	<p align="center">CDM: FORM FOR SUBMISSION OF A “LETTER TO THE BOARD” (Version 01.2)</p> <p align="center">This form should be used only by project participants and other stakeholders for submitting a “Letter to the Board” in accordance with the latest version of the <i>Modalities and procedures for direct communication with stakeholders</i></p>
<i>Name of the stakeholder¹ submitting this form (individual/organization):</i>	Project Developer Forum
<i>Address and contact details of the individual submitting this form:</i>	Address: 100 New Bridge Street, London, EC4V 6JA Telephone number: +65 6578 9286 E-mail address: office@pd-forum.net
<i>Title/Subject (give a short title or specify the subject of your submission)</i>	PDF position on withdrawal and suspension of LoAs
<i>Please mention whether the submitter of the form is:</i>	<input type="checkbox"/> Project participant <input checked="" type="checkbox"/> Other stakeholder, please specify NGO
<i>Specify whether you want the letter to be treated as confidential²:</i>	<input type="checkbox"/> To be treated as confidential <input checked="" type="checkbox"/> To be publicly available (UNFCCC CDM web site)
Please choose any of the type(s) below ³ to describe the purpose of this submission.	
<input type="checkbox"/> Type I: <input type="checkbox"/> Request for clarification <input type="checkbox"/> Revision of existing rules <input type="checkbox"/> Standards. Please specify reference <input type="checkbox"/> Procedures. Please specify reference <input type="checkbox"/> Guidance. Please specify reference <input type="checkbox"/> Forms. Please specify reference <input type="checkbox"/> Others. Please specify reference <input type="checkbox"/> Type II: Request for Introduction of new rules <input checked="" type="checkbox"/> Type III: Provision of information and suggestions on policy issues	
Please describe in detail the issue on which you request a response from the Board, including the exact reference source and version (if applicable).	
Honorable Members of the CDM Executive Board, Dear Mr. Duan, The PD-Forum is writing again ⁴ to express our concern about the discussions regarding the withdrawal or suspension of letters of approval, in response to a request from CMP.7 to the CDM EB. ⁵ With only one last	

¹ DNAs and DOEs shall use the respective DNA/DOE forms for communication with the Board.

² As per the applicable modalities and procedures, the Board may make its response publicly available.

³ Latest CDM regulatory documents and information are available at: <http://cdm.unfccc.int/Reference/index.html> .

⁴ See our previous submissions on “Comment no conditional letters of approval”, dated 23 December 2011, <http://www.pd-forum.net/files/048ff3dff90a7f402b09548ac0f5e840.pdf>, and in response to the call for inputs on the annotated agenda of EB68, dated 8 July 2012, <http://www.pd-forum.net/files/8b57c526702ddb8497b1872de5ad3f.pdf>.

chance for discussions prior to CMP.8, and in the absence of any formal consultations with CDM stakeholders on this issue, we wish to highlight several serious concerns and make a suggestion as to how some of the issues raised might be taken into account.

The CMP request to the Board is “to assess the implications of the withdrawal or suspension” of LOAs. The language of the CMP request suggests the option to withdraw or suspend does not yet exist. There are no procedures for such actions, and in accordance with the glossary of terms an LOA is unconditional. Indeed, CMP requests the EB to assess any implication of such actions and report to the CMP. However, some discussions in the EB seem to take for granted that LoAs can be withdrawn at any moment and without due process, and that projects are effectively de-registered immediately. In this opinion, DNAs act as judge, jury and executioner, because the country’s notification of the withdrawal or suspension would state the implications (eg suspension or de-registering), timeframe (eg notice or immediate), and whether any objection period or dispute resolution is available. This interpretation is unacceptable to CDM market participants.

The unconditional Letter of Approval is an absolutely essential element of the CDM process. As investors in CDM projects, project developers rely on the LoA to ensure that they can obtain the value that CERs represent, which make the project feasible, with significantly reduced risk. If the LoA becomes conditional, it means that future revenues from the CERs become conditional. That undermines the basis for investment in the CDM. In short, making LoAs conditional could effectively stop any further investment via the CDM.

It is our opinion that a project is registered for its full crediting period and an LoA is valid for the current crediting period. When a project requests a renewal of the crediting period (if a renewable crediting period is chosen), it needs to update the baseline and take into account changed national circumstances. This is the moment to re-assess whether the project is still valid and continues to achieve emission reductions. In principle, as long as the project is valid, the LoA should remain valid. Therefore, a project and the LoA should be valid at least for the duration of its crediting period.

Private sector investors have successfully invested billions of Euros in CDM projects because they have been assured that CERs, which represent an essential source of additional income and offset a very wide variety of risks to the individual investment, can be delivered without interference. They have been lead to believe this to be the case by, among others, the CDM EB’s own requirement that LoA are non-conditional. Obtaining the host country LoA is often the final trigger for financial commitment. In the event that a Party is allowed to withdraw an LoA, the certainty behind the access to an essential revenue stream of the project is removed. As a result, CDM projects will no longer be bankable; revenues from CERs would be conditional on meeting undefined requirements. The impact of such an event on private sector financing of CDM needs to be evaluated as part of this discussion, but there has not been a serious assessment of these implications yet by the Board, nor any engagement with stakeholders in this regard, as requested by CMP.

Without prejudice, we wish to note the following observations:

- The concept note on the withdrawal and suspension of Letters of Approval provides a useful overview of the legal aspects around the suspension or withdrawal of LoAs.⁵ While the note did not support our view that LoAs are unconditional, it recommended that withdrawal or suspension are an action of “last resort” because of the limited circumstances in which such action would be regarded as not arbitrary in international law.
- The concept note also highlighted necessary elements if withdrawal or suspension of LoAs were allowed, including a requirement to present the reasons for the action, minimum notice periods, period of suspension, dispute resolution.

⁵ Decision 8/CMP.7, Further guidance relating to the clean development mechanisms, para 29: “requests the Executive Board to assess the implications of the withdrawal or suspension of Letters of Approval and make recommendations to be considered by the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol at its eighth session”.

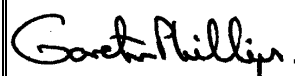
⁶ EB68 annotated agenda para 99/ Annex 18.

- The High-Level Panel on the CDM Policy Dialogue recommends that an LoA can be withdrawn, but only after an objective and transparent assessment process, and only if the project is proven to have a harmful impact on sustainable development.⁷ Again, while the High-Level Panel did not support our view that LoAs are unconditional, at least during the crediting period, it requires due process and proof that the project is harmful.⁸
- The process of withdrawing an LoA has distinct parallels with other topics under discussion including appeals and significant deficiencies. Activities which contravene national legislation should be addressed within the normal legal channels of the host country and these for example, may result in the suspension of a permit to operate. Activities which relate to the sustainable development benefits which CDM projects propose to deliver should be addressed via a transparent and fact-based appeals process which, in PD Forum's opinion, should be encompassed within the broader process of appeals under the CDM.

The PD Forum therefore recommends that projects are registered and LoAs are valid at least for the current crediting period; the renewal of the crediting period is a possible moment for review. Where projects are harmful, sufficient procedures exist to review projects and reject issuance; further investigation should be possible through the appeals process and significant deficiencies. Where projects contravene national legislation, the normal legal channels of the host country need to be followed, and these may result for example in the suspension of a permit to operate; indeed if these national legal routes are not exhausted the arbitrary nature of the withdrawal is proven. We ask the EB to re-engage with stakeholders and consult them to assess the needs for and impacts of withdrawal of suspension of LoAs.

The CDM is an example of almost unparalleled transparency, rule-based decision making process applied globally and equally to any stakeholder, and thus relative certainty to international investors in uncertain markets. As a learning-by-doing mechanism, the CDM process has dramatically improved over time, and continues to improve, for example with the discussions on an appeals process. However, without due process on this critical issue, all such benefits are lost, undermining the basis of investment in the CDM at a time when increased investments in climate mitigation is needed and market prices are already at an unsustainably low level.

With best wishes,



Gareth Phillips,
Chairman, Project Developer Forum

Please provide any specific suggestions or further information which would address the issue raised in the previous section, including the exact reference source and version (if applicable).

If necessary, list attached files containing relevant information (if any)

- [replace this bracket with text, the field will expand automatically with size of text]

Section below to be filled in by UNFCCC secretariat

Date when the form was received at UNFCCC secretariat	22 October 2012
Reference number	2012-179-S

⁷ 'Climate Change, Carbon Markets and the CDM: A Call to Action', Report of the High-Level Panel on the CDM Policy Dialogue, Recommendation 6.4.

⁸ The PD Forum does not support or defend projects that have been proven to be harmful to sustainable development; indeed such projects would be contrary to our agreed Code of Conduct, see <http://www.pd-forum.net/page.php?m=3&s=5>.

History of document

Version	Date	Nature of revision
01.2	08 February 2012	Editorial revision.
01.1	09 August 2011	Editorial revision.
01	04 August 2011	Initial publication date.
Decision Class: Regulatory Document Type: Form Business Function: Governance		