - thus allowing the DOE to apply other approaches as well. Nonetheless, there is still no clarity whether it is expected that the DOE visits a sample of e.g. the household where CFLs are implemented. Further provisions might be made within an update of the VVS.

The guidelines missed to suggest a common approach for how CERs may be discounted in case the actual sample does not achieve the required confidence level and precision. Instead, a request for a temporary deviation from the monitoring plan will have to be submitted for each individual project. It is requested to further clarify what will form the basis for assessing and approving such deviations.

Draft standard for uncertainty of measurements in large-scale baseline and monitoring methodologies (Annex 10)

It is proposed that erroneous measurements need to be dealt with a deviation request. General guidance on acceptable deviations should be developed. This is also necessary for the EB and the secretariat to consistently assess and approve deviation requests.

It is recommended that the proposed maximum uncertainty level of 5% (if exceeded, a discount must be applied) should be revised to have different thresholds depending on the size of the emission reductions (large projects can afford more advanced measurement systems than small projects) and depending also on the best possible accuracy that can be achieved for a certain measurement type. Electricity generation can for example be measured much more accurately than a flow of methane gas from a digester. The thresholds should incentivize the best possible measuring practice, but the accuracy of these will vary. Furthermore the requested evaluation campaign (paragraph 10) might be technically and extremely costly especially for remote areas in LDCs. Hence, applying the same value and requirements to all types of monitoring does not consider the technical feasibility and commercial appropriateness.

Draft guideline on the application of materiality in verifications (Annex 13)

First of all we would like to repeat the concern expressed already last time, that the narrow interpretation for applicability only in standard CDM project verification is perceived as a subjective interpretation of the CMP guidance and recommend a review thereof.

Paragraph 18 b) still contains a mistake, as not detected errors have to be assessed against the materiality thresholds (detected errors have to be corrected anyway) but “potential errors”.

Draft guidelines on additionality of first-of-its-kind project activities and draft guidelines on common practice (Annex 14)

Under paragraph 2 the draft guideline gives an extensive definition of the term “measure”, while this expression is nowhere used in the following provisions. This is considered confusing and a revision thereof is recommended.

Concept note on three issues in the demonstration of additionality (Annex 15)

Introducing a threshold of a minimum of 10 % contribution by CERs to cover annual operation costs is consider arbitrary and could lead to unforeseen consequences as it will link additionality to CER market prices. The DOE Forum recommends not to follow this approach.

Concept note and work programme on improving standards and guidelines related to PoAs (Annex 17)

The DOE Forum would like to point to the following unresolved issues:

1. Under the recent procedures it is impossible for any DOE to include a CPA which is not 100% implemented (i.e. any greenfield activity) into a PoA due to risk of erroneous inclusion. Erroneous inclusion is linked with the question of whether or not a CPA factually meets the eligibility criteria. This means until this requirement can be 100% validated no CPA can be included without prohibitive risk. If for example an eligibility criterion says “turbine capacity < 5MW” and even in case everything is well documented in the CPA-DD based on a feasibility study, a DOE cannot include that CPA at least the implementation / purchase is at a mature level, because else the turbine capacity could potentially be a different one. This is a real problem for many PoAs in practice. This point is exactly the difference to validation in regular CDM activities not being affected by the concept of inclusion / erroneous inclusion. If under regular CDM a different implementation is identified, there is a procedure in place and there is no harm for the validating DOE. In PoA the same would constitute a case of erroneous inclusion for the including DOE, because factually the CPA does not meet the eligibility criteria. Changes in the provisions to this aspect are required.

2. During the PoA Workshop in May 2011 all stakeholders shared the common sense that DOE liability for issues under the responsibility of the CME creates a misbalance and deadlock. Solution discussed during the workshop: The DOE shall audit the CME Management System. Once this system audit is completed the DOE is held harmless for further CPA inclusions under the responsibility of the CME. However the PoA procedures and the new PoA Standard incorporated only the first half (management system audit) without the second half (liability cut). Hence actually the situation has not improved as the DOE risk is just the same as before. It is requested to amend the procedures for erroneous inclusion of CPAs accordingly.

3. We perceive a contradiction between the stipulation to update sampling requirements according to latest version of UN sampling guidance on the one hand and the fact that once a PoA with its generic CPA-DD are registered (possibly with sampling measures valid at that point in time) there is no procedure to change this for CPAs to be included later. It is not clear how to handle this issue in practice. Can PP ex-post change the respective section in PoA-DD and generic CPA-DD? And what are the implications for DOEs?

Draft Procedure for Addressing Significant Deficiencies in Validation, Verification and Certification Reports (Annex 19)

It is with disappointment that the DOE Forum received the draft procedure published with the annotated agenda and recognized that the previous draft has been revised to such a minor extent. We note that: the majority of the issues of concern to the DOE Forum remain unresolved. In particular, the document contains several inconsistencies, and there are no proposed means of addressing the concerns that have been the subject of discussion for some time, and which appear to be largely unreflected in this draft.

Thus the proactive efforts of the DOE Forum, including discussions during workshops and roundtables together with our documented submissions appear to have not been taken into account. For this reason we re-submit the DOE Forum's draft procedure dated 31 July 2012 as an annex to this letter. It details those elements which DOEs consider essential to guarantee that validation and verification services remain a sustainable and viable business for DOE's and that CDM is therefore a truly sustainable market mechanism. The inputs made by the DOE Forum will enable DOEs' work to be insurable and financially manageable, and makes the procedure applicable under exceptional but clearly justified circumstances and ensures that it is executable - three elements which are missing within the revised draft from the secretariat.

In detail we would like to raise the following points.

We are pleased to see that an appeals process has been introduced, which is one of the requirements for ensuring the procedure is potentially insurable. However, the appeal process described is not independent and provides no means for a decision to be overruled. It is therefore considered that the appeals procedure in the current draft is not sufficient to form the basis for the insurance industry to insure against the potential losses resulting from it.

We are pleased to see a limitation of the time period for applying this procedure is proposed, providing a point of time in the future when this procedure will enter into force. This proposal regarding the time frame is appreciated, however under such an approach the associated risk in terms of the total amount of potential liability remains unquantifiable. Therefore we would like to reinforce our previous requests for setting an absolute cap on this risk.

The definition of professional care referring to "… skill and care which is ordinarily exercised by professionals…" is too vague a definition of such a fundamental element. This definition is the trigger for applying the procedure and justifying any liability. The fact that it is open to interpretation presents serious concerns for the DOE Forum. This weakness in definition reduces the trust which could be placed in the procedure and the transparency and fairness that it should deliver.

We understand that the objective is for this procedure to be applied in every situation where excess issuance is assumed, thus leading to many cases where a DOE is not liable but has to deliver corrected validation or verification reports. Considering the reputational risks for DOEs associated with this procedure we clearly advocate a separation of approach. Such a separation would enable a review of a 'significant deficiency' only where there is either clear evidence from the beginning, or where a previous investigation of excess issuance concludes that it may be due to professional negligence or fraud by the DOE. A separate procedure for addressing assumed or reported excess issuance would provide greater incentives to DOEs to report mistakes in previous reports if detected. This also refers to one of the most obvious inconsistencies within the secretariat's draft where under paragraph 9 e) a DOE can report own significant deficiencies, while no such possibility exist for cases where

an excess issuance cannot does not result from a breach of validation or verification rules. For giving an example, there might be situations in which a document that has been falsified by somebody else was assessed with all required professional care without having the possibility to detect the fraud at the time of validation or verification. Hence, this example would not be considered as significant deficiency and therefore the procedure would not be applicable.

We disagree with the various routes by which the procedure may be triggered. Opening the process for any stakeholder to request its application is considered inappropriate and unnecessary and creates a high risk of long-term damage to both an individual DOE's reputation as well as the CDM as a whole. The suggested barrier of requesting a refundable fee is also perceived to be discriminatory with regard to stakeholders from LDCs, and obsolete as we see no appropriate need to allow stakeholders to trigger the procedure.

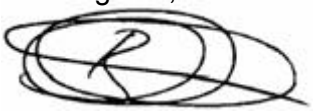
Finally the suggested way of balancing excess issuance by cancelling CERs, ERUs, RMUs or AAUs would need to be figured out in more detail as it does not consider the aspect whether these units should originate from the same commitment period in which excess issuance occurred, or form the one when decision was taken, or any other possibility.

The cover note of the secretariat elaborates on impacts in paragraph 10 in just two sentences. We consider this insufficient to address the request of Dec 8/CMP.7 paragraph 13 that 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".* Apart from the investigation of the insurability of the previous draft procedure we are neither aware of any investigation of the overall impacts of the various approaches nor of a report on related findings.

In conclusion, we recommend that the secretariat's draft is not submitted for decision by CMP but invite the secretariat to jointly undertake further efforts by fully investigating the impacts of the proposals in order that they may be minimised and that the objectives, presented under paragraph 1 of the draft procedure, are met.

More details on the addressed annexes/topics will be provided and hopefully discussed during the regular interaction.

Kind regards,



Werner Betzenbichler
Chair of the DOE/AIE Forum

Attachment: The DOE Forum's draft procedure on significant deficiencies

# DRAFT PROCEDURE FOR ADDRESSING SIGNIFICANT DEFICIENCIES IN PAST VALIDATION, VERIFICATION OR CERTIFICATION REPORTS

| Proposed Text | Explanation |
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| **I. Introduction**<br><br>**A. Background**<br><br>1. The Conference of the Parties serving as the Meeting of the Parties to the Kyoto Protocol (CMP), at its first session, established the basis of a regulatory framework of the clean development mechanism (CDM) to implement Article 12 of the Kyoto Protocol through the annex to decision 3/CMP.1, the annexes II, III and IV to decision 4/CMP.1, the annex to decision 5/CMP.1 and the annex to decision 6/CMP.1. The CMP revised provisions in these decisions through new decisions in subsequent sessions. In addition, the Executive Board of the clean development mechanism (hereinafter referred to as the Board) operationalized the CDM process by adopting various standards, procedures and guidelines and revised them, as appropriate, with a view to improving the CDM process.<br>2. Although Paragraph 22 of the Modalities and Procedures of the CDM provides instructions regarding the treatment of significant deficiencies in past validation, verification or certification reports it had to be recognized that following these instructions literally would have implication that would endanger the operationalization of the CDM. Therefore this procedure is focused on an adequate and fair approach when dealing with potential misconduct of Designated Operational Entities. | *It needs to be mentioned that Marrakech cannot be and has never been implemented in taking the wording one by one. Especially for operationalizing the assessment work to be delivered by the DOEs there has been no precedence on which provisions could have been based on. By fixing an outstanding issue it is envisioned to make the system whole focusing on the original objective of incentivizing adequate DOE performance.* |

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| 3. Upon appointing a DOE or a DOE being appointed as a Designated Operating Entity by the UNFCCC the UNFCCC [the UNFCCC secretariat] and the DOE agree to be bound by the regulatory framework and to follow the various standards, procedures and guidelines. A signed agreement shall be part of the accreditation documents. | *This approach shall create a legally binding obligation which shall form the basis in case a DOE challenges the final decision by calling a legal court. This is seen necessary to make it insurable. It is considered that UNFCCC secretariat is able signing legally binding contracts as they do when contracting consultants or hiring personnel.* |
| **B. Objective**<br>4. The objective of this procedure is to<br>a. provide a clear definition of a significant deficiency; and<br>b. devise a process for investigation of potential significant deficiencies; and<br>c. Agree a mechanism for determination of liability of the DOE (if any).<br><br>This serves as further incentive to Designated Operational Entities (DOEs) to continue with protecting the integrity of the CDM. | *The objective is incentivizing DOE performance. The DOE Forum appreciates such a focus requesting ethical behavior by acting with all professional care when performing services. As DOEs operate in various jurisdictions a globally applicable procedure for dealing with the topic of fraud and professional negligence in DOE work appears being the most suitable solution.* |
| **II. Scope and applicability**<br><br>5. The procedure is considered as a part of documents that regulate CDM accreditation issues for DOEs and is therefore only applicable within the framework of the accreditation standard and procedure. It provides regulations with relevance to the consequences to a DOE of proven misconduct with regard to significant deficiencies in past validation, verification or certification reports. | *The procedure has to be seen in the context of the accreditation system and not as part of the project cycle. Otherwise it is inconsistent with the objective, which targets at DOE performance and not primarily at the reparation of historic registrations or issuances.* |
| 6. It is not an element of the project cycle of individual CDM activities, albeit its outcome may have an impact on future issuances of registered activities. | *In case a project is registered based on a significant deficiency there is most likely the wish to stop further issuance for this activity. This should be possible already under the recent procedures as new information needs to be provided in the context of "activity changes". It furthermore protects any DOE recently* |

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| | *working on the verification of an activity under investigation.* |
| 7. The procedure is applicable to all significant deficiencies in validation, verification or certification reports which have been submitted by an individual DOE within the last five years from the date when the EB starts a review under this procedure. | *Limiting the period sets deadline also for those who may trigger the process and will keep the process manageable to some extent. Besides the reduction of risk exposure for a DOE such a time horizon increases the likelihood of having accessible witnesses considering changes in personnel and the missing opportunity to summon persons involved in past cases which are not any longer engaged by an accused DOE.* |
| 8. The procedure shall not be applied to cases in which a DOE reported an excess issuance of CERs as described under paragraph 9, where the DOE voluntarily cancels an amount of CERs equivalent to this excess. | *In case of a self-accusation by a DOE before any process as described later has been launched, the voluntary cancellation of CERs should be considered being sufficient to demonstrate compliance with this procedure.* |
| **III. Definitions**<br><br>9. Significant deficiencies in past validation, verification or certification report(s) refers to situations where as a result of the professional negligence or fraud of a DOE that performed the validation, verification or certification, CERs have been issued for<br>a. a project not eligible for registration under CDM,<br>b. a monitoring period of a registered CDM which goes beyond the actual emission reductions while considering the materiality thresholds. | *Issuance of a material amount of unjustified CERs (defined according to the materiality standard) is one requirement to trigger the process. The other requirement is the potential occurrence of fraud or professional negligence as defined below.* |
| 10. Fraud of a DOE in the context of DOE assessments comprises each submission of request for registration or issuance by a DOE which is intentionally based on material misstatements or omissions within validation, verification or certification reports. | *This is a willful, non-ethical behavior, which puts benefits on the side of the actor and disadvantages to all competitors. Regulating this by EB has a value for all entities working in compliance with the existing rules.* |
| 11. Professional negligence in the context of DOE assessments comprises each submission of request for registration or issuance by a DOE which is based on material misstatements or omissions within validation, verification or certification reports resulting from the | *The paragraph addresses situations, where an entity misses to demonstrate its commitment to CDM and the professional handling of its duties in this service sector. As such misconduct may endanger the reputation of all service providers, regulating this aspect by EB has again a value for all entities* |

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| neglect of the professional duty as defined under paragraph 12. It does not include misstatements or omissions resulting from<br>a) Fraudulent or misleading information provided by or on behalf of the clients of the DOE,<br>b) the application of methodological standards or guidelines that have undergone or are proposed to undergo further revisions or amendments by Board guidance due to a lack of clarity.<br>c) a difference of technical opinion between a DOE and the EB provided that the technical opinion of the DOE is a competent opinion. | *working in compliance with the existing rules.* |
| 12. The professional duty of care required from each individual DOE when executing its services in the validation, verification and certification of CDM activities (including CDM Programmes of Activities) encompasses the responsibilities for<br>a. Following the requirements of the accreditation standards in good faith<br>b. Following the instructions given by the Validation and Verification Standard during their validation and verification activities where the same are clear and unambiguous<br>c. Establishing measures to protect its own operations against corruption and financial crime | *This paragraph presents what is understood under duties that cause a start of investigation of duties are failed. A DOE is expected to perform in the manner to be reasonably expected of a competent organization experienced in CDM activities.* |
| **IV. Principles of liability for significant deficiencies**<br><br>13. Where the review of potential significant deficiencies determines that there are no significant deficiencies, no liability or costs of the review undertaken in accordance with section VIII below shall be imposed on the DOE. | *self-explanatory* |
| 14. Where the application of this procedure proves significant deficiencies in any previous validation, verification or certification report(s) by the DOE that performed the validation, verification or certification, the DOE shall be liable in accordance with section VIII | *self-explanatory* |

| Proposed Text | Explanation |
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| below. | |
| 15. The application of the procedure does not restrict any legal action being taken by the DOE against a project participant or any other parties being involved in the CDM activities for which significant deficiencies occurred. | *This is also a reminder to DOEs and also to the market that there are constellations, where the DOE is not responsible alone (e.g. corruption) and that there might be possibility to further legal action among those parties, whereas the procedure is not considered as "legal action".* |
| 16. The liability of DOEs for significant deficiencies shall equal the quantity of excess CERs issued in respect thereof, but shall be up to a maximum of 250.000 USD per incident where a significant deficiency has been proven, limited to a maximum amount of two million USD accumulated over the period as defined in paragraph 7 above. As a reference the average price for secondary CERs from three market places will be taken at the day when EB decides on DOE liability according to paragraph 35. | *The given thresholds are considered material, as it would detract the profits even of large DOEs which were made over a long period in time. The amount of 250.000 USD is in the range of the tenfold of recent service fees and would result in a "pay-back" period of many years. A limitation is required in order to keep the procedure insurable. It has been agreed that insurance products might be a mean for a DOE to manage the risks associated to its operation in accordance with the accreditation standard, whereas insuring is not considered being mandatory.*<br><br>*As the liability payment is related to the amount of excess issuance it is necessary setting a conversion date in order to fix the payment* |
| **V. Initiation of a review of potential significant deficiencies**<br><br>17. The possible existence of significant deficiencies in past validation, verification or certification reports shall be identified by the CDM Accreditation Panel. | *There is no need to establish further initial procedures as performance assessments or spot checks can be trigger by various reasons including information submitted by external parties. But there should be possibilities for the secretariat and the AP to pre-assess any information before starting this procedure in order to filter unjustified accusations.* |
| 18. The Accreditation Panel shall advice the secretariat to prepare and send to the DOE that prepared the validation, verification or certification reports within 28 days a summary of the facts and evidences relating to the submission. The DOE shall have 28 days to provide a response to the secretariat's summary. The deadline shall be extended up to 90 days from receipt of the secretariat's summary | *self-explanatory* |

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| upon the request of the DOE providing reasons. | |
| 19. If a DOE voluntarily cancels excess CERs issued and acknowledges the occurrence of significant deficiencies for the reported cases the Accreditation Panel shall assess the information provided by the DOE and prepare an assessment report according to the provisions in paragraph 30. In this case the procedure for review (section VI) shall be skipped and a decision by the Board shall be given as provided under section VII. | *This paragraph introduces a short-cut in case a DOE acknowledges the occurrence of a significant deficiency. It might incentivize cooperation and could offer a better positioning at least for defending the DOE's accreditation.* |
| 20. In each other case where the Accreditation Panel determines that the existence of potential significant deficiencies warrants a review, the Accreditation Panel shall prepare a summary of findings, together with a recommendation to initiate a review, and a scope of review, which includes:<br>a. potential significant deficiencies;<br>b. the relevant validation, verification and certification reports to be examined by the review;<br>c. an estimation of the amount of excess issuance;<br>d. A summary of the facts and supporting evidence for each potential significant deficiency in past validation, verification or certification reports;<br>e. A summary of the CDM requirements in effect at the time of each potential significant deficiency and any interpretation of them applied to the facts. | *self-explanatory*<br>*For clarification: The review will be launched by EB based on a recommendation by AP.* |
| **VI. Review of potential significant deficiencies**<br><br>21. At the Board meeting at which the matter is placed on the agenda, the Board shall decide whether to initiate a review, and if so, shall decide the scope of review, the competences to be covered by the review team, and any further action, as deemed appropriate. | *Further action encompasses a potential suspension or partial suspension.* |

| Proposed Text | Explanation |
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| 22. Should the Board decide to initiate a review then, the secretariat shall do the following:<br>a. Establish the review team to undertake the review of potential significant deficiencies;<br>b. Notify the project participants and the DOE of the initiation of review;<br>c. For cases where a validation report is the subject of the scope of review, suspend the issuance of CERs for the relevant CDM project activity or PoA. | *self-explanatory, taken from secretariat's draft* |
| 23. The Secretariat shall propose a competent, experienced and independent review team. The DOE may object to the proposed team within 7 days after being informed by providing a written justification of such objections, such as by way of example only any conflict of interest by individual team members or missing competencies to assess individual aspects. Objections will be responded within further 7 days. | *This also includes the option to request a complete coverage of all required competences (e.g. legal, technical, sectoral), if a DOE feels that important issues are not covered.* |
| 24. Within 28 days of the date of the agreement of the parties as to the review team, the DOE shall provide written responses to each potential significant deficiency in each relevant validation, verification or certification report as detailed in the scope of review. Such response may include:<br>a. Clarification or rebuttal of the facts (including submission of any additional facts and documents) and the DOE's interpretation of the facts that apply to the potential significant deficiency; and/or<br>b. Clarification or rebuttal of the CDM requirements in effect at the time of each potential significant deficiency and the DOE's interpretation of them applied to the facts. | *self-explanatory, taken from secretariat's draft* |
| 25. Within the 28-day period for the DOE to provide responses to the scope of review of potential significant deficiencies, the DOE may request the review team, by email through a dedicated email address, | *self-explanatory, taken from secretariat's draft* |

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| to make a telephone call to it to provide clarifications on the issues identified if they are not sufficiently clear to it. In this case, the DOE shall provide the contact details of the person to be called with preferred time slots. The review team shall fix a call appointment within three (3) days of receipt of the request. The secretariat shall record the call. | |
| 26. Within 28 days of receipt of the DOE's response, the review team shall prepare an assessment report on the potential significant deficiencies in the context of the scope of review, the CDM requirements applicable to the project activities that were available at the time that the validation, verification and certification reports were submitted, and taking into account the responses of the DOE. The assessment report shall establish whether the conclusions are based on a concordant opinion of the whole review team, and in case not, shall provide information on any deviating opinion. | *self-explanatory, mainly taken from secretariat's draft*<br>*The last sentence has been added as it might support DOEs if their opinion is backed by some review team members* |
| 27. If, during the assessment, the review team requires further clarification or information from a party involved in the validation or verification activity, it shall ask the party to submit a response addressing the required clarification or provide the requested information. The party shall respond within 28 days to the review team after receiving such request. If the review team receives a response from the party, it shall, notwithstanding the provision in paragraph 26 above, finalize the assessment report within 14 days of receipt of the requested clarification or information. If no such response is received, the review team shall finalize the assessment report within 14 days following the end of the 28-day period in which the party was requested to respond. | *self-explanatory, taken from secretariat's draft* |
| 28. If, during the assessment, the review team identifies that the assessment requires input from a relevant panel or working group, or if the DOE requests input from a relevant panel or working group, either the review team or the DOE shall request the secretariat to | *self-explanatory, taken from secretariat's draft* |

| Proposed Text | Explanation |
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| place the matter on the agenda of the next meeting of the panel or working group. In this case, the review team shall, notwithstanding the provision in paragraph 26 above, finalize the assessment report within 14 days of receipt of the input from the panel or working group. | |
| 29. If, during the review, the review team forms the opinion that an extension of the deadline is required for the assessment, or receives a request from the DOE for an extension of the deadline for a response referred to in paragraph 24 above, it shall submit a request for a specified extension of the deadline to the Chair of the Board, explaining the reasons for the request. The Chair of the Board shall grant the extension of no longer than 90 calendar days. | *self-explanatory, taken from secretariat's draft* |
| 30. The assessment report shall include the findings and recommendations from the review and the reasons and rationale for the findings and recommendations, including, but not limited to:<br>a. A proposed decision to be taken by the Board;<br>b. The facts and any interpretation of the facts by the review team that formed the basis of the proposed decision, including a determination of the reasons (including whether any significant deficiency was caused by professional negligence or fraud) and responsibility for the significant deficiencies in past validation, verification or certification report(s);<br>c. The amount of excess issuance based on calculations performed by the review team and if applicable a relevant panel or working group;<br>d. The CDM requirements applicable to the significant deficiencies in effect at the time of the submission of the request for registration or issuance of CERs and any interpretation of them applied to the facts;<br>e. A summary of any impact with regard to registered project activities such as the need for requesting the approval of an | *self-explanatory, mainly taken from secretariat's draft*<br><br>*paragraph e) will include a decision on individual project activities (if necessary), while this is not the focus of this procedure* |

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| activity change before any future request of issuance. | |
| **VII. Consideration of assessment of significant deficiencies**<br><br>31. The secretariat shall forward the review team's assessment report to the DOE. The DOE shall have 28 days to submit, in writing, any objections to the findings or recommendations of the assessment report. If the DOE has raised any objections to the findings or recommendations of the assessment report it shall be given an opportunity for a hearing at a Board meeting before any decision is made by the Board. The secretariat shall forward the assessment report together with any written objections and technical reviews received to the Board, and shall place the matter on the agenda of the next available Board meeting. | *Inclusion of a hearing in case there is no agreement with the assessment team's findings.* |
| 32. If no objection to the findings or recommendations of the assessment report has been received in accordance with paragraph 31 above, the secretariat shall submit the assessment report to the Board for decision at the next available Board meeting. | *Otherwise there will be the hearing first.* |
| 33. At the Board meeting for which the matter is placed on the agenda, the Board shall decide whether to:<br>a. Accept the DOE's assertion that significant deficiencies do not exist or<br>b. Accept the assessment report's conclusion, if different from (a); or<br>c. Request the review team to continue its assessment and provide guidance for the assessment; | *self-explanatory, taken from secretariat's draft* |
| **VIII. Liability arising from finding of significant deficiencies**<br><br>34. If the Board decides that the DOE is responsible for significant deficiencies in past validation, verification or certification reports the | *Paragraph 16 is reference to the cap. In case a DOE decides to run the appeals process according to paragraph 36, the written decision will form the basis thereof.* |

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| Board shall also confirm the extent of liability to be borne by the DOE. The Board when deciding on the amount of the liability payment shall follow the provisions given under paragraph 16 above. The EB shall prepare and send to the DOE a detailed, reasoned, written decision. | |
| 35. Costs relating to the review referred to in section VI above shall be added to the liability payment if the DOE is found to be responsible for the occurrence of the significant deficiencies. | *self-explanatory, taken from secretariat's draft* |
| 36. The DOE shall have the right to launch an appeals process against the Board decision within 28 days in accordance with the appeals procedure (to be established). In this case the decision made under paragraph 33 shall be considered provisional and shall not be executed until the resolution of the appeals process. | *This appeals process against Board decisions is not yet established, but will be most likely agreed at CMP8;*<br>*Without the appeal process the risk by this procedure is considered not being manageable, neither by insurance products (which will most likely not be available without appeals process) nor by any other means* |
| 37. The agreement between the UNFCCC and the DOE referred to in paragraph 3 shall be governed by [German law] and the parties submit to the nonexclusive jurisdiction of the [German] courts. The appeals procedure shall not prevent either party from exercising its rights before any [German court]. | *Making such an agreement also offers the benefit to UNFCCC that an entity could not simply avoid financial consequences by leaving CDM business and consequently the liability unpaid.* |
| 38. If no appeal is made within this period or if the appeal process confirms the decision of the Board the secretariat shall instruct the DOE on the bank details for the transfer of the liability payment. The secretariat shall purchase an amount equivalent to the liability payment and retire these CERs at the cancellation account. A proof of this action shall be made publicly available. | *It is recommend that not the DOE takes care for acquiring CERs but the secretariat using the liability payment. A DOE does not need by become an actor on the CER market, an issue which might be interpreted again as a conflict of interest.* |
| 39. If a DOE fails to transfer the payment within 90 days after receipt of the instructions, the DOE's accreditation shall be suspended until such time when it complies. | *Self-explanatory, taken from secretariat's draft, while time period is expanded as insurance claims may require some time to be settled.* |