

**JI-JISC38-AA-A01**

## Concept note

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# Measures to address issues arising from DOEs acting as AIEs

Version 01.1



<b>TABLE OF CONTENTS</b>	<b>Page</b>
<b>1. PROCEDURAL BACKGROUND.....</b>	<b>3</b>
<b>2. PURPOSE .....</b>	<b>3</b>
<b>3. KEY ISSUES AND PROPOSED SOLUTIONS .....</b>	<b>3</b>
3.1. Complaints against DOEs acting as AIEs.....	3
3.2. Appraisal and review of determinations and verifications.....	4
<b>4. IMPACTS.....</b>	<b>6</b>
<b>5. SUBSEQUENT WORK AND TIMELINES.....</b>	<b>6</b>
<b>6. RECOMMENDATIONS TO THE JISC .....</b>	<b>6</b>
<b>APPENDIX . DRAFT PROCESS FOR HANDLING COMPLAINTS AGAINST A DOE ACTING AS AN AIE .....</b>	<b>7</b>

## 1. Procedural background

1. The Joint Implementation Supervisory Committee (JISC), at its thirty-seventh meeting (JISC 37), agreed to allow designated operational entities (DOEs) accredited under the accreditation rules of the clean development mechanism (CDM) to act voluntarily as accredited independent entities (AIEs) under joint implementation (JI), and agreed to rely on the CDM accreditation system for all accreditation functions, while taking measure to safeguard environmental integrity.
2. The JISC, at the same meeting, agreed that the effective date for relying on the CDM accreditation system shall be 2 August 2016, and as of this date, meetings of the Joint Implementation Accreditation Panel (JI-AP), AIE assessment activities, calls for JI assessment team experts, and regulatory documents related to JI accreditation shall cease.
3. The JISC, while agreeing on the arrangements referred to in paragraphs 1 and 2 above, requested the secretariat to prepare a concept note to be considered at JISC 38 in order to address any issues that may arise from DOEs acting as AIEs, given that neither the JISC nor the Executive Board of the CDM will actively review DOEs acting as AIEs during the determination and verification of JI activities. The JISC indicated that the concept note should include options for the continuation of a complaints process (against DOEs acting as AIEs) and options to enhance the appraisal and review of determinations and verifications.

## 2. Purpose

4. The purpose of this concept note is to present measures to address issues that may arise due to the decision by the JISC allowing DOEs acting as AIEs in order to safeguard the environmental integrity of JI by looking into the processes for:
  - (a) Complaints against DOEs acting as AIEs;
  - (b) Appraisal and review of determinations and verifications.

## 3. Key issues and proposed solutions

### 3.1. Complaints against DOEs acting as AIEs

5. The “Procedure for accrediting independent entities by the Joint Implementation Supervisory Committee” (JI accreditation procedure)<sup>1</sup> contains provisions to deal with complaints against AIEs, raised by their client organizations or any entities that have submitted comments during the global stakeholder consultation process (of proposed JI projects). A complaint in this context is defined as “an expression of dissatisfaction with the performance of an AIE in relation to its JI function(s)”. In the absence of supervision by the JISC and the JI-AP of DOEs acting as AIEs, this complaint process could function as a safety net to detect the under-performance of the entities in their determination and verification activities for JI projects, and be used to take appropriate actions, including the suspension and withdrawal of status of acting as AIEs for those under-performing entities.

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<sup>1</sup> P-JI-ACCR-02.

6. Based on this, it is recommended to keep the complaint process operational even after 2 August 2016, when all JI accreditation-related processes will cease. In this case, since the current complaint process is included in the JI accreditation procedure, the continuing complaint process could be established independent from the JI accreditation procedure instead of keeping the JI accreditation procedure partially effective.
7. The current complaint process involves the JI-AP, which will also cease its operation as of 2 August 2016. Therefore, a modification to the complaint process would be needed if it is to continue to operate. The simplest solution to this is to replace the JI-AP with the JISC for the role in the complaint process. The draft complaint process with this modification is contained in the appendix (changes to the current provisions are highlighted in yellow).

### **3.2. Appraisal and review of determinations and verifications**

8. Under the current “Procedures for appraisals of determinations under the verification procedure under the Joint Implementation Supervisory Committee” (the appraisal procedure), and the current “Procedures for reviews under the verification procedure under the Joint Implementation Supervisory Committee” (the review procedure),<sup>2</sup> a determination or verification submitted by an AIE is processed in the following sequence:
  - (a) The determination or verification is published on the United Nations Framework Convention on Climate Change (UNFCCC) JI website and JISC members and alternate members are notified;
  - (b) Two external experts selected from the roster established for this purpose prepare appraisals of the determination or verification.<sup>3</sup> At the same time, any JISC member or alternate member may make his/her own appraisal of the determination or verification. The appraisals are shared by all JISC members and alternate members;
  - (c) The secretariat prepares a summary of the appraisals<sup>4</sup> and submits it to the JISC as an input for its consideration of the determination or verification;
  - (d) If the validation or verification is placed under review (prompted by three requests for review by JISC members or by a Party involved in the project), the validation or verification is reviewed by the JISC at its meeting or electronically. The request for review shall provide reasons for the request;
  - (e) The project participants and the AIE are invited to submit comments to the JISC on issues raised in the request for review;
  - (f) The secretariat prepares: (i) a summary of the information included in the requests for review and in the initial comments submitted by the project participants and the AIE; and (ii) a recommendation to the JISC on the next course of action;

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<sup>2</sup> <<http://ji.unfccc.int/Ref/Procedures.html>>.

<sup>3</sup> The appraisals shall indicate whether the requirements of Article 6 of the Kyoto Protocol and the JI guidelines as well as further relevant requirements defined by the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol or the JISC are met and appropriately dealt with by the AIE and provide reasons in case these conditions are not fulfilled. The appraisals shall also include suggestions on how the issues identified could be avoided, if appropriate.

<sup>4</sup> The summary of appraisals does not contain the secretariat’s own analysis.

- (g) The JISC decides to:
    - (i) Accept the determination or verification without conditions;
    - (ii) Accept the determination or verification subject to certain conditions (revision of documentation);
    - (iii) Require a more detailed review;
  - (h) If the JISC decides to conduct a detailed review, a review team consisting of two JISC members or alternate members and external experts selected from the roster established for this purpose,<sup>5</sup> as appropriate, interacts with the project participants and/or the AIE by requesting clarification and/or further information, analyses the case in detail and prepares a final recommendation to the JISC;
  - (i) The JISC decides to:
    - (i) Accept the determination or verification without conditions;
    - (ii) Accept the determination or verification subject to certain conditions (revision of documentation);
    - (iii) Reject the determination or verification.
9. The current appraisal and review procedures as summarized above contain multiple stages of checks by the secretariat, external experts and subsequently by the JISC. In particular for the cases placed under review, the possibility of initiating a detailed review could function as an additional safeguard against a determination or verification that does not meet the relevant JI regulatory requirements to get accepted by the JISC.
  10. The appraisal stage may be seen as relatively weaker as it relies entirely on external experts for assessing determinations and verifications. However, despite the relative weakness of the appraisal stage, the overall appraisal and review procedures seem sufficiently robust to detect errors made by a DOE acting as an AIE if it is under-performing. In addition, it is expected that a very low number of determinations and verifications will be submitted under the JI “Track 2” procedure in the foreseeable future. Based on these, it is recommended not to change the current appraisal and review procedures under the arrangement of allowing DOEs acting as AIEs.
  11. Alternatively, to enhance the relatively weak appraisal stage, the replacement of two external experts with the secretariat for preparing appraisals of determination or verification (the steps referred in paragraph 8(b) above) may be considered. Such change could also offset the situation in which very few submissions were made to the Track 2 process in recent years, therefore external experts on the roster may no longer maintain the same level of knowledge of the requirements for JI projects. However, due to the current expectation of a very low number of determinations and verification likely to be submitted in the near future, such change could be implemented if and only when the trend of submission of determinations and verifications under the Track 2 process turns clearly upward.

<sup>5</sup> The same roster referred to in paragraph 8(b) is being used.

## **4. Impacts**

12. The proposals in this concept note aim to protect the environmental integrity of JI under the arrangement of allowing DOEs to act as AIEs in the absence of supervision of them by the JISC and the JI-AP. The proposed solution would not incur additional cost to DOEs acting as AIEs, project participants or to the operation of the JI regulations by the JISC and the secretariat.

## **5. Subsequent work and timelines**

13. Subsequent work will be to publish the revised process for handling complaints against DOEs acting as AIEs as an independent regulatory document after the current JI accreditation procedure ceases to be operational (2 August 2016).

## **6. Recommendations to the JISC**

14. The secretariat recommends that the JISC agree on the proposed solutions presented in section 3 above by:
  - (a) Adopting the revised complaint process as contained in the appendix, issuing it as an independent regulatory document and making it effective as of 2 August 2016;
  - (b) Agreeing to maintain the current appraisal and review procedures for now, but changing them by replacing two external experts with the secretariat for appraisals if and only when the trend of submission of determinations and verifications under the Track 2 process turns clearly upward.

## Appendix . Draft process for handling complaints against a DOE acting as an AIE

1. For the purpose of this ~~appendix process~~, a complaint is defined as an expression of dissatisfaction with the performance of ~~an AIE~~ a designated operational entity (DOE) designated under the clean development mechanism acting as an accredited independent entity (AIE) in relation to its ~~JI function(s)~~ joint implementation (JI) determination and verification activities from its client's organization or any entity that has submitted comments during the global stakeholder consultation process which were not taken into consideration by the AIE.
2. A complainant shall submit a complaint to the ~~JI-AP~~ Joint Implementation Supervisory Committee (JISC), through the secretariat, using the complaint form (JI-F-CD) and supporting documentation. Such complaint shall be submitted only if the complainant has exhausted all possibilities of complaints/disputes/appeal within the AIE's system. The complainant shall present evidence of that effort among the supporting documentation of the complaint.
3. The secretariat shall acknowledge receipt of the complaint and establish a complaint committee constituted of secretariat staff.
4. The committee shall have seven days from receipt of the complaint to request, if necessary, the complainant to submit any relevant information for the initial assessment. The complainant shall submit the requested information within seven days of receipt of the request.
5. The committee shall carry out an initial assessment of the complaint and submit its report to the ~~JI-AP~~ JISC for its consideration within fifteen days of receipt of the complaint or the additional information, if applicable.
6. If the ~~JI-AP~~ JISC finds that the complaint is not substantiated with appropriate evidence, it shall close the case. The secretariat shall inform the complainant of this finding.
7. If the ~~JI-AP~~ JISC finds, based on the initial assessment, that the complaint is substantiated, the secretariat shall inform the AIE of the complaint, unless it concerns fraud or unethical conduct. The secretariat shall provide the AIE with the complaint and the supporting documentation received from the complainant. In situations where the complaint relates to fraud or unethical conduct, the secretariat may conduct an investigation of the complaint without immediately informing the AIE of the complaint.
8. The AIE shall have seven days from ~~the~~ receipt of the notification of complaint to provide a response to the complaint, including information justifying its opinion/decision and/or conduct.
9. Based on the information received from all parties, the committee shall have seven days to prepare an assessment report for consideration by the ~~JI-AP~~ JISC. The committee shall prepare the report even in the absence of a response from the AIE.
10. The assessment report shall comprise a summary of the case with the assertions of both parties, an investigation of the alleged facts and a recommendation on whether the complaint is justified or not.

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11. A complaint may be considered justified if the assessment reveals that the AIE has not complied with its own accredited system and/or the JI requirements.
  12. The secretariat shall inform both parties to the complaint of the outcome of the assessment and the dates when the complaint will be considered by the ~~JI-AP-JISC~~.
  13. The ~~JI-AP-JISC~~ at or before its next meeting shall consider all information relevant to the complaint including the assessment report prepared by the committee, and shall decide on the case.
  14. The ~~JI-AP-JISC~~ may decide to conduct an additional assessment, ~~recommend to the JISC the conduct of or~~ a spot-check, or suspension of the ~~status of acting as an~~ AIE, or ~~take~~ any other relevant action.
  15. The ~~JI-AP-JISC~~, through the secretariat, shall inform both parties to the complaint of its decision.
  16. The considerations by the JISC referred to in paragraphs 5, 6, 7, 9, 12 and 13 above should be done by electronic means to the extent possible and practical.

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#### Document information

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