



Forest Carbon Partnership Facility

Transfer of Title to ERs - Update -

FCPF Carbon Fund Meeting (CF17)
Paris, January 30 – February 1, 2018



BACKGROUND

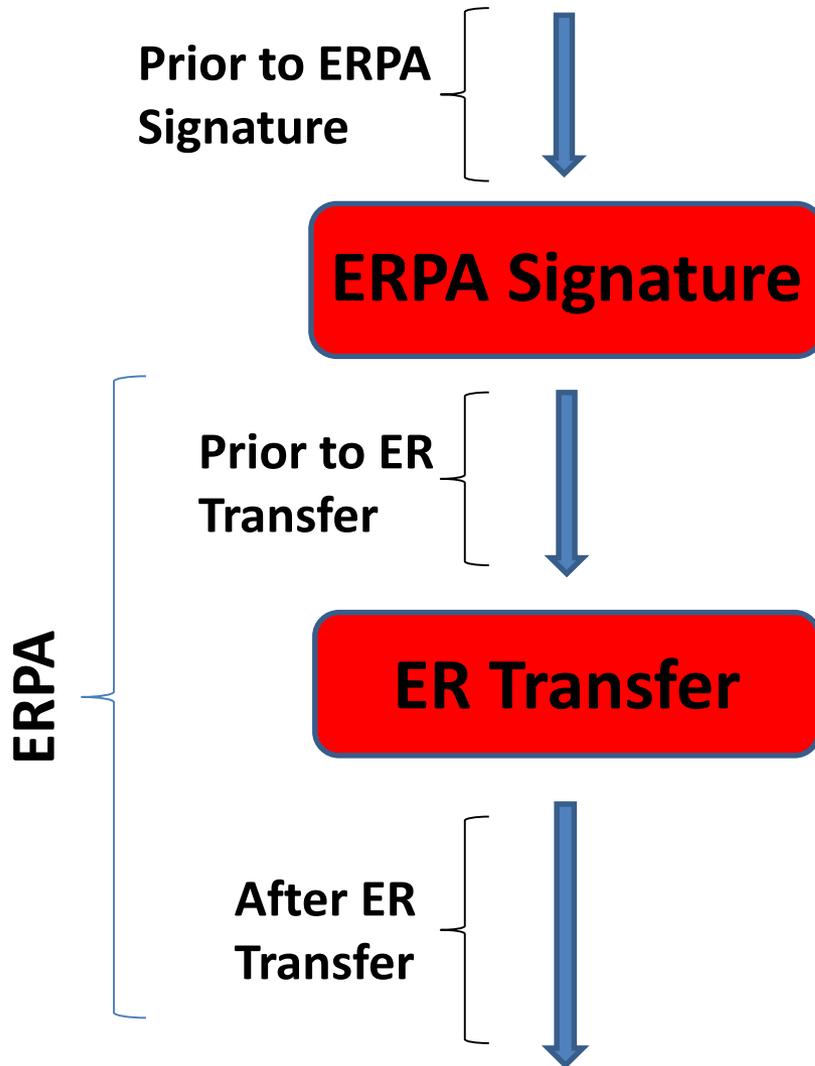
Background

- FCPF Carbon Fund Methodological Framework (MF) as well as FCPF ERPA General Conditions (GCs) require Program Entity to demonstrate to FCPF Carbon Fund its ability to transfer title to ERs prior to ERPA signature, but no later than ER transfer
- MF clarifies that this can be done through various means, incl.:
 - Legal and regulatory frameworks
 - Sub-arrangements with potential land and resource tenure rights-holders, and
 - Benefit-sharing arrangements under the Benefit-Sharing Plan
- FMT presented on “Transfer of Title to ERs” at CF16 (June 2017)
- CF16 Chair’s summary states as follow-up action: “FMT will prepare an **indicative check list** for the **type of evidence** Program Entities should submit to demonstrate their ability to transfer title to ERs”



Expected Timing of Demonstration of Ability to Transfer Title to ERs

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*).



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



INDICATIVE CHECKLIST OF TYPES OF EVIDENCE

Legal and regulatory frameworks (1)

- **Guiding Question:**
 - Does the REDD Country have legal instrument(s) (e.g., statutes, regulations, decrees, administrative orders) that
 - Stipulate that Program Entity has (1) Title to ERs, and/or (2) authority to transfer Title to ERs
 - Provide basis for land and resource tenure holders to claim interests in the Title to ERs?
- **Type of evidence:**
 - ✓ Description of type of legal instrument and its legal effect and whether its scope covers ER Program Accounting Area
 - ✓ Identification of entity responsible for implementing/enforcing legal instrument
 - ✓ Overview of how legal instrument was drafted/reviewed/adopted to confirm if legislative process was transparent/consultative/respective of interests of land and resource tenure holders (incl. Indigenous Peoples)
 - ✓ Summary of relevant provisions on issues such as:
 - Definition of rights to carbon
 - Transferability of ERs

Legal and regulatory frameworks (2)

- ***Type of evidence (continued):***
 - ✓ Assessment of any ambiguities/uncertainties/apparent contradictions in legal instrument that might affect ER Program and, if so, provision of roadmap and timeline of actions to manage related potential risks
 - ✓ In the absence of explicit legislative treatment:
 - Assessment of whether any legal instrument provides sufficient basis for determining existence/ownership/transferability of carbon
 - Assessment of whether government owns land/assets needed for carrying out ER activities, or has right under sub-arrangement(s) to occupy land and/or use resources on that land for carrying out ER activities
 - Assessment of whether national law (e.g., contract law, property law) will uphold some form of agreement between Program Entity and land and resources tenure holders whereby the two agree that Program Entity will be only seller of ERs or that Program Entity may transfer ERs on behalf of land and tenure rights holders

Sub-arrangements with potential land and resource tenure rights-holders (1)

- **Guiding Questions:**
 - Has Program Entity entered into any sub-arrangements (e.g., contracts, agreements, payment for ecosystem services schemes) that could be basis for potential land and resource rights holders to claim interests in Title to ERs?
 - Have potential land and resource tenure rights holders, through the sub-arrangement(s), willingly/expressly/validly agreed that Program Entity will be only seller of ERs, or may sell the ERs on their behalf?
- **Type of evidence:**
 - ✓ Description of structure/requirements/enforcement/duration of sub-arrangements
 - ✓ Description of legal basis for sub-arrangements
 - ✓ Assessment of whether sub-arrangements were entered into through transparent and consultative process
 - ✓ Description of how sub-arrangements affect ownership/transfer of ERs
 - ✓ If Title to ERs is attached to land and resources tenure rights, demonstration that land and resource tenure rights holders have willingly/expressly/validly agreed that Program Entity will be only seller of ERs or may sell ERs on behalf of the land and tenure rights holders

Sub-arrangements with potential land and resource tenure rights-holders (2)

- *Type of evidence (continued):*
 - ✓ Description of whether the government has rights under such sub-arrangements to occupy land and/or use the resources on that land for carrying out ER activities or can cause the land/resources tenure holders to carry out ER activities
 - ✓ Description of how disputes related to the sub-arrangements will be addressed
 - ✓ Assessment of any ambiguities/uncertainties/apparent contradictions in sub-arrangements that might affect ER Program and, if so, provision of roadmap and timeline of actions to manage related potential risks

Benefit Sharing Arrangements (1)

- ***Guiding Questions:***
 - How has design of Benefit Sharing Plan (BSP) incorporated considerations on land and resource tenure rights (including legal and customary rights of use, access, management, ownership, etc.), and Title to ERs? In particular, have potential land and resource tenure rights holders been included in the list of beneficiaries under the BSP?
 - Does the BSP require beneficiaries to register with the benefit sharing mechanisms in return for an authorization of the Program Entity to transfer Title to ERs?
- ***Type of evidence:***
 - ✓ Explanation of how benefit sharing arrangement in BSP improves Program Entity's ability to transfer Title to ERs
 - ✓ Explanation of if/how far potential land and resource tenure rights holders or owners of Title to ERs have been included in list of beneficiaries under BSP
 - ✓ If ownership of ERs is not provided for in country's legal system or sub-arrangements, explanation of how benefit sharing arrangement has provided additional clarity on Program Entity's ability to transfer Title to ERs under ER Program

Benefit Sharing Arrangements (2)

- *Type of evidence (continued):*
 - ✓ If beneficiaries are deemed to have potential land and resource tenure rights, but not Title to ERs (e.g. a statute vests Title to ERs to the State regardless of who holds the land and resource tenure rights), description of whether such potential land and resource tenure rights holders are still eligible to receive benefits under BSP
 - ✓ Explanation of how identification of eligible categories of beneficiaries under ER Program and design of BSP was done in a consultative/transparent/participatory manner that is appropriate to the country context
 - ✓ Explanation of whether relevant feedback and grievance redress mechanism for ER Program is available to address grievances and disputes related to benefit sharing arrangement



THANK YOU