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Concept note

Terms and conditions for entities using the
mechanism registry

Version 01.0



United Nations
Framework Convention on
Climate Change

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1. Procedural background

1. The Conference of the Parties serving as the meeting of the Parties to the Paris Agreement, at its third session, adopted rules, modalities and procedures for the mechanism established by Article 6, paragraph 4 of the Paris Agreement (hereafter called RMPs).¹ The RMPs provide that the mechanism shall include a registry, and that the Supervisory Body shall, in accordance with relevant decisions of the CMA, establish the requirements and processes necessary to operate the mechanism with respect to the registry of the mechanism². Section VI of the RMPs provides requirements on the mechanism registry, including that: it shall contain accounts for both public and private entities; that it shall be developed and operationalised to operate at best practice standards for registries; and that the secretariat shall be the registry administrator and maintain and operate the registry under the supervision of the Supervisory Body.
2. At its eleventh meeting, the Supervisory Body considered the draft registry procedure, and requested the secretariat to provide information on the elements of the terms and conditions for users, for the Supervisory Body to consider at its thirteenth meeting.
3. This concept note provides information on the proposed elements of the terms and conditions for users of the mechanism registry (Terms), and issues and proposed solutions for Supervisory Body consideration. Supervisory Body guidance on these issues will inform how the secretariat proceeds to draft the Terms, as mechanism registry administrator.

2. Purpose

4. The purpose of this concept note is to provide information on the proposed Terms and seek guidance from the Supervisory Body.

3. Key issues and proposed solutions

5. Terms provide the basis upon which the registry is made available to its users. It provides clarity to users on: (i) their rights and responsibilities in respect of their use of the registry; (ii) the implications of breaching any of those responsibilities in respect of the registry; and (iii) clarity on the legal relationship between the user and the mechanism registry administrator. It is standard practice for registries to have Terms for their services.
6. There are two key issues which the Supervisory Body may wish to consider and provide guidance on with respect to possible Terms:
 - (a) The different rights and responsibilities of Parties compared to entities; and
 - (b) Whether the Terms recognize ownership of account holdings.

¹ Decision 3/CMA.3. Available at:

https://unfccc.int/sites/default/files/resource/cma2021_10_add1_adv.pdf#page=25.

² Paragraph 24(a)(v) of the RMPs. Available at:

https://unfccc.int/sites/default/files/resource/cma2021_10_add1_adv.pdf#page=31.

3.1. Rights and responsibilities of Parties and entities

7. The registry will have two types of users: Parties and authorized entities. The requirements, responsibilities, and rights are different for each.
8. Parties have responsibilities related to the authorization of entities that are seeking to use the mechanism registry. This will form an ongoing association between the Party and the entity's accounts in the registry. Additionally, Parties have reporting responsibilities and distinct transaction rights, such as the ability to make transfers of units in the registry to a retirement account for use towards their Nationally Determined Contribution. Registry-related information provided to Parties may include information on registry functions, such as how to open accounts, what information they must provide, and the information which will be made available to them, for example, their associated entities accounts.
9. In contrast, the requirements, rights and responsibilities of authorized entities as users of the registry are similar to requirements, rights and responsibilities of users of other registry systems, and can be easily addressed through the Terms. For example, the requirement on entities to provide accurate and verifiable information, ensure that they understand their rights of access, and limit liability of the UNFCCC from any losses arising from the commercial activity in the registry (i.e. to maintain the privileges and immunities of the United Nations). In addition, the Terms for authorized entity users of the registry will need to provide clarity on the relationship between Parties, the UNFCCC, and entities, such as with whom account information will be shared with, and how the UNFCCC or Parties may affect entities accounts or their access to the registry.
10. The most straightforward approach to addressing the different requirements, rights, and responsibilities of users of the registry is to produce Terms for authorized entities users only, and address the roles and responsibilities of Parties through another document, such as the Article 6.4 manual on the roles and responsibilities of Parties, currently under development.

3.2. Whether the Terms recognises ownership of account holdings

11. The CMA has not provided guidance on the recognition of ownership with regards to units held in the mechanism registry, nor how the registry may or may not recognise ownership, and/or financial security interests.
12. Whether or not ownership is recognized in the registry relates to the development of Terms as they will need to address any rights and responsibilities for authorized entities in respect of arrangements to recognise ownership and/or financial security interests³. For example, other carbon market systems acknowledge in their registry terms that users have ownership of the units held in their accounts. Other registries detail in their terms the services the registry provides to record and manage beneficial ownership, and any limitations of liability in respect of this. Other registries further specify in their terms that information provided on account holdings is not considered evidence of ownership.

³ Input received in response to the Supervisory Body's call for inputs on financial security interests is currently being analysed and the issue will be presented for the Supervisory Body's consideration at a future meeting.

13. Regarding the wider issue of ownership and whether this is acknowledged in these Terms, there are two options for the Supervisory Body's consideration:
 - (a) Frame users' rights with regard to control, with no acknowledgement of ownership; or
 - (b) Confirm ownership, with users' able to obtain proof of ownership documentation for their account holdings; the Terms specifying that transfers constitute transfer of ownership, and all disputes relating to ownership shall be left to either private dispute resolution if between account holders and/or third parties, or mediation and the United Nations Commission on International Trade Law (UNCITRAL) if involving the UNFCCC.
14. Option (a) would defer the issue by remaining ambiguous at this stage of the registry development. Option (b) would be significant in making a clear decision on the issue.

4. Impacts

15. Due to the distinction between the two types of registry users - Parties and authorized entities – authorized entity's' rights and responsibilities would be most appropriately addressed through a dedicated Terms document.
16. The roles and responsibilities of Parties with respect to the registry may be covered in a separate document.
17. The elaboration of a Terms document for authorized entities will provide:
 - (a) certainty on their rights and responsibilities in respect of the use of the registry;
 - (b) the implications of acting inconsistently with those rights and responsibilities; and
 - (c) clarity on the legal relationship between the authorized entities and the mechanism registry administrator.

The appendix below provides a description of the key elements that would constitute the Terms document.

5. Subsequent work and timelines

18. The secretariat will proceed to develop the Terms and maintain them for authorized entity users of the registry. Alongside this, the secretariat will prepare an appropriate document for Party users of the registry.

6. Recommendations to the Supervisory Body

19. The secretariat recommends that the Supervisory Body consider the issues in this concept note and provide guidance on these issues to support the drafting of the Terms.

Appendix. Key elements of the Terms for entities

1. The Terms will be developed in accordance with best-practice standards for registries and with a view to fulfilling the purpose outlined in paragraph 5 above. Proposed sections of the Terms, and a brief outline of what these sections would cover are detailed below:
 - (a) Interpretation: This section will provide all the terminology used throughout the Terms, as well as provide the hierarchy for interpretation if any inconsistencies are identified between these Terms and any decisions made by the Supervisory Body and the CMA (i.e. if there is any inconsistency between these Terms and a decision by the CMA, the decision by the CMA shall prevail to the extent of the inconsistency);
 - (b) Application: This section will provide clarity on how and when the Terms apply, how updates to the Terms will be made and affect their application, and consequences of an authorized entity not complying with or accepting the Terms;
 - (c) General terms: This section will cover what is provided to account holders upon acceptance of these Terms (e.g. access to the mechanism registry), how the registry may be updated or changed overtime, and the obligations of registry account holders such as compliance with documentation requirements, and not to assign or transfer their rights. This section will also provide information on how account holders can contact the mechanism registry administrator with any issues, when that contact will be deemed received, and how the registry administrator will respond or action any issues or requests;
 - (d) Becoming an account holder: This section will detail the process for authorized entities to become account holders and requirements for this, including obtaining authorization from Parties and providing necessary documentation, such as the evidence of authorization from a Party, identity information and contact details. It will also provide clarity on the representations, warranties, and covenants provided by authorized entities during the process of becoming an account holder. This section will also provide details on how authorized entities may update this information overtime;
 - (e) Accounts in the registry: This section will focus on the functionalities available to account holders. It will include information on account access, available information, the transactions they may perform, and any potential limitations on transactions with reference to conditions imposed by the authorizing Party. In relation to the authorizing Party, this section will provide information on the how the authorized entity's accounts will interact with the authorizing Party, and necessary information-sharing functionalities⁴. This section will also include how authorized entities may terminate their accounts;
 - (f) Suspension and termination of access to the registry or accounts: This section will provide the Terms under which an authorized entity's access to their accounts may be suspended or terminated. It will provide that accounts will be suspended when

⁴ Pending Supervisory Body guidance, this section may also include a recognition of account holders as owners of A6.4ERs held in their accounts.

there are reasonable grounds to believe that an issue has arisen, such as repeated security breaches to their accounts, failure to pay applicable fees or the user having ceased to exist as a legal person. The Terms in this section will provide the ability for authorized entities to reactivate suspended accounts if the cause is remedied within a specified period. The Terms will provide that accounts shall be terminated for significant or permanent reasons, including failure to remedy the cause of suspension, breach of the mechanism's rules (including failure to agree to updates to the Terms), or withdrawal of Party authorization. This section will also provide the implications of account suspension or termination, and detail how units held in accounts will be managed;

- (g) Fees: This section will outline the fee requirements for authorized entities, including payment schedules and the consequences of non-payment;
- (h) Disclaimer of warranties, limitation of liability and indemnification: This section will indemnify UNFCCC from legal actions resulting from the authorized entity's use of the registry, such as any damages or loss of actual or anticipated profits from the use of the registry, any disruption in the availability of the registry, any viruses or malicious software associated to the registry. In addition, this section will provide the disclaimer of warranties, such as providing that the UNFCCC does not warrant that the information made available in the registry has not been changed or modified through malicious attacks or unauthorized third-party interventions;
- (i) Data ownership and intellectual property: This section will provide clarity on the ownership of any information submitted by authorized entities to the UNFCCC, including any intellectual property rights associated with the registry and data within.
- (j) Confidentiality, IT security, and information management: This section will provide the privacy rights of authorized entities regarding their information and data stored within the registry, and how that information and data will be managed confidentially (including a reference to necessary sharing of information with Parties, dealt with under the proposed section on entity accounts above), and relatedly, how the registry will maintain IT security. This will include how any breaches to security will be managed, and provide that authorized entities must act reasonably to maintain the registry's security and the confidentiality of their access details (i.e. not share their login details and maintain anti-virus protection);
- (k) Force majeure: This section will provide for situations where the registry or an authorized entity is unavailable, or the UNFCCC is unable to fulfil their obligations, due to an event out of the affected persons control (e.g. a natural disaster);
- (l) Termination of registry: This section will provide that access to the registry is subject to decisions by the CMA and Supervisory Body, and that, in accordance with any future decisions, the registry may be terminated;
- (m) Rights cumulative: This section will provide that the Terms are to be read as additional to all other rights, remedies, and powers provided elsewhere (e.g. in the rules and regulations of the mechanism);
- (n) Severance: This section will provide for circumstances where certain terms or conditions within the Terms are deemed unenforceable, so as to ensure that all others remain in force; and

- (o) Dispute resolution: This section will provide how disputes related to the registry will be resolved and include Terms requiring authorized entities to amicably resolve disputes between themselves at the exclusion of the UNFCCC, and recommend that any remaining unresolved disputes be directed to the United Nations Commission on International Trade Law (UNCITRAL).

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