

Rules of Procedure

applicable to the review of allegations of fraudulent and other proscribed practices by external collaborators, grantees, implementing partners and suppliers

Introduction

This Procedure is based on the ILO Office Directive, *Policy against fraudulent and other proscribed practices*, IGDS No. 69. It sets out the administrative process to be followed by the [ILO Vendor Review Committee](#) in the review of allegations of fraudulent and other proscribed practices (Proscribed Practices) against external collaborators, grantees, implementing partners and suppliers (Vendors). It is based on the Model Policy Framework (MPF), developed by the United Nations High-Level Committee on Management (HLCM) Procurement Network and endorsed by the HLCM and Chief Executives Committee in 2011 for Agencies of the UN system.

The proceedings set forth herein are administrative in nature and are without prejudice to any investigations or other actions pursuant to the mandate of the ILO, arbitral proceedings, or any civil or criminal proceedings that may be ongoing or otherwise result from a referral to governmental authorities pursuant to paragraph 3.12 below.

CHAPTER I: DEFINITIONS

- 1.1. **Agency:** The United Nations, its subsidiary entities, Funds and Programmes, as well as the Specialized Agencies of the UN System.
- 1.2. **Affected Agency:** Agency of the UN System against which the Vendor Review Committee from the ILO or from another Agency has determined that Proscribed Practices took place in respect of one or more of its procurement activities.
- 1.3. **Participating Agency:** An Agency that has adopted the MPF.
- 1.4. **Lead Agency:** In instances of collaborative procurement, or when more than one Agency is involved in a specific procurement action, the Agency representing the other Agencies that will lead the undertaking of data gathering and analysis, and the Sanctions proceedings against a specific Vendor. The Agencies involved shall decide amongst themselves which is to act as the Lead Agency for the particular case. Selection of the Lead Agency shall be based on the Agency with (a) the most direct involvement with the Proscribed Practice(s); and/or (b) the most resources at its disposal. All Agencies shall collaborate with the Lead Agency.
- 1.5. **Days:** Unless stated otherwise, means working days, which do not include weekends and/or holidays. A weekend is Saturday and Sunday. Holidays are those officially recognized by the ILO headquarters. If the last day of any period falls on a weekend or holiday, the term shall run until the end of the next day on which the ILO is officially open for business.
- 1.6. **Eligibility:** The quality or state of a Vendor of being eligible; meeting the threshold-required conditions for potentially being deemed acceptable for any or all particular stages in the context of an Agency procurement process. A Vendor may be determined as eligible to be placed on the United Nations Global Marketplace (UNGM) and/or an Agency's roster, or as eligible to receive an Agency solicitation or EOI or being acceptable to be awarded a contract. Eligibility is

separate and distinct from “qualified”, or “responsible” or “responsive” in the context of the evaluation of an offer in response to a solicitation.

- 1.7. **Eligible Vendor:** A Vendor meeting the requirements of paragraph 1.6. When a Vendor is a consortium, joint venture or partnership all of its members must meet these eligibility requirements.
- 1.8. **UN Ineligibility List:** A list hosted in UNGM and identified as the “UN List”, accessible to staff at all Agencies. This list aggregates information disclosed by the Affected Agency, which includes the name, location, grounds for ineligibility as well as the start and expiration dates of the Sanction for each Vendor that has lost its eligible status.
- 1.9. **UN Ineligibility List Administrator:** The Secretary of the Committee having administrator rights over the dedicated area of UNGM that hosts the UN Ineligibility List, and being in charge of creating an entry, removing it, and doing all other actions that are deemed necessary for the proper update and administration of the UN Ineligibility List.
- 1.10. **Proscribed Practices:** The following are definitions of conduct or behaviour that constitute Proscribed Practices, which may take place at any time during the procurement process, including but not limited to, contract execution and/or beyond:
 - 1.10.1. “Fraud” or “Fraudulent practice”: any act or omission whereby an individual or entity knowingly misrepresents or conceals a fact (a) in order to obtain an undue benefit or advantage or avoid an obligation for himself, herself, itself, or a third party, and/or (b) in such a way as to cause an individual or entity to act, or fail to act, to his, her or its detriment; ¹
 - 1.10.2. “Corruption” or “Corrupt practice”: the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party; ²
 - 1.10.3. “Coercion” or “Coercive practice”: an act or omission that impairs or harms, or threatens to impair or harm, directly or indirectly, any party or the property of the party to improperly influence the actions of a party; ³
 - 1.10.4. “Collusion” or “Collusive practice”: an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party; ⁴
 - 1.10.5. “Unethical practice”: any conduct or behaviour that entails an actual, potential, or perceived conflict of interest. This may include the receipt of gifts and hospitality, violation of post-employment provisions, or non-compliance with other published requirements of doing business with the ILO (for example, the UN Supplier Code of Conduct); ⁵
 - 1.10.6. “Obstruction” or “Obstructive practice”: the deliberate destruction, falsification, alteration or concealing of evidence material to an investigation or making false statements to investigators in order to materially impede an investigation into allegations of the foregoing; and/or threatening, harassing, or intimidating another to

¹ Common definitions of fraud and presumptive fraud as adopted by the High-Level Committee on Management (HLCM) in the Conclusions of its thirty-third session, Budapest, 30-31 March 2017.

² As defined in paragraph 4.7 of the *Model Policy Framework on Vendor Sanctions for Agencies of the United Nations System* (MPF), March 2011.

³ Ibid.

⁴ Ibid.

⁵ Ibid.

prevent them from disclosing their knowledge of matters relevant to an investigation or from pursuing an investigation; or an act intended to materially impede the exercise of the ILO's inspection and audit rights.⁶

- 1.11. **Rehabilitation:** The designated process in a particular case, defined and managed by the Affected Agency, through which a sanctioned Vendor regains its Eligibility and the particular entry related to a specific case is removed from the UN Ineligibility List upon request of the Affected Agency to the UN Ineligibility List Administrator. If there are more than one Affected Agencies, the Rehabilitation process shall be defined and managed by the Lead Agency only.⁷
- 1.12. **Respondent:** A Vendor that is the subject of an inquiry into a possible conduct that would amount to a Proscribed Practice.
- 1.13. **Sanction:** An administrative determination, including any necessary measures or rehabilitative requirements, determined and applied by the Committee in its discretion as a result of a Vendor engaging in Proscribed Practices. Such determination is intended to ensure compliance with the rules, regulations and policies of the Affected Agency and the UN System.
- 1.14. **Vendor:** An offeror or a prospective, registered or actual external collaborator, grantee, implementing partner or supplier, contractor or provider of goods and/or services to the UN System. This includes a private or public entity, (whether parent, holding, subsidiary, affiliate or member(s) in a consortium, partnership or joint venture), a government agency or a non-governmental organization. Employees, officers, advisers, representatives or subcontractors of the Vendor will be considered agents for which the Vendor is responsible under this Procedure.
- 1.15. **Vendor Review Committee:** Also referred to as the Committee. The Committee established by the ILO tasked with reviewing allegations of Proscribed Practices by Vendors and recommending decisions to the ILO Treasurer and Financial Comptroller on Sanctions against the Vendor concerned.

CHAPTER II: PROCEDURES OF THE VENDOR REVIEW COMMITTEE

- 2.1. **Referral to the Committee.** The Treasurer and Financial Comptroller, after consulting with the Chief Internal Auditor, and having taken due consideration of the findings of the investigation and any particular interests of the ILO, will determine whether an allegation of Proscribed Practices merits being referred to the Committee.
- 2.2. Upon receipt of the referral, the Secretary shall analyze the investigation report received and may request additional information from the Chief Internal Auditor, the Director of Human Resources Development (HRD) (for external collaborators), Chief of the Budget and Finance Branch (BUDFIN) (for grantees and implementing partners) and Chief PROCUREMENT (for suppliers), as necessary. The Secretary will prepare a Notice of Administrative Action based on the investigation report(s) and any subsequent information received, and present its content in draft form to the Committee for review. The Notice of Administrative Action, once approved by the Committee, will formalize the allegations and be sent to the Respondent(s).
- 2.3. **Draft Notice of Administrative Action (Notice).** The draft Notice prepared by the Secretary shall:
 - 2.3.1. Include a copy of the investigation report(s) from IAO, redacted as necessary. The IAO report(s) shall identify each entity that may be subject to Sanctions (the Respondent(s)), state the allegation of Proscribed Practices, summarize all relevant factual information

⁶ Ibid.

⁷ The Lead Agency managing the Rehabilitation process may be different from the Lead Agency that represented the Agencies at the time of the start or during the conduction of the Sanctions proceedings.

- on the alleged behaviour that surfaced during the examination, and include all documentation that will be presented to the Committee as information on the alleged facts;
- 2.3.2. State that the Respondent has an opportunity to respond to the Notice in writing within thirty (30) days and that failure to do so may result in the Committee considering the Notice as admitted in full;
 - 2.3.3. State that the Committee may recommend to the Treasurer and Financial Comptroller any of the Sanctions described in paragraph 3.9;
 - 2.3.4. State that the Treasurer and Financial Comptroller may request, after the Sanctions have been imposed, that the Respondent be included in the UN Ineligibility List;
 - 2.3.5. Provide a summary of the procedure;
 - 2.3.6. Specify any other information that the Secretary deems material to the allegations; and
 - 2.3.7. Ensure that any information or data provided by the Vendor is confidential, as well as the privileged information generated pursuant to Committee functions is fully and adequately protected, pursuant to ILO data protection policies and procedures.
- 2.4. **Approval of the Notice of Administrative Action.** The Committee shall review the draft Notice, make amendments as necessary, and approve it. The Secretary shall then issue to the Respondent(s) the Notice, redacted as necessary to protect the confidentiality of the other parties or protect any other information the Committee deems privileged or confidential, with all attachments. The Notice sent to the Respondent(s) will be considered a submission for the purposes of paragraphs 2.19 and 2.20.
- 2.5. **Interim Suspension.** Prior to referring the review of the matter to the Committee, the Treasurer and Financial Comptroller, in consultation with the Chief Internal Auditor, may decide to implement preventative measures based on an interim investigation report when a Vendor has admitted the allegations, or when there is clear undisputable evidence supporting the allegation of Proscribed Practices. The preventive measures can relate to the suspension of the Vendor from ongoing contracts or procurement actions. After the matter has been referred to the Committee for review and when reasonable inferences may be drawn from the investigation report and other documentation presented to the Committee, the Committee may also recommend to the Treasurer and Financial Comptroller that the Respondent be suspended from participating in ongoing or future contracts or procurement actions, at any stage of its proceedings. Interim Suspension shall not be deemed a Sanction for the purposes of this Procedure until the final action has been decided on, which shall supersede any Interim Suspension.
- 2.6. **Respondent's Response.** The Respondent(s) shall submit a written response (Response) to the Secretary within thirty (30) days following the receipt of the Notice. The Response must present arguments and provide supporting documentation or information in response to the allegations presented. The Response will be deemed to have been submitted upon actual receipt by the Secretary. The Response must include a declaration, signed by the Respondent(s), that the information contained therein is truthful and correct to the best of the signer's knowledge. The Secretary may inform the Respondent(s) if the Committee needs further information in order to deliberate.
- 2.7. **Reply from the ILO.** If the Committee considers that further information is needed, it shall submit, within five (5) days of receipt of the Respondent's Response, a copy of the Response to the Chief Internal Auditor, the Director of HRD, Chief of BUDFIN or Chief PROCUREMENT who

shall have thirty (30) days from the receipt of the Response to present further arguments and documentation in reply to the arguments and documents set forth in the Response. The Reply shall be limited to arguments and documents offered in rebuttal and shall be submitted to the Secretary, who shall then submit a copy to the Respondent.

- 2.8. **Respondent's Sur-reply.** A copy of the Reply redacted, as necessary, shall be forwarded by the Secretary of the Committee to the Respondent(s). The Respondent(s) shall have fifteen (15) days after receipt of the Reply to present arguments and information and documentation in specific rebuttal to the Reply. The Sur-reply will be deemed to have been submitted upon actual receipt by the Secretary. The Secretary shall submit a copy of the Sur-reply to the Chief Internal Auditor, the Director of HRD, Chief of BUDFIN or Chief PROCUREMENT, as the case may be. The Response must include declaration, signed by the Respondent(s), that the information contained therein is truthful and correct to the best of the signer's knowledge.
- 2.9. **New Documentation and Information.** If new information and documentation becomes available to the Chief Internal Auditor, the Director of HRD, Chief of BUDFIN or Chief PROCUREMENT or the Respondent(s) after the submission of written materials and before the conclusion of the Sanctions proceeding, the Chief Internal Auditor, the Director of HRD, Chief of BUDFIN or Chief PROCUREMENT or the Respondent(s) may submit such new evidence to the Secretary. The submission must include a brief explanation on the significance of the new documentation or information. The Committee shall consider the additional information and documentation if (i) 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 party at the time of its submissions and (ii) if such information and documentation is relevant to the Committee's determination. The new documentation and information shall be communicated to the Chief Internal Auditor. The Committee may, at its discretion, request the Chief Internal Auditor, the Director of HRD, Chief of BUDFIN or Chief PROCUREMENT or the Respondent(s) to respond to the new evidence, as necessary.
- 2.10. **Admissions from the Respondent.** A Respondent may admit to all or part of any allegation included in the Notice of Administrative Action without prejudice to its right to present information, documentation or arguments regarding mitigating circumstances.
- 2.11. **Mitigating Circumstances.** The Respondent may present documentation and arguments regarding mitigating circumstances that may be relevant to the Committee's determination. Such information and documentation must be submitted in accordance with the deadlines set forth in this paragraph on Submissions to the Committee.
- 2.12. **Aggravating Circumstances.** The Secretary or the Chief Internal Auditor, the Director of HRD, Chief of BUDFIN or Chief PROCUREMENT may include in their submissions information on aggravating circumstances or information concerning previous Sanctions imposed by the ILO or any other Agency in the UN system.
- 2.13. **Exculpatory Materials.** The Secretary, with the approval of the Committee, shall provide to the Respondent any materials in the Secretary's possession that would reasonably tend to exculpate the Respondent or mitigate the Respondent's culpability.
- 2.14. **Language.** All written materials submitted to the Committee shall be in English, French or Spanish, unless otherwise requested by the Committee. Exhibits and attachments may be submitted in their original language but must be accompanied by a certified translation into one of the three above languages.
- 2.15. **Communications.** The Secretary shall maintain records of all proceedings, including the date of receipt of Notices and successive submissions. If a Respondent refuses delivery of the Notice, the Secretary shall determine the date of receipt. If a Respondent's address is unknown or

fictional, the Secretary shall use his or her best efforts to cause the Respondent to receive the Notice. If these efforts are unsuccessful, the Secretary shall inform the Committee, who will determine if the Respondent has received sufficient notice and whether additional efforts are required. The Committee may take action where it deems necessary when delivery could not be confirmed. Communications related to the Procedure shall be sent by courier, mail with delivery confirmation, facsimile with "confirmation of transmission", or email with confirmed delivery.

- 2.16. **Extensions of Time.** The Chief Internal Auditor, the Director of HRD, Chief of BUDFIN or Chief PROCUREMENT or the Respondent for good cause shown, may request an extension of time to the Secretary, who shall present the request to the Committee. The Committee may, at its sole discretion and when it considers that the request is not a delaying tactic or an abuse of procedure, grant reasonable extensions of any deadlines.
- 2.17. **Computation of deadlines.** For the purposes of this Procedure, "days" as used herein means calendar days of the ILO Geneva HQ, and do not include weekends and holidays. If the last day of any period falls on a day in which the Respondent or ILO Geneva HQ is not officially open for business, the term shall run until the end of the next day on which the Respondent or the ILO Geneva HQ is officially open.
- 2.18. **Failure to submit a timely Response.** If the Respondent fails to submit a Response in accordance with paragraph 2.6, the allegations set forth in the Notice will be considered by the Committee without the Respondent's response.
- 2.19. **Distribution of Submissions.** The Secretary shall provide copies of all the submissions related to a particular matter to the Chief Internal Auditor, the Director of HRD, Chief of BUDFIN or Chief PROCUREMENT and the Respondent and any other incriminating or exculpatory materials. Distribution is undertaken by the Secretary at the Committee's direction promptly after these have been submitted to the Committee and does not constitute a waiver of the privileges and immunities of the ILO. The Respondent does not have the right to request any other information or documentation in the Committee or ILO's possession. If any information is deemed privileged or otherwise confidential or if a person who provided the ILO with information that led to the allegations requested that his or her identity be kept confidential, the Respondent shall not have the right to discover the individual's identity but will be informed of the allegations made and any documentation provided, which the Secretary may redact as necessary, in order to secure the informant's anonymity and/or protect any other information it deems privileged or confidential.
- 2.20. **Distribution of Submissions to Others.** The Committee may direct the Secretary to disclose materials submitted to the Committee, subject to the above provisions on the confidentiality of materials, to:
 - 2.20.1. Respondents in other Sanctions proceedings involving related matters;
 - 2.20.2. Other affected Agencies;
 - 2.20.3. Parties who may be involved but are not named as Respondents;
 - 2.20.4. Agencies, international organizations or national authorities; and
 - 2.20.5. Others deemed necessary by the Committee.
- 2.21. The Committee shall assess for each of the above recipient(s) whether the materials can be shared or is protected from disclosure as part of the archives of the ILO under its privileges and immunities. In every case, the Secretary shall indicate to the above recipient(s) that the shared information can only be used for the purpose for which it was provided and cannot be disclosed further to other parties.

- 2.22. **Withholding of Sensitive Materials.** The Committee may instruct the Secretary to withhold the disclosure of any particular information or documentation, pursuant to its determination that there is a reasonable basis to conclude that providing said information or documentation may endanger the life, well-being, safety, health of any person or entity, and/or that such information or documentation is otherwise sensitive or confidential.
- 2.23. **Privileged Materials.** Attorney-client communications and attorney work product of any party shall be exempt from disclosure. The Committee may also determine other materials to be confidential pursuant to the ILO's privileges and immunities, or otherwise that disclosure would not be in the best interests of the ILO.
- 2.24. **No Waiver of Privileges and Immunities.** Communication materials sent to the Respondent or other parties outside of the ILO do not constitute a waiver of its privileges and immunities. When disseminating information pursuant to this Procedure, a notice shall be added stating that, "Nothing in this procedure, and nothing revealed or implied during this proceeding shall be deemed to expressly or implicitly waive any of the privileges and immunities of the ILO or any other UN entity, including their subsidiary organs."
- 2.25. **Data Protection.**
- 2.25.1. Data provided to, and generated by, this Procedure, particularly information compiled in the UN Ineligibility List, will be subject to the ILO's rules and regulations.
 - 2.25.2. All handling of data will be subject to the Data Protection policy of the ILO and in any event, in accordance with the following general principles: Personal data will be processed fairly and lawfully, will be obtained only for one or more specified and lawful purposes, and will not be further processed in any manner incompatible with that purpose or those purposes.
 - 2.25.3. Personal data shall be adequate, relevant and not excessive in relation to the purpose or purposes for which it is processed; it shall be accurate and, where necessary, kept up to date. Personal data processed for any purpose or purposes shall not be kept for longer than is necessary for that purpose or those purposes.
 - 2.25.4. Appropriate technical and organizational measures shall be taken against unauthorized or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.
 - 2.25.5. Personal data shall not be transferred, unless the recipient ensures an adequate level of protection for the rights and freedoms of data subjects in relation to the processing of personal data.
- 2.26. **Confidentiality.** In principle, all information and documentation gathered and created under this Procedure shall be protected from disclosure as part of the archives of the ILO under its privileges and immunities. Determinations on sensitive or privileged information shall be made on a case by case basis, balancing the best interests of the ILO with the requirement to provide Vendors with sufficient information to enable them to contest the allegations in a meaningful way.
- 2.27. **Hearings.** Respondents shall have no right to a hearing. The Committee may, at its discretion, hold hearings when it deems them necessary, also determining their duration and form. The Secretary shall keep a written summary of the hearings.

CHAPTER III: DETERMINATIONS OF THE COMMITTEE

- 3.1. **Determinations of the Standard of Proof.** After reviewing the entire documents, the Committee shall determine whether the Standard of Proof was met pursuant to paragraphs 3.3, 3.4 and 3.5 to support a finding that the Respondent engaged in any of the Proscribed Practices.
- 3.2. **Information and Documentation.** The Committee shall have discretion to determine the relevance, materiality, weight and sufficiency of all the information and documentation, including witness statements, submitted by either party to support its arguments. The Committee shall also consider information and documentation presented concerning mitigating and aggravating circumstances.
- 3.3. **Bifurcated Standard of Proof.** This Procedure adopt a bifurcated approach to the standard of proof, that is, "Clear and Convincing Proof" for grievous offences (all of the Proscribed Practices, as currently defined) and a lower "Preponderance of Evidence" for any other Proscribed Practices added in the future that do not constitute grievous offences.
- 3.4. **Standard of Proof Standards not met.** If the Committee finds that the information does not meet the appropriate standard of proof that the Respondent engaged in a Proscribed Practice, the Sanctions proceedings shall be closed after consultation with the Treasurer and Financial Comptroller. The Secretary shall make a record of the Committee's finding and promptly inform the Respondent and the Chief Internal Auditor, the Director of HRD, Chief of BUDFIN or Chief PROCUREMENT. A matter may only be re-opened when the Committee approves the Secretary's request based on new information available pursuant to paragraph 2.9 above, after consultation with the Treasurer and Financial Comptroller.
- 3.5. **Standard of Proof Standards met.** If the Committee finds, after its assessment of the veracity of the allegations made and of the reliability and sufficiency of the information presented to the Committee to establish that there is clear and convincing proof that the Respondent engaged in any of the Proscribed Practices, the Committee shall issue a written report summarizing its recommendation to the Treasurer and Financial Comptroller. Other Proscribed Practices not listed above, and that do not constitute grievous offences, will only require that the information presented to the Committee meets the Preponderance of Evidence that the Respondent engaged in those Proscribed Practices.
- 3.6. **Re-opening of a case.** A matter may be re-opened when the Committee determines, after consultation with the Treasurer and Financial Comptroller, that new information made available to the Committee pursuant to paragraph 2.9, after the conclusion of the Sanction proceedings and the imposition of a Sanction, warrants the re-opening of the case.
- 3.7. **Settlement.** The Respondent may, at any time before the Committee reaches a final determination, present an offer of Settlement in accordance with the Committee procedures to the Secretary, who shall submit it to the Committee for its consideration within five (5) days. The Settlement offer must include an admission of involvement in Proscribed Practices, as well as an action plan for mitigating and eradicating the actions or omissions that resulted in the allegations included in the Notice. The Committee (following consultations with the Participating Agencies involved in a joint procurement action, as appropriate) may recommend the Treasurer and Financial Comptroller to approve or reject the Settlement offer at its sole discretion.
- 3.8. **Imposition of Sanctions.** If the Committee determines that there is sufficient information to support allegations of actions or omissions that constitute Proscribed Practices, the Committee shall select an appropriate Sanction, or a combination of Sanctions, proportional to the determinations based primarily on the demonstrated facts, and its duration. The recommended Sanction(s) will be communicated by the Secretary to the Treasurer and Financial Comptroller for its decision. The Sanctions shall be imposed through a written decision, which shall be final and, unless stated otherwise in the decision, take effect immediately. The decision shall be without prejudice to any action that may be taken by any government or other international

organization under applicable law. The Respondent shall be given notice, in writing, consisting of a summary of the decision, the imposed sanction, and the Rehabilitation procedures, if applicable.

- 3.9. **Possible Sanctions.** The Committee may recommend any of the following Sanctions or a combination of them. Sanctions affecting a Respondent's Eligibility shall be the basis of common actions as described below, but the details of which shall otherwise remain confidential between the ILO and the Respondent:
- 3.9.1. **Censure:** A letter of reprimand of the Respondent's behaviour. Censure does not affect the Respondent's Eligibility, but its existence will be an aggravating factor for imposing Sanctions in future proceedings;
 - 3.9.2. **Ineligibility or Debarment:** A formal declaration that a Respondent has become ineligible for a period of time to be awarded and/or to partake in contracts financed or executed by the ILO. Exceptionally, the Committee may recommend that a Vendor's ineligibility is permanent; and
 - 3.9.3. **Other Sanctions:** The Committee may recommend other Sanctions that it finds appropriate to the circumstances at hand.
- 3.10. **Application to Affiliated Entities.** The Committee shall have the option to recommend to extend the Sanctions to a Vendor's parent or holding company and/or subsidiaries, when the entire chain of ownership/control is named as a Respondent in the Notices of Administrative Action and where it is shown that the Proscribed Practice was the result of a company-wide policy or systematic course of action of the Vendor. Different determinations may be made with respect to the different Respondents in the same chain of ownership/control based on the facts presented by each Respondent.
- 3.11. **Disclosure of Decisions.** If a Sanction is imposed on a Respondent, information on the identity of the sanctioned party and the Sanctions imposed shall be shared with the UN System through the procedure detailed below and subject to the data protection provisions under paragraph 2.25. The Committee may request the Secretary, after consultation with the Treasurer and Financial Comptroller, share such information with other international organizations (in particular, if affected), host countries, and any other parties deemed appropriate in accordance with this Procedure.
- 3.12. **Referral to Governmental Authorities.** When the ILO is acting as Lead Agency, subject to the Affected Agency's external communication policies, its privileges and immunities, and consistent with the Procedure described herein, the Committee may, in consultation with the Affected Agency's Legal Office, and based on clear instructions from the Treasurer and Financial Comptroller recommend to the Head of the Affected Agency that a matter be referred, on a confidential basis, to the appropriate governmental authorities in accordance with the Affected Agency's internal procedures in this regard.
- 3.13. **Disclosure to Other Possibly Affected International Organizations.** If, during the course of the Committee's proceedings, information comes to light regarding Proscribed Practices in connection with another International/Regional Organization that may have been affected, the Committee may recommend that the Head of the Affected Agency authorize the sharing of information and documentation, on a confidential basis, with other International and/or Regional Organizations by means of an appropriate pre-authorized process and in accordance with its privileges and immunities.
- 3.14. **Exceptions.** Pursuant to the demands of its own mandates, the ILO may exceptionally opt out of applying the Sanction(s) imposed by another Agency with regards to specific Ineligible

Vendors. If the ILO considers that it is in its best interest that an Ineligible Vendor, included in the UN Ineligibility List, is made exceptionally eligible to participate in a future contract for the ILO, an Exception may be decided by the Treasurer and Financial Comptroller.

- 3.15. **UN Ineligibility List.** The UN Ineligibility List is a central roster, hosted and maintained confidentially by UNGM as an electronic document with data protection that aggregates information provided by the ILO and Participating Agency, as the case may be. Vendors that are subject to Sanctions that affect their Eligibility, pursuant to the Procedure detailed herein, shall be entered into the Ineligibility List for a term starting upon notification of the Treasurer and Financial Comptroller's decision and ending once they are rehabilitated. The Ineligibility List shall not be published or otherwise distributed.
- 3.16. **Inclusion in the UN Ineligibility List.** After the Respondent has been notified of the ILO final determination, the Secretary shall submit a formal summary of the decision to the Participating Agencies involved in a joint procurement action, if any. A Respondent included in the UN Ineligibility List shall be considered an ineligible vendor (Ineligible Vendor). The summary shall indicate, at a minimum, the name of the ILO and any other Affected Agency, the date of the ILO determination, the name, nationality, address and contact information of the Ineligible Vendor, the type and duration of the Sanction(s) imposed, and the Proscribed Practice that resulted in the imposing of the Sanction. The Secretary shall notify the Ineligible Vendor within five (5) days of its inclusion in the UN Ineligibility List and the specific information included in the entry. The notification shall include instructions on how to formulate a request to correct errors in the entry.
- 3.17. **Effects of inclusion in the UN Ineligibility List.** Any Vendor included in the Ineligibility List will be considered to have lost its eligible status as defined in paragraph 1.6. The UN Ineligibility List administrator shall inform the Secretary of any inclusions or deletions to the UN Ineligibility List within two (2) days.
- 3.18. **Correction of Errors.** If upon receiving the notification the Ineligible Vendor believes that the entry as presented in its notification of inclusion in the UN Ineligibility List contains errors regarding identity, type or duration of the Sanction(s), the Ineligible Vendor must respond to the Secretary in writing within five (5) days, specifying the errors in the entry and providing supporting documentation. The Secretary shall confirm or amend the information provided within five (5) days of receipt of the Ineligible Vendor's response, and the Ineligible Vendor will be notified in writing. The Secretary, as the UN Ineligibility List administrator, shall amend the UN Ineligibility List as necessary. The Ineligible Vendor may not present documentation or make arguments that could be construed as a *de novo* review of the merits of the ILO determination.

CHAPTER IV: REHABILITATION OF INELIGIBLE VENDORS

- 4.1. **Rehabilitation upon Expiration of Sanction(s).** An Ineligible Vendor wishing to restore its business relationship with the ILO may request to have its Eligibility status restored by the Committee when the Sanction(s) imposed by the ILO and corresponding entry in the UN Ineligibility List have expired.
- 4.2. **Rehabilitation prior to Expiration of Sanction(s).** Ineligible Vendors may also request Rehabilitation when at least half of the Sanction(s) term has expired, provided they can demonstrate that corrective measures have been put in place and have fully met or gone beyond the requirements of the ILO determination.
- 4.3. **Rehabilitation Procedure.** In cases where an Ineligible Vendor requests Rehabilitation, the request must be submitted in writing to the Secretary and must be accompanied by supporting documentation. The request will be deemed to have been submitted upon actual receipt by the Secretary. The Secretary shall submit the request to the Committee within five (5) days of receipt. In order to be rehabilitated, the Ineligible Vendor shall demonstrate that corrective

measures have been put in place that fully meet or go beyond the requirements of the Committee's determination. The Ineligible Vendor must provide sufficient information attesting to the medium to long-term effects of corrective measures, the deterrent effects resulting from the Sanction(s) imposed, and must show that re-establishing its eligibility will be a sound decision for the Committee. The Committee shall recommend the Treasurer and Financial Comptroller to reject or accept the request for Rehabilitation within thirty (30) days of its submission.

- 4.4. **Effects of Rehabilitation, Notifications.** The Committee shall process requests for Rehabilitation and inform the Ineligible Vendor of the outcome of the request. If the ILO accepts the Ineligible Vendor's request for Rehabilitation, the Secretary shall inform the Ineligible Vendor and any Affected Agency and shall make a change of status of the entry in the UN Ineligibility List. If no other entries concerning the Vendor subsist, the Vendor will regain its status as an Eligible Vendor.

These Rules of Procedure are approved by the Director-General.

Geneva, November 2021

Guy Ryder