

Legal and Institutional issues in CDM

CD4CDM Suriname Project – Second National
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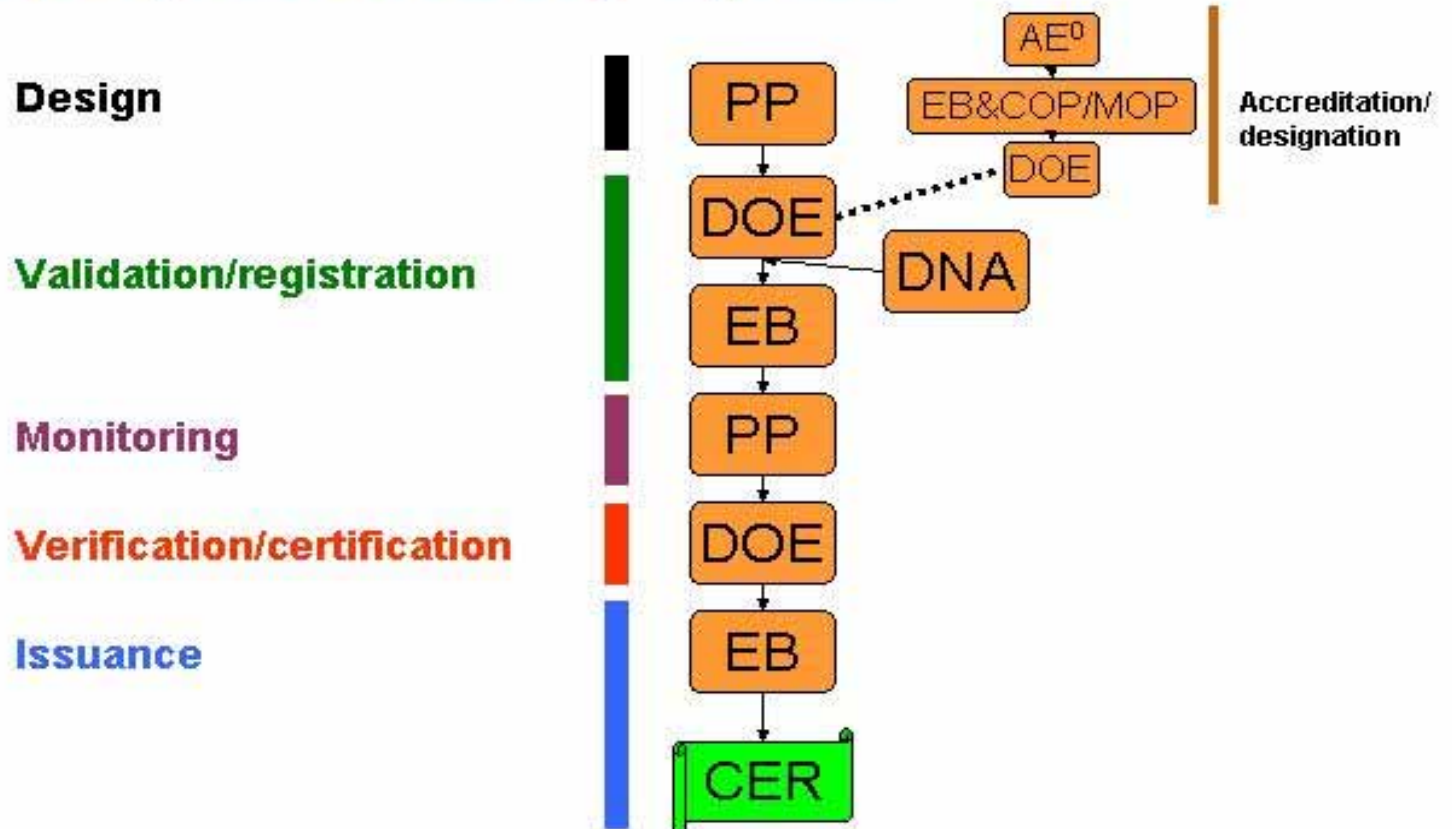
Scope of presentation

- CDM approval process
- Registries
- Legal title to CERs
- (Legal) transfer of CERs

Certified Emission Reduction

Metric tonne of carbon dioxide equivalent reduced, abated or sequestered by a CDM Project and approved by the CDM Executive Board subsequent to Verification and Certification that leads to an issued CER.

CDM project activity cycle



CDM approval process (I)

- **VALIDATION**

- independent evaluation of project activity by a DOE
- documents:
 - ***Project Design Document (PDD)***
 - ***Contract between Project Participants (PPs) and DOE***
 - ***Letter of Approval issued by the host country DNA***
 - ***Validation report***

- **REGISTRATION**

- formal acceptance of validated project by CDM EB
- documents:
 - ***Validation report***

Validation process

Design of project activity; submission of Project Design Document to DOE

DOE: Checks validation requirements

Approved methodology

New methodology

EB: To consider new methodology

EB

If approved, DOE: Finalizes validation

Registration process

Request for review within 8 weeks

YES

NO

EB: Conduct and conclude review within two meetings

CDM project activity registered

Project activity rejected, possibility to start process again

CDM approval process (II)

- **MONITORING**
 - collection by PPs of data to calculate GHG reductions
 - documents:
 - ***Monitoring plan***

- **VERIFICATION AND CERTIFICATION**
 - periodic review and determination by DOE of monitored GHG emission reductions
 - documents:
 - ***Contract between PPs and DOE***
 - ***Monitoring reports***
 - ***Verification Report***
 - ***Certification Report***

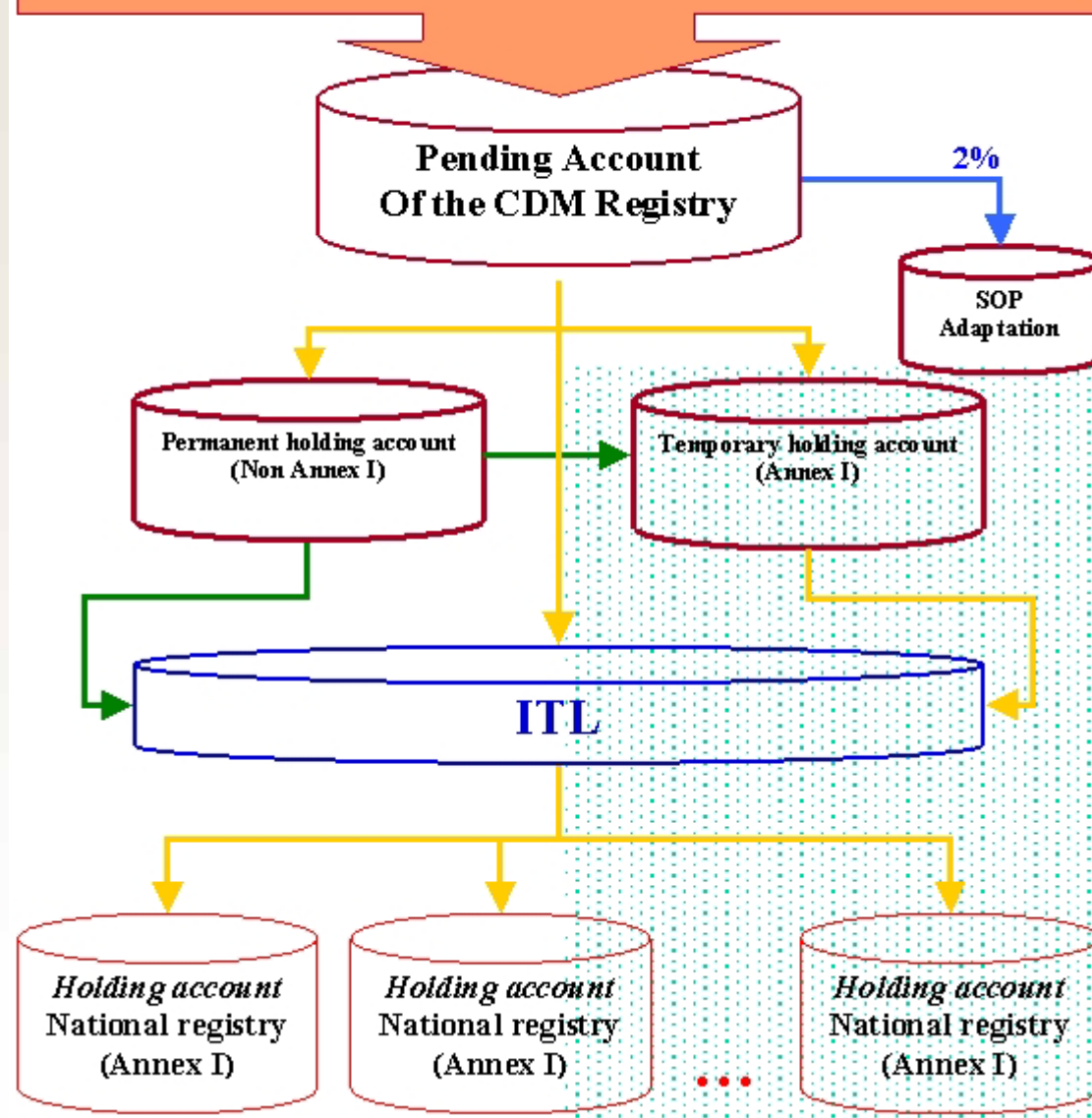
CDM approval process

- **ISSUANCE OF CERs**
 - In principle CDM EB will issue CERs equal to certified amount of GHG reductions within 15 days after receipt of Certification Report
 - documents:
 - ***Allocation Statement***

Registries: ITL, CITL, National

- **International Transaction Log (ITL)**
- **CDM Registry**
 - *“The Executive Board shall establish and maintain a CDM registry to ensure the accurate accounting of the issuance, holding, transfer and acquisition of CERs by Parties not included in Annex I”*
 - Unique serial number
 - Four different types of accounts (pending, adaptation fund, temporary holding and permanent holding account)
- **Community Independent Transaction Log (CITL)**
 - Not all CERs are equally recognised in EU
 - Limitations to amount of CERs introduced in EU ETS
- **ITL, CDM, CITL, NL national registry linked since 22 October 2008**

EB Instructs CDM Registry Administrator to issue CERs



Legal title to CERs (I)

- Creation of valuable commodity (CERs) from reducing GHGs relatively new concept
- Kyoto Protocol and Marrakech Accords silent on legal status of CERs and question who has legal title to CERs.
- Options
 - Project owner is legal owner CERs
 - GHG emission reductions are a “national resource” and thus property of Host Country
 - Title to GHG reductions may also be in dispute between different entities involved in project

Legal title to CERs (II)

- Seller should review all legal project arrangements to ensure that rights to CERs have not already been assigned to another party and confirm that none of the entities involved will lay claim to the CERs.
- Purchaser to ensure that seller can prove legal title to CERs.

Legal transfer of CERs (I)

- In order to identify whether CERs are transferable under Surinam law two issues are relevant, namely:
 - (i) what is the legal status of a CER, which is relevant to assess how a CER can legally be transferred; and
 - (ii) what law is applicable to the actual legal transfer of the CERs.

Legal transfer of CERs (II)

Applicable Law

- No general conflict rules for CERs
- Choice of Law in ERPA

Legal transfer of CERs (III)

Legal transfer of CERs pursuant to current Surinam Civil Code (SCC)

- **Article 639 SCC**

“Eigendom van zaken kan op geen andere wijze worden verkregen dan door levering tengevolge van een rechtstitel van eigendomsovergang, afkomstig van degene, die gerechtigd was over de eigendom te beschikken.”

- **Article 667 SCC**

“Levering van schuldvorderingen op naam en andere onlichamelijke zaken geschiedt door middel van een authentieke of onderhandse akte, waarbij de rechten op die voorwerpen aan een ander worden overgedragen”

Legal transfer of CERs (IV)

- The new Surinam Civil Code (nSCC) has strict rules on transfer that stipulate what is legally transferable. The following categories are transferable:
 - Objects (*zaken*);
 - restricted rights (*beperkt rechten*);
 - rights of action/claim (*vorderingsrechten*); and
 - "other rights" (*andere rechten*) as far as the transferability thereof is stipulated by law.

Legal transfer of CERs (V)

- Right of action/claim
- Other right

A CER is proof of GHG emission reductions under the Kyoto Protocol but does it grant a right to the holder that can be exercised against anyone?

Legal transfer of CERs (VI)

- Article 3:84 nSCC
“Voor overdracht van een goed wordt vereist een levering krachtens geldige titel, verricht door degene die bevoegd is over het goed te beschikken”
- Article 3:93/94/95 nSCC
Legal transfer of registered/unregistered claims
- Separate regime for the legal transfer of ‘emission rights’ in NL as “other rights”

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