



SECRETARIAT

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Distribution: All staff members at Headquarters, established offices and Permanent Missions

DIRECTOR GENERAL'S BULLETIN

UNIDO POLICY ON EXCLUSION FROM FUNDING

1. The purpose of this Director General's bulletin is to promulgate the attached policy, which specifies the criteria and procedures that apply to exclude certain parties, in particular recipients of procurement contracts or grants, from UNIDO funding.
2. The Managing Director, CMO, shall be responsible for ensuring the implementation of the present bulletin.
3. The bulletin takes effect on the date of its promulgation.

UNIDO POLICY ON EXCLUSION FROM FUNDING

1. Purpose and overview

The purpose of the present policy is to specify the criteria and procedures that apply to exclude certain parties from UNIDO funding.

2. Scope

This policy applies to prospective or current suppliers, vendors or contractors of goods, works or services procured by UNIDO; prospective or current grant beneficiaries or implementing partners; and an affiliate of any of the foregoing.

3. Definitions

In this policy:

- a) **Affiliate:** means any person or entity that exercises ownership or control over another person or entity, or which is owned or controlled by or under common ownership or control with, such person or entity, whether directly or indirectly and in whole or in part, such as a parent, subsidiary or associate company, or as a member of their administrative, management or supervisory body.
- b) **Authorized Official:** means the Managing Director, Directorate of Corporate Management and Operations (hereinafter referred to as “MD, CMO”), or any other official to whom authority is delegated under the financial rules.
- c) **Bankruptcy:** means a legal proceeding, whether judicial, administrative or regulatory, for winding-up, settling or distributing the assets and liabilities of an insolvent or bankrupt person or entity.
- d) **Child Labor:** means any practice inconsistent with the rights set forth in the Convention on the Rights of the Child, including article 32 thereof, which, *inter alia*, requires that a child shall be protected from performing any work that is likely to be exploitative, hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral, or social development.
- e) **Conflict of Interest:** means a situation where a personal interest conflicts with or improperly influences the performance of an obligation or duty. For purposes of this policy, the appearance of a conflict of interest (apparent conflict of interest) and the possibility that a conflict of interest could arise (potential conflict of interest) fall within the scope of the definition of conflict of interest.

- f) **Financing of Terrorism:** means any prohibited activity that directly or indirectly finances or provides support or assistance to individuals or entities that are (i) associated with terrorism, as included in the list maintained by the United Nations Security Council Committee established pursuant to Resolutions 1267 (1999), 1989 (2011) and 2253 (2015); or (ii) the subject of sanctions or other enforcement measures pursuant to sanctions regimes established by the United Nations Security Council.
- g) **Forced Labor:** means all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered him/herself voluntarily, in accordance with the definition of forced or compulsory labour contained in the ILO Forced Labour Convention (1930).
- h) **Fraud and Corruption:** means any of the following prohibited practices:
- **Corrupt practice:** means the offering, giving, receiving or soliciting, directly or indirectly, of anything of value, whether tangible or intangible, to improperly influence the actions of another party, including but not limited to extortion, fraud, and bribery;
 - **Fraudulent practice:** means any act or omission, including misrepresentation, which knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial and/or other benefit and/or to avoid an obligation;
 - **Collusive practice:** means an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party;
 - **Coercive practice:** means any act impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of the party;
 - **Obstructive practice:** means acts or omissions intended to materially impede the exercise of contractual rights of audit, investigation and access to information, including destruction, falsification, alteration or concealment of evidence material to an investigation into allegations of fraud and corruption.
- i) **Money Laundering:** means any prohibited activity as defined in Article 6 of the United Nations Convention against Transnational Organized Crime:
- The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her actions;
 - The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing such property is the proceeds of crime;
 - The acquisition, possession or use of property, knowing at the time of receipt that such property is the proceeds of crime; or
 - The participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this Article.
- j) **Non-observance of the Law:** means the willful or reckless disregard or evasion of or non-compliance with any applicable laws, ordinances, rules, regulations or obligations, including,

but not limited to: grave professional misconduct, including misrepresentation or the failure to timely disclose a conflict of interest; non-payment of taxes or social security contributions; conduct related to a criminal organization; breach of health, safety, labour and environmental standards; breach of data protection/privacy laws; human trafficking and other grave human rights violations; and the commission of terrorist offences or offences linked to terrorist activities.

- k) **Sexual Abuse:** means the actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions.
- l) **Sexual Exploitation:** means any actual or attempted abuse of a position of vulnerability, differential power, or trust, for sexual purposes, including but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another.
- m) **Sexual Harassment:** means any conduct or behavior of a sexual nature in the workplace or in connection with work, which is unwelcome and offensive and which can reasonably be seen as creating an offensive, intimidating, hostile or humiliating working environment. Sexual harassment may occur between persons of the opposite sex or the same sex. It may be a single incident or a series of events.

4. Exclusion Criteria and Procedures

4.1 UNIDO shall exclude from access to funding any person or entity within the scope of paragraph 2 of the present policy, including its affiliates, that has been the subject of a final judgment or of a final administrative decision¹ in respect of one or more of the following grounds (hereafter, exclusion criteria):

- a) Bankruptcy;
- b) Non-observance of the law;
- c) Fraud and corruption;
- d) Money laundering;
- e) Financing of terrorism;
- f) Child labour;
- g) Forced labour;
- h) Sexual harassment, sexual exploitation or sexual abuse;
- i) Financial and other irregularities, such as in connection with the disclosure, presentation or reporting of financial statements, accounts, expenses or claims for reimbursement;
- j) Being or creating a shell company;

¹ For the purposes of the present policy, a final judgment or administrative decision is one that is immediately executable in accordance with its terms. Therefore, the possibility of an appeal to another instance does not render the judgment or decision non-final. If the relevant authority stays or suspends the execution of the judgment or decision, such as for reasons of public policy or the public interest or because an appeal has been filed, the judgment or decision will, nevertheless, be deemed final for purposes of the statement of confirmation set out in this policy.

- k) Engaged in the sale or manufacture of anti-personnel mines or components utilized in the manufacture of anti-personnel mines, cluster bombs, and other weapons and ammunitions;
- l) Determined to be in violation of sanctions or other enforcement measures pursuant to sanctions regimes established by the United Nations Security Council, which can be accessed via <https://www.un.org/securitycouncil/>;
- m) Excluded from access to funding by UNIDO, an agency of the United Nations system or other inter-governmental organization, an international financial institution, or a national or international public authority.

4.2 UNIDO reserves the right to apply the terms of this policy or additional exclusion criteria to other persons or entities who apply for or are in receipt of UNIDO funding, in accordance with the terms and conditions of their agreement or contract with UNIDO.

4.3 Every person or entity within the scope of this policy shall be required, before or upon signing a contract or agreement with UNIDO, to sign or incorporate by reference the following statement of confirmation:

Statement of Confirmation

[Name of recipient] (hereafter, “Declarant”) accepts to abide by the terms of the UNIDO Policy on Exclusion from Funding, as may be amended from time to time (hereafter, “Policy”), and represents and warrants that Declarant is not and has not been the subject of any of the exclusion criteria stated in the Policy.* Further, Declarant covenants and agrees to notify UNIDO promptly in the event that Declarant becomes subject to any of the exclusion criteria stated in the Policy* during the term of Declarant’s contract or agreement with UNIDO.

*As may be supplemented by the terms of Declarant’s contract or agreement with UNIDO.

4.4 If the Declarant will not sign the statement of confirmation, or a notification pursuant to the statement of confirmation is received by UNIDO, the Authorized Official shall require the Declarant to submit, within ten (10) business days, a statement and accompanying documentary evidence covering the following:

- a) A summary explaining the applicable grounds for exclusion from funding;
- b) Whether any steps have been or will be taken to correct, mitigate or remediate the grounds for exclusion from funding, including details and expected completion date;
- c) Justification for receiving UNIDO funding.

4.5 The Authorized Official shall review the statement of confirmation in paragraph 4.3 and statement provided in paragraph 4.4 and take the decision whether to exclude the Declarant from funding. To facilitate the review, the Authorized Official may request additional supporting documents, as deemed necessary. The decision shall give due regard to all relevant circumstances, including: the principle of proportionality; whether corrective or remedial action has been taken or is feasible; the existence of a prior similar exclusion determination;

and the best interests of UNIDO as well as the concerned project or programme. A decision to exclude from funding is hereafter referred to as the Exclusion Determination.

- 4.6 The Exclusion Determination shall specify the grounds for, effective date, and duration of the exclusion, as well as the conditions for lifting the exclusion from funding, if any. The Authorized Official shall communicate the Exclusion Determination to the Declarant without undue lay.
- 4.7 UNIDO shall be entitled to suspend, terminate or take such other action in respect of a contract or agreement where a party thereto is or may be found to be the subject of an Exclusion Determination.
- 4.8 Unless the Authorized Official determines otherwise, the Exclusion Determination shall be without appeal. The Exclusion Determination shall not be lifted until corrective or remedial action has been taken and substantiated to the satisfaction of the Authorized Official or the duration of the exclusion has lapsed.
- 4.9 The Exclusion Determination shall be duly recorded in UNIDO's database (e.g., supplier master data), archived and made public or shared upon the request of the United Nations and related agencies as well as other partners in development, in accordance with UNIDO's document retention and other policies (information disclosure, data protection, etc.).