

A6.4-SBM015-AA-A11

Information note

Analysis of the pros and cons related to framing users' rights with regard to control versus confirming ownership of account holdings

Version 01.0



1. Procedural background

1. The Conference of the Parties serving as the meeting of the Parties to the Paris Agreement (CMA), through decision 3/CMA.3, adopted the rules, modalities and procedures (RMPs) for the mechanism established by Article 6, paragraph 4, of the Paris Agreement (Article 6.4 mechanism), as contained in the annex to that decision.¹ The decision requested the Supervisory Body of the Article 6.4 mechanism to develop provisions for various processes necessary to operate the mechanism, including the registry for the mechanism (mechanism registry). Requirements for the mechanism registry are provided throughout the RMPs, including, but not limited to, in sections V.H, V.J, V.K, VI, VII, and XI.B.
2. The CMA, through decision 7/CMA.4, annex I, further elaborated the requirements of the mechanism registry, including, but not limited to, in its sections II.A, II.B, IV and VI.² The CMA, through decision -/CMA.6 (Further guidance on the mechanism established by Article 6, paragraph 4, of the Paris Agreement),³ provided further guidance on the registry, including in relation to authorization,⁴ interoperability and availability.⁵
3. The Supervisory Body, at its thirteenth meeting, considered the draft procedure "Article 6.4 mechanism registry"⁴ and the concept note "Terms and conditions for entities using the mechanism registry"⁵ and requested the secretariat to further develop the draft procedure "Article 6.4 mechanism registry" for consideration at a future meeting, taking into account the guidance provided at the meeting. This guidance included the further development of the draft procedure in relation to issues of ownership or control and security interests.⁶
4. Also at its thirteenth meeting, the Supervisory Body further requested an analysis of the pros and cons related to framing users' rights with regard to control versus confirming ownership of account holdings, including implications for processes and procedures, corporate due diligence and execution risk requirements, and liability protections for account holders.

¹ Decision 3/CMA.3, annex, as contained in document FCCC/PA/CMA/2021/10/Add.1. Available at: https://unfccc.int/sites/default/files/resource/cma2021_10a01E.pdf.

² Decision 7/CMA.4, annex I, chapters II–VI, in document FCCC/PA/CMA/2022/10/Add.2. Available at: https://unfccc.int/sites/default/files/resource/cma2023_10a02E.pdf.

³ Decision -/CMA.6, "Further guidance on the mechanism established by Article 6, paragraph 4, of the Paris Agreement" (advance unedited version), available at: https://unfccc.int/sites/default/files/resource/CMA_6_agenda%20item15b_AUV_2.pdf.

⁴ A6.4-SBM013-AA-A13 – Draft procedure: Article 6.4 mechanism registry, available at: <https://unfccc.int/sites/default/files/resource/a64-sbm013-aa-a13.pdf>.

⁵ A6.4-SBM013-AA-A14 – Concept note: Terms and conditions for entities using the mechanism registry, available at: <https://unfccc.int/sites/default/files/resource/a64-sbm013-aa-a14.pdf>.

⁶ A6.4-SBM013 – Meeting report: Thirteenth meeting of the Article 6.4 mechanism Supervisory Body (ver. 01.0), available at: <https://unfccc.int/sites/default/files/resource/A6.4-SBM013.pdf>.

2. Purpose

5. This information note has been prepared to provide information to the Supervisory Body pursuant to its request detailed in paragraph 4 above.

3. Relationship to providing functionality for the treatment of financial security interests in the registry

6. As noted in the "Information note: Legal, technical and financial implications of providing functionality for the treatment of financial security interests in Article 6.4 emissions reductions within the mechanism registry", ownership may not be critical to all security interests as these financing arrangements are generally based on the security holder taking security over the right to something of value, which could be ownership, but could also possibly be the right to control Article 6.4 Emission Reductions (A6.4ERs) in the mechanism registry. The registry could be designed to allow third parties to hold a security, or pledge, against A6.4ERs held in accounts, without recognizing the account holder as the owner of the account holdings. As discussed in the information note referenced above, this functionality would require further development by the secretariat.

4. Overview of ownership as an issue for consideration by the mechanism registry

7. To date, the Article 6.4 mechanism frames users' rights in the mechanism registry in terms of control and is silent as to the legal nature of A6.4ERs. Over recent years, ownership of carbon credits and related matters have been raised with increasing frequency, including directly to the Supervisory Body through stakeholder communications.
8. Some stakeholders have raised multifaceted and complex issues concerning the mechanism registry's recognition of ownership (or lack thereof). These include calls for the registry to conform and provide proof of ownership to impose more robust regulation of the carbon market, mirroring obligations in the financial sector to boost confidence in the market, and to attract more finance through enforceable security interests over A6.4ER ownership.
9. For instance, if the Article 6.4 mechanism was developed to provide clarity on (i) the legal nature of A6.4ERs; (ii) the ownership of them (through the mechanism registry); and (iii) which laws shall govern the registry and where disputes are to be resolved, there would be clearly applicable laws and regulations for issues such as money laundering and financing of terrorism, as well as corporate due diligence and liability protections. Section 7 elaborates further on how recognizing ownership may affect corporate due diligence and related measures.
10. As this information note explores, providing such clarity on these legal aspects of the Article 6.4 mechanism is not advisable. However, as section 7 details, the Article 6.4 mechanism is being developed to manage risks of money-laundering and the financing of terrorism and provide due diligence processes.

11. With regard to stakeholder demand for enforceable security interests, international carbon market activities are often financed with the expectation of repayment with the revenue from the sale of the carbon credits. Financers typically require some form of security to safeguard their investment, which would ideally be over the carbon credits themselves (potentially alongside other assets). This information note explores the distinction between framing users' rights with regard to ownership versus control in facilitating security interests, drawing the conclusion that a system enabling the recognition of a third-party interest may be possible without a recognition of ownership.
12. The information note should be read alongside the "Information note: Legal, technical and financial implications of providing functionality for the treatment of financial security interests in Article 6.4 emissions reductions within the mechanism registry", which provides further information, including on the possible functionality of this system.
13. Ownership recognition issues in international carbon market registries are not unique to the Article 6.4 mechanism. Many large registries which operate internationally have contracted out of their registry accounts bearing any determination of ownership through their respective terms and conditions, as to avoid the registry operator becoming involved in ownership disputes.
14. For example, in the Verra Registry Terms of Use,⁷ Verra directly addresses the legal title of the carbon credits held in its registry (referred to as 'Instruments'⁸), stating that "... the User acknowledges and agrees that Verra does not in any way guarantee legal title to the Instruments and the User relies on any content obtained through the Verra Registry at its own risk",⁹ and further that "... Verra is under no obligation to verify or otherwise enquire into the validity of, or legal title to, the Instruments or any Related Instruments and does not recognize any interest in an Instrument or Related Instrument other than the interest of the entity named as the holder of the Instrument in the Registry or any Approved Sub-Register".¹⁰

⁷ Terms of Use, Verra Registry, dated October 2024, available at: <https://verra.org/wp-content/uploads/2024/10/Verra-Registry-TOU-October-2024.pdf>.

⁸ Defined by their Terms of Use (October 2024) as "a unit issued by, and held in the Verra Registry representing the right of an account holder in whose account the unit is recorded to claim the achievement represented by the unit. Such achievement may include, but is not limited to, a GHG emission reduction or removal in an amount of one (1) metric tonne of CO₂ equivalent that has been verified in accordance with the applicable Verra Program Rules".

⁹ Paragraph 9.1 of the Terms of Use, Verra Registry, dated October 2024.

¹⁰ Paragraph 9.2 of the Terms of Use, Verra Registry, dated October 2024.

15. The Universal Carbon Registry (UCR) does require users who intend to list carbon credits (referred to as CoUs)¹¹ on the UCR to provide or arrange for "... evidence of legal title to the CoUs or CoU in accordance with the User Guidelines/Manual..."¹² and refers to 'owners' of CoUs in its Terms and Conditions (Terms of Use), however, they also include a term that "The user acknowledges and agrees that UCR does not in any way guarantee the legal title or Environmental Benefit/Attributes¹³ of the Units and the User relies on any content obtained on UCR at its own risk".¹⁴ Further, it states that "For the avoidance of doubt, UCR has made its best endeavours to confirm, but is under no obligation to verify or otherwise enquire into the validity of, or the legal title to, the CoU or offset Units¹⁵ including any Environmental Benefit/Attributes derived therein..."¹⁶.
16. These examples from Verra and UCR's respective Terms of Use demonstrate how it is standard practice in international carbon market registries to determine that issues of ownership are outside of the registry's concern and protect the registry from ownership-related responsibilities and liabilities.

¹¹ Defined by their Terms and Conditions (Terms of Use), dated August 2024 (ver. 9.0) as "carbon dioxide equivalent CoU or Unit or carbon offset/credit CoU or Unit. Each individual CoU or Unit relating to an Environmental Benefit, generated from a project activity and carried out under and in accordance with the UCR CoU Standard (being ex-post) and eligible to be listed in the UCR or Registry as determined by UCR, which has been, or will be, assigned a unique serial number by UCR and some other organisation acceptable to UCR".

¹² Paragraph 6.2(b) of the Terms and Conditions (Terms of Use), dated August 2024 (ver. 9.0), UCR. Available at:
https://a23e347601d72166dcd6-16da518ed3035d35cf0439f1cdf449c9.ssl.cf2.rackcdn.com/Documents/UCRtermsandconditionsAugust2024Ver9_310824151628037810.pdf.

¹³ Defined by their Terms and Conditions (Terms of Use), dated August 2024 (ver. 9.0), as "all legal and equitable right, title, interest and benefit arising from or associated with (i) the protection, conservation or enhancement of the environment and/or biodiversity; or (ii) GHG reductions; or (iii) any other legal and equitable right, title, interest or benefit relating to the environmental benefit as may be created either by law, standard, contract or otherwise between UCR and the governing body of any methodology or standard, and as accepted by UCR".

¹⁴ Section 9 of the Terms and Conditions (Terms of Use), dated August 2024 (ver. 9.0), UCR.

¹⁵ Defined by their Terms and Conditions (Terms of Use), dated August 2024 (ver. 9.0), as "carbon dioxide equivalent CoU or Unit or carbon offset/credit CoU or Unit. Each individual CoU or Unit relating to an Environmental Benefit, generated from a project activity and carried out under and in accordance with the UCR CoU Standard (being ex-post) and eligible to be listed in the UCR or Registry as determined by UCR, which has been, or will be, assigned a unique serial number by UCR and some other organisation acceptable to UCR".

¹⁶ Section 9 of the Terms and Conditions (Terms of Use), dated August 2024 (ver. 9.0), UCR.

17. Other registries which do acknowledge ownership are quite distinct from the mechanism registry in legal nature. For example, the Ariadne registry, which provides a registry for trading upstream emissions reductions (UERs) for the European Fuel Quality Directive, acknowledges account holders are owners of the UERs held in their accounts, however the Terms and Conditions¹⁷ are governed by the laws of England and Wales, and the English courts are designated as the jurisdiction for resolving any disputes.¹⁸ As this information note elaborates, providing an applicable law and jurisdiction for governing the mechanism registry is not recommended as it could expose the secretariat to increased legal disputes (see section 5 below) and could exceed the mandate of the Supervisory Body (see section 6 below).
18. The clean development mechanism (CDM) registry did not address ownership in its operational framework.

5. Absence of an applicable law and jurisdiction for implementing ownership

19. The applicable law and jurisdiction for enforcing an ownership claim are critical to a claim's value - the law defines the legal framework under which a claim to ownership will be recognized, and the judiciary (court system) designated to uphold the law. It is a matter of law that determines what a carbon credit is, which regulations it is subject to, and what obligations arise from its ownership (for example, obligations related to the transfer of title or anti-money-laundering).
20. The mechanism registry was established under the Paris Agreement. According to decision 3/CMA.3, annex, para. 65,¹⁹ the United Nations Framework Convention on Climate Change (UNFCCC) secretariat shall serve as the mechanism registry administrator and maintain and operate the mechanism registry under the supervision of the Supervisory Body. Owing to this unique legal status, the mechanism registry does not fall under any national or regional jurisdiction. Consequently, unlike other carbon market operators that are subject to specific domestic or regional laws (see section 4 above), the Article 6.4 mechanism cannot be definitively governed by any singular national or regional legal framework. This uniqueness has significant implications for issues such as ownership of carbon credits and dispute resolution.
21. Although institutionally linked to the United Nations, the UNFCCC secretariat is an autonomous and independent treaty body and not part of the United Nations Secretariat. The UNFCCC secretariat enjoys privileges and immunities only in Germany. Even if Parties agree to submit disputes or claims to a defined settlement procedure, the lack of the UNFCCC secretariat's legal status as an international organization (and the accompanying immunity from legal processes) may result in legal claims against the

¹⁷ According to which the registry is made available to users in accordance with paragraph 1.1 of Terms and Conditions of Use of the Ariadne Climate UER Registry, ver. 2.0, 24 January 2022.

¹⁸ Section 30 of the Terms and Conditions of Use of the Ariadne Climate UER Registry, ver. 2.0, 24 January 2022.

¹⁹ Decision 3/CMA.3, annex, as contained in document FCCC/PA/CMA/2021/10/Add.1. Available at: https://unfccc.int/sites/default/files/resource/cma2021_10a01E.pdf.

secretariat in its role as the registry administrator. Such claims would likely need to be settled in national courts, exposing the secretariat to potential liabilities.

22. For the Article 6.4 mechanism to function effectively and to uphold the objectives of the Paris Agreement, it is crucial to protect the UNFCCC secretariat from legal disputes. Defining registry users' rights in terms of ownership could significantly increase the likelihood of ownership-related disputes involving, or brought against, the UNFCCC secretariat by third parties.
23. Moreover, seeking to secure certainty over ownership by subjecting the Article 6.4 mechanism (and thus the UNFCCC secretariat) to domestic legal systems would be inconsistent with the mechanism's status and purpose as a treaty-based, international mechanism. It is not feasible to apply a single domestic law to define ownership or resolve disputes in the context of the Article 6.4 mechanism market, and doing so would expose the UNFCCC secretariat to the risk of legal action in multiple jurisdictions, establishing a problematic precedent and potentially leading to numerous legal challenges.
24. Addressing these challenges would require significantly more resources for the secretariat. Even if the applicable law were clarified, the secretariat would still face liability risks by operating in a commercial sphere for which it is not designed (e.g. the United Nations does not generate profit or maintain reserves for liabilities). Therefore, it is essential to identify and implement methods to avoid or limit potential risks and liabilities under any approach that may be adopted.
25. Liability protections for the UNFCCC secretariat, in its role as the mechanism registry administrator, will need to be strengthened even without framing users' rights with regard to ownership, in order to mitigate legal risks to the secretariat arising from the registry. These protections are already envisaged for the "Terms and conditions for entity account holders" and the "Important information for Party account holders". They will include requirements that any disputes be resolved directly between the parties involved in the transaction; designation of a dispute resolution process, including a recognized arbitrator which the registry administrator would accept instruction from; and indemnification clauses to protect the secretariat from third-party liabilities, thereby limiting the secretariat's legal exposure.

6. Potential implications on the international registry

26. Any consideration of ownership within the Article 6.4 mechanism should be carefully considered with respect to the International Registry. Thus far, the CMA has not provided guidance on the issue of ownership for any UNFCCC-administered registry, nor was ownership addressed in the CDM registry.
27. While there are many differences between the mechanism registry and the international registry²⁰, both share a common legal nature. Similar to the CDM registry, they are hosted by the UNFCCC and therefore fall outside domestic legal frameworks.

²⁰ Including the Supervisory Body supervising the mechanism (and therefore its registry) under the authority and guidance of the CMA, compared to the CMA having direct oversight of the international registry; and the units managed within the registries

28. Incorporating ownership into the mechanism registry would be a substantial undertaking, as it would necessitate designating an applicable law and jurisdiction. Such a designation would create a fundamental distinction between the mechanism registry and both the International Registry and the CDM registry, whose legal statuses remain detached from any single jurisdiction. It is unclear whether the CMA would view such a significant legal divergence for UNFCCC registries as exceeding the mandate of the Supervisory Body.

7. Corporate due diligence across ownership and control-based registries

29. Much of the certainty stakeholders seek regarding the recognition of ownership pertains to the application of market integrity and regulatory standards (i.e. corporate due diligence and liability protections). As with ownership itself, the regulations that govern ownership are set by the law and enforced by jurisdictions, meaning their application would rely on (i) the recognition of A6.4ERs as relevant to the regulatory standards (i.e. as intangible assets subject to corporate due diligence legislation); and, in many instances, on whether the account holder is recognized as the owner. To equally bind all account holders as far as possible, the Article 6.4 mechanism would need to be subject to a chosen law and jurisdiction for enforcing the law.
30. If the mechanism registry framed rights around ownership and if A6.4ERs were recognized as assets or financial instruments²¹ held by the account holder, corporate due diligence requirements which may apply include preventing fraud, ensuring market integrity through robust system controls, verifying property rights, validating ownership transfers, and enabling cross-jurisdictional recognition of rights. Relatedly, it is likely there would be requirements for verifying legal compliance with any applicable regulations, including thorough beneficial ownership checks (i.e. security interests) and multi-level authorization protocols.
31. If rights in the mechanism registry were framed around control and if A6.4ERs were covered by relevant regulations, corporate due diligence might focus more on verifying corporate information in the registry, verifying sources of funds, tracking the proceeds of trading activities, screening against United Nations Security Council sanction lists, and establishing and maintaining basic entity authentication and system access rights.
32. To draw on the example of Verra in section 4 above, Verra is a registered non-profit corporation under the laws of Washington, D.C., in the United States of America. This means Verra will be bound by the applicable laws of that jurisdiction. Even though they do not expressly acknowledge ownership of the carbon credits within their registry, it is bound by corporate due diligence obligations and other legal requirements pertaining to its activities, such as anti-money-laundering and counter-terrorist financing laws, rules and regulations, for which Verra has dedicated policies.²²

²¹ Note: The definition of what carbon credits 'are' also differs between jurisdictions and is a topic of deliberations internationally, including in work underway by the International Institute for the Unification of Private Law (UNIDROIT).

²² See 'Important policies' at <https://verra.org/about/overview/>.

33. Many aspects of corporate due diligence and related processes have the objective of ensuring integrity and protecting against illegal activity. Similarly, the Article 6.4 mechanism's standards, procedures and tools have been developed to provide for integrity safeguards, validation and verification processes, and sustainable development assessments to prevent corruption, uphold ethical practices, and ensure compliance with domestic laws throughout the lifecycle of projects, programmes and programmes of activities. For example:
- (a) The mandatory Article 6.4 sustainable development tool emphasizes the need to minimize corruption risks. Declarations on the absence of illegal activities are integrated into the validation and registration forms. Activity participants must provide detailed assurances that their development, implementation, and operational processes uphold ethical and legal standards;²³
 - (b) Activity participants are required to submit a declaration confirming that their proposed activities do not involve illegal activities, including money-laundering, tax evasion, fraud, bribery, and criminal activities, and this declaration must be validated by the designated operational entity;
 - (c) All participants in the Article 6.4 mechanism (activity participants and account holders) must be authorized by Parties, providing an opportunity for Parties to impose additional safeguards, such as adherence to national corporate due diligence regulations, as a condition of their authorization.
34. Further, as provided by 3/CMA.3, the mechanism registry shall maintain requisite identification requirements developed by the Supervisory Body. These identity requirements and related measures for managing risks of money laundering and financing of terrorism will be developed to be akin to those used by other registries. At its thirteenth meeting, the Supervisory Body requested an information note on know-your-customer provisions for the mechanism registry, which will be considered at a future meeting. That information note will further explore this matter.
35. Execution risk (i.e. the risk that a business plan will not be successful when actioned),²⁴ for example that carbon credits may not sell at the price planned for in a financing arrangement, is a risk likely to be navigated by users of the mechanism registry. Execution risk is influenced by various factors, including operational, technical and organizational challenges related to parties to a business plan; market volatility; politics; regulations; and unforeseen events. Some of these factors are often subject to regulation or are regulations themselves in domestic legal systems, which can mitigate execution risk.

²³ Article 6.4 sustainable development tool, element level question (ELQ) 10: Do the activity participants provide a declaration that the proposed A6.4 activity, in its development, implementation, and operation, will not involve any illegal activities, including money laundering, tax evasion, fraud, bribery, or other criminal activities?"

²⁴ <https://dictionary.cambridge.org/dictionary/english/execution-risk>.

36. Due to the international nature of the Article 6.4 mechanism, execution risk may be significant in the market regardless of whether a statement of ownership is provided. For example, execution risk may be influenced by factors such as assessments of ownership transfers (noting the lack of applicable law for the Article 6.4 mechanism), verification of compliance with applicable legal frameworks, the cross-border transaction nature of the Article 6.4 mechanism, vulnerabilities in managing fraud, money-laundering and other illicit activities due to the different jurisdictions, and varying regulatory capacities.

8. Framing rights around control while facilitating findings of ownership

37. Regardless of whether the mechanism registry frames users' rights with regard to ownership, some jurisdictions may recognize account holders as owners of their holdings and require all entities authorized by the Party to comply with legislation for corporate due diligence, etc.
38. The mechanism registry could present account holder information in the registry to facilitate this recognition on a Party-by-Party basis, for example by providing evidence of account holdings so as to support account holders in any claims of ownership (i.e. detailed reports of their account holdings).
39. In many jurisdictions, possession is a critical consideration in determining ownership of assets. Often referred to as the presumption of ownership, it is presumed that the person or entity who holds an asset is the owner, unless proven contrary. While a determination of possession would be dependent on the applicable law (as with ownership), account holders could use evidence of their account holdings in the mechanism registry to support a determination of possession and therefore ownership, as applicable.
40. Currently, the "Procedure: Article 6.4 mechanism registry" proposes information on the activities of the mechanism registry to be streamed as publicly available on the dedicated UNFCCC website in real time, which shall include the amount of authorized A6.4ERs, not authorized A6.4ERs (Mitigation Contribution Units) and Certified Emission Reductions in each holding account. This could include functionality for account holders to download, from the online interface, reports on their account holdings and all transactions from their accounts. This publicly available information may already suffice to support a claim of possession, and therefore ownership, where applicable.
41. As stated in section 5, it is important that the secretariat is protected from potential legal disputes resulting from any recognition of ownership. Measures to this effect are planned for the upcoming documents "Terms and conditions for entity account holders" and "Important information about the mechanism registry for Parties", as applicable.

9. Implications for processes and procedures of control-based versus ownership-based registry development

42. As stated in section 5 above, providing more certainty to the market on the legal ownership and the rights and obligations of account holders with respect to the ownership of their account holdings requires clarity regarding the applicable law, what an A6.4ER is, and who the owner is. As discussed above, the mechanism registry could, in theory:

- (a) Determine the applicable law, although this is not recommended and would be a matter for CMA consideration; and
 - (b) Recognize the account holders as owners of A6.4ERs held in their accounts.
43. Determining what A6.4ER are is a matter for determination by the applicable law, not the mechanism registry.
44. If the mechanism registry were to address the matters in paragraph 42 (a)(b) above, it would need to comply with all laws and regulations of the applicable jurisdiction. This would be a significant undertaking and, as stated in section 5 above, would fundamentally change the nature of the Article 6.4 mechanism as a United Nations instrument. The Supervisory Body would also need to update/develop other regulations and documentation to ensure consistency, including, but not limited to, the "Procedure: Article 6.4 mechanism registry" and the upcoming documents "Terms and conditions for entity account holders" and "Important information about the mechanism registry for Parties".
45. As discussed in section 8 above, facilitating a presumption of ownership (in Parties' domestic law) through registry information or documentation could be reasonably straightforward in comparison. As above, the "Procedure: Article 6.4 mechanism registry" already provides real-time information on account holdings. To further facilitate the transparency of information past and present, the Supervisory Body could update the "Procedure: Article 6.4 mechanism registry" to explicitly provide functionality for account holders to download reports on their account holdings at a given time, and all transactions from their accounts. These reports could facilitate account holders' claiming of ownership via evidence of possession and the presumption of ownership, in applicable jurisdictions.

10. Recommendations to the Supervisory Body

46. The secretariat recommends that the Supervisory Body take note of this information note and proceed with the development of the mechanism registry framing users' rights with regard to control rather than seeking to confirm ownership of account holdings.

Document information

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