

CERSPA Initiative



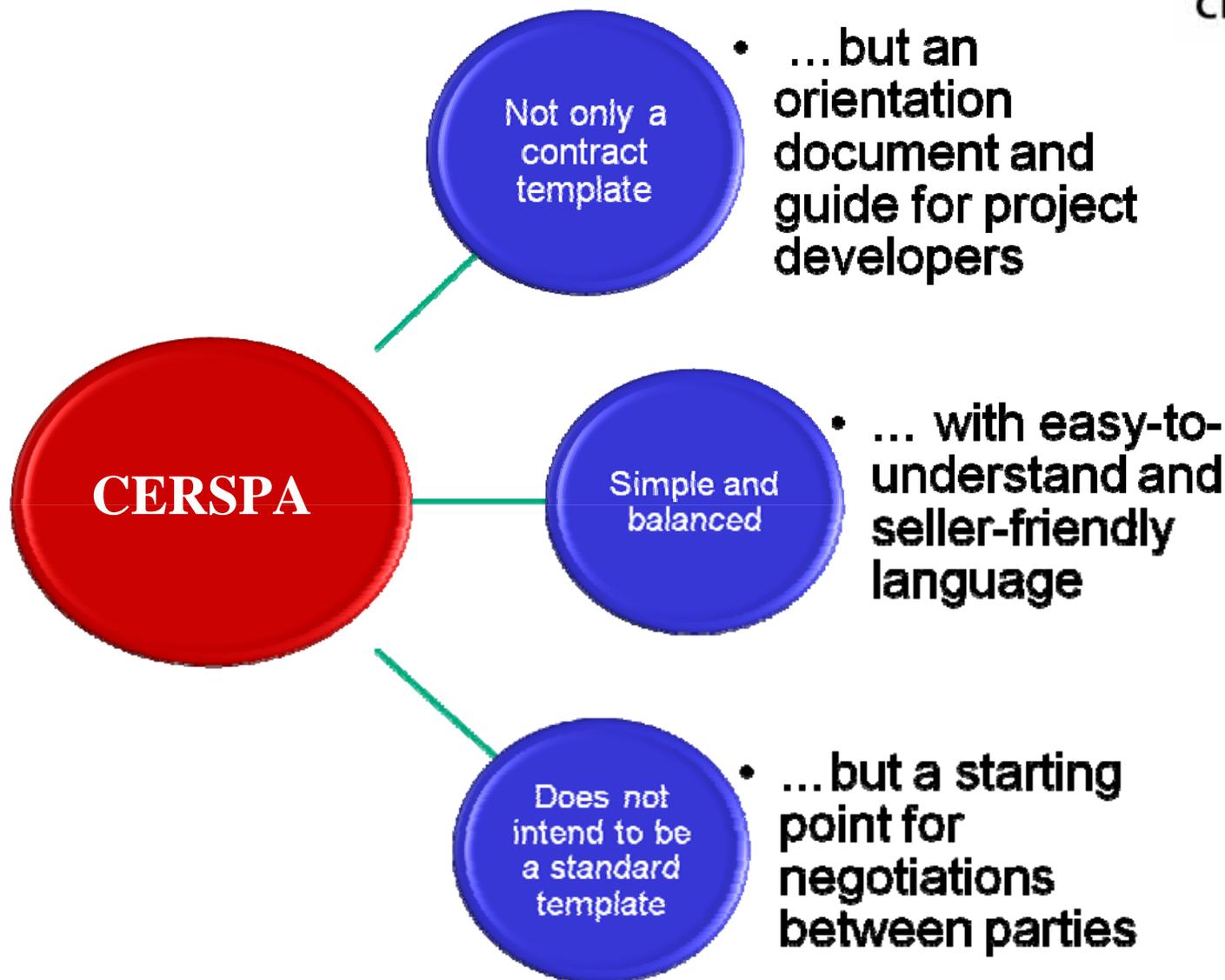
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- To assist project developers negotiate their carbon credits and tap the CDM market potential;
- Relatively new market, in which buyers have more access to information, experience, better credit rating, and specialised legal advice;
- Negotiations are often unbalanced, particularly if the seller is a medium/small project developer;
- ERPAs are complex and lengthy documents, normally written in English and governed by English law (common law);
- Project developers are often not involved in the discussions related to the carbon market and the CDM.

Main Features



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Types of Contracts

Forward contracts (ERPAs)

- Long-term sale and purchase agreement, in which delivery of credits is set at a future date;
- Suitable for Seller's seeking finance or up-front payment (predictable flow of resources);
- Not standardized;
- Market risk normally shared by the parties.

Spot Contracts

- Immediate settlement – credits already issued;
- Seller is not looking for finance;
- Standardized contracts (brokers or specialised exchanges);
- Seller takes on the market risk.

Forward Contracts (ERPAs)



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Assign responsibilities, create rights
and allocate risks

Commercial
Aspects

Main
Obligations

Events of
Default and
Remedies



Commercial Aspects

Sale and Purchase

- What is traded;
- The quantity that is traded;
- Period of generation of CERs (2008 -2012...)

Price

- Define the nominal value of the contract;
- Different structures:
 - Fixed;
 - Variable;
 - Blend

Payment

- On delivery;
- Advance payment;
- Project development costs

Main Obligations



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SELLER



- Deliver the contracted CERs (periodically)
- Obtain the necessary project approvals/permits
- Implement the project in accordance with the PDD and the Kyoto Rules
- Inform the buyer of any material changes in the project Implementation/operation
- Other obligations...

BUYER



- Make timely payments
- Maintain enough funds and resources
- Take delivery of contract CERs
- Have in place a registry account able to receive CERs

Main Obligations



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Delivery of CERs in the CERSPA:



- 1) Seller must deliver the CERs on the agreed date in the registry account of the Buyer, free of any encumbrances;
- 2) Alternatively, when the Buyer is the only focal point for communication with the CDM EB, Delivery is deemed to take place at the moment of issuance of CERs.

* *Note: The right to receive, hold and transfer CERs is exclusive to “CDM Project Participants”.*

Communication rights with the CDM EB



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- The focal point has the right to decide on the allocation of CERs among project participants;
 - Different forms of communication:
 - One party holds exclusive communication rights in relation to all aspects of the CDM project;
 - Both parties exercise jointly the communication rights in relation to all aspects of the CDM project;
 - One party holds exclusive communication rights in relation to some aspects of the CDM project, while both parties retain joint communication with respect to other scopes (such as CER allocation).
- * *Note: All entities appointed as focal points must sign the communication forms with the CDM EB.*

Communication rights with the CDM EB



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- In the CERSPA:
 - The Seller acts as the focal point for all scopes of communication with the CDM EB, including the decisions on the allocation of CERs once they are issued.

alternatively:

- The Buyer and the Seller agree that the Seller will have exclusive rights of communication in relation to the CDM project, except for the allocation of CERs, which shall be decided jointly by the Buyer and the Seller.



Events of Default and Remedies

- Standard events of default:
 - Delivery failure (seller);
 - Payment default (buyer);
 - Bankruptcy or insolvency;
 - Breach of a material obligation;
 - Provide or make false information.
- Objective of the CERSPA: minimize liability to both parties and share risks equally
 - Liquidated damages only triggered in the event of an intentional breach or gross negligence.

Events of Default and Remedies



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CERSPA

In the event of a Seller's Default, the Buyer may:	In the event of a Buyer's Default, the Seller may:
Terminate the contract, unless the default is a delivery failure, in which case the Buyer can only terminate if the delivery failure took place in two consecutive years	Terminate the contract
Recover advance payment and project development costs	Recover pending payments plus interests or the return of the CERs delivered
If the default is the result of an intentional breach or gross negligence, demand liquidated damages	If the default is the result of an intentional breach or gross negligence, demand liquidated damages

Main aspects to keep in mind



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- ❖ Protect the project and the company:
 - Reduce or limit liability (caution with firm delivery guaranties!)

- ❖ Consider the CDM as a partnership among parties and not a mere off-take agreement el MDL:
 - Buyer can offer technical and financial assistance for CDM development;
 - The more involved is the Buyer in the project, the better it will understand the difficulties and complexities in developing the project and generating the CERs.

- ❖ Ensure a robust legal document that creates incentives for both parties to fulfil their obligations throughout the entire contractual term.

To find out more...



CLIMATE FOCUS

- ❖ Document publicly available (www.cerspa.org)
- ❖ Available in English, Spanish, French, Portuguese and Chinese;
- ❖ On-line forum for discussions, comments and questions (open to all);
- ❖ CERSPA v2.0 currently under development.



Thanks!

Questions:

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