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Legal Issues: CDM and JI transactions

Workshop: “CDM and JI - Chances for German Technologies”

Robert O’Sullivan

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Hamburg, Germany



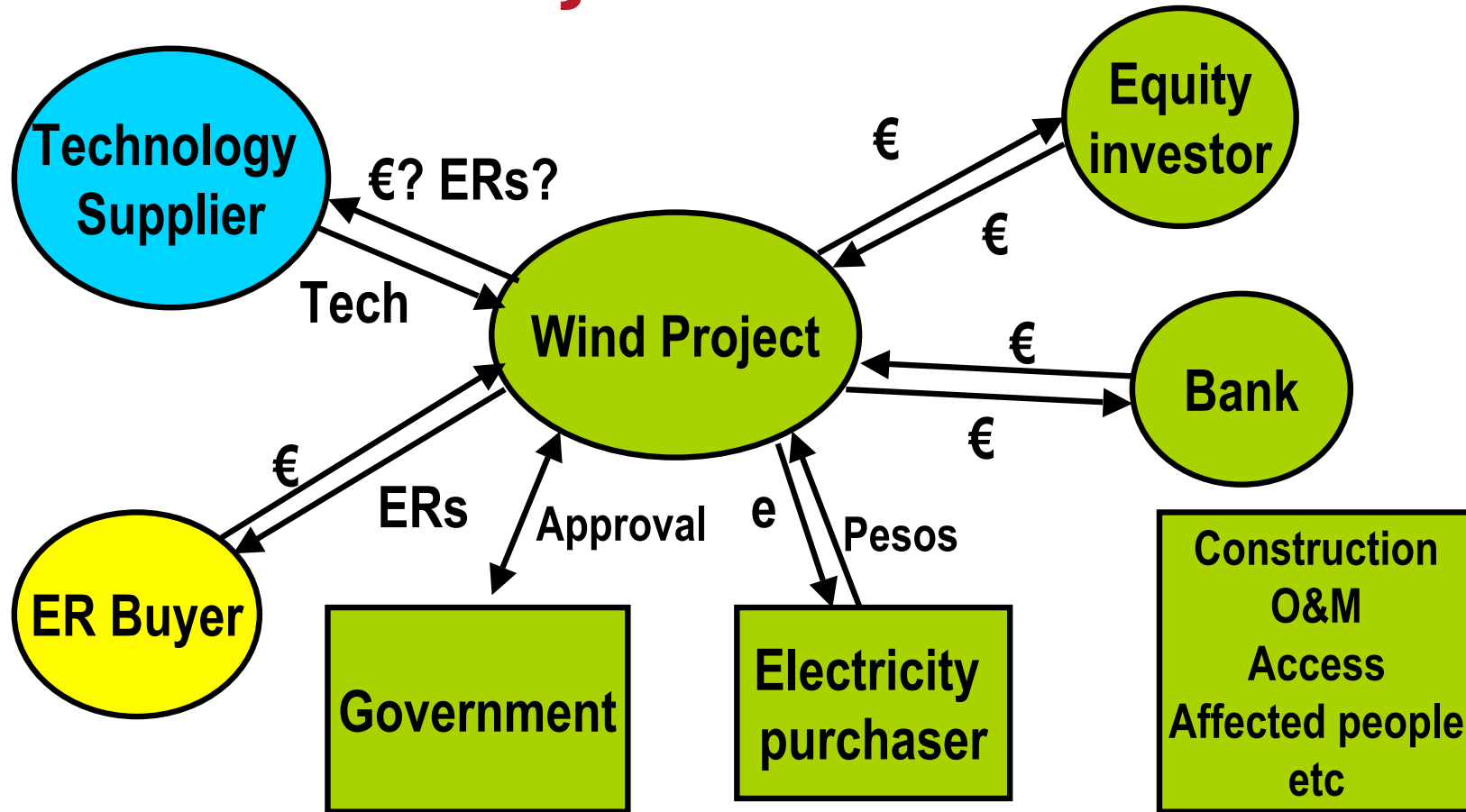
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Overview

- Overview of Project Structure
- Emission Reduction Purchase Agreements
 - Price
 - Volume and Delivery
 - Remedies
- Technology Supply



CDM/JI Project Structures



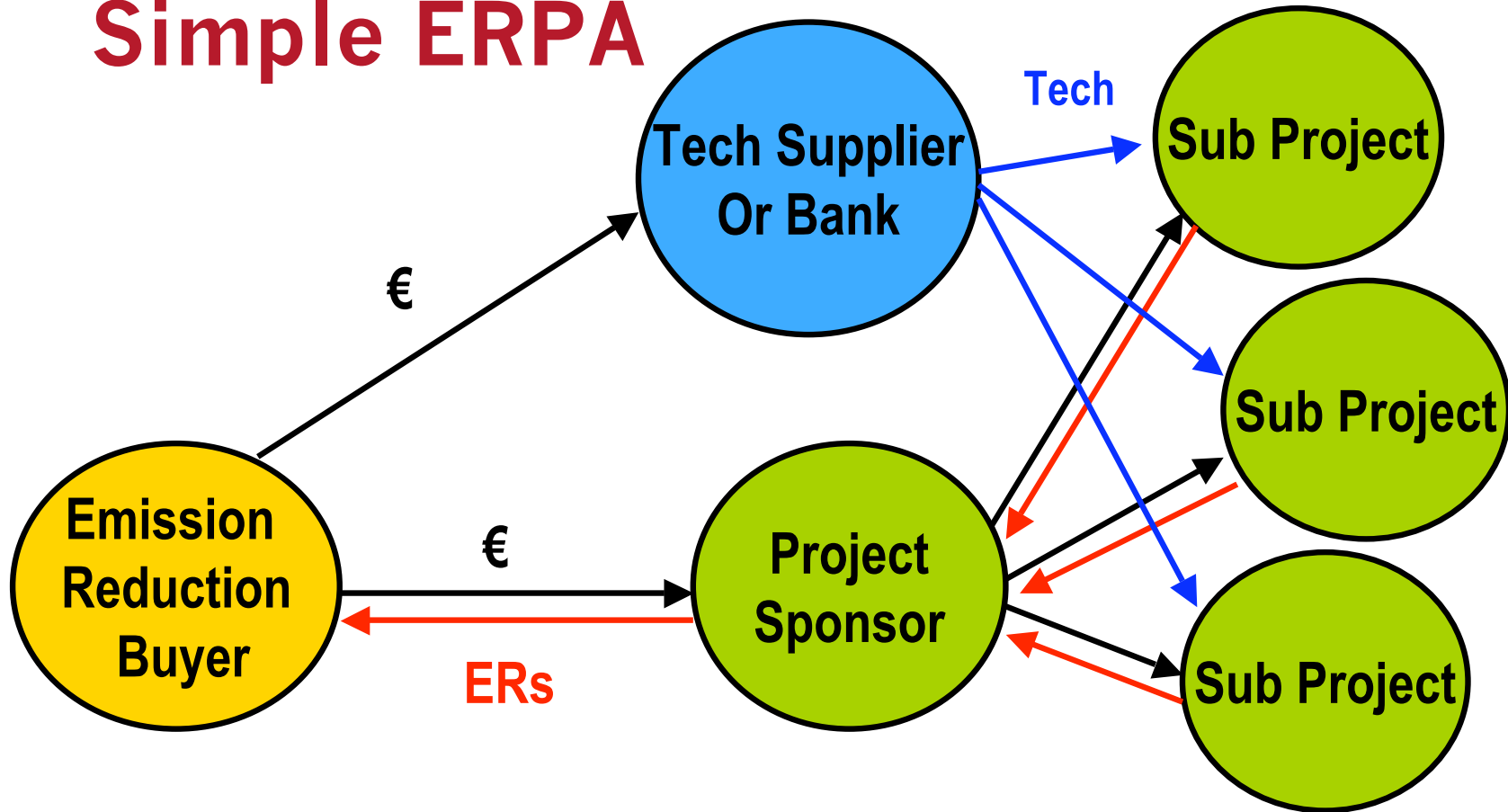


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Emission Reductions Purchase Agreements (ERPAs)



Simple ERPA





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ERPA: Overview

- To date Buyer/Seller relationship most common form of transferring Emission Reductions in CDM/JI projects
- Long term off-take agreement vs. spot contracts
- Can be combined with other relationships
 - Common issues



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ERPA: Issues and Terms

General Issues

- Allocation of risks
- Allocation of responsibilities
- Identification of rights and obligations

Key Terms

- Price
- Volume and delivery
- Damages/default
- Monitoring and Verification
- Governing Law, Costs, Force Majeure



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Price: Fixed Price

“The Buyer agrees to pay the Seller €X for each CER delivered to the registry account of the Buyer before 1st March, 2013”



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Price: Simple Indexed Price

“The Buyer agrees to pay the Seller $X\%$ of the Market Price of an EU Allowance for each CER delivered into the registry account of the Buyer before 1st March 2013”



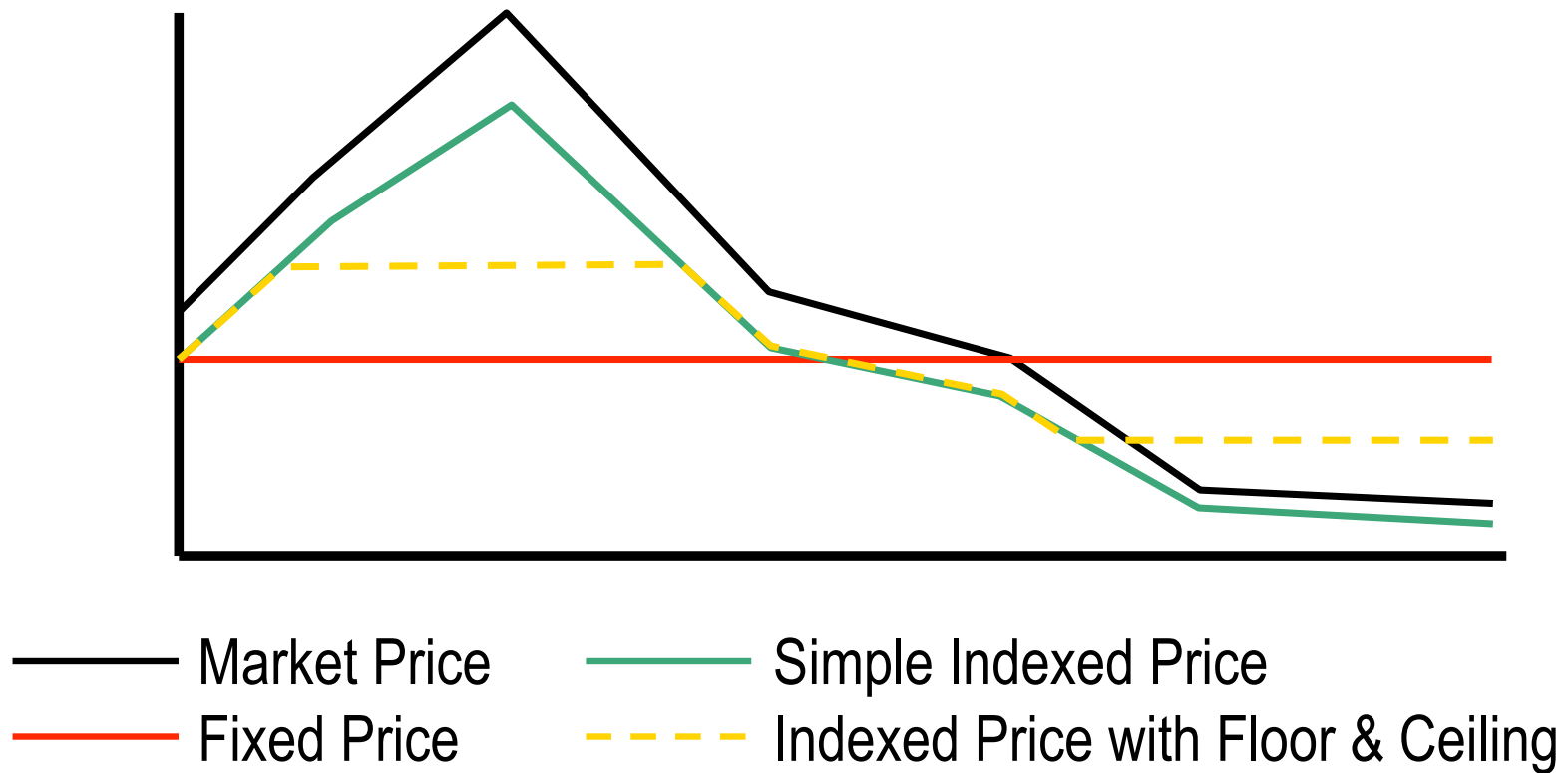
Price: Indexed Price with Floor and Ceiling

“The Buyer agrees to pay the Seller $X\%$ of the Market Price of an EU Allowance for each CER delivered into the registry account of the Buyer before 1st March 2013, except that irrespective of the Market Price of an EU Allowance the price paid for each CER shall never be greater than €X per CER and shall never be less than €X per CER”



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Price: Different Approaches in Practice





Pricing: Factors that Affect the Starting Price

- Bargaining
- Demand
- EUA price
- Timing of payments and delivery
- Delivery “guarantees” / remedies for under delivery
- Who pays share of proceeds for EB admin expenses (\$0.10/0.20 per CER)
- Risks
 - Regulatory (baseline, additionality, registration)
 - Project (underlying project risks inc. technology, financing etc)
 - Host country (LoA)
 - Counter party (capitalization, experience)
 - Reputation (resettlement?)
- Who pays which taxes



Volume and Delivery

- When
- Where (to and from)
- How
 - primary transfer (Art. 6/12)
 - secondary transfer (Art.17)
 - Communication rights with the EB (CDM)
- How much
 - CDM: share of proceeds for adaptation (2%)
- Seniority



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Fixed Annual Volume

“Before the 1st February each year the Seller agrees to deliver the first X CERs generated by the Project in the previous Year into the registry account nominated by the Buyer”



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Fixed total amount with “Acceleration”

- Combined with seniority and fixed total delivery obligations

“Before the 1st February each year the Seller agrees to deliver 100% of the CERs generated by the Project in the previous Year into the registry account nominated by the Buyer until a total of X CERs have been delivered”



Percent: Total and Annual

“Before the *1st March 2008* the Seller agrees to deliver *X%* of the CERs *generated by the Project before 1st January 2008* into the registry account of the Buyer”

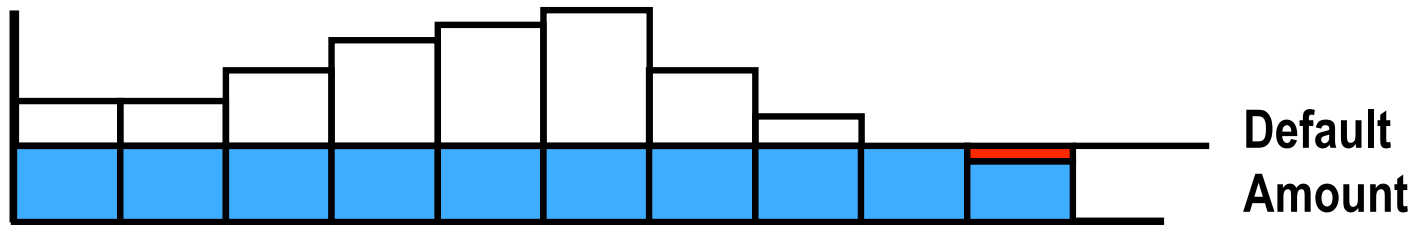
“Before the *1st February* each year the Seller agrees to deliver *% X* of the CERs *generated by the Project in the previous Year* into the registry account nominated by the Buyer”



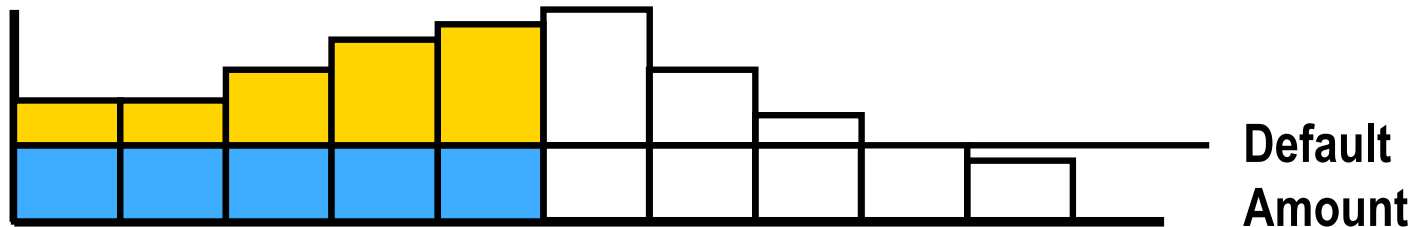
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Volume and Delivery: Fixed vs. %

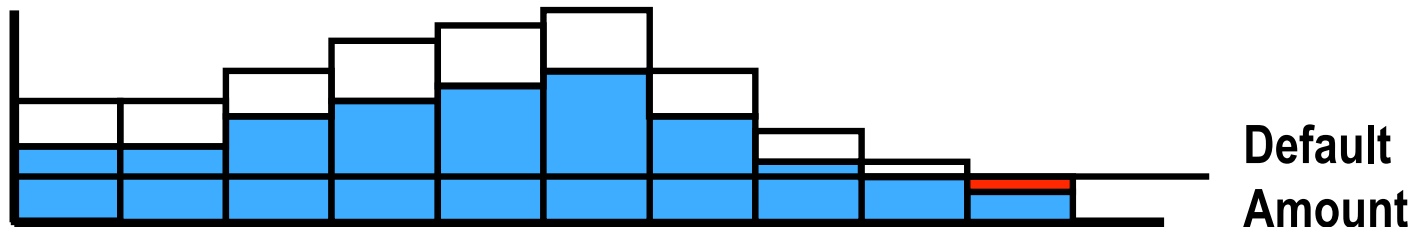
Fixed



Fixed with acceleration



% with Default Amount





Remedies: Delivery Default

“If the Seller fails to deliver the Default Amounts the Buyer may;

*Require the Seller to provide **replacement CERs** to the Buyer*

*Recover **damages** from the Seller*

*Require the Seller **deliver additional CERs in the following Year** in an amount equal to the difference between the amount delivered and the Default Amount*

***Terminate the Agreement** and recover from the Seller any outstanding Advance Payment and other outstanding costs plus interest of X%.”*



Remedies: Payment default

*“In the event of a Payment Default **interest** payable to the Seller shall accrue to the Buyer at a fixed rate of X% per annum*

*If the Buyer has not remedied a Payment Default within the cure period, the Seller may **recover damages** from the Buyer*

*If the Buyer has not remedied a Payment Default within the cure period, the Seller may **recover CERs** already delivered to the Buyer but not paid for*

*If the Buyer has not remedied a Payment Default within the cure period, the Seller may **terminate the agreement**”*



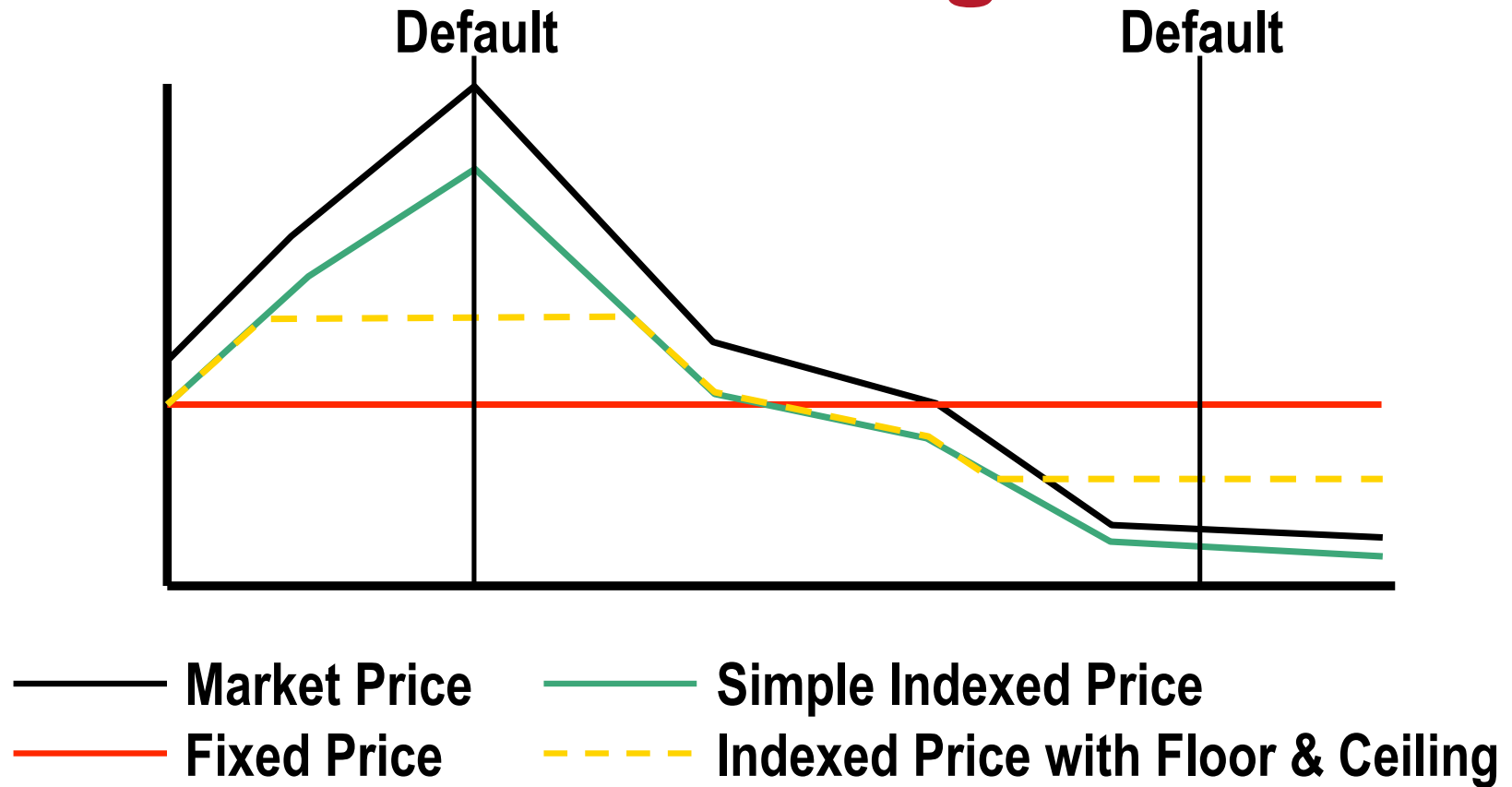
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Remedies: Intentional Breach

- Normally have strict damages remedies for defaults that are the result of intentional misconduct or gross negligence



Remedies and Pricing





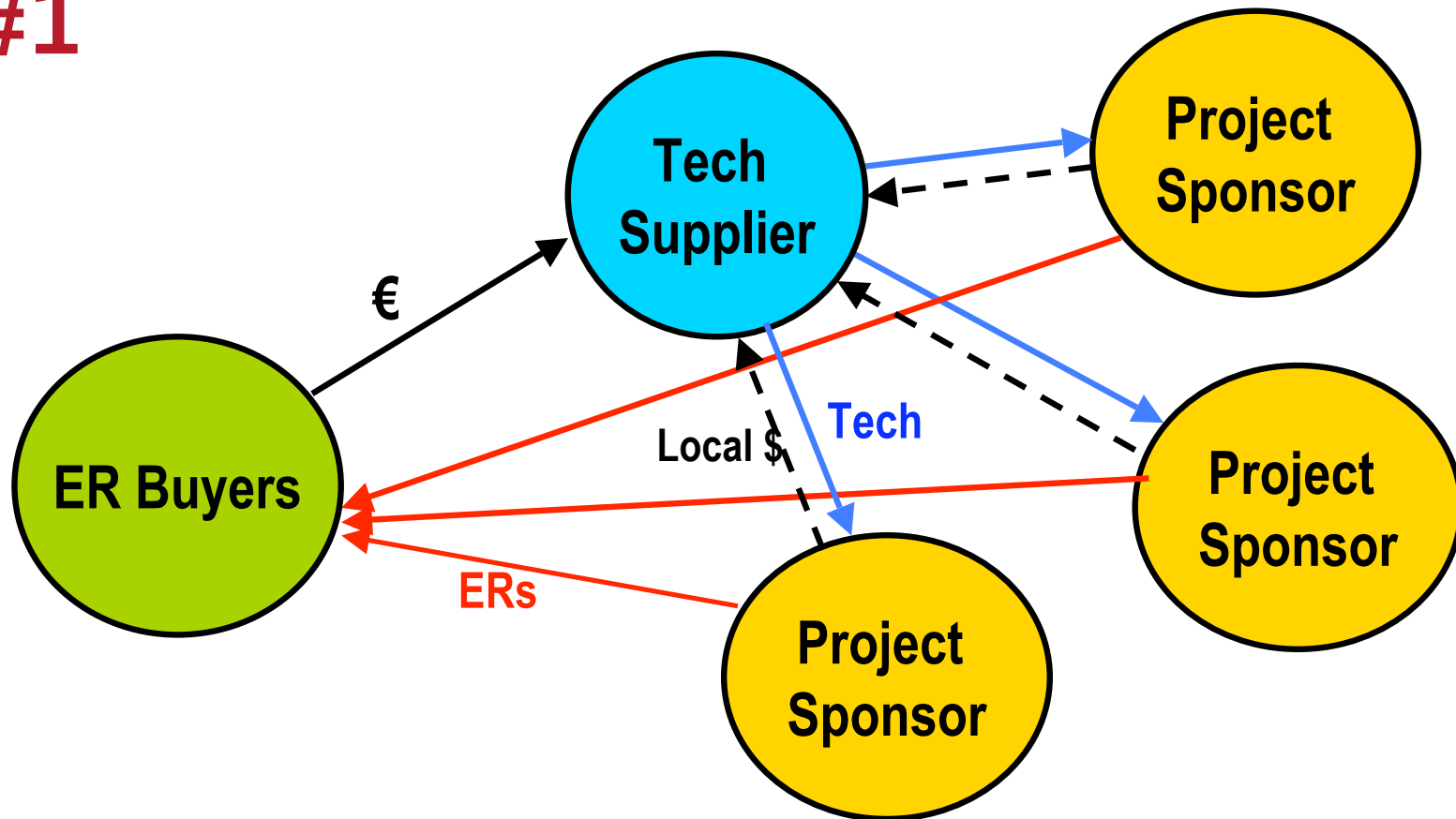
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Technology Supply



Taking advantages of CDM/JI

#1





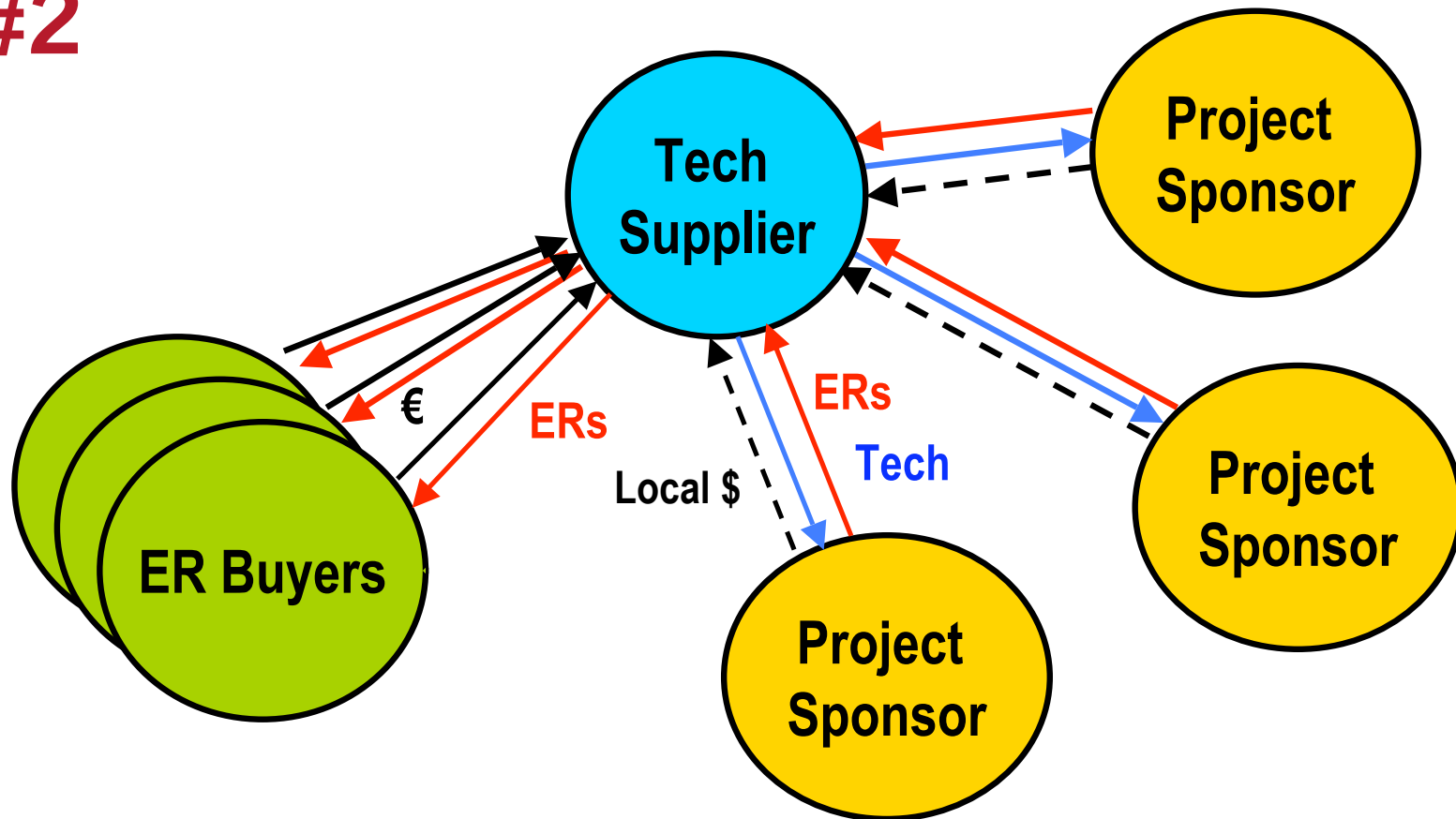
Issues

- Hard currency payments from buyer used to (help) pay for technology
 - Timing of transfer of title to technology
 - Enables partnership between technology supplier and CER/ERU buyer
- Requires commitment to support ongoing operation of project



Taking advantages of CDM/JI

#2





Issues

- Technology supplier acts as trader
 - Supplies tech. at reduced cost/free in return for receiving ERs (timing of transfer of title, local law)
 - Responsible for selling CERs/ERUs
 - Receives hard currency payments from sale of CERs/ERUs
 - Increased exposure to market fluctuations
 - Requires pooling and trading strategy
 - E.g. AgCert (free tech) Nepal Biogas (reduced cost tech)
- Requires commitment to support ongoing operation of project



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Conclusions

- There are lots of different structures
- That contain a lot of issues

BUT

- There are lots of different solutions
- There are lots of people who can help!



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Questions?

Robert O'Sullivan

Climate Focus

+31 10 217 5992

r.osullivan@climatefocus.com