

CDM ERPA's

What Sellers need

**2nd Latin America
Carbon Forum**

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Seller's Needs

- a Project
- Kyoto project cycle: PDD, Validation, Registration, Monitoring, Verification
- Host Country Approval/Authorization (LoA), right to sell CERs
- An Emission Reductions Sale/Purchase Agreement (“ERPA”)
- a Buyer

Host Country Approval

- Designated National Authority (“DNA”) of Host Country is competent body
- DNA is to approve the CDM project activity and authorize the Project Company to participate in CDM
- Typical instrument: the Letter of Approval (“LoA”)
- LoA needs to be clear, unambiguous, unconditional and irrevocable
- Unfortunately, most LoA’s do not pass this test, which increases non-delivery risk
- Host Country should preferably state not to be involved in the allocation of CERs
- Dispute resolution

Seller's ERPA Needs

- Price; Payment
- Credit
- Delivery flexibility
- Force Majeure
- Operational flexibility
- Compliance issues

Price

- Fixed
- Floating:
 - linked to EUA price (which index?)
 - floor price
 - capped price
- Reimbursement of costs
- Prepayment (agree on realistic milestones)
- Time of payment

Credit

- Who is the Buyer: solid company, SPV, trading subsidiary, government, IFI or carbon fund?
- Credit support: Parent Guarantee, Letter of Credit
- Escrow account: purchase price is pre-paid into an account held by an independent account holder – the Escrow Agent – which will hold the amount for the benefit of the Buyer until Delivery of the CERs and as from Delivery for the benefit of the Seller

Delivery flexibility

- Delivery period rather than Delivery date
- Early delivery
- Timing: avoid potential backlogs at UNFCCC and DOEs
- Delivery default to be cured by (a) delivery of replacement CERs, and/or (b) postponed delivery

Force Majeure

- Don not accept liability for events outside your control
- Natural disasters, Acts of God, etc.
- Civil disturbances, terrorism, etc.
- Governmental intervention: revocation or breach of LoA
- UNFCCC bodies and Kyoto infrastructure: EB Decisions, ITL risk

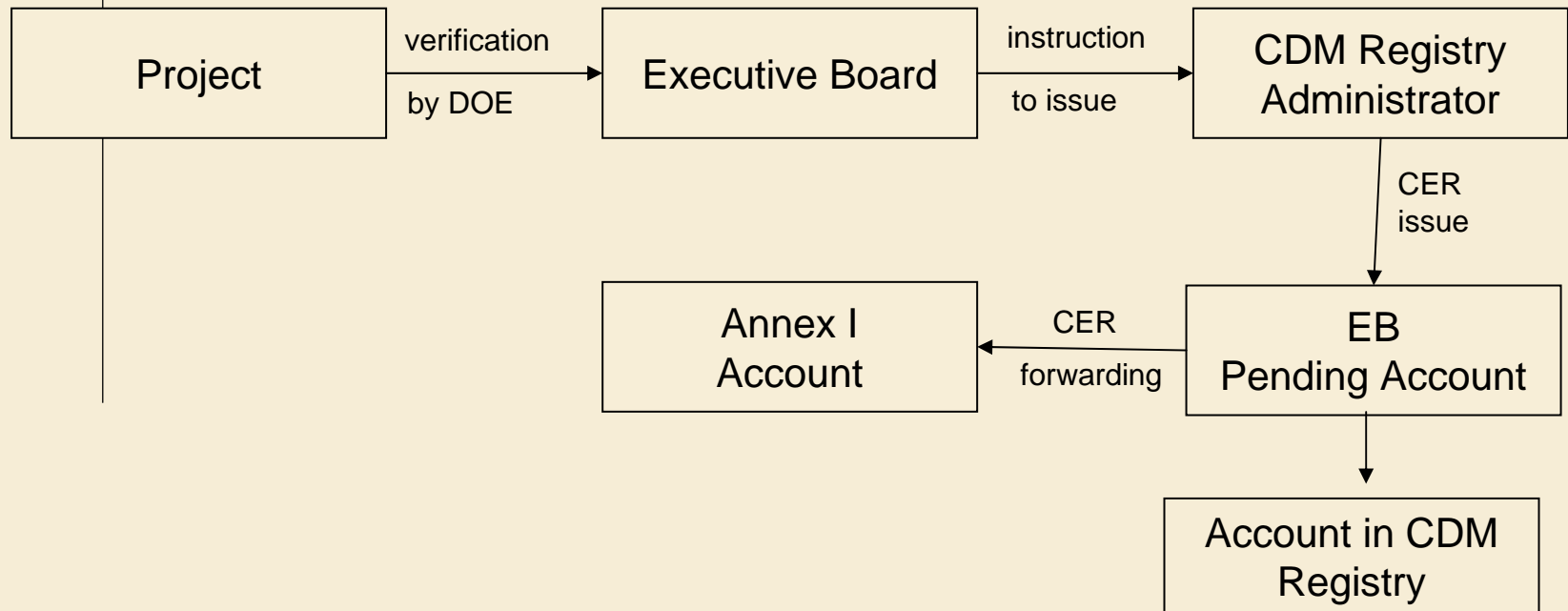
Operational Flexibility

- CDM lite
- no operational obligations beyond customary operations or prudent industry practice

Compliance issues

- Reporting; information undertakings
- insurance
- Corporate Social Responsibility policies, such as the OECD Guidelines

Buyer? CER trail

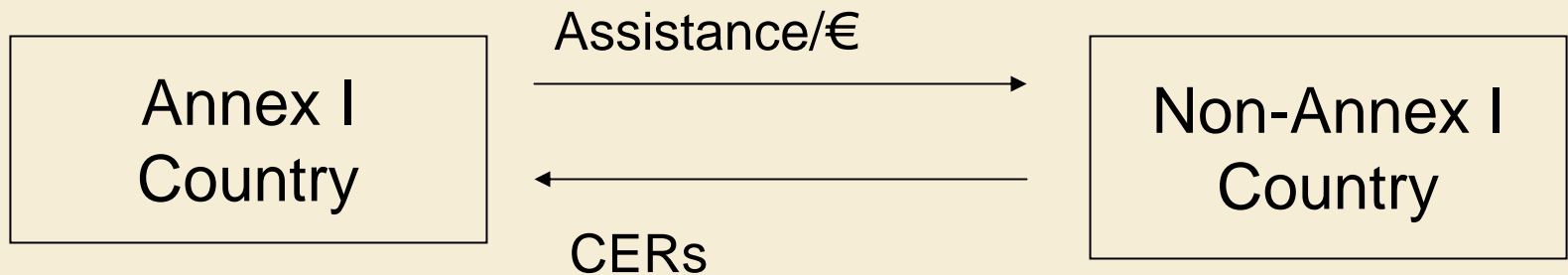


- Annex I Account holder may transfer CERs to another account in the same National Registry
- As from 1 January 2008, Annex I Account holder may transfer CERs to accounts in other National Registries

Buyer?

- Unilateral CDM: no Annex I Country involved
- Semi-Unilateral CDM: Seller to obtain to Letter of Approval from Annex I Country

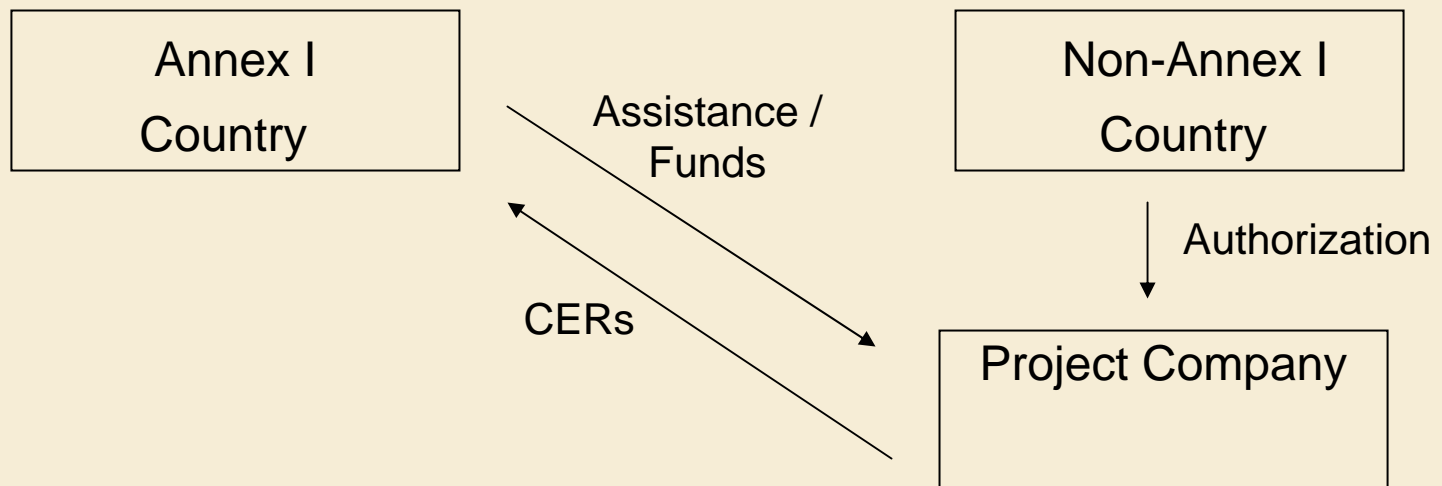
CDM Basic Structure



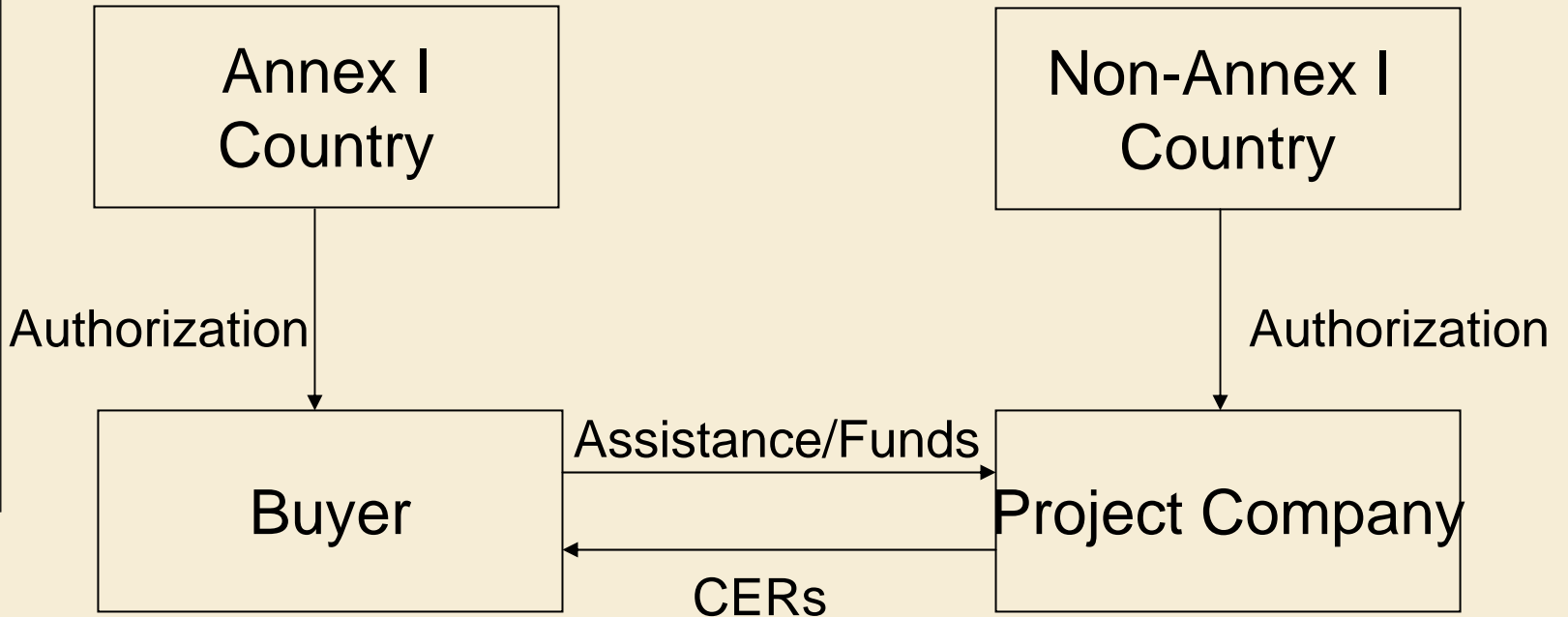
- Article 12 Kyoto Protocol
- Agreement among States

Involvement Legal Entity

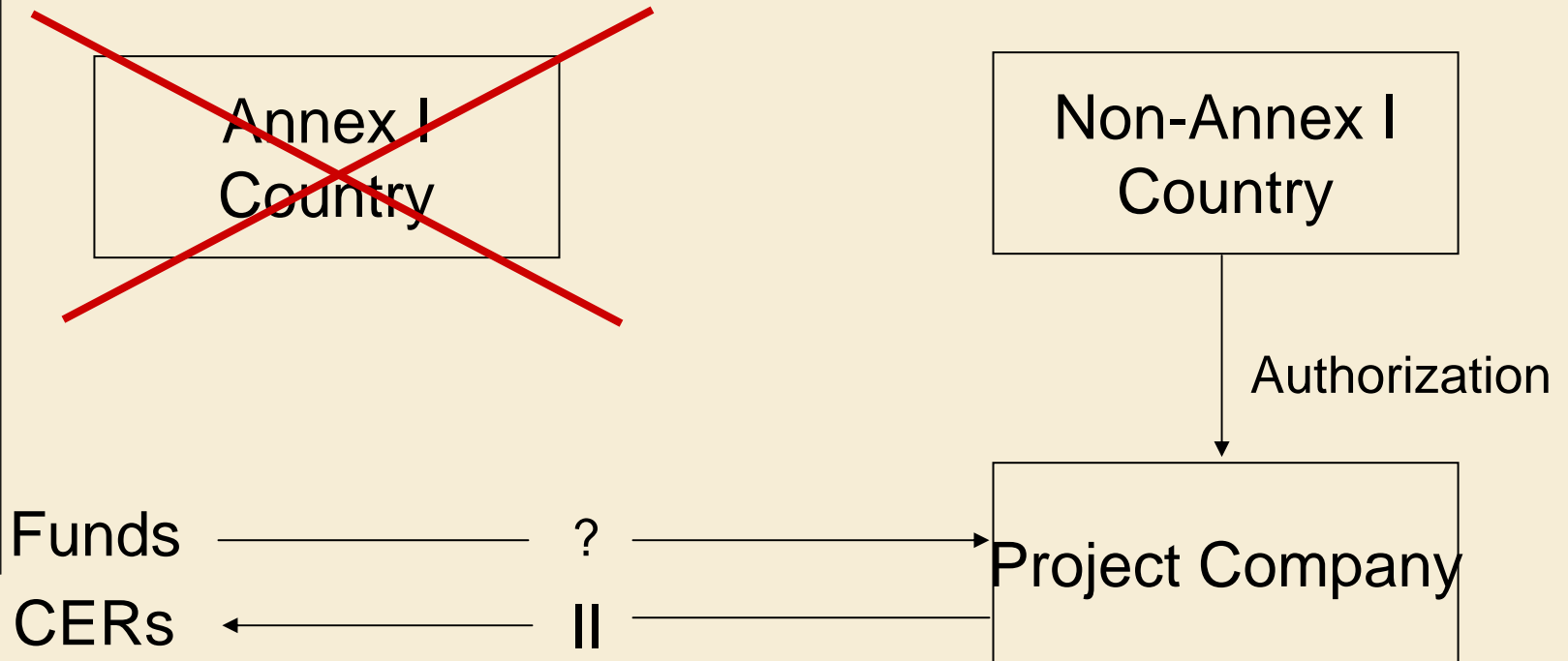
- Participation in CDM may involve private and/or public entities (art. 12 par. 9 KP)
- Parties may authorize legal entities (par. 33 Annex to Decision 3/CMP.1)



Involvement two Legal Entities

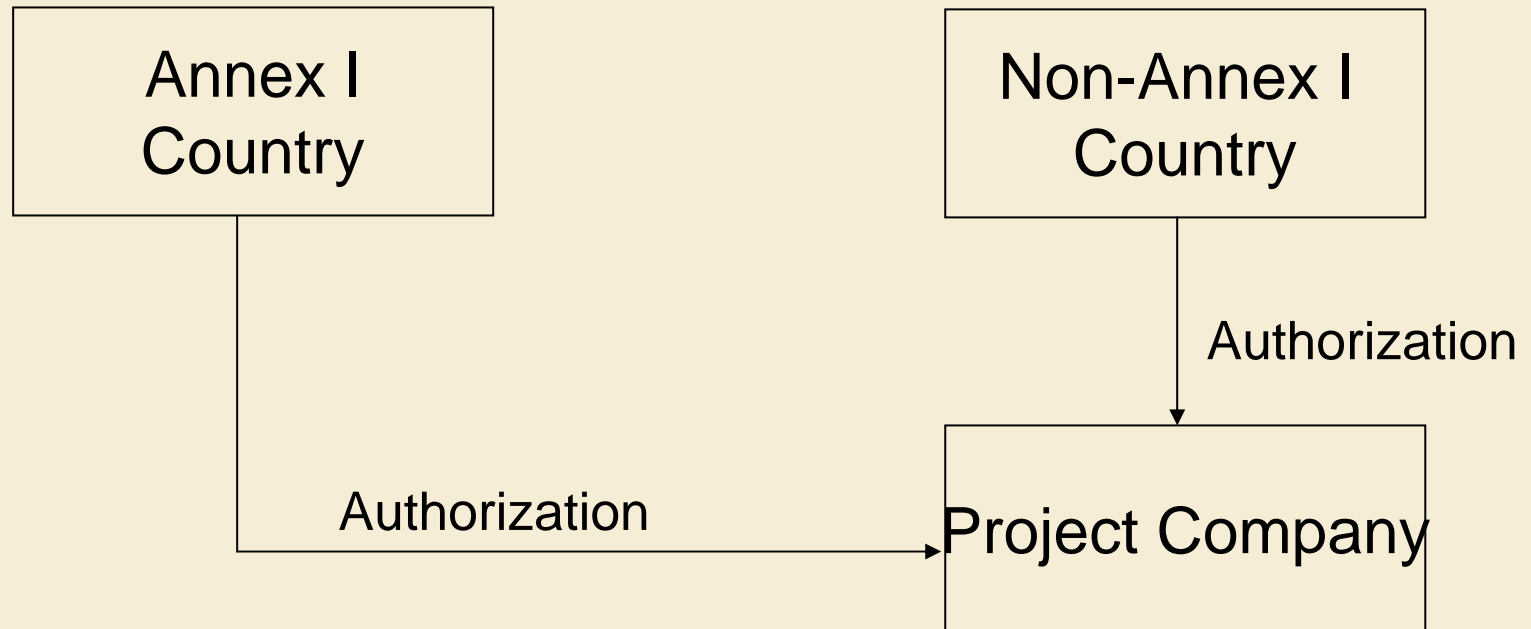


Unilateral CDM

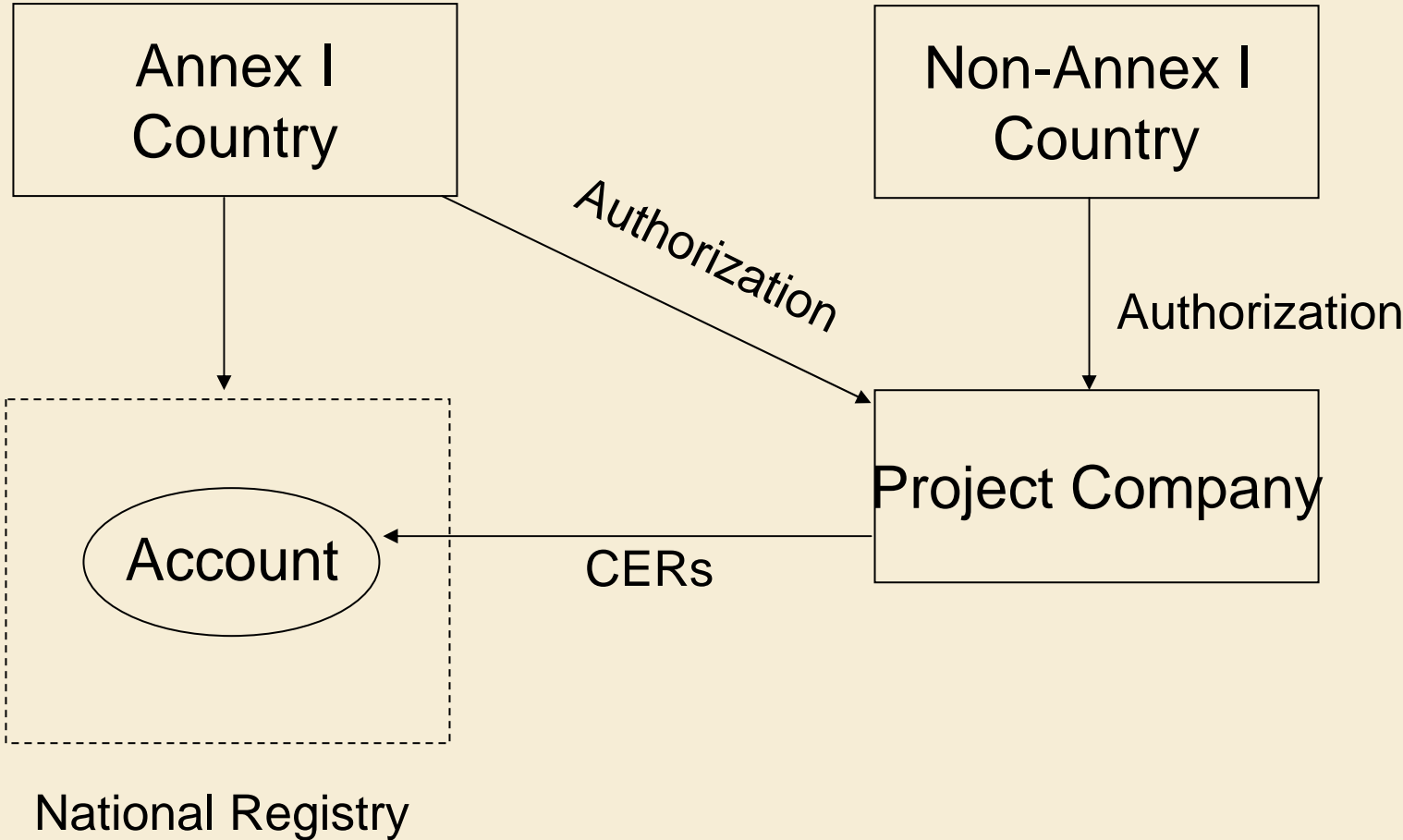


- Registration of CDM project can take place without Annex I Country involvement
- Forwarding of CER's from CDM Registry only after Annex I Country involvement
(Executive Board, CDM Guidelines)

Semi-Unilateral CDM



- Annex I Countries may authorize Non-Annex I legal entities to participate in CDM
- The Netherlands and the UK have issued policy rules to authorize legal entities irrespective of nationality
- Other countries are still looking into this option



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