

**DRAFT****Annex 3****DRAFT PROCEDURE FOR ADDRESSING SIGNIFICANT DEFICIENCIES IN PAST
VALIDATION, VERIFICATION OR CERTIFICATION REPORTS¹****(Version 01.0)****I. Definitions**

1. A significant deficiency means, with regard to validation, verification, or certification report(s), a breach of the clean development mechanism (CDM) accreditation, validation and verification rules or requirements applicable at the time of the submission of the validation, verification or certification report(s), which has resulted in:

- (a) A positive validation opinion where, if the breach had not occurred, a negative validation opinion would have been given; and/or
- (b) More certified emission reductions (CERs) having been or intended to be issued to the registered CDM project activity or programme of activities (PoA) than would have been or would be issued if the breach had not occurred.²

II. Principles of liability for excess issuance of certified emission reductions

2. Where the review of potential significant deficiencies determines that there are no significant deficiencies, no liability or costs of the review undertaken in accordance with section IV below shall be imposed on the designated operational entity (DOE).

3. Where the significant deficiencies in any previous validation, verification or certification report(s) are a result of the professional negligence or fraud of a DOE that performed the validation, verification or certification, the DOE shall be liable for the excess issuance of CERs in accordance with section V below.

4. Any review of potential significant deficiencies shall be limited to validation, verification, or certification report(s) submitted on or after 28 November 2008.

III. Initiation of review**A. Identification of potential significant deficiencies**

5. The following parties may make a submission identifying potential significant deficiencies in previous validation, verification or certification report(s):

- (a) The Board and/or the secretariat during the assessment or review of a request for registration of a proposed CDM project activity or PoA, or a request for issuance of

¹ This procedure does not apply to cases of excess issuance of CERs resulting from erroneous inclusion of component project activities (CPAs) in a PoA. The ["Procedures for review of erroneous inclusion of a CPA"] ["Clean development mechanism project cycle procedure"] shall apply to such cases.

² Such a deficiency may include an incorrect parameter, determined ex-ante at validation, used in the emission reduction calculations. In such a case, it is the validating DOE that is liable for any significant deficiency and not the verifying DOE. However, for a significant deficiency in a monitoring plan, where a verifying DOE is also responsible for correcting an incorrect parameter, it is the [verifying DOE] [validating DOE] [both validating and verifying DOEs] that [is] [are] liable.

**DRAFT**

CERs carried out in accordance with the “Clean development mechanism project cycle procedure”;

- (b) The CDM Accreditation Panel during the review of an assessment of a DOE conducted by a CDM assessment team in accordance with the “Procedure for accrediting operational entities by the Executive Board of the clean development mechanism”;
- (c) Another DOE with respect to the validation or previous verification for a CDM project activity or PoA for which it is carrying out a verification and certification activity;
- (d) Any designated national authority (DNA) that has authorized a project participant in a CDM project activity or PoA;
- (e) The DOE that originally produced the validation, verification or certification report; or
- (f) Another stakeholder.

6. A submission setting out the potential significant deficiencies identified via paragraph 5(c)–(f) above shall be submitted to the secretariat through a dedicated interface on the UNFCCC CDM website, using the form **F-CDM-COMP** together with sufficient supporting documentary evidence. The submissions shall be treated as confidential and shall not be made public.

7. For submissions received from another stakeholder in paragraph 5(f) above, a refundable fee of [USD 1,000] per submission shall be lodged with the secretariat at the time of submission. The submission shall not be processed in accordance with paragraph 9 below until payment has been received by the secretariat.

8. In the case of self-declaration by the DOE referred to in paragraph 5(e) above, the submission shall contain any relevant corrected validation, verification or certification reports and any relevant monitoring reports and attached spreadsheets that it deems necessary, as well as a quantification of any excess issuance of CERs that may have occurred as a result of the significant deficiencies in the relevant validation, verification or certification reports.

B. Preliminary investigation and recommendation on review**1. Preliminary investigation**

9. Within 28 days of the receipt of identification of potential significant deficiencies, the secretariat shall prepare a summary of the facts and evidence relating to the submission (ensuring that the confidentiality of sources of information is preserved), and provide it to the DOE that prepared the validation, verification or certification reports regarding which the submission is made. The DOE shall have 28 days to provide a response to the secretariat’s summary. The deadline may be extended up to 90 days from receipt of the secretariat’s summary upon the request of the DOE providing reasons.

10. Within 14 days of receipt of the DOE’s response, or, if no such response is received, within 14 days of the end of the 28-day period in which the DOE may respond, the secretariat shall conduct an analysis of the submission based on the information held by the secretariat (including documentary evidence supplied by third parties) and taking into account any response provided by the DOE and shall determine one of the following courses of actions:

- (a) No action is required because the information provided and the DOE’s response do not support the possible existence of potential significant deficiencies. In this case, the secretariat shall proceed in accordance with paragraph 11 below;



DRAFT

- (b) No review is required because the DOE has admitted potential significant deficiencies. In this case, the secretariat shall proceed in accordance with paragraph 12 below; or
- (c) A review is required because the information provided in the submission and the DOE's response support the possible existence of potential significant deficiencies. In this case, the secretariat shall proceed in accordance with paragraphs 13–14 below.

2. No action required cases

11. Where the secretariat determines that no further action is required, the secretariat shall prepare a summary of findings of the analysis together with a recommendation of no further action. The secretariat shall submit the summary of findings and the recommendation to the Board for approval. If no member of the Board objects to the summary of findings or the recommendation within 20 days, they shall be deemed accepted by the Board.

3. DOE admission cases

12. In the cases of DOE admission, referred to in paragraph 5(e) above and where the DOE's response under paragraph 9 above admits the existence of significant deficiencies and the documents referred to in paragraph 8 above have been provided, the secretariat shall assess the information provided by the DOE and prepare a summary of findings of the assessment, together with a recommendation that corrective action be taken in accordance with section V below. The secretariat shall submit the summary of findings and the recommendation to the Board for approval. If no member of the Board objects to the summary of findings or the recommendation within 20 days, they shall be deemed accepted by the Board.

4. Review required cases

13. Where the secretariat determines that the existence of potential significant deficiencies warrants a review, the secretariat shall prepare a summary of findings, together with a recommendation to initiate a review, and a scope of review, which includes:

- (a) The proposed membership of the review team³ that shall undertake the review of potential significant deficiencies;
- (b) The relevant validation, verification and certification reports to be examined by the review;
- (c) A summary of the facts and supporting evidence (ensuring that the confidentiality of sources of information is preserved) for each potential significant deficiency in previous validation, verification or certification reports;
- (d) A summary of the CDM requirements in effect at the time of each potential significant deficiency and any interpretation of them applied to the facts; and
- (e) If possible, an estimate of any excess issuance of CERs that may have occurred as a result of the potential significant deficiencies.

³ The review team shall be drawn from experts who collectively have the necessary competences with regard to accreditation requirements, validation and verification requirements, methodological requirements, knowledge of the local context of the projects in question, legal requirements and shall be selected in accordance with a "Terms of reference for a significant deficiency review team".

**DRAFT**

14. The secretariat shall submit the summary of findings, recommendation and scope of review to the Board for approval. If no member of the Board objects to the summary of findings, recommendation and the scope of review within 20 days, they shall be deemed accepted by the Board.

5. Board objections

15. If a member of the Board objects to the summary of findings and the recommendation, or the scope of review, received in accordance with paragraphs 11, 12 or 14 above, he/she shall notify the Chair of the Board through the secretariat, giving reasons in writing. The secretariat shall acknowledge receipt of the objection and make it available to the Board.

16. If a member of the Board objects to the summary of findings, the recommendation or the scope of review more than 14 days prior to the next Board meeting, the summary of findings, the recommendation or the scope of review shall be placed on the agenda of the next Board meeting; otherwise it shall be placed on the agenda of the subsequent Board meeting.

17. At the Board meeting at which the matter is placed on the agenda, the Board shall decide whether to initiate a review, and if so, shall decide the scope of review.

IV. Review of potential significant deficiencies**A. Assessment of significant deficiencies**

18. Following the Board's decision to initiate a review and approval of the scope of review of significant deficiencies in previous validation, verification or certification reports, the secretariat shall do the following:

- (a) Establish the review team to undertake the review of potential significant deficiencies;
- (b) Notify the project participants and the DOE of the initiation of review;
- (c) Make publicly available the Board's decision to initiate the review on the UNFCCC CDM website;
- (d) For cases where a validation report is the subject of the scope of review, suspend the issuance of CERs for the relevant CDM project activity or PoA.

19. Within 28 days of the date of notification of the initiation of review of potential significant deficiencies, the DOE shall provide written responses to each potential significant deficiency in each relevant validation, verification or certification report as detailed in the scope of review. Such response may include:

- (a) Clarification or rebuttal of the facts (including submission of any additional facts and documents) and the DOE's interpretation of the facts that apply to the potential significant deficiency; and/or
- (b) Clarification or rebuttal of the CDM requirements in effect at the time of each potential significant deficiency and the DOE's interpretation of them applied to the facts.

20. Within the 28-day period for the DOE to provide responses to the scope of review of potential significant deficiencies, the DOE may request the review team, by email through a dedicated email address, to make a telephone call to it to provide clarifications on the issues identified if they are not sufficiently clear to it. In this case, the DOE shall provide the contact details of the person to be called



DRAFT

with preferred time slots. The review team shall fix a call appointment within three (3) days of receipt of the request. The secretariat shall record the call.

21. Within 28 days of receipt of the DOE's response, the review team shall prepare an assessment report on the potential significant deficiencies in the context of the scope of review, the CDM requirements applicable to the project activities that were available at the time that the validation, verification and certification reports were submitted, and taking into account the responses of the DOE.

22. If, during the assessment, the review team requires further clarification or information from a party involved in the validation or verification activity, it shall ask the party to submit a response addressing the required clarification or provide the requested information. The party shall respond within 28 days to the review team after receiving such request. If the review team receives a response from the party, it shall, notwithstanding the provision in paragraph 21 above, finalize the assessment report within 14 days of receipt of the requested clarification or information. If no such response is received, the review team shall finalize the assessment report within 14 days following the end of the 28-day period in which the party was requested to respond.

23. If, during the assessment, the review team identifies that the assessment requires input from a relevant panel or working group, it shall request the secretariat to place the matter on the agenda of the next meeting of the panel or working group. In this case, the review team shall, notwithstanding the provision in paragraph 21 above, finalize the assessment report within 14 days of receipt of the input from the panel or working group.

24. If, during the review, the review team forms the opinion that an extension of the deadline is required for the assessment, or receives a request from the DOE for an extension of the deadline for a response referred to in paragraph 19 above, it shall submit a request for a specified extension of the deadline to the Chair of the Board, explaining the reasons for the request. The Chair of the Board shall grant the extension unless he/she is of the opinion that the reasons are unjustified.

25. The assessment report shall include the findings and recommendations from the review and the reasons and rationale for the findings and recommendations, including, but not limited to:

- (a) A proposed decision to be taken by the Board;
- (b) The facts and any interpretation of the facts by the review team that formed the basis of the proposed decision, including a determination of the reasons (including whether any significant deficiency was caused by professional negligence or fraud) and responsibility for the significant deficiencies in previous validation, verification or certification report(s);
- (c) The CDM requirements applicable to the significant deficiencies in effect at the time of the submission of the request for registration or issuance of CERs and any interpretation of them applied to the facts;
- (d) A summary of any corrections required to be made by the DOE in the validation, verification or certification report(s) in question as well as any relevant monitoring report(s) and attached spreadsheets;
- (e) A quantification of any excess issuance of CERs that has occurred as a result of the significant deficiencies in the relevant validation, verification or certification reports.

**DRAFT****B. Consideration of assessment of significant deficiencies**

26. The secretariat shall forward the review team's assessment report to the DOE. The DOE shall have 14 days to submit, in writing, any objections to the findings or recommendations of the assessment report. If the DOE has raised any objections to the findings or recommendations of the assessment report it shall be given an opportunity for a hearing at a Board meeting before any decision is made by the Board. The secretariat shall forward the assessment report together with any written objections received to the Board, and shall place the matter on the agenda of the next available Board meeting.

27. If no objection to the findings or recommendations of the assessment report has been received in accordance with paragraph 26 above, the secretariat shall submit the assessment report to the Board for approval. If no member of the Board objects to the findings of the assessment report within 20 days, the assessment report shall be deemed accepted by the Board.

28. If a member of the Board wishes to object to the findings or recommendations of the assessment report, he/she shall accordingly notify the Chair of the Board through the secretariat, giving reasons in writing. The secretariat shall acknowledge receipt of the objection and make it available to the Board.

29. If a member of the Board objects to the findings or recommendations of the assessment report more than 14 days prior to the next Board meeting, the matter shall be placed on the agenda of the next Board meeting; otherwise it shall be placed on the agenda of the subsequent Board meeting.

30. At the Board meeting for which the matter is placed on the agenda, the Board shall decide whether:

- (a) If presented, to accept the DOE's argument(s) that certain or all of the significant deficiencies identified in the assessment report do not exist and that corrections to the validation, verification or certification reports are not necessary in total or in part. In this case, the Board may request the review team to re-calculate the quantity of excess CERs taking into account the Board's decision to accept the DOE's argument(s); or
- (b) To accept the assessment report's finding that no significant deficiencies were identified and no further action is required; or
- (c) To accept the assessment report's finding that confirms that significant deficiencies exist and the assessment report's recommendations and to authorize the secretariat to implement the provisions in section V below; or
- (d) To request the review team to clarify or expand on any aspect of the assessment report that the Board deems necessary in order for it to make a decision.

31. The review team shall complete any further work required by the Board within 14 days and submit a revised assessment report to the Board for consideration at the next available Board meeting. At that Board meeting, the Board shall make a decision in accordance with paragraphs 30 (a)–(c) above.

V. Consequences arising from finding of significant deficiencies**A. Corrective action and compensation**

32. In accordance with the decision made under paragraphs 12, 27 or 30 above, the secretariat shall do the following:

- (a) Direct the DOE responsible for the occurrence of the significant deficiencies to make all necessary corrections to the validation, verification or certification report(s) as outlined in

**DRAFT**

the assessment report (including where the significant deficiency is not a result of the professional negligence or fraud of the DOE);

- (b) Require the DOE responsible for the occurrence of the significant deficiencies, as a result of the DOE's professional negligence or fraud, to transfer an equivalent amount of emission reduction units (ERUs), CERs, assigned amount units (AAUs) and/or removal units (RMUs) equal to the excess CERs issued into the cancellation account in the CDM registry within 90 days or another timeframe decided by the Board taking into account the circumstances of each case;
- (c) If applicable, resume issuance of CERs for the project activity or PoA for which significant deficiencies were ultimately not determined or for which corrections to the validation, verification or certification report(s) have been made in accordance with subparagraph (a) above to meet CDM requirements.

B. Additional consequences

33. The Board shall decide either at the meeting referred to in paragraph 30 above, or at the next available Board meeting after the decision is made in accordance with paragraph 27 above, whether:

- (a) To suspend the accreditation of the DOE in accordance with the "Procedure for accrediting operational entities by the Executive Board of the clean development mechanism" (CDM accreditation procedure) where the significant deficiencies in the validation, verification or certification report(s) are due to fraud by the DOE; and/or
- (b) No future issuances of CERs for the project activity or PoAs shall be allowed where the review and correction of the significant deficiencies in the validation have led to a positive validation opinion changing to a negative validation opinion.

34. The secretariat shall publish a summary of the Board's final decision on the review, and any corrected validation, verification or certification reports on the UNFCCC CDM website.

C. Failure to comply with secretariat's direction

35. If a DOE fails to respond to a scope of review within 28 days in accordance with paragraph 19 above, or fails to comply with the directions under subparagraphs 32(a)–(b) above, the Board shall suspend the DOE's accreditation in accordance with the CDM accreditation procedure until such time as it complies.

D. Costs of review

36. The DOE found to be responsible for the significant deficiencies as a result of professional negligence or fraud shall bear the costs of conducting the review.

37. A fee paid in accordance with paragraph 6 above shall be refunded if the Board decides to initiate a review of significant deficiencies.
