



Forest Carbon Partnership Facility

Ability to transfer Title to Emission Reductions

FCPF Carbon Fund Meeting (CF16)

Paris, June 19-22, 2017

Overview

- I. Requirements under the Methodological Framework/
ERPA General Conditions**
- II. Manners to Demonstrate Ability to Transfer Title**
- III. Expected Timing of Demonstration of Ability to
Transfer Title to ERs**
- IV. Due Diligence**
- V. Remedies**
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I.

Requirements under the Methodological Framework (MF) and ERPA General Conditions (GCs)

Requirements re Transfer of Title to ERs

- Indicator 36.2 of the MF:

“The ER Program Entity **demonstrates its ability to transfer to the Carbon Fund Title to ERs**, while respecting the land and resource tenure rights of the potential rights-holders, including Indigenous Peoples (i.e., those holding legal and customary rights, as identified by the assessment conducted under Criterion 28), in the Accounting Area.”

- Section 15.01(a) of GCs:

“The Program Entity shall **ensure throughout the Term** and in accordance with the MF that the Program Entity has the **ability to transfer Title to ERs** to the Trustee, free of any interest, Encumbrance or claim of a Third Party other than in accordance with the ERPA.”



II.

Manners to Demonstrate Ability to Transfer Title to ERs

Manners to demonstrate Ability to Transfer Title to ERs

Indicator 36.2 of the MF:

“...The ability to transfer Title to ERs may be demonstrated **through various means**, including

- Reference to existing **legal and regulatory frameworks**,
- **Sub-arrangements** with potential land and resource tenure rights-holders (including those holding legal and customary rights, as identified by the assessments conducted under Criterion 28), and
- **Benefit-sharing arrangements** under the Benefit-Sharing Plan.”

Reference to existing legal and regulatory frameworks

Does the REDD County have existing legal and regulatory act(s) (e.g. acts, regulations, decrees, orders etc.) documenting the Program Entity's: (1) Title to ERs and/or (2) authority to transfer Title to ERs generated by the ER Program within the ER Program Accounting Area?

If yes, e.g.

- Describe the type of legal instrument and its legal status
- Identify the entity responsible for implementing/enforcing the legal instrument
- Explain the process of how and when the legal instrument was passed/became effective and how land and resource tenure rights of potential rights holders in the ER Program Accounting Area, including Indigenous Peoples, have been respected during this process
- Summarize the relevant provisions of the legal instrument
- Explain the linkage, if any, between the Title to ERs and the benefit sharing arrangement
- Identify any areas of ambiguity or uncertainty that may require further attention, and propose a roadmap and a timeline to address such ambiguity or uncertainty

Sub-arrangements with potential land and resource tenure rights-holders

If existing legal and regulatory act(s) cannot be submitted to document, in full or in part, the Program Entity's Title to ERs and/or authority to transfer Title to ERs, has the Program Entity entered into any sub-arrangements (e.g. contracts, payment for ecosystem services arrangement, etc.) with potential land and resource tenure rights holders, and have the potential rights holders willingly and validly assigned their rights to the Program Entity to act on their behalf?

If yes, e.g.

- Demonstrate that through prior, informed consultation, relevant rights holders have agreed to assign their Title to ERs to the Program Entity or have authorized the Program Entity to transfer Title to ERs on their behalf through a sub-arrangement
- Explain if there is a legal basis for the sub-arrangements, and how they will be implemented/enforced
- Explain how relevant disputes related to the sub-arrangement(s) will be addressed
- Identify any areas of ambiguity or uncertainty that may require further attention, and propose a roadmap and a timeline to address such ambiguity or uncertainty

Benefit-sharing arrangements under the Benefit-Sharing Plan

Has the Program Entity prepared a Benefit-Sharing Plan, in accordance with the MF?

If yes, e.g.

- Explain the linkage between ownership of Title to ERs and the benefit sharing arrangement
- Explain if and, if so, how potential land and resource tenure rights holders benefit under the Benefit-Sharing Plan
- Explain how the Benefit-Sharing Plan was designed in a consultative, transparent, and participatory manner appropriate to the country context to ensure that any negative impacts to the underlying land and resources rights of such relevant stakeholders are avoided or minimized
- Explain if the relevant feedback and grievance redress mechanism for the ER Program is available to address grievances and disputes related to the benefit sharing arrangement



III.

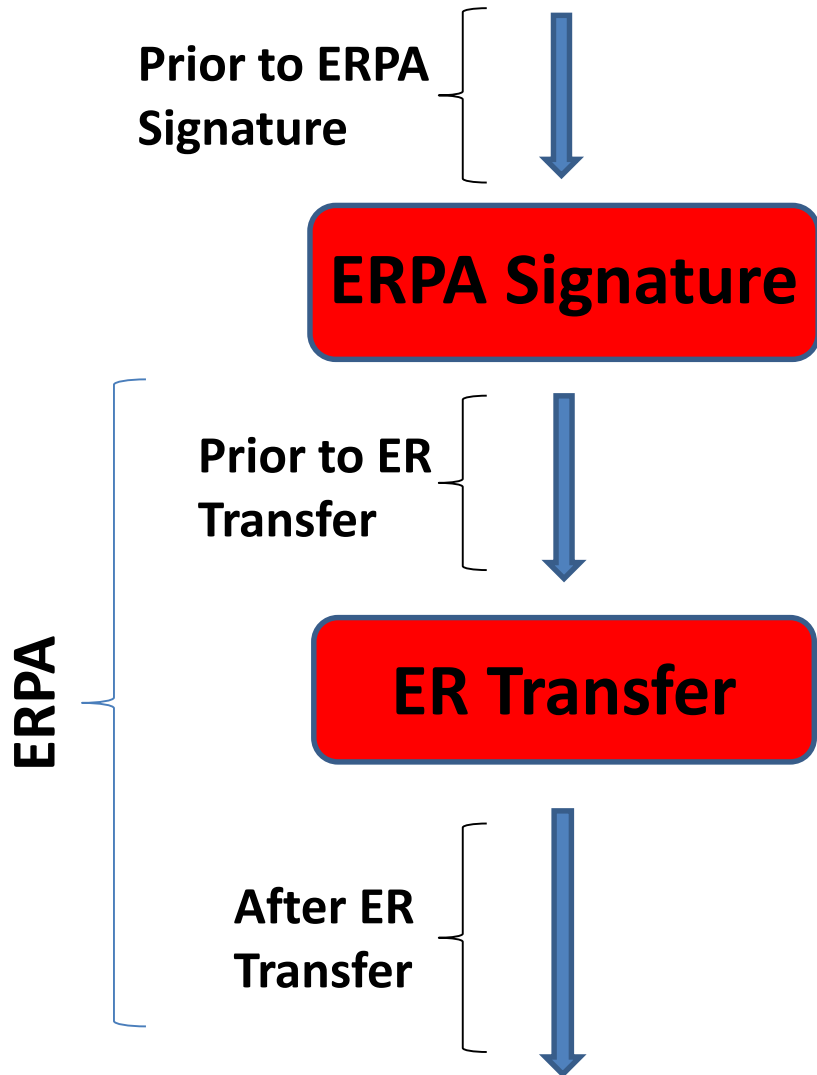
**Expected Timing of Demonstration of Ability
to Transfer Title to ERs**

Expected Timing

Indicator 36.2 of the MF:

“The ER Program Entity demonstrates its ability to transfer Title to ERs **prior to ERPA signature**, or *at the latest*, at the **time of transfer of ERs** to the Carbon Fund. If this ability to transfer Title to ERs is still unclear or contested at the time of transfer of ERs, an amount of ERs proportional to the Accounting Area where title is unclear or contested shall not be sold or transferred to the Carbon Fund.”

Expected Timing



Seller demonstrates ability to transfer title to ERs. If cannot demonstrate, may reduce Contract ER volume or delay ERPA signature

Seller demonstrates ability to transfer title to (verified) ERs. If cannot demonstrate, may result in Event of Default (*ER Transfer Failure*).

If validity of transfer of title to (verified) ERs is contested, may result in Event of Default (*Title Transfer Failure*).



IV.

Due Diligence

World Bank's Due Diligence

- The World Bank will carry out desk review of the evidence submitted by the Program Entity to demonstrate such ability on a prima facie basis in different phases (ie. prior to ERPA signature, prior to ER transfer, and post ER transfer, if contested)
- The World Bank will assume that the evidence submitted to be complete, accurate, and true
- Evidence submitted by the Program Entity shall include summary descriptions and may be supplemented by relevant court decisions, legal opinions by legal experts familiar with the REDD country's legal and regulatory frameworks, (sample) sub-arrangement(s) (to be) entered into by the Program Entity and the sub-entities for the ER Program, and/or a Benefit Sharing Plan



V.

Remedies

Inability to Transfer Title to ERs/Title Contest (prior/after ER Transfer)

Inability to Transfer Title to ERs/
Title Contest



Program Entity endeavors to resolve
within Reporting Period

Submits **ER Monitoring Report**, including:

- Remaining inability to Transfer of Title/Title Contest
- Evidence demonstrating ability to Transfer Title to ERs

Prior to ER
Transfer



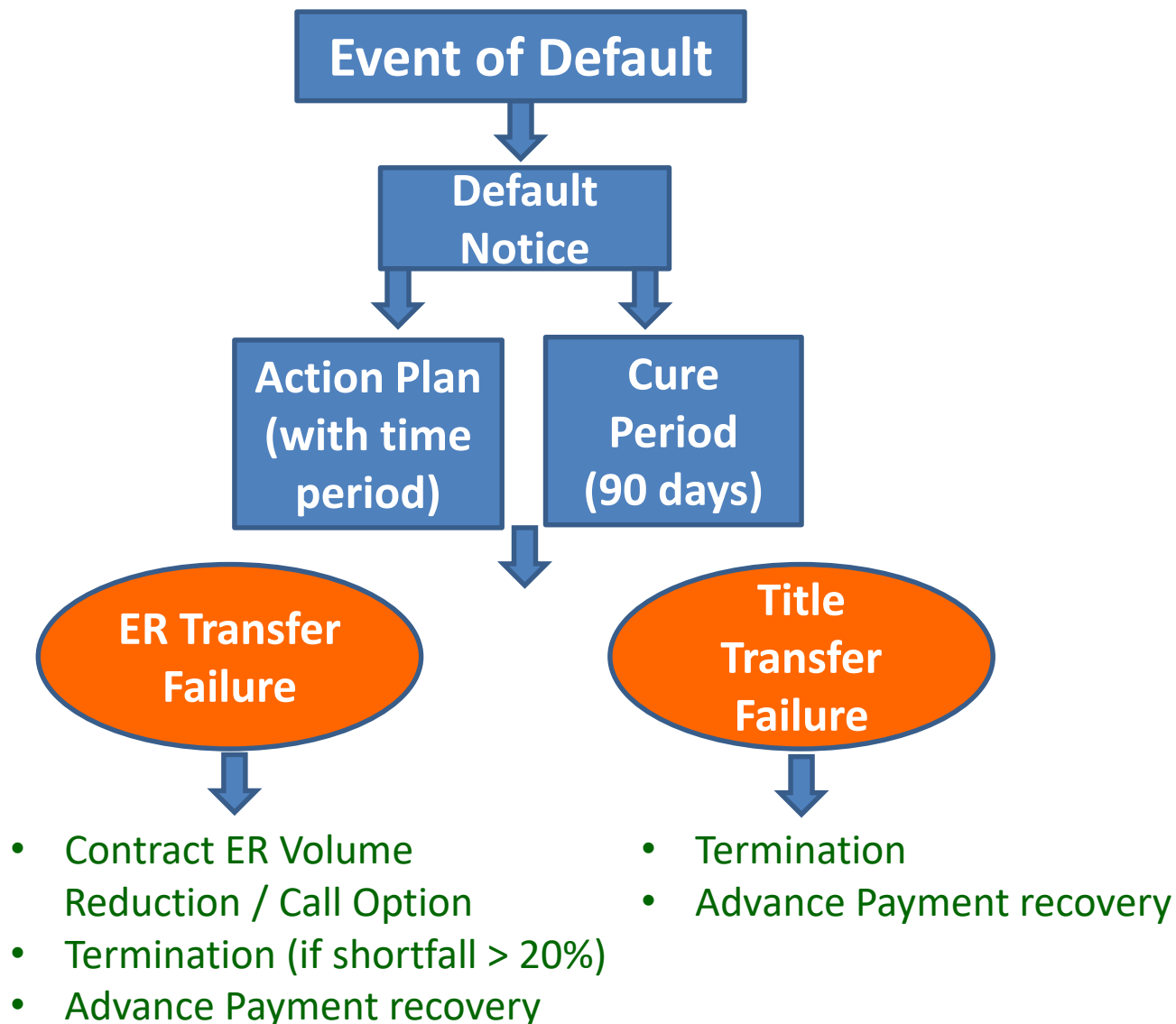
Trustee determines, in consultation with the Program Entity, the amount of affected Contract ERs/Additional ERs, and no transfer of such affected ERs shall be allowed (see next slide on *ER Transfer Failure*)

After ER
Transfer



Trustee assesses (on prima facie basis) whether Title Contest has merit. If yes, Trustee, in consultation with Program Entity, calculates the amount of affected Contract ERs/Additional ERs/Buffer ERs, and notify the Program Entity and Buffer Manager (see next slide on *Title Transfer Failure*)

Events of Default due to inability to demonstrate Transfer of Title to ERs (prior/after ER Transfer)





VI.

Next Steps

Next Steps

- Carbon Fund Participants asked to approve the due diligence approach presented in this presentation.
- Facility Management Team will prepare an indicative check list for the type of evidence that should be submitted by the Program Entity to demonstrate its ability to transfer Title to ERs.

A wooden boardwalk with a lattice railing, covered in fallen autumn leaves, leading through a forest with green and yellow foliage.

THANK YOU