



“78. Project participants or the coordinating/managing entity shall complete the local stakeholder consultation process before the start date of the project activity, PoA or CPA, as defined in the “Glossary of CDM terms” and submitting the PDD or PoA-DD of the proposed CDM project activity or PoA to a DOE for validation.”

2) Paragraph 75 of the CDM Project Standard, also requires that:

“Project participants or the coordinating/managing entity shall conduct the local stakeholder consultation in accordance with applicable national regulations, if any”

In fact, many jurisdictions define local stakeholder consultation processes at two levels:

a) A general local stakeholder consultation process about the project is often conducted according to national legislations and requirements. Requirements usually are specific for technology, scale, region and the type of intervention. Where projects are small or do not have significant effect on external stakeholders, the project is subject to national legislation that protects external parties from any impacts or offer grievance mechanisms that allow them to question the project.

b) The general local stakeholder consultation process may make reference to the fact that the project will be developed under the CDM, but the main purpose is to obtain the local stakeholder's input on general aspects of the project as part of domestic licensing criteria.

c) It is frequently the case that general local stakeholder consultation processes, or part therefore, are undertaken or regulated by governmental entities and the project developer will only be involved during effective project implementation.

d) For projects with significant impacts, the general local stakeholder consultation process has different stages and often translates into a continuous stakeholder engagement process.

e) Many countries have also defined rules for CDM specific local stakeholder consultation processes to ensure that local communities can express their opinions in consideration of the fact that the project will be developed under the CDM. For that purpose countries often require that drafts PDD, PoA or CPA, as well as other documents, are made available.

3) According to the Glossary of CDM terms (version 08.0), available at: [https://cdm.unfccc.int/Reference/Guidclarif/glos\\_CDM.pdf](https://cdm.unfccc.int/Reference/Guidclarif/glos_CDM.pdf), the “start date” is defined as follows:

i) “In the context of a CDM project activity or CPA, the earliest date at which either the implementation or construction or real action of a CDM project activity or CPA begins.

ii) In the context of a CDM PoA, the date on which the coordinating/managing entity officially notifies the secretariat and the DNA of their intention to seek the CDM status or the date of publication of the PoA-DD for global stakeholder consultation in accordance with the relevant CDM rules and requirements.”

Observations and Suggestions:

1) Avoiding retroactive rulings

Our members have observed that some DOEs have required fulfilment of the provisions of paragraph 78 of the CDM Project Standard for projects and PoAs with a project starting date before 1 April 2015. While it seems obvious, we suggest that the EB clarifies that the provisions of the paragraph shall not be applied retroactively.

For these projects, the provisions of the CDM Project Standard (version 07.0) valid until 1 April 2015 shall apply:

“Project participants shall complete the local stakeholder consultation process before submitting the proposed CDM project activity or PoA to a DOE for validation”.

Any other interpretation causes an irresolvable conflict for these projects and infringes decision 2/CMP.4 paragraph 14, which “requests the Executive Board to adhere to the principle that any decision, guidance, tool and rule shall not be applied retroactively”.

2) Conflict with the Project Starting Date of PoAs.

As defined by the Glossary of CDM terms, the Project Starting Date for PoAs may be defined as

“the date on which the coordinating/managing entity officially notifies the secretariat and the DNA of their intention to seek the CDM status”.

This procedure is further clarified by the submission of the Prior Consideration form to the UNFCCC and Host Country DNA, as defined in paragraph 14 of the CDM Project Cycle Procedure (version 09.0):

“... the coordinating/managing entity may notify to the DNA(s) of the host Party(ies) of the PoA and the secretariat in writing of the intention to seek the CDM status for the PoA, using the “CDM programme of activities prior consideration form” (CDM-PoA-PC-FORM) for the purpose of determining the start date of the PoA.”

In this case, it is the purpose of this “Prior Consideration” to announce the intention to develop a PoA, as well as to set its Start Date, which must be before any effective action in relation to a CPA is taken. In other words, the Project Starting Date in this case is the very first moment that the intention of developing a Program of Activities is announced. At this point in time Project Developers do usually not have the information or documents such as a draft PDD, PoA or CPA that are required by domestic regulation to undertake a CDM specific local stakeholder consultation. Therefore, the request to undertake a local stakeholder consultation process before the start date of a PoA is inadequate.

### 3) Conflict with the Project Starting Date of CDM Projects and CPAs

As defined by the Glossary of CDM terms, the Project Starting Date of a CDM project activity or CPA is defined as “the earliest date at which either the implementation or construction or real action of a CDM project activity or CPA begins.”

Such Start Date may be defined by very diverse events, such as the signature of equipment or construction contract or a successful bid for a public tender to develop a concession or to supply a Power Purchase contract. Depending on the event this may mean that the project developer did not have any prior relation, commitment or entitlement to the project. In fact, it is the essential concept behind the Project Starting Date to determine the earliest moment when the Project Developer assumes a tangible commitment for the development of a project.

With this concept in mind, it is not plausible to request that a CDM specific local stakeholder consultation is conducted before such an event because:

- i) If local stakeholder consultations are undertaken before a tangible commitment for the development of the project exists, this will not only generate sunk costs, but also expectations and confusion that will frustrate the stakeholders in question.
- ii) CDM specific local stakeholder consultations need to be developed in accordance with applicable national regulations”. These domestic regulations commonly require that adequate information and documentation, such as draft PDDs, PoAs or CPAs are made available. Developing such documents requires detailed project studies that are usually not available before the events that define the Project Start Date. Moreover, it requires investment of resources (time, money and people) to prepare the necessary documentation that are not justifiable before an effective investment decision is taken.
- iii) Undertaking local stakeholder consultation on the basis of limited information and incomplete documents may further increase frustration as it will not allow addressing stakeholder concerns.
- iv) Undertaking a CDM specific local stakeholder consultation too early prevents local stakeholders from expressing grief about the effective impacts that occur during construction and implementation of the process and thus is not in their best interest.

#### Conclusions and Suggestions:

The PD Forum fully supports the necessity and intention to ensure that local stakeholders are adequately consulted and involved in the project development and implementation process. To ensure that this is met with utmost respect for local circumstances, it is key to supervise that projects have been licensed according to the rules and requirements implemented by sovereign parties. To structure such an approach we suggest a rationale which 1) builds on the general local stakeholder consultation process and legislation for project licensing and 2) uses the CDM specific local stakeholder process to confirm that the domestic stakeholder consultation process or applicable licensing requirements have been effectively met during project implementation.

	<p>In order to ensure the effectiveness of such a concept, we believe that the original rule to Project Developers to “complete the local stakeholder consultation process before submitting the proposed CDM project activity or PoA to a DOE for validation” is more appropriate.</p> <p>As a matter of fact project developers are already required to describe and demonstrate that all legal requirements, including those related to environmental and operating licenses, have been met and how stakeholders have been engaged based on national, as well as CDM specific requirements. This is not only validated by the DOE, but also subject to the approval of the host country DNA, which is required to judge and attest the projects contribution for sustainable development. Last but not least, the local and the global stakeholder consultation allow any local and global stakeholder to question the work of project developers, DOEs as well as of the DNA and the general effectiveness of the requirements.</p>
<p><b>Supplemental Documents</b> If applicable, list the title(s) of any attached file(s) or link(s)</p>	
<p><b>This communication may be made public</b></p>	<p>Yes</p>

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### Document information

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