

## Annex I: Administrative Remedies and Exclusion Policy

### I. Introduction

1. The Green Climate Fund (GCF or the Fund) has a zero-tolerance policy towards prohibited practices.<sup>1</sup> It is, therefore, essential that the GCF does business with parties that adhere to the highest integrity standards.
2. Recalling Clause IX – Fiduciary standards, paragraph 63, of the *Governing Instrument for the Green Climate Fund*, the purpose of this policy is to ensure the application of fiduciary principles and standards to the Fund’s entities and all operations, projects, and programmes financed by the Fund, including implementing entities. Accordingly, this Policy establishes a regime for remedies and exclusion of individuals and entities engaged in the misuse of the proceeds of GCF financing in Fund-related Activities. The ultimate objective is to ensure that GCF financing is used solely for its designated purpose.
3. The administrative remedies and exclusion regime establishes a formal administrative process that is designed to protect the Fund from abuses, while offering the respondents due process before deciding on an appropriate action. This Policy is intended to protect the interests, resources, and reputation of the GCF while affirming the fiduciary duties of counterparties doing business with the Fund. It serves the dual objectives of:
  - (a) Excluding actors (individuals or entities) engaged in prohibited practices from access to GCF financing for the period to be decided by the Case Review Officer and/or Case Review Panel; and
  - (b) Providing for reform opportunities by requiring the individuals or entities to adhere to GCF Integrity Compliance Guidelines<sup>2</sup> before being reconsidered for GCF financing. This Integrity Compliance Programme will be monitored by the Independent Integrity Unit (IIU) to guarantee adherence to the highest integrity standards while ensuring that appropriate controls and mechanisms are in place to prevent future reoccurrence of integrity violations.

### II. Scope of the policy

4. The scope of this policy is to set out the principles and general procedures to be followed in the administrative process by which the Fund determines, through administrative proceedings or settlements, whether or not to apply administrative remedies and exclusions against counterparties found to have engaged in prohibited practices in connection with Fund-related Activities.

### III. Definitions

5. For the purpose of this Policy, the following terms are defined as follows:
  - (a) **“Affiliate”** refers to any legal or natural person that controls, is controlled by, or is under common control with the Respondent;
  - (b) **“Board”** means the Board of the Green Climate Fund;

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<sup>1</sup> “Prohibited Practices” as defined in decision GCF/B.22/19 *Policy on Prohibited Practices*.

<sup>2</sup> IIU will develop Integrity Compliance Guidelines which set the requirements to be implemented by individuals and entities excluded from participating in GCF-funded activities in order to meet the Fund’s integrity and ethical standards and to be eligible for reconsideration of their debarment or exclusion.

- (c) **“Case Review Officer”** means the GCF personnel who represents the first tier of the case review regime and who will make a determination based on the statement of charges presented to him/her by the Head of the IIU;
- (d) **“Case Review Panel”** means the Case Review Panel which will review the determination made by the Case Review Officer;
- (e) **“Case Review Panel Secretary”** means the Secretary to the Case Review Panel;
- (f) **“Chairperson”** means the Chairperson of the Case Review Panel;
- (g) **“Counterparty”** means any party that contributes to, executes, implements, bids for, or in any way participates in, Fund-related activities, including receiving a grant, loan, or other forms of financing or support from the Fund. Counterparties include a contributor, accredited entity, direct access entity, executing entity, delivery partner, fiscal agent, financial intermediary, vendor, and (for the purpose of this policy) any entity within, or to which the Secretariat directly disburses GCF resources, including for the Readiness and Preparatory Support Programme;
- (h) **“Covered Individual”** means Co-Chairs of the Board, Board members, alternate members, advisers (each defined in *the Rules of Procedures of the Board of the Green Climate Fund*), Board-appointed officials, external members, and GCF personnel;
- (i) **“External Debarment Decision”** means a decision of an external party to any agreement for recognition of debarment or exclusion decisions entered into by the GCF;
- (j) **“Fund-related Activity”** means any activity which is financed, administered, or supported by the Fund, either with its own resources or those of others, or any activity that materially affects or may materially affect or otherwise be relevant to the Fund;
- (k) **“GCF personnel”** means any GCF staff or any other individual contracted and/or engaged by the GCF to perform official functions for the GCF, excluding Board-appointed officials and external members;
- (l) **“GCF staff”** means all persons appointed to a post in the GCF under a letter of appointment;
- (m) **“General Counsel”** means the General Counsel of the Green Climate Fund;
- (n) **“Governing Instrument”** means the instrument entitled *“Governing instrument for the Green Climate Fund”* that was approved by the Conference of Parties at its seventeenth session on 11 December 2011 and is annexed to decision 3/CP.17;
- (o) **“Notice”** means the notice of administrative action prepared by the Case Review Officer delivered to the Head of the IIU, the Case Review Panel Secretary, and the Respondent;
- (p) **“Panel member”** means a member of the Case Review Panel;
- (q) **“Respondent”** means the individual or entity against whom a statement of charge(s) is made whether by the Case Review Officer or the Case Review Panel or designated as such in a settlement. In cases involving more than one such individual or entity, the term refers individually and collectively to all such individuals and entities; and
- (r) **“Review”** means the process in which cases are reviewed, where parties request a formal change to an official decision of the Case Review Officer.

## IV. Commencement of the Administrative Remedies and Exclusion proceedings

### 4.1 Preparation of statement of charges by the Independent Integrity Unit

6. If, as a result of an investigation, the IIU concludes that a preponderance of evidence supports a finding of a prohibited practice by a counterparty, the IIU shall prepare a statement of charges.

### 4.2 Transmittal to the Case Review Officer

7. The functions of the Case Review Officer shall include reviewing allegations of prohibited practices referred to him/her by the IIU. The terms of reference, qualifications and appointment of the Case Review Officer will be set out in the Administrative Remedies and Exclusion Procedures which will be submitted for consideration and approval by the Board. The appointment of the Case Review Officer will require Board approval.

### 4.3 Consideration of statement of charges by the Case Review Officer

8. The IIU shall submit the statement of charges to the Case Review Officer who, after consideration, shall determine whether there is a preponderance of evidence that supports a finding of a prohibited practice by the Respondent.

### 4.4 Dismissal of case

9. The Case Review Officer may dismiss the case as provided for in paragraphs 9(a) and 9(b) below or partially dismiss the case as provided for in paragraph 9(c). In such case, the Case Review Officer shall prepare a notice recording his/her conclusions and the closure of the administrative remedies and exclusion proceedings and shall deliver the notice to the IIU. The basis for the dismissal of a case, whether in whole or in part, by the Case Review Officer shall be:

- (a) **Insufficient evidence.** If the Case Review Officer determines that the statement of charges does not, by a preponderance of the evidence, support a finding of a prohibited practice by the Respondent, the case shall be dismissed;
- (b) **Expiration of statute of limitations.** The Case Review Officer shall dismiss the case in respect of any prohibited practice if the commission of the last constituent act of that practice occurred more than 10 years prior to the date of the statement of charges; or
- (c) **Partial dismissal.** When a statement of charges includes allegations in respect of more than one alleged prohibited practice or Respondent, the Case Review Officer may partially dismiss the case in respect of certain alleged prohibited practices and/or Respondents on the grounds specified in paragraphs 9(a) and 9(b) above.

### 4.5 Resubmission

10. In case of a partial dismissal, the IIU may amend the statement of charges to exclude the alleged prohibited practices and/or counterparties that have benefitted from such dismissal and may, within 30 calendar days, resubmit the statement of charges to the Case Review Officer for further consideration. Any dismissal by the Case Review Officer shall not prejudice the

resubmission by the IIU of a further statement of charges, including alleged prohibited practices and/or counterparties previously dismissed supported by new evidence not initially contained in the original statement of charges following the submission of an explanation from the IIU on why the evidence was not originally included and how its inclusion takes the matter further in the interests of justice.

#### 4.6 Issuance of notice

11. If the Case Review Officer concludes that the statement of charges does, by a preponderance of the evidence, support a finding of a prohibited practice by the counterparty, the Case Review Officer shall prepare a notice of administrative action (a “notice”), which he/she shall deliver to the Head of the IIU, the Case Review Panel Secretary, and the Respondent. The Case Review Officer may issue rules regulating the constructive delivery in exceptional cases and delivery or submission by electronic means. If there is any doubt as to the date as of which a document should be deemed as delivered or submitted, the Case Review Officer shall decide.

#### 4.7 Response

12. Within 60 calendar days following delivery of the notice, the Respondent may deliver a written response in physical or electronic form to the Case Review Officer, including arguments and evidence. The Case Review Officer shall submit a copy of the response to the IIU.

#### 4.8 Determination

13. After the expiration of the period provided for in paragraph 12 above, the Case Review Officer shall consider the record consisting of:

- (a) The notice of administrative action;
- (b) The response, if any; and
- (c) Any additional materials pursuant to section 7.9.

14. The Case Review Officer shall make a determination in accordance with paragraphs 14(a) to 14(c) below, which he/she shall deliver to the Respondent and the Head of the IIU:

- (a) **Dismissal.** If the Case Review Officer concludes that a finding of a prohibited practice is not supported by a preponderance of the evidence, the Case Review Officer shall prepare a determination, recording his/her findings and dismissing the case, thereby terminating the proceedings under this policy, or the Case Review Officer may partially dismiss the case in respect of certain alleged prohibited practices and/or Respondent(s);
- (b) **Failure to submit a response.** If the Respondent does not submit a response within the time period provided for in paragraph 12 above, the Respondent shall be deemed to have admitted the allegations set forth in the notice and to have waived his/her/its right to a Case Review Panel review of the determination. The Case Review Officer shall prepare a determination recording his/her findings and imposing the administrative remedies on the Respondent; or
- (c) **Finding of a prohibited practice.** If the Case Review Officer concludes that a preponderance of the evidence supports a finding that the Respondent engaged in a prohibited practice, the Case Review Officer shall prepare a determination recording his/her findings and imposing administrative remedies and/or exclusion on the

Respondent. If warranted by the submissions, the Case Review Officer may, prior to rendering a decision, require the IIU to file or upon request by the IIU, allow the filing of a reply by the IIU or additional submissions by the IIU and the Respondent to complete the proceedings.

## V. Case Review Panel

### 5.1 Composition of the Case Review Panel

15. The Case Review Panel shall be composed of three panel members, as follows:
  - (a) One panel member, who shall be a Board-appointed official from an independent unit of the GCF other than the IIU or a member of GCF personnel from an independent unit of the GCF other than the IIU, who shall serve for a term of up to three years, which may be renewed once for a period up to three years; and
  - (b) Two panel members, who shall not be GCF staff at the time of their appointment, and who shall not have been GCF staff at any time in the last three years preceding their appointment, and agree not to accept employment with the GCF for a period of two years after the end of their term on the Case Review Panel, who shall each serve for a term of up to three years, which may be renewed once for a period up to three years.
16. The terms of reference, qualifications, and appointment of the members of the Case Review Panel will be set out in the Administrative Remedies and Exclusion Procedures which will be submitted for consideration and approval by the Board. The appointment of the Case Review Panel members will require approval by the Board.

### 5.2 Request for review by the Case Review Panel

17. Unless the Respondent has waived his/her/its right to a review in accordance with paragraph 14(b) above, the Respondent may, within 45 calendar days following the date of the delivery of the determination made in accordance with paragraph 14(c), request the review of such determination by the Case Review Panel in writing addressed to the Chairperson of the Case Review Panel through the Case Review Panel Secretary (a "request for review").

### 5.3 Reply

18. A copy of the request for review shall be forwarded by the Case Review Panel Secretary to the Head of the IIU who may submit a written reply within 30 calendar days of receiving such copy. A copy of the reply shall be forwarded by the Case Review Panel Secretary to the Respondent.

### 5.4 Decision of the Case Review Panel

19. The Case Review Panel shall consider the record, which shall consist of:
  - (a) The notice;
  - (b) The response of the Respondent;
  - (c) The reply of the IIU or additional submissions by the IIU and the Respondent pursuant to paragraph 14(c);
  - (d) The determination of the Case Review Officer;

- (e) The request for review;
  - (f) The reply by the IIU to the request for review, if any; and
  - (g) Any additional materials pursuant to section 7.9.
20. The Case Review Panel shall make a decision in accordance with paragraphs 20(a) to 20(c) below, which the Case Review Panel Secretary shall promptly deliver to the Respondent, the Case Review Officer and the Head of the IIU:
- (a) **Dismissal.** If the Case Review Panel concludes that a finding of a prohibited practice is not supported by a preponderance of evidence, the Case Review Panel shall issue a decision recording its findings and dismissing the case, thereby terminating the proceedings under this policy. Any dismissal by the Case Review Panel shall not prejudice the resubmission by the IIU of a further statement of charges, including alleged prohibited practices and/or counterparties previously dismissed supported by new evidence not initially contained in the original statement of charges;
  - (b) **Partial dismissal.** When a notice of administrative action includes findings in respect of more than one alleged prohibited practice or Respondent, the Case Review Panel may partially dismiss the case in respect of certain alleged prohibited practices and/or Respondents; and
  - (c) **Finding of a prohibited practice.** If the Case Review Panel concludes that a preponderance of evidence supports a finding that the Respondent engaged in a prohibited practice, the Case Review Panel shall issue a decision recording its findings and imposing an administrative remedy and exclusion on the Respondent. The decision shall be final and shall terminate the proceedings under this policy.

## VI. Imposition of administrative remedies and/or exclusion

### 6.1 Selection of administrative remedies and/or exclusion

21. Upon a finding that the Respondent engaged in a prohibited practice, the Case Review Officer or the Case Review Panel, as applicable, may impose administrative remedies and/or a combination of administrative remedies and exclusion. In determining an administrative remedy and/or exclusion, the Case Review Panel shall not be bound by the administrative remedies imposed by the Case Review Officer.

### 6.2 Possible administrative remedies and/or exclusion

22. The administrative remedies and/or exclusions that may be imposed under this Policy are the following:
- (a) **Reprimand.** A written censure of a Respondent's behaviour;
  - (b) **Debarment/exclusion.** Pursuant to paragraph 31(c) of the *Policy on Prohibited Practices*, a decision that a Respondent is ineligible, either permanently or for a stated period of time, to be awarded and/or participate in, directly or indirectly, contracts to be entered into after the effective date of the determination of the Case Review Officer or the decision of the Case Review Panel, as applicable, for projects, programmes and other activities funded by the GCF;
  - (c) **Conditional non-debarment/non-exclusion.** A decision that a Respondent is required to comply with certain remedial, preventative, or other measures (such as adoption or enhancement of integrity compliance guidelines, restitution of misused funds, and/or

remediation) as a condition to avoid debarment/exclusion from additional contracts for projects, programmes and other activities funded by the GCF. Failure by the Respondent to comply with such measures in the prescribed period shall result in automatic debarment/exclusion under the terms as provided in the decision; and

- (d) **Debarment/exclusion with conditional release.** A decision that a Respondent is subject to debarment with a conditional release under which all or part of such debarment/exclusion shall be terminated upon compliance with conditions set forth in the decision (such as adoption or enhancement of integrity compliance guidelines, restitution of misused funds, and/or remediation). Without limitation to the foregoing, a decision may include any such combination of remedies as may be determined by the Case Review Officer or decided by the Case Review Panel.

23. A determination by the Case Review Officer or a decision by the Case Review Panel will be without prejudice to the right of the Secretariat to pursue contractual remedies according to its procedures.

### 6.3 Parties subject to administrative remedies and exclusions

24. The Case Review Officer or the Case Review Panel, as applicable, may include affiliates of a Respondent among sanctioned parties. Any enforcement imposed on any affiliate may be imposed at the time enforcement is imposed on a Respondent, or at any subsequent time within the limitation set forth in paragraph 9(b) above, provided that the parties subject to enforcement under this provision receive notice of the administrative remedies and such remedies are determined as provided in this policy.

### 6.4 Successors and assignees

25. In the case of acquisitions, mergers, reorganizations, or other corporate events subsequent to the events leading to administrative remedies involving the sanctioned entity, a presumption will be applied that successors and assignees are subject to the administrative remedies and exclusions imposed on their predecessors. Such application of sanctions may be informed by the provisions of the *Harmonized Principles on Treatment of Corporate Groups*, or such other policies or guidelines as may be adopted by the GCF on the treatment of affiliates.

### 6.5 Factors affecting choice of administrative remedies and exclusions

26. The Case Review Officer and the Case Review Panel may consider the following factors:

- (a) The egregiousness and severity of the Respondent's actions;
- (b) The past conduct of the Respondent involving a prohibited practice;
- (c) The magnitude of any losses caused by the Respondent, including the extent of the harm caused to the public welfare;
- (d) The damage caused by the Respondent to a project or programme funded by the GCF or to the operations of the GCF, including the credibility of the procurement process;
- (e) The nature of involvement of the Respondent in the prohibited practice;
- (f) Any mitigating circumstances, including the intervening implementation of programmes to prevent and detect prohibited practices or other remedial measures by the Respondent;
- (g) The Respondent's admission of culpability or cooperation in the investigation process;

- (h) Any interference or obstruction committed by the respondent in the course of the investigative process; and
- (i) Any other factor of similar nature or character as enumerated above.

## 6.6 Effective date of review

27. A determination by the Case Review Officer shall become effective upon the expiration of the period for filing a request for review. A decision by the Case Review Panel shall become effective upon notification to the Respondent of the administrative remedies and/or exclusion by the Case Review Panel Secretary.

## 6.7 Request to reopen

28. Either the Head of the IIU or a Respondent may request that a matter be reopened for reconsideration on an exceptional basis and only on the basis of newly discovered facts which, by due diligence, could not have been discovered prior to the issuance of a determination. The Head of the IIU or a Respondent may submit such request to:

- (a) The Case Review Officer, if the Respondent has not filed a request for review; or
- (b) The Case Review Panel, if the Case Review Panel has issued a decision.

29. Upon receipt of such request, the Case Review Officer or the Case Review Panel, as applicable, shall decide, each in their discretion, whether to reopen the matter for further proceedings as the Case Review Officer or Case Review Panel determines appropriate. Until the Case Review Officer or the Case Review Panel has made a determination and/or decision on the basis of such newly discovered facts, the existing determination and/or decision and associated administrative remedies and exclusions shall remain in full force and effect.

## VII. Further procedural matters

### 7.1 Evidence

30. Any kind of evidence may form the basis of arguments presented, and the Case Review Officer or the Case Review Panel shall have discretion to determine the relevance, materiality, weight and sufficiency of evidence. Formal rules of evidence shall not apply.

31. In addition, prior to making a determination/decision, the Case Review Officer and the Case Review Panel shall have access to the contents of the written record of any related or other proceedings under this Policy that involve the same Respondent.

### 7.2 Hearings

32. Neither the IIU nor a Respondent shall have a right to an oral hearing. The Case Review Officer shall make his/her determination/decision on the basis of the written record and without an oral hearing. The Case Review Panel may, in its discretion, hold such oral hearings as it deems appropriate, and, in such case, shall determine the nature, length, and form of any such hearing. In a formal oral hearing, the IIU and the Respondent may be represented by counsel.

### 7.3 Admissions of culpability

33. At any stage in the proceedings, a Respondent may admit all or part of any allegation without prejudice to the opportunity to contest other allegations, or any part thereof.

### 7.4 Mitigating circumstances

34. The Respondent may present evidence and arguments regarding mitigating circumstances, including admissions and the implementation of programmes by the Respondent to detect or prevent prohibited practices, or any agreement with the GCF regarding the allegations or otherwise relevant to the proceedings. Such evidence and arguments shall be submitted with the written submissions contemplated in this policy and in accordance with the corresponding deadlines.

### 7.5 Provision of other information to respondent

35. All evidence presented to the Case Review Officer or to the Case Review Panel by the IIU, including all relevant evidence that would reasonably tend to exculpate the Respondent or mitigate the Respondent's culpability, shall be provided to the Respondent. Notwithstanding the foregoing and any other provisions of this policy, the Respondent shall not have the right to review, obtain, or discover any other information or documents in the possession of the GCF that is not made publicly available pursuant to GCF policies. In particular, the Respondent shall not have the right to discover the identity of any individual who has provided information to the GCF and who has specifically requested that his/her identity not be disclosed to the Respondent.

### 7.6 Sensitive materials

36. Notwithstanding any other provisions of this policy, the IIU and the Case Review Officer may, in the performance of their respective functions, withhold particular evidence or information from disclosure to a Respondent upon a determination that there is a reasonable basis to conclude that:

- (a) Revealing the evidence or information might cause or contribute to a risk of imminent danger or serious harm to individuals or the GCF; or
- (b) Withholding the evidence or information is required by GCF policies.

37. In making this judgement, the IIU and the Case Review Officer shall consult with the Chairperson of the Case Review Panel. Such evidence may be taken into account for the purposes of a determination by the Case Review Officer or a decision by the Case Review Panel.

### 7.7 Privileged materials

38. Notwithstanding any other provisions of this policy, communications between legal counsel (or a person acting at the direction of said counsel) and a client for the purpose of providing or receiving legal advice ("attorney-client communications") and writings reflecting the mental impressions of an attorney or other person acting in anticipation of legal proceedings ("attorney work product") shall be privileged and shall be exempt from disclosure.

## 7.8 External advisors

39. The Case Review Officer and the Case Review Panel shall each have the authority to obtain the services of external legal counsel and other advisors to assist in their deliberations. When doing so, all communications with such other parties shall be deemed to be privileged to the Case Review Officer or the Case Review Panel, as applicable, and shall be exempt from disclosure.

## 7.9 Additional materials

40. If new evidence becomes available to either the IIU or the Respondent after the submission of written materials, but prior to a determination/decision, the IIU or the Respondent, as applicable, may submit such new evidence together with a brief explanation of the significance of the new documentation or information, which must be certified as truthful and correct by the person providing it.

41. The Case Review Officer or the Case Review Panel will consider the new documentation and information if:

- (a) It was not known to, or could not reasonably have been known to, or by reasonable due diligence could not have been discovered by the relevant person at the time of its submissions; and
- (b) Such information and documentation are relevant for the Case Review Officer or Case Review Panel's recommendation.

42. The Case Review Officer and the Case Review Panel may, at their discretion:

- (a) Request clarifications and further evidence from either the Respondent or the IIU; and/or
- (b) Authorize the IIU or the Respondent, as applicable, to submit additional arguments and evidence responding to any submissions by the other party under this section, in the form and time that the Case Review Officer or the Case Review Panel, as applicable, may reasonably determine.

## VIII. Disclosure

### 8.1 Publication of the case review actions

43. If the determination/decision imposed on the Respondent is an administrative remedy and/or exclusion provided for in paragraphs 22(b), 22(c), or 22(d), the name and address of any Respondent, the prohibited practice, and the administrative remedies and/or exclusion imposed shall be published on the GCF website and shall remain posted on such website as long as the decision is in effect.

### 8.2 Referral to governmental authorities

44. If there is evidence that the laws of any country may have been violated by a Respondent, the Head of the IIU shall refer the matter to the Board with a recommendation on whether the matter should be referred to the appropriate government authorities. Such recommendation shall be made in consultation with the General Counsel, whose advice shall be

appended to the recommendation. Such referral may include any information provided by the Respondent to the Case Review Officer or the Case Review Panel.

### 8.3 Disclosure to affected international organizations

45. If there is evidence of a Prohibited Practice, the IIU may make such evidence available to another international or multilateral organization pursuant to the terms of any agreement that the GCF enters into with such organizations, including any information provided by the Respondent to the Case Review Officer or the Case Review Panel.

## IX. Temporary exclusion

### 9.1 Principle

46. The Case Review Officer may temporarily suspend a Respondent from eligibility to participate in or be awarded contracts to be entered into after the effective date of the decision of the Case Review Officer for projects, programmes and other activities funded by the GCF pending the conclusion of proceedings under this policy.

### 9.2 Recommendation

47. From the initiation of an investigation by the IIU and up to a determination (if applicable) pursuant to paragraph 21 above, the Head of the IIU may recommend that the Case Review Officer impose a temporary exclusion.

### 9.3 Basis

48. In order to impose a temporary exclusion, the Case Review Officer must find, in consultation with the Chairperson of the Case Review Panel:

- (a) That the award of contracts to the Respondent concerned or its participation in contracts to be entered into after the effective date of the determination of the Case Review Officer for projects, programmes and other activities funded by the GCF could result in significant harm to a project or programme, or to the GCF;
- (b) That, after consultation with the Secretariat, any negative impact the temporary exclusion would have on projects, programmes and other activities funded by the GCF was justified in view of the potential significant harm of not making the temporary exclusion; and
- (c) That the Head of the IIU has offered substantial evidence that supports an allegation of a prohibited practice.

### 9.4 Notice of temporary exclusion

49. In the event of a temporary exclusion, the Case Review Officer shall send a written notice of temporary exclusion to the Respondent concerned and to the IIU. The notice of temporary exclusion shall include the recommendation for the temporary exclusion, as presented by the Head of the IIU pursuant to paragraph 47 above, and the basis for the temporary exclusion, as determined by the Case Review Officer pursuant to section 9.3. The

temporary exclusion shall have immediate effect upon delivery of the notice of temporary exclusion.

## 9.5 Request for reconsideration

50. The Respondent concerned may, within 30 days following such delivery, file with the Case Review Officer a request for reconsideration of the temporary exclusion including the basis and supporting evidence for such request.

51. Within 30 days following delivery of such request, the Case Review Officer shall, in consultation with the Chairperson of the Case Review Panel, issue a final determination, with written notice to the Respondent concerned and to the Head of the IIU. The temporary exclusion shall remain in effect pending such final determination.

## 9.6 Effect

52. The effect of a temporary exclusion is to require the relevant Respondent not to submit a response to any request for proposal or solicitation in relation to any contract to be entered into after the effective date of the determination of the Case Review Officer for projects, programmes and other activities funded by the GCF.

53. The temporary exclusion shall remain in effect until the earlier of:

- (a) The expiration of 12 months following its imposition; or
- (b) As applicable:
  - (i) A determination of the Case Review Officer to dismiss the case pursuant to section 4.4;
  - (ii) A determination of the Case Review Officer to dismiss the case pursuant to paragraph 14(a) above; or
  - (iii) The date of effectiveness of an administrative remedy pursuant to paragraph 27 above.

54. Such period may be renewed pursuant to a further recommendation by the IIU and approval by the Case Review Officer of the recommendation, in consultation with the Chairperson of the Case Review Panel, and notification to the Respondent pursuant to paragraph 49.

## 9.7 Non-publication of temporary exclusion

55. A temporary exclusion will not be published on the GCF website for public access. However, GCF shall put it on a database for internal consultation and due diligence, and shall notify all delivery partners and accredited entities of the temporary exclusion and request that the Accredited Entities notify the relevant executing entities. The Secretariat, delivery partners, accredited entities and executing entities shall be obliged not to enter into any contract directly with any entity listed on such database or notified to them, as applicable, after the effective date of the determination of the Case Review Officer for projects, programmes and other activities funded by the GCF.

## **X. Settlements**

### **10.1 Negotiated settlements**

56. At any time during an investigation or proceedings under this policy, but not after the issuance of a decision, the IIU may submit to the Case Review Officer a fair and credible settlement agreement entered into between the GCF and a Respondent. Any settlement agreement shall:

- (a) Provide for the conditions under which the proceedings under this Policy are to be terminated, in whole or in part, which may include the imposition of any measure similar to an administrative remedy;
- (b) Contain an acknowledgement by the Respondent and by the IIU that the settlement agreement has been entered into freely, with full disclosure of its terms and without any form of duress; and
- (c) Include a condition that the settlement agreement shall become effective only if cleared by the Case Review Officer and shall become null and void if such clearance is not provided.

### **10.2 Settlement agreement**

57. The submission of a settlement agreement to the Case Review Officer shall automatically stay the proceedings, if any. The Case Review Officer, only with the concurrence of the General Counsel, shall clear the settlement agreement if he/she finds that:

- (a) The terms of the settlement agreement do not manifestly violate section 6.2 of this Policy or any guidance issued by the GCF in respect thereof; and
- (b) The settlement agreement was entered into freely, with full disclosure of its terms and without any form of duress.

### **10.3 Settlement Guidelines**

58. The IIU in consultation with the Secretariat shall develop settlement guidelines to set clear responsibilities of the different parties in order to ensure due process.

## **XI. Recognition of debarment/exclusion**

### **11.1 Debarment/exclusion by other institutions/organizations**

59. The IIU shall submit for consideration by the Board any proposed agreement/arrangement that may be entered into between the GCF and another institution/organization or network of institutions/organizations for recognition of debarment/exclusion decisions.

60. Under such agreement/arrangement, all persons (individuals and entities) debarred or excluded by a decision of another party to any agreement for recognition of debarment/exclusion decisions entered into by the GCF (an “external debarment decision”) may be considered for cross-debarment by the GCF, if the conditions noted in section 11.2 below are met. In such cases, the debarment by the GCF shall be published on the GCF website, shall provide a link to the other party’s debarment website, and shall remain posted on the GCF

website as long as the enforcement decision is in effect. The GCF shall not notify affected subjects of a debarment resulting from the application of cross-debarment unless the subject requests the GCF to provide comments or clarification.

## 11.2 Conditions for debarment/exclusion

61. The Head of the IIU shall have determined, and the Case Review Officer shall have agreed, following consultation with the Secretariat, that such external debarment decision:
- (a) Is based, in whole or in part, on a finding of a commission of one or more prohibited practices defined in the *Policy on Prohibited Practices* of the GCF, for the purpose of which determination, the Head of the IIU may request additional details from the institution that made the external debarment decision;
  - (b) Has been made public by the institution that has issued that external debarment decision;
  - (c) Has an initial period of debarment exceeding one year;
  - (d) Has been made within a period not exceeding 10 years of the commission of the last constituent act of the most recent prohibited practice to which such decision relates;
  - (e) Has not been made in recognition of a decision made in a national or other international forum; and
  - (f) Is not inconsistent with the legal and other institutional considerations of the GCF.

## XII. Policy implementation, monitoring, reporting and review

### 12.1 Investigation of GCF personnel

62. This policy does not apply to investigations concerning any individual who is a member of GCF personnel.

### 12.2 Interpretation

63. Any question arising as to the proper interpretation of any provision of the present policy or any other legal matter in relation to it shall be referred by the IIU, the Case Review Officer, or the Case Review Panel, as the case may be, to the General Counsel for advice.

### 12.3 Responsibilities of the Independent Integrity Unit

64. Pursuant to paragraph 43 above, the IIU shall ensure that a list of individuals and entities that have been subject to debarment/exclusion is posted on the GCF website promptly following the effective date of each relevant determination/decision and is accessible to the public.

### 12.4 No rights or privileges conferred

65. This policy is adopted to guide the exercise of discretion by the GCF and does not in itself confer any rights or privileges to any party. The GCF reserves the right to alter, amend, supplement, revise, suspend, or terminate this Policy, with or without notice, which will be

effective as of the date of approval thereof by the appropriate authority and will apply to proceedings for which a statement of charges is issued by the IIU after such date.

## 12.5 Sharing of information subject to other limitations

66. Notwithstanding any other provisions of this policy, the sharing of information contemplated in it shall be subject to the limitations of the GCF concerning the use and confidentiality of information, the Fund's contractual obligations with outside parties, and to other relevant considerations in such policies and contracts.

## 12.6 Reporting to the Board

67. The IIU shall provide periodic and timely reports to the Board and to the Ethics and Audit Committee of the Board, pursuant to their respective mandates, including significant outcomes and developments relating to:

- (a) The imposition of administrative remedies/exclusions following a determination/decision of the Case Review Officer or the Case Review Panel;
- (b) The list of entities subjected to temporary exclusion;
- (c) Paragraphs 10 and 20(a) above on resubmission;
- (d) Section 6.7 on reopening;
- (e) Section 10.1 on negotiated settlements; and
- (f) Section 11.1 on debarment/exclusion by other institutions/organizations.

68. Such reporting shall seek to preserve the integrity and confidentiality of the relevant processes.

## XIII. Effective date

### 13.1 Effectiveness

69. This policy shall come into effect following the appointment of the Case Review Officer, the Case Review Panel members, the Case Review Panel Secretary, and the Case Review Panel Chairperson, and the adoption of:

- (a) The Administrative Remedies and Exclusion Procedures;
- (b) The Administrative Remedies and Exclusion Guidelines for the implementation of this policy;
- (c) The Integrity Compliance Guidelines; and
- (d) The Settlement Guidelines.

### 13.2 Effect on legal agreements

70. The GCF Secretariat shall ensure that all new legal agreements entered into by the GCF after the effectiveness of this policy give effect to the relevant requirements of this policy.