



# CDM Legal issues

## – perspectives from CDM consultant

---

**Yisong Guan**

**Easy Carbon Consultancy Co. Ltd.**

## Three points for legal issue management

---

- n Go to court is the last thing to do
- n To avoid negative legal issues, the best approach is to manage the CDM commercial issues in agreement at the beginning of cooperation
- n Understand more of CDM is a very necessary way to manage risk

# Outlines

---

- n Character of CDM
- n CDM cooperation structure
- n Risks and benefits against different cooperation structure
- n Key factors for buyer selection
- n Intent of cooperation - Termsheet
- n Impacts from other parties
- n CDM development risks before registration
- n CDM development risks during CER generation
- n Other issues to be addressed

# Character of CDM

---

- n Political based mechanism
- n A mechanism still under developing
- n International cooperation
- n Future deal and long term cooperation
- n Carbon market is not a matured commodity market
- n Multi-parties involvement

# CDM cooperation structure

---

## n Unilateral

- ü Cooperate with buyer when project registered or CERs generated
- ü Project owner pays all development costs
- ü Spot transaction or forward transaction

## n Bilateral

- ü Cooperate with buyer at the beginning of project
- ü Development costs paid by seller, buyer or share
- ü Buyer could also be the investor of the project

## Risks and benefits against different cooperation structure

---

### n Risk of Unilateral

- ü Project owner bares most of the cost risk
- ü Manage all the aspects of CDM issues or rely on support from consultancy

### n Benefit of Unilateral

- ü Project owner controls the development and project
- ü Fully ownership of CER before transaction
- ü Relatively easy to quit the cooperation

## Risks and benefits against different cooperation structure (continue)

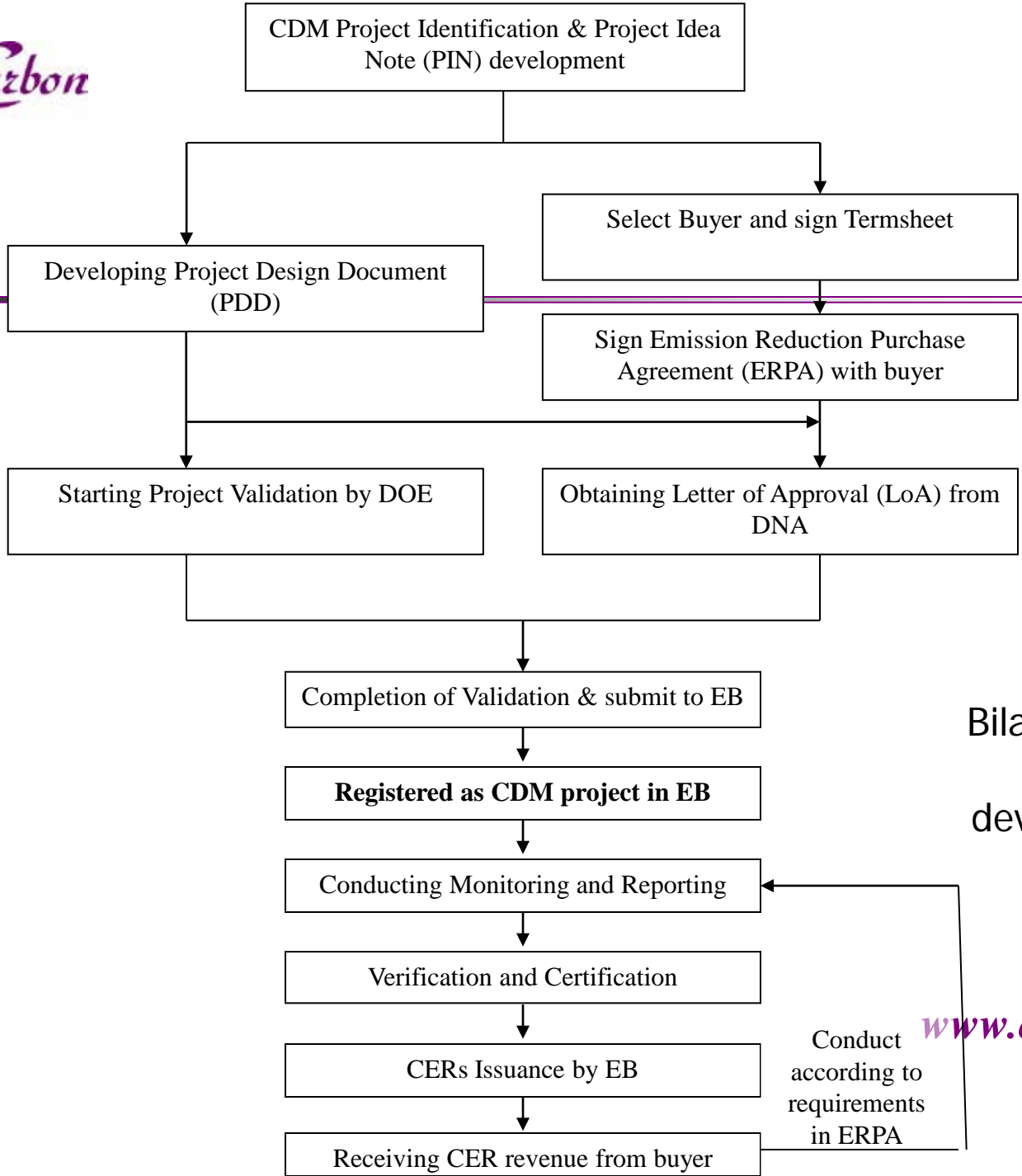
---

### n Risk of Bilateral

- ü Project owner partly lost the control of project development
- ü Partly or fully lost the ownership of CER
- ü Bundling tightly with buyer and difficult to quit

### n Benefit of Bilateral

- ü No or less costs risk
- ü Not necessary to manage all aspects of CDM development



Bilateral CDM project development chart



# Buyers of CER

---

- n End user of CER (Government, power utility)
- n Multiparty entity (Word bank, ADB etc)
- n Bank
- n CER Broker
- n Carbon fund
- n Others

# Key factors for buyer selection

---

- n Reliability and financial background
- n Ownership and liability of entity
- n CDM experience and track record
- n Carbon market experience
- n Price and conditions
- n Efficiency and communications
- n Due Diligence and familiar with project

# Intent of cooperation - Termsheet

---

## n Key content:

- ü Price
- ü Exclusive period
- ü Pre conditions
- ü Responsibility for costs and taxes
- ü Governing law and dispute resolution
- ü Confidential

# Impacts from other parties

---

## n UNFCCC

- ü eligible of project
- ü new rules and change of rules by EB meeting

## n Host country opinion

- ü Non Annex I country DNA (LoA approval and relevant requirements , CER price and tax)
- ü Annex I country DNA (validation opinion, WCD, etc)

## n Local government

- ü permit, environment, tax, access to resource (power grid, water, land, etc)

# Impacts from other parties (continue)

---

- n DOE

- ü Validation opinion, verification opinion, efficiency, new cost due to change disclosed, experience in sector and region

- n Consultancy company

- ü Experience, efficiency, team capacity and management, Communication skill

- n Entities involved with project development

- ü Investor and shareholder
- ü Local stakeholder
- ü Construction and operation companies, contractor

## CDM development risks before registration

---

- n Failure of requirements from Due Diligence
- n Methodology application problem
- n Additionality argument insufficient and late of CDM consideration
- n Permits and documentation problem
- n Objection from stakeholders
- n Negative opinion or delay from DNA
- n Negative opinion from validation
- n Request for review by EB
- n Rejected by EB

## CDM development risks during CER generation

---

- n Late or lack of commissioning
- n Short, surplus or failure of CER delivery
- n Project design changed
- n Monitor plan changed
- n Not able to implementation monitoring and data collection
- n Problem with Quality control and inconsistency of data
- n Negative opinion from verification
- n Request for review of issuance request
- n Rejection of CER issuance

# Other issues to be addressed

---

- n Authorization of document signing
- n Pre-conditions of ERPA
- n Reporting of issues timely
- n Monitoring responsibility and data collection
- n Transaction period and delivery schedule
- n Ownership transfer



**Thank you !**

---

Yisong Guan

Deputy director

Easy Carbon Consultancy Co. Ltd.

Phone: +86 10 58697045-603, 58697044

Fax : +86 10 59000064

Email: [gyisong@easy-carbon.com](mailto:gyisong@easy-carbon.com)

Website : [www.easy-carbon.com](http://www.easy-carbon.com)