

CDM-EB89-AA-A13

Concept note

Reducing risk of disputes and irregularities in the modalities of communication process

Version 01.0



United Nations
Framework Convention on
Climate Change

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1. Procedural background

1. At its seventy-fourth meeting, the CDM Executive Board (the Board) considered a concept note on disputes relating to modalities of communication (MOC) and emission reduction purchase agreements (ERPAs) and approved measures for mediation by the secretariat in dispute cases. The current concept note builds on this work by analysing recent practice and input from stakeholders on risks of disputes and irregularities and corresponding risk-mitigation measures.
2. In 2015, the Board considered a communication submitted by a focal point (FP) requesting unilateral withdrawal. The Board agreed not to change the current rules and requested the secretariat to look further into this matter and to obtain the views of the Project Developers Forum (PDF) for further consideration by the Board. Input from the PDF was received in February 2016. This input included additional recommendations with regard to the MOC process.
3. This work relates to the activity 'CDM registry - Changes to modalities of communication and transactions' under objective 1(a): 'Operate efficient project and entity assessment processes' with a resource allocation as referred to in table 2 on page 12 of the CDM two-year business plan 2016–2017 and management plan 2016 (EB87, annex 1).

2. Purpose

4. This concept note analyses the most commonly recurring issues in the MOC practice and recommends measures that may avoid loss of communication lines for CDM projects and/or simplify the MOC process.
5. The analysis and recommendations relate to CDM project activities and not to programme of activities (POAs). This is because the MOC process for POAs is structured differently, allowing the coordinating/managing entity (CME) to take unilateral actions to update the MOC if and when required.

3. Key issues and proposed solutions

6. The Clean Development Mechanism (CDM) market decline over recent years has led a significant number of intermediaries and buyers to exit the market by dissolving or ceasing operations, announcing a state of dormancy, or closing down departments dealing with CDM trading. Some of these entities still hold project participant (PP) and/or FP rights in CDM projects. By not handing over their rights to active PPs, PPs/FPs that become inactive often block the possibility for bringing the MOC statements up to date. Current information on PPs/FPs in the process of dissolution or dormancy indicates that hundreds of projects are affected.
7. The MOC is a critical part of the CDM system. It is the basis on which communications to the Board/secretariat are formalized and the basis on which the CDM registry administrator acts in respect of issuance for a project activity. An inaccurate or out-of-date MOC for a project activity presents a risk for the PPs and the CDM system.

3.1. Options to prevent PP status from becoming out of date

8. The CDM as whole does not distinguish between different types of PPs, nor does it elevate the rights of any particular type of PP above the rights of any other type of PP within the group of PPs for a given project activity. Simply, the CDM allows the PPs for a given project activity to make arrangements among themselves and to designate entities – the FPs – to communicate on their behalf with the Board/secretariat. All PPs are required to collectively agree to the designation of FPs.
9. The reality of the CDM practice shows that entities have different interests/stakes and take on different responsibilities, often for a different duration of time, in a project activity. For example, an entity may seek a PP status for the sole reason of receiving CERs from the CDM registry as per decision 3/CMP.1, appendix D, paragraph (c). This has resulted in many projects having multiple (four or more) “buyer” PPs. A large number of PPs in a project activity significantly complicates the agreement on changes to the designation of FPs as per the MOC process.
10. If the MOC is not kept up to date, communication with a given project may be obstructed or, in some instances, effectively stop. The most commonly recurring problem in keeping MOC up to date is the exit of Annex I Party (AIP) PPs that had not voluntarily withdrawn their PP status after terminating their ERPAs, or prior to entering liquidation or dormancy, or prior to discontinuing CDM trading, and thus becoming a “blocker” for further MOC updates. The CDM registry has dealt with over 100 projects impacted in this way during the past two years. While some cases in this category were resolved through the CDM project cycle procedure (PCP) provisions on cessation¹, approximately half of these cases (involving dormant entities, entities still in the process of liquidation, or simply not contactable or unwilling to engage) were either difficult to resolve or remain pending.
11. Because AIP PPs often participate in several projects, the secretariat estimates that several hundreds of projects are affected. These affected projects have not yet attempted to update their MOC either because the projects had been abandoned or because of the lack of need to request an update.
12. The secretariat has identified two options for addressing the risk of not-contactable PPs becoming the reason for blocking further updates to the MOC:
 - (a) Introducing an end-date for participation of AIP PPs;
 - (b) Introducing a two-grade system of rights for AIP PPs.
13. Both options are restricted to AIP PPs only for the following reasons:
 - (a) Host-Party (HP) PPs are critical for project implementation and delivery of CERs. A project requires at least one PP from the HP and a LOA from the HP² to continue its registration;

¹ Cessation refers to insolvency and the state of being written-off from the national companies registrar

² Reference is made to the procedure on “Process for dealing with letters from DNAs that withdraw approval/authorization”

- (b) There has been no incidence of HP PPs blocking MOC updates due to discontinued operations. While HP PPs may have discontinued operations, they are typically the last entity “on the ground”, and if they are no longer active the project is most likely discontinued as well.
14. The following two sub-sections discuss each of these two options with the recommendations summarized in paragraph 17.

3.1.1. Introducing an end-date for participation

15. The duration for which a buyer needs to participate in a project would be known early in the process if linked to the duration of its ERPA. Limiting the duration of participation in the MOC process would involve introducing a non-mandatory date-field in the MOC statement form that would be monitored by the secretariat systems in order to effect a PP withdrawal when the an end-date is reached.
16. Providing an opportunity to align ERPA periods with participation timelines would eliminate the need to update MOC statements later in the project life cycle, when entities and representatives may no longer be contactable. PPs that are withdrawn in this way would continue to hold letters of approval (LOAs) and may re-apply for PP status any time after their withdrawal becomes effective through the established MOC process.

3.1.2. Introducing a two-grade system of rights for AIP PPs

17. This option would involve introducing two separate roles for AIP PPs in order to distinguish between PPs whose consent is necessary for changes to the MOC statements and PPs whose consent is not required. The latter role would be assigned to PPs that are primarily interested in receiving CERs from the CDM registry and are willing to forego rights in maintaining the MOC statements for the projects they participate in. While this option may simplify updating MOC statements for projects with large pools of PPs (ten or more PPs is not uncommon), its introduction may have a number of less-desired implications, including:
- (a) Legal complexity may be introduced by altering the CDM regulatory practice of not distinguishing between different types of PPs;
 - (b) The FPs for scope of authority (a) have the right to instruct the CDM registry administrator on forwarding of CERs. This scope of authority is traditionally held by AIP PPs as a means of addressing delivery risks and these entities are not likely to accept limited PP rights whereby their consent is no longer required for MOC changes;
 - (c) Complexity may be added to the MOC process;
 - (d) Complexity may be added to the issuance of LOAs where Designated National Authorities (DNAs) decide to reflect the practice of differentiating PP rights.
18. **Recommendation:** It is recommended that a voluntary end-date be introduced for the participation of entities authorized by AIP DNA. The option is straightforward, easy to administer and expected to be used in practice. Introducing differentiation between PP rights at regulatory level is not recommended at this stage.

3.2. Facilitating exit of entities from CDM projects

3.2.1. Facilitating PP exit from CDM projects

19. Another common issue for updating the MOC is the unavailability of the FP responsible for communicating changes to the MOC – the FP for scope of authority (b). The replacement of the FP for scope of authority (b) may not be possible if the FP is also a PP and its own consent required for a new MOC statement. This has the spill-over effect of blocking the exit of PPs that may wish to withdraw but there is no FP to communicate their withdrawal. Deferring a PP withdrawal until a FP is available to communicate the change may lead to the withdrawing PP not being contactable at that time and the corresponding complications for the MOC process.
20. A PP withdrawal is a voluntary process. Therefore, a PP should be allowed to communicate:
 - (a) Unilaterally its own withdrawal from a project activity.
 In addition, a PP should be allowed to communicate:
 - (b) The cessation of other PPs, as the cessation requires written evidence which addresses the risk of false communication;
 - (c) Changes related to their own representatives' contact details.
21. **Recommendation:** Extending the scope of direct submissions from PPs on MOC changes related to unilateral withdrawal, changes to their own contact details and communication on cessation of other PPs could simplify the MOC process. Unilateral withdrawal by PPs is not expected to introduce risks for other PPs. Information about duration of PP engagement with a project activity is public on the CDM website.

3.2.2. Administrative withdrawal of PPs

22. Another issue encountered in the MOC practice is inability to establish contact with PPs that legally exist but are no longer active. These cases may be categorized as follows:
 - (a) PPs in the process of liquidation;
 - (b) PPs in the state of dormancy – legally incorporated but officially inactive;
 - (c) PPs that are still operational but have discontinued CDM operations, and whose representatives are no longer available or not willing to engage.
23. A number of stakeholders, including the IBRD and the PDF, have called for an administrative procedure for the withdrawal of non-contactable PPs. The procedure should establish a process for the administrative withdrawal of a PP when it can be demonstrated that a consistent effort to contact the PP has failed. This may involve documented efforts by other PPs and the secretariat to contact the non-contactable PP and a view by the authorizing DNA. When the efforts consistently fail, the authorizing DNA has no objections, and an administrative period³ has elapsed, non-contactable PPs should be withdrawn. The PDF has stated that PPs that still want to be active would

³ "Administrative period" is used in the sense of a period require for certain procedural steps to take effect.

respond in time to maintain their legal rights as per the MOC process. In addition, withdrawn PPs continue to hold LOAs and may apply, through the respective project governance process, for inclusion in a project activity at any time after their withdrawal becomes effective.

24. **Recommendation:** The Board may request the secretariat to develop a process for administrative withdrawal of PPs for inclusion in a future revision of the PCP.

3.2.3. Facilitating FP exit from CDM projects

25. In 2015, an entity with FP role in several projects requested the following:
- (a) The CDM rules be changed to allow an FP to unilaterally withdraw (without PP consent) from a project activity;
 - (b) The FP rights be transferred to the HP PP as a default FP.
26. The Board considered the matter at its eighty-fifth meeting, decided not to change the current practice, and requested the secretariat to further consider the issues raised by IBRD and seek input from the PDF.
27. In its input from 8 February 2016, the PDF stated that “the topic is very sensitive as the FP and PP rights are important legal positions that can affect the relationships between project owners and project developers, as well as other participants (e.g. buyers) in the CDM process. Therefore, the possibility for withdrawal should be restrictive. Nevertheless, most of the project developers observed situations where projects were abandoned or companies simply ceased to exist and it was impossible to get a signature for necessary changes to the MOC. As the FP is responsible for the forwarding of CERs to an account outside the CDM registry and for the submission of changes of PPs, we do not see a problem if an FP unilaterally withdraws. In this case the remaining PPs need to submit a new MOC to designate new FPs.”
28. Forcibly maintaining FPs may have:
- (a) Negative consequences, including costs, for FP entities that act in good faith but are obstructed due to the inaction of counterpart PPs;
 - (b) Little or no value if the FP does not wish to engage further with the project activity. It may be argued that in the interest of transparency the actual availability of FPs should be public.
29. **Recommendation:** The Board may request the secretariat to develop and propose provisions for the voluntary withdrawal of FPs for inclusion in a future revision of the PCP. The process would involve making relevant non-confidential information public and storing/handling communications (including analysis of the risks and the possibility of handing over any FP rights to HP PPs) until the new FPs have been designated.

3.3. Online system for MOC submissions

30. In their submission from 15 April 2016, the PDF requested the Board to consider the possibility to improve the existing online electronic interface for the MOC process and to include capabilities for online authentication of FPs/PPs, as well as capabilities for changes to be approved on the basis of online authentication.

31. The proposal from the PDF could certainly deliver simplifications and improved processing timelines for the MOC, however, implementation of this scale of changes would require substantial time and resources at a time when operational volumes are decreasing. Due to the late submission of this input further analysis could not be included in this concept note.
32. **Recommendation:** The Board may wish to request the secretariat to analyse the proposal and to propose options for implementation at a future meeting.

4. Impacts

33. By combining both preventive and problem-solving measures, the proposed changes are expected to have positive impacts on existing and future projects in maintaining up-to-date MOC. The proposed changes have emerged from recent practice and have already received the support of a number of stakeholders, including the PDF and the IBRD.
34. Difficulties in updating MOC have been cited as a reason for projects not being able to make offers on the UN platform for voluntary cancellation of CERs. While such cases may be limited in number, a positive impact can be expected by increasing the supply of CERs for voluntary cancellation.

5. Subsequent work and timelines

35. The secretariat would update the PCP during a future revision with any of the changes approved by the Board. No grace period would be required.
36. Minor works to the MOC electronic interface and related forms and databases would be required if the Board approves the automatic withdrawal of PPs with authorizations from AIP on the basis of a voluntary end-date for participation.

6. Recommendations to the Board

37. The secretariat invites the Board to consider the proposed changes to the MOC process and to approve for inclusion in the PCP:
- (a) A voluntary end-date for the participation of entities authorized by AIP;
 - (b) Extending the scope of direct submissions by PPs on their own unilateral withdrawal, changes to their own contact details and communication on cessation of other PPs;
 - (c) The administrative withdrawal of PPs;
 - (d) The unilateral withdrawal of PPs.
38. The Board may wish to request the secretariat to analyse the proposal from PDF to improve the MOC electronic interface and to propose options for implementation at a future meeting.
39. The Board may wish to provide any other guidance as it deems appropriate.

Appendix 1. Input from the Project Development Forum

1. Input from PDF from 8 February 2016



Stakeholder Communication Form

(Version 01.0)

This form shall be used for any CDM-related communication with the UNFCCC secretariat or the CDM Executive Board. All the questions are mandatory unless otherwise indicated.

The completed form and any supplemental documents shall be submitted electronically to cdm-info@unfccc.int, or via fax to +49-228-815-1999 or via post to: Sustainable Development Mechanism (SDM) Programme, UNFCCC secretariat, P.O. Box 260124, D-53153 Bonn, Germany.

SECTION 1: COMMUNICATION HEADER

Please provide your contact information.

Title: Mr. **First Name:** Sven **Last Name:** Kolmetz

Name of Organization: Project Developer Forum **E-mail Address:**

Postal Address: 100 New Bridge Street, UK London EC4V 6JA **Phone Number:**
Country: Unite Kingdom *Include country code (e.g. +49-228-815-1999)*

Stakeholder Type: Non-Governmental Organization (NGO) **If other:**

Please indicate from whom you would like to get an answer.

This communication is addressed to¹: Chair of CDM Executive Board (normal track)

SECTION 2: PROJECT ACTIVITY OR PROGRAMME OF ACTIVITIES (PoA)

If this communication refers to a specific CDM project activity/PoA, please answer questions in this section (otherwise proceed to Section 3).

Project/PoA Ref. Number **If applicable, CPA Ref. Number:**
 5-digit# format 01234 8-digit# format 0123-4567

Project Cycle Stage Other **If other:**

If there is no specific CDM Reference Number, please answer the remaining questions in this section (otherwise proceed to Section 3).

Host Country(ies) All Non-Annex I

Project/PoA Title

Technology Type Other **If other:** All

SECTION 3: YOUR COMMUNICATION

Title/Subject
 Maximum 250 characters Input to letter to the CDM Executive Board submitted by the World Bank Group on voluntary withdrawal of Focal Point entities

Communication Text
 Include background, details, and conclusion (unlimited length)

The PDF welcomes the possibility to comment on the request from the World Bank for unilateral withdrawal of FP / PP and thanks for this opportunity. The topic is a very sensitive one as the FP and PP rights are important legal positions that can affect relationship between project owners and project developers as well as other participants (e.g. buyers) in the CDM process. Hence, the possibility for withdrawal should be restrictive. Nevertheless, most of the project developers observed a situation where projects were abandoned or companies simply ceased to exist and it was impossible to get a signature for necessary changes of the MoC. As the FP is responsible for the forwarding of the certificates to an account outside the CDM registry and for the submission of changes of PP's we do not see a problem if a FP unilaterally withdraws. In this case the remaining PP's need to submit a new MoC with the new FP.

¹ In accordance with the "Procedure: Direct communication with stakeholders" (version 02.0), stakeholders may address communications either (a) to the secretariat, in order to seek a fast-track technical or operational explanation regarding the implementation of existing CDM rules, or (b) to the CDM Executive Board, in order to communicate to the Board their views on CDM rules and their implementation, or to seek official clarifications of CDM rules.

	<p>Difficulties arise if one or more PP's are not available any more. So, the still active PP cannot change anything if they cannot get the signature of the inactive PP and may be blocked. In this case the inactive PP needs to be identified and the UNFCCC needs to get in touch with the inactive PP and try to get his consent that he is not active in the project any more or that the company does not exist any more. Only after a reasonable attempt to get to the status of an inactive PP this PP may be neglected and withdrawn from the MoC. To avoid delays in this process the response time should be limited to one month. We expect that a PP that still wants to be active would respond in time to maintain his legal rights.</p> <p>Besides these specific questions we would like to point out that the MoC procedures are rather complex and regularly create problems. If the EB finds it appropriate we would be happy to support and suggest simplified procedures for the MoC related processes.</p>
Supplemental Documents <i>If applicable, list the title(s) of any attached file(s) or link(s)</i>	
This communication may be made public	Yes

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Document information

<i>Version</i>	<i>Date</i>	<i>Description</i>
01.0	02 March 2015	<p>This form supersedes and replaces the following:</p> <ul style="list-style-type: none"> • F-CDM-RtB: <i>Form for submission of Letters to the Board</i> (version 01.2) • F-CDM-RtB-DOE: <i>Form for communication on policy issues initiated by AEs/DOEs</i> (version 01.1) • CDM-RtB-DNA: <i>Form for communication on policy issues initiated by DNAs</i> (version 01.1)
Decision Class: Regulatory Document Type: Form Business Function: Governance Keywords: communications		

2. Input from PDF from 15 April 2016



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 5-digit# format 01234 8-digit# format 0123-4567

Project Cycle Stage Registration **If other:**

If there is no specific CDM Reference Number, please answer the remaining questions in this section (otherwise proceed to Section 3).

Host Country(ies) All Non-Annex I

Project/PoA Title

Technology Type Other **If other:** All

SECTION 3: YOUR COMMUNICATION

Title/Subject
 Unsolicited comments on MoC procedures
Maximum 250 characters

Communication Text
Include background, details, and conclusion (unlimited length)

Many thanks for the opportunity to deliver suggestions for the simplification of the MoC procedures.

We would like to suggest to further digitise the MoC procedure using the existing interface, but further develop this to a real MoC registry and database that avoids printing out forms and sending them around for signatures. This future MoC registry could work like the EU registry (but of course much simpler as no certificates are administered, only MoC forms).

The registered focal point (primary or secondary representative) for a project or POA would log in to the CDM interface (as currently set up) to fill the required form/request changes.

After saving the form (as currently set up), similar to the EU registry, the focal point representative would be asked to provide a mobile/cell phone number to receive a challenge (code composed of

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	<p>letters and numbers) to authenticate the changes requested.</p> <p>After authentication of the request (in the CDM interface), if the changes are related to a project or POA with joint focal points, the system would send emails to the focal point representatives (as currently set up in the CDM interface when issuance is approved or a change is processed) to confirm the changes. The latter could be done using the same process logging into the CDM interface; providing a mobile / cell phone number to receive a challenge to authenticate the changes.</p> <p>Based on experience with the EU registry, to avoid access problems in remote areas or countries with bad lines, it would be helpful to extend the validity of the challenge/code to authenticate the changes – for a few hours instead of few minutes.</p> <p>Ideally at log in the focal point would only be able to see/access the project(s) or POA(s) where he/she has responsibilities, to avoid the currently required search which at occasion takes a long time. After the selection of the project the latest MoC should open including all annexes, allowing him to do the necessary changes directly in the form. Hence, there would be no need to download older versions of the MOC or even look into paper archives.</p> <p>Also, it would be great if the history of the changes would be directly available in this interface (of course, older versions cannot be changed but just checked).</p> <p>In the case of change of contact information, registration of new project participants, any transaction where current participants need to be informed, after all changes have been entered and approved, –similar to the current practice, all project participants (former and new ones) would be informed.</p> <p>Finally, we would like to ask for a MoC Hotline. If this cannot be answered by CDM staff at all times, at least to be available to record messages for later response. . It should be clearly indicated that it would only receive and act on issues related to MOCs changes and queries.</p> <p>The PD Forum would be available to discuss any of the above points, if you would require more information or explanation.</p>
Supplemental Documents <i>If applicable, list the title(s) of any attached file(s) or link(s)</i>	
This communication may be made public	Yes

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