

Introduction to ERPA



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VER ERPA



- 1. Main Features**
- 2. Risk Allocation**
- 3. Key Provisions**

Features



- **Sale and Purchase agreement**
 - Object ERs
 - Amount, Price and Payment
- **ER creation**
 - Who does what
 - validation
 - Registration
 - Verification
 - Certification
- **Risk allocation - *Risk is allocated to the party best able to bear it***
 - Project risk (to be borne by Project Entity)
 - KP regulatory /baseline risk (to be borne by Trustee)
 - Market risk (shared)

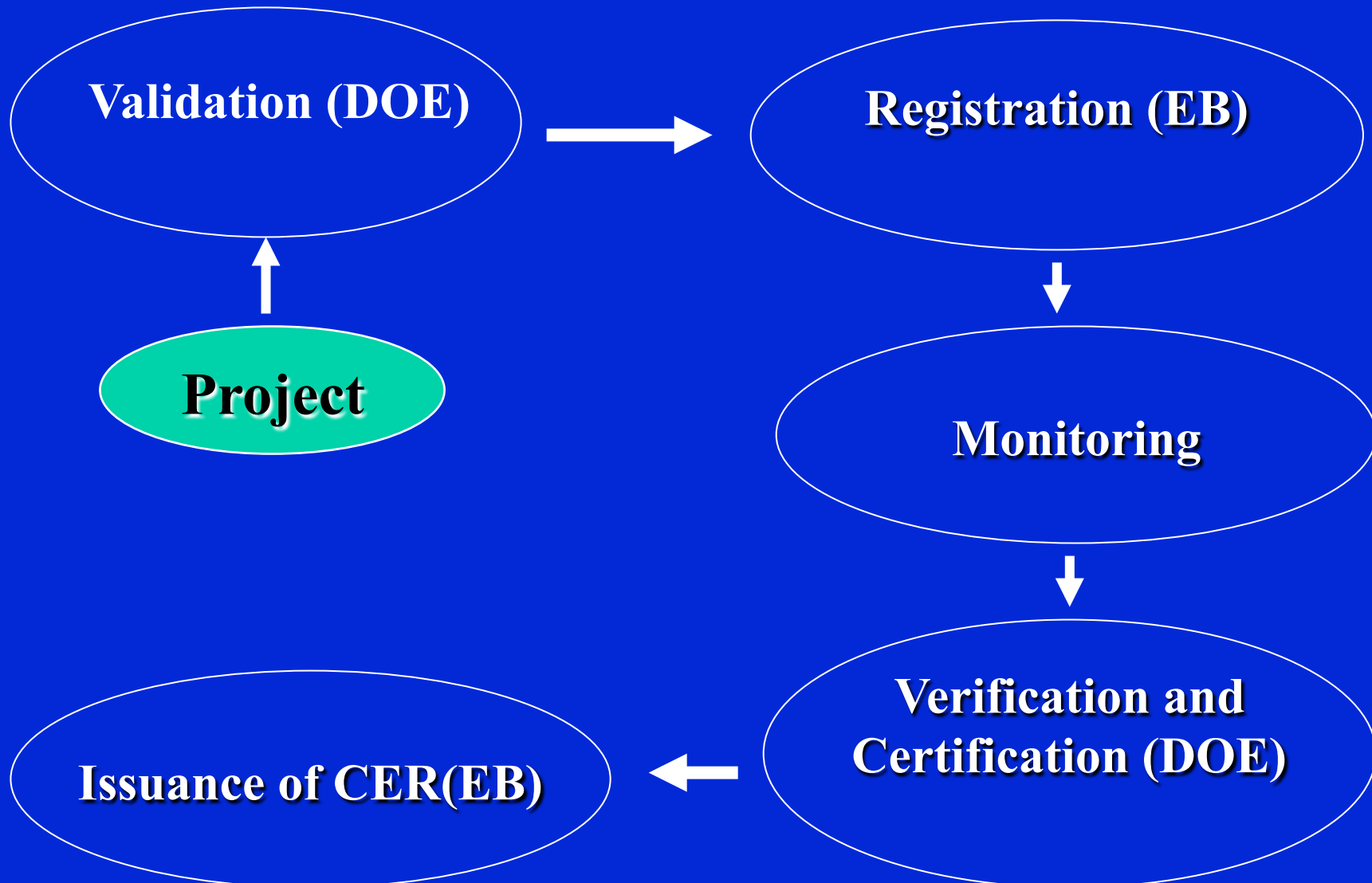
Risk allocation – KP risk



Implications:

- If the project fails to be registered by the EB, the Trustee will still make payments (upon Verification)
- If an unapproved methodology is used, which leads to decrease of ER production, the Trustee will still pay for the full number of contract ERs calculated on the basis of the unapproved methodology (the one used at the time of signature of the ERPA)
- Example of calculation: $\frac{X}{Y}$ (GC: Section 6.04)

KP risks: CDM Cycle/Rules



Structure



- **Two parts**
 - **General Conditions (standard terms, conditions, rights/obligations)**
 - **Negotiated agreement (purchase amount, price, payment, preconditions)**
 - **In the case of inconsistency, the negotiated part prevails**

Key Contractual Provisions



- Definitions
- Transfer of legal title
- Payment upon delivery
- Monitoring and Verification
- Project Development and Operation
- Events of Defaults
- Remedies
- Termination events

Sale and Purchase



- **Contract ERs**
 - Total and annual amounts
 - Unit price
 - Purchase Commencement Date – Non convertible ERs
- **Additional ERs**
 - ERs generated in addition to the Annual Amount
 - Transfer of additional ERs to the Trustee
- **Option ERs (if applicable)**

Transfer and Payment



- *Transfer of VER by Project Entity*
 - Annual transfer time and schedule
 - Within 15 days after receipt of Verification Report
 - In accordance with pre-determined schedule
- *Payment by Trustee*
 - Annual payment upon receipt of the Transfer form (within 60 days)
- *Transfer of legal title upon delivery*

Time and Schedule for Annual ER Transfer and Payment



Project Entity: Submit Annual ER Report within 30 days of the end of Reporting Year



Verifier: Provide PE/Trustee with Verification Report within 45 days of receipt of ER Report



Project Entity: Transfer ERs through Transfer Form by PE within 15 days of Verification Report



Trustee: Make payment within 60 days of receipt of Transfer Form

Costs, Taxes and Share of Proceeds



- **Costs**
 - Deduction of project preparation / KP related costs from annual payment (caped) by Trustee in the Annual Payments
- **Taxes**
 - Deduction of Host country taxes by Trustee
- **Share of proceeds (UNFCCC)**
 - Borne by Trustee:**
 - 2% CER deduction for Adaptation Fund
 - US\$ 20 Cents per CER for Admin costs

Project Registration



- **Trustee is responsible for Registration and Verification**
 - **including contracting DOEs**
- **Trustee is focal point for communicating with EB**



Project Development

- **Project Entity develops and operates the Project**
- **Project Entity informs the Trustee on the Project Commissioning Date**

Force Majeure Events



- **Extraordinary and unavoidable, beyond reasonable control**
 - **Negotiate mutually agreeable alternative arrangement**
 - **Increase Maximum Option Volume**
 - **Terminate the ERPA**



Events of default by Trustee

- Failure to make payment
- Other material breach
- Remedies:
 - Require payment
 - terminate the ERPA



Events of Default by Project Entity

- **Transfer Failure**
- **Dissolution/liquidation/bankruptcy (etc.)**
- **Material delay in the construction**
- **Material breach of terms of ERPA**
- **Repeatedly failure to comply with CDM related rules**
- **Failure to meet the requirements of the MP or EMP**

Transfer Failure



- **Remedies:**
 - **Transfer of shortfall in the following year**
 - **Reduce annual amount and Increase Maximum Option Volume**
 - **Terminate the ERPA if it occurs during 3 consecutive reporting years or any of the last 3 years**



Intentional Breach

- **Default due to intentional breach**
- **Remedies:**
 - **Terminate the ERPA**
 - **Recover damage and costs**

Other significant clauses



- **Governing Law**
 - English Law
- **Arbitration**
 - In accordance with UNCITRAL
- **Termination**



Thank you