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# Annual Implementation Report on the Policy on Prohibited Practices

## Secretariat management response

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### **Summary**

This document presents the Secretariat management response to the Annual Implementation Report on the Policy on Prohibited Practices of the Independent Integrity Unit.

## I. Introduction

1. The GCF's Independent Integrity Unit (IIU) prepared the Annual Implementation Report on the Policy on Prohibited Practices (IIU Report), to be presented to, and considered by, the GCF Board for information at its 27th Board meeting (B.27). The IIU Report covers the period March 2019 to February 2020. This Secretariat Management Response presents the compilation of inputs from various offices within the Secretariat as part of the IIU consultation exercise
2. The IIU Report was drafted by IIU as part of their mandate "to provide a brief report on experiences and lessons learnt to the Board after one or two years as a basis for a wider review of the policies."<sup>1</sup> The Policy on Prohibited Practices (the Policy), states that "The IIU shall report on the implementation of this Policy, on an annual basis to the Board." (Section XI, para. 39). Whilst the Policy does not specifically provide for the Secretariat to submit a response to the IIU Report, the Secretariat believes that its inputs may be valuable for consideration by the Board, and subsequently conveyed its intention to do so to the IIU, with no objections being raised by the IIU.
3. The objective of the Secretariat's response is to provide insights as to the effectiveness of the implementation of the Policy, as well as pathways for the Secretariat to provide its support to the IIU as the implementers of the Policy.
4. The Secretariat's response has been reviewed by its Senior Management Team. It comprises of general and specific comments from the Secretariat to the IIU Report, noting that the IIU Report does not contain specific recommendations to be addressed.
5. The Secretariat's response to the IIU Report is provided as an addendum to the IIU Report. While the Secretariat's intention was to provide its response, as conveyed to the IIU, as an annexure to the IIU Report in order to present a comprehensive information document to the Board, the Secretariat became aware of the final IIU Report on 17 October 2020 upon its endorsement by the EAC.

## II. General Comments

6. The Secretariat acknowledges that prohibited practices have the potential to threaten the transparent, accountable and efficient use of GCF resources, and ultimately the accomplishment of the overall GCF goal to deliver financing for projects that address the threats of climate change. The Executive Director is fully committed to the zero-tolerance approach cemented in the Policy, and continues to support efforts to identify, mitigate and redress integrity violations in the operations of the Fund.
7. This has translated into, *inter-alia*, the Secretariat collaborating fully with the IIU towards the development of the draft Administrative Remedies and Exclusions Policy (ARE), (to be brought to the Board for consideration), and the integrity regime in general.
8. The Secretariat values the insights and observations of the IIU, responsible for implementing the Policy, as well as the measures they have undertaken to communicate the Policy internally. The Secretariat notes that the IIU Report speaks of various information/training sessions<sup>2</sup> on Prohibited Practices and Whistleblower protection (in February, May, December 2020), Conflicts of Interest (in February and July 2020), sexual harassment, abuse and exploitation (February, May 2019, February 2020). The Secretariat welcomes an indication of: how many of the sessions focused on prohibited practices; the attendance at, and feedback from, these sessions; and, lessons learnt, and insights gained from, these training and advocacy engagements. Moreover, dedicated fraud-prevention training, for

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<sup>1</sup> GCF Board decision GCF/B.22/13, February 2019

<sup>2</sup> IIU Report, page 8, footnote 24

example, would be imperative for IIU to provide to GCF staff and personnel in general, and to procurement personnel, in particular. Finally, IIU's participation in onboarding training for GCF staff and personnel is welcomed by the Secretariat.

9. The Secretariat notes that the IIU Report focuses on Wrongdoing and Misconduct in general, and not solely on prohibited practices as defined by the Policy. This leads to information included in the IIU Report that appears in other IIU reporting to the Board, such as the IIU's Activity Report to the Board.

10. The Secretariat notes the reporting period is March 2019 to February 2020, with the IIU Report being presented at B.27 in November 2020. The Secretariat opines that any prohibited practices matters that fall outside the reporting period of the IIU Report and since March 2020 should be stipulated, if applicable.

11. The Secretariat welcomes the IIU's advice, guidance and collaboration in providing clear and consistent guidance to GCF Counterparties on the required integrity standards for managing GCF resources.

### **III. Conclusion**

12. The IIU Report provides a useful assessment of the implementation of the Policy over the reporting period for the Secretariat to consider and reflect on. The Secretariat stands ready to collaborate with the IIU in its implementation of the Policy moving forward such that transparency and accountability is ensured in the application of GCF's zero-tolerance approach to identify, mitigate and redress integrity violations in the operations of the Fund.

## Annex I: Secretariat management response – Specific Comments to the IIU Report

Section and page number
<b>Executive Summary, page 1</b>
<p><i>(a) The report also indicates that to complement the business model of the GCF and its operational reliance on Counterparties, it is of critical importance to ensure that integrity standards and obligations are cascaded down to executing entities and ensure compliance throughout various stages of project implementation. Therefore, it will be important for the GCF to provide clear and consistent guidance to its implementing entities on the required integrity standards for managing GCF resources. This includes requiring due diligence obligations and applying robust data-driven monitoring mechanism to assess how such obligations are adhered to at project level, with a view to identifying risks and applying mitigating measures as needed.</i></p> <p>The Policy (paragraph 38) specifies that the IIU is responsible for implementation of the Policy. The Secretariat welcomes IIU’s advice and collaboration in providing clear and consistent guidance to GCF Counterparties on the required integrity standards for managing GCF resources. The Secretariat notes that “implementing entities” is not a defined term in the IIU Report nor in the Policy. It is unclear whether reference is being made to Counterparties generally, or Accredited Entities, Executing Entities and procured parties, or others.</p> <p><i>(b) The Policy sets out measures to be taken by the GCF if the Policy is violated. While grounds for seeking such remedies are provided for in contractual agreements, to enhance the effectiveness of the imposition of remedies, a mechanism was developed to provide a range of remedies, which seeks to serve the purpose of Counterparty rehabilitation beyond the punitive role, especially given a limited range of actors for climate projects.</i></p> <p>The Secretariat notes that paragraph 31 of the Policy sets out the steps that may be taken with respect to Counterparties, subject to the terms of any legal agreement with them. Several of these are administrative steps which are not contractual matters. The Administrative Remedies and Exclusion Policy is not yet approved by the Board or in force. The current position is that such administrative remedies are within the authority of the EAC subject to confirmation by the Board, which is not reflected in the IIU Report.</p> <p><i>(c) Furthermore, continuing from the previous year, actions were undertaken to support capacity building of Accredited Entities to meet the GCF Fiduciary Standards and enhance their institutional capacity.</i></p> <p>The Secretariat notes that the IIU Report appears to speak to integrity matters more broadly and is not focused on prohibited practices specifically, contrary to the purpose of the IIU Report.</p>
<b>Section I. Introduction and Policy Overview, page 2</b>
<p><i>This annual implementation report assesses the progress made in implementing the Policy in its first year, from March 2019 through February 2020, with an aim to identifying areas where the GCF could strengthen its implementation efforts. (para. 2)</i></p>

The Secretariat would like to highlight that the Board will consider this report in November 2020, more than 6 months after the end of the reporting period. The Secretariat would appreciate any prohibited practices matters arising outside the reporting period, and since March 2020, to be stipulated. Moreover, submission of the report more closely aligned to the reporting period may be beneficial moving forward.

## **Section II Implementation of the Policy on Prohibited Practices, pages 2-10**

*(a) In conjunction with the contractual agreements referred to above, Covered Individuals are also bound by relevant GCF policies and procedures that set out the standards of conduct and obligations in discharging duties to ensure the maximum discretion on all matters relating to the GCF. (para. 7)*

The Secretariat notes that Covered Individuals are bound by relevant policies and procedures as a result of the contractual agreements referred to, and not in conjunction with them.

*(b) The Policy establishes that when Staff or any other GCF Personnel other than Staff violate the Policy, they may be subject to disciplinary measures or administrative sanctions, respectively as provided in the relevant contractual agreements (para 22 and 23). These remedies would be commensurate with the commission of the prohibited conduct and any such measures imposed are determined and enforced by the Executive Director, guided by the IIU investigation findings and recommendations (para 24). (para. 8)*

The Secretariat notes that paragraph 22 of the Policy states that disciplinary measures will be imposed against GCF Staff as provided for in the Human Resources Legal Framework. Any other GCF Personnel engaging in such conduct may face sanctions as set out in the relevant contractual agreements (para. 23).

*(c) With the exception of the role stipulated in paragraph 27, any disciplinary measures or sanctions to be imposed on GCF Personnel shall be determined and enforced by the Executive Director. The Executive Director shall be guided by the findings and recommendations made by the IIU at the conclusion of its investigation of a report of suspected Wrongdoing concerning GCF Personnel as provided for in this Policy. Notwithstanding the foregoing, in the event that the suspected Wrongdoing is alleged to have been committed by GCF Personnel working under the Authority of the IIU, the relevant investigations shall be conducted in accordance with procedures to be approved by the Board. (para. 24) (para. 8)*

The Secretariat notes that the Terms of Reference of the Independent Unit Heads focus on and addresses the independence of the IUs; they also take their cue from the Governing Instrument which guarantees that the IUs are independent of the Secretariat which is headed by the Executive Director. In applying a purposive construction to the provisions in the Policy and the respective TORs, staff and personnel of the IUs would therefore be subject to disciplinary measures or sanctions determined and imposed by the respective Head of the IU.

*(d) Out of forty-five (45) cases filed with the IIU during the reporting period, thirty-two (32) cases (71%) were reported by Covered Individuals and twenty-seven (27) (60%) concerned Misconduct and Prohibited Practices alleged to have been committed by Covered Individuals. As detailed in Table 1 below,*

*cases concerning Misconduct and Prohibited Practices constitute eighty-five percent (85%) and fifteen percent (15%) of the total cases, respectively. While harassment does not constitute a Prohibited Practice as currently defined by the Policy, proven harassment can amount to Misconduct depending on the gravity, as set out in the Administrative Guidelines on Human Resources. Additionally, types of behavior amounting to Misconduct include both failure to observe duties of employment including the Staff Code of Conduct and a breach of obligations set out (para. 9)*

As noted above, this section seems to be focused on more than just prohibited practices, but general misconduct. The IIU Report, by extending to matters of misconduct which are not prohibited practices, makes the scope of reporting unclear – it is noted that 4 cases of prohibited practices were handled by IIU in the reporting period. The section also replicates information covered in the report on the activities of the IIU, the IIU annual reports, and the Annual Implementation Report Policy on the Protection of Whistleblowers and Witnesses.

*(e) Out of twenty-seven (27) cases registered with the IIU concerning Covered Individuals during the reporting period, following preliminary reviews, six (6) allegations fell outside the remit of the Unit. Following investigations, twenty (20) cases were found unsubstantiated failing to meet evidentiary requirements. As illustrated in Table 1, despite reports alleging Wrongdoing, there was only one (1) substantiated case of Misconduct committed by GCF Personnel not related to Prohibited Practices, to which the IIU recommended appropriate remedial measures. Moving ahead, with the expansion of the GCF and its operations, the IIU foresees an increase in cases over time. Accordingly, the effective enforcement of such recommendations can be strengthened by utilizing a system to monitor the implementation of actions recommended, including improvements to procedures and internal controls to mitigate risks of recurrences. (para. 10)*

As indicated above, it is unclear why allegations that do not relate to prohibited practices are being addressed by IIU within this report. The Secretariat notes that of the 4 prohibited practices matters handled, none were substantiated. The IIU's projection of an increase in prohibited practice cases is considered speculative. The reference to the need for "effective enforcement of such recommendations" may also be inappropriate as it speaks to misconduct and not prohibited practices.

*(f) Whilst Conflicts of Interest are not deemed Prohibited Practices per se, the Policy obligates Covered Individuals to disclose, mitigate or correct real or perceived conflicting interests since failure to do so may amount to Misconduct (para 9 and para 14). (para. 12)*

*During the reporting period, the IIU received all required declarations. The IIU also received three (3) disclosures and requests for advice from Board-Appointed Officials and External Panel Members concerning potential conflicts between their function as a GCF Covered Individual and their roles and interests outside the GCF. Upon assessment, the IIU outlined the potential conflicts and provided an appropriate advisory in order to adequately mitigate risks to and/or adverse impact on the GCF. (para 14)*

As indicated above, conflict of interest is not defined as a prohibited practice; whilst a conflict may give rise to a prohibited practice, the IIU Report does not stipulate any such instances within the reporting period; it is also unclear if these matters were identified as part of the various GCF Policies on Ethics and Conflict of Interest. This limits assessing the implementation of the Policy.

*(g) Based on the above performance, the IIU assessed that going forward, the GCF would benefit by progressing efforts to build awareness among Covered Individuals regarding what constitutes Conflicts of Interest, what their disclosure obligations are, how they can be mitigated and where they can seek advice. Additionally, advancing capacities to collect and monitor the reported and declared data will benefit the GCF's risk management portfolio. ([para. 16])*

The Secretariat welcomes the IIU undertaking efforts for awareness-raising in this regard, as implementers of the Policy, and stands ready to support the IIU accordingly.

*(h) The Policy obliges Counterparties to maintain the same high level of integrity and accountability as Covered Individuals in carrying out Fund-related Activities. Counterparties are, subject to the terms of legal agreements with the GCF, required to prevent, detect and investigate Prohibited Practices in relation to Fund-related Activities and cooperate with IIU investigations (para 19). (para. 17)*

The Secretariat notes that para. 19 of the Policy does not speak of Counterparties being required to “detect” prohibited practices.

*(i) While the self-assessment of Accredited Entities' compliance with the Fiduciary Standards are required via the Annual Performance Report, to more effectively assess the effectiveness of the Policy in ensuring compliance by Counterparties with the obligations under the Policy, the Annual Performance Reviews can be strengthened to require information regarding the following: (i) whether Counterparties have in place policies and procedures which enable them to comply with the GCF integrity standards; (ii) whether assurances have been provided through legal arrangements which seek to ensure that GCF proceeds are not used for unintended purposes; and (iii) whether appropriate due diligence has been conducted in engaging executing entities and sub-contractors to ensure that they are capable of carrying out funded activities consistent with the GCF standards. Based on such data, monitoring efforts can be strengthened to identify gaps or risks and to subsequently support Counterparties in developing effective mitigating measures and determining the extent to which enhanced monitoring will be required. (para. 19).*

As noted above, it is unclear why reference is made to the Fiduciary Standards, rather than focusing on prohibited practices. Moreover, by not using terminology from the Policy itself, the meaning and/or scope of phrases such as “integrity standards” remains unclear.

*(j) The Policy requires that the IIU take measures to proactively monitor that Prohibited Practices are prevented in Fund-related Activities (para 11, 41). Accordingly, during the reporting period, the IIU developed the methodology for the Proactive Integrity Reviews (“PIRs”), a data-driven prevention and oversight tool for the GCF projects/programs based on benchmarking international best practices set by peer organizations. Utilizing the Integrity Risk Assessment Framework, the PIR can benefit from data referred to above. The IIU anticipates that through the conduct of these PIRs, it will be able to identify, at an early stage, and mitigate any integrity risks, recommend improvements and provide technical capacity support to Counterparties for better implementation of the GCF integrity policies. (para. 20)*

The Secretariat has not been consulted on, nor has insights into, the PIR methodology or the Integrity Risk Assessment Framework, which will certainly impact the Secretariat’s functioning should support be required from the Secretariat. It is also unclear if either the PIR or the Integrity Risk Assessment Framework methodologies include data analytics to identify activities for review or contain facets and/or comprise of either remote or continuous audit monitoring, and what IIU’s capacity is in that regard. The Secretariat welcomes engaging further with the IIU in this regard.

*(k) To complement the business model of the GCF and its operational reliance on Counterparties, it is of critical importance to ensure that integrity standards and obligations are cascaded downstream to executing entities and sub-contractors. The Policy provides that Counterparties contractually cause the same obligations to be cascaded down to ensure that GCF funds are not used for improper purposes (para 20). (para. 21)*

The Secretariat notes that the Policy refers to Counterparties incorporating requirements in their downstream agreements corresponding to their own rules, policies and procedures to this end.

*(l) To comply with this requirement, Counterparties are expected to obligate their subcontractors to incorporate corresponding provisions in all subsidiary agreements. Such modalities enable the GCF integrity standards to be applied throughout all stages of GCF-funded activities. In the preparation of this report, evidence or information demonstrating that such obligations were complied with was difficult to ascertain. Given the absence of privity of contract between the GCF or Accredited Entities with executing entities and third parties further downstream, it will be all the more important to ensure that these obligations are adhered to by the parties involved in downstream activities. (para. 22)*

The Secretariat notes a correction to the IIU statement. The GCF has privity of contract with Accredited Entities, who, in turn, have privity of contract with Executing Entities (and any other third parties such as procured parties) for implementation of a funded activity. The comments by the IIU Report only on Accredited Entities is unclear, given that the definition of Counterparties is much broader than that.

*(m) To this end, going forward, the GCF may consider providing more guidance to Counterparties and strengthening the reporting requirements through annual reports on the compliance by Counterparties with the passing down of obligations throughout various stages of the project implementation. This can be achieved through, inter-alia, the standardization of integrity provisions in subsidiary agreements and ad-hoc spot checks. (para. 23)*

The Secretariat welcomes the IIU's advice and guidance in providing such guidance to Counterparties, given the IIU's overarching responsibility for implementation of the Policy. Moreover, in view of the Secretariat's comments above, which clarifies that the Policy allows Counterparties to incorporate in their downstream agreements requirements corresponding to their own rules, policies and procedures, integrity provisions in subsidiary agreements cannot be readily standardized as they stem from the Counterparties' own requirements.

*(n) Information/training sessions. The IIU took steps to conduct more than twelve information and training sessions that aimed at introducing the GCF integrity framework to Covered Individuals and familiarizing them with their obligations under the Policy. The topics covered include: the GCF integrity standards and what is required of the GCF staff to comply; what to report to the IIU and how to report; the protections available to Staff who file a report; the obligation to declare and mitigate risks of conflicts of interest; and what constitutes sexual harassment and how to report it; and preventing sexual exploitation in projects. The IIU worked closely with the relevant GCF offices, such as Human Resources, Staff Council and the Independent Redress Mechanism in carrying out these sessions, targeting various groups of Covered Individuals including GCF Personnel, Board Members, Alternate Board Members, Advisers and External Members of panels and groups. (para. 32(a))*

The Secretariat welcomes an indication of: how many of the sessions focused on prohibited practices; the attendance at, and feedback from, these sessions; and, lessons learnt, and insights gained from, these training and advocacy engagements. Moreover, dedicated fraud-prevention training, for example, would be imperative for IIU to provide to GCF staff and personnel in general, and to procurement personnel in particular. Finally, IIU's participation in onboarding training for GCF staff and personnel is welcomed by the Secretariat.

*(o) Policy advisory. As part of the IIU's overall work program to prevent and mitigate risks of Prohibited Practices and build capacity of stakeholders to address integrity issues, the IIU provides advisories and guidance regarding the interpretation and implementation of GCF integrity policies in the context of Fund-related Activities. Such advisories are categorised in relation to: (para. 32(b))*

For the reporting period in question, IIU may be well placed to indicate: precisely how many advisory requests were received, both internally and externally, and responded to concerning prohibited practices; the turn-around time for an advisory to be provided by IIU; and, the lessons learnt or insights gained that would further progress implementation of the Policy.

*(p) Establishment of the GCF integrity framework. To maximize the Policy's effectiveness, the IIU endeavoured to develop a subset of GCF integrity policies. Such policies address, in more detail, different types of Prohibited Practices referred to in the Policy, completing the GCF integrity framework as illustrated in Figure 1 (para. 35)*

The Secretariat notes that: parts of the SEAH Policy are still under revision; and the Investigative Standards as well as the ARE Policy have not yet been adopted by the Board.

*(q) Update of the Fiduciary Standards. Following the adoption of a suite of integrity policies, a number of Board decisions requested the IIU in conjunction with the Accreditation Committee to update the initial Fiduciary Principles and Standards incorporating such policies. Accordingly, the IIU developed the relevant fiduciary standards with an aim to seek the Board's endorsement in 2021. The update of the fiduciary standards is of critical importance in assessing entities' capability to manage the resources in the best interest of the GCF since the Standards are used as a basis to inform the criteria used to accredit entities. The IIU will continue to lead, in collaboration with the Secretariat and under the guidance of the EAC and the Accreditation Committee of the Board, in proposing and following through with necessary updates in line with principles enshrined in the Governing Instrument. (para. 36)*

As stated above, it is unclear why reference is made to the Fiduciary Standards, rather than focusing on prohibited practices.