

Applications for Review of the Debarment Period under the Review Mechanism

Debarment due to Conviction of any of the Relevant Offences

For government service contracts (excluding works services) that rely heavily on the deployment of non-skilled workers¹ (Non-skilled Worker Contracts), there is an essential requirement for assessment of tenderers' past performance in terms of convictions of the following offences (Relevant Offences)²:

- (a) any offence under the Employment Ordinance (Cap. 57) and the Employees' Compensation Ordinance (Cap. 282), conviction in respect of which individually carries a maximum fine corresponding to Level 5 or higher within the meaning of Schedule 8 to the Criminal Procedure Ordinance (Cap. 221);
- (b) Section 17I(1) of the Immigration Ordinance (Cap. 115);
- (c) Section 38A(4) of the Immigration Ordinance (Cap. 115);
- (d) Section 89 of the Criminal Procedure Ordinance (Cap. 221) and section 41 of the Immigration Ordinance (Cap. 115) (aiding and abetting another person to breach his condition of stay);
- (e) Sections 7, 7A, 7AA, 43B(3A), 43BA(5) and 43E of the Mandatory Provident Fund Schemes Ordinance (Cap. 485); and
- (f) any offence under the Occupational Safety and Health Ordinance (Cap. 509) and Factories and Industrial Undertakings Ordinance

¹ Non-skilled Workers are those performing the functions comparable to the duties of Government Model Scale 1 Grade Staff. Currently, Model Scale 1 Grades include Car Park Attendant II, Explosives Depot Attendant, Ganger, Gardener, Property Attendant, Supplies Attendant, Ward Attendant, Workman I & II, and Workshop Attendant.

² For tenders and quotations issued on or after 1 April 2019, the scope of the Relevant Offences had been expanded to include: (a) sections 7AA, 43B(3A) and 43BA(5) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485) and (b) any offence under the Occupational Safety and Health Ordinance (Cap. 509) and Factories and Industrial Undertakings Ordinance (Cap. 59), conviction in respect of which individually carries a maximum fine corresponding to Level 5 or higher within the meaning of Schedule 8 to the Criminal Procedure Ordinance (Cap. 221). For the above mentioned offences under the expanded scope, the reference period for the counting of a tenderer's conviction records commences from 1 April 2019.

(Cap. 59), conviction in respect of which individually carries a maximum fine corresponding to Level 5 or higher within the meaning of Schedule 8 to the Criminal Procedure Ordinance (Cap. 221).

2. If a contractor is convicted of any of the Relevant Offences, it is debarred from tendering and submitting quotations for Non-skilled Worker Contracts for a maximum period of five years from the date of conviction (Debarment Period). The length of the Debarment Period is to be determined in accordance with paragraphs 3 to 5 below. Any tender or quotation offer for a Non-skilled Worker Contract submitted by a contractor who is so debarred will not be considered. For the purpose of debarment, a conviction of any of the Relevant Offences will count irrespective of whether it is obtained under a government or private contract and irrespective of the type of services offered under that contract. For the avoidance of doubt, a conviction will still be counted even if it is not obtained under any service contract. Convictions will be counted by the number of summonses convicted.

3. If a **sentence of imprisonment** of any duration (including a suspended sentence) is imposed by the court on the contractor following the conviction of any of the Relevant Offences, the contractor shall be subject to a Debarment Period of **five years** from the date of conviction, irrespective of whether a fine is also imposed.

4. For a contractor convicted of any of the Relevant Offences receiving a sentence other than imprisonment (including a suspended sentence), the applicable Debarment Period shall be determined with reference to the level of **maximum fine** that the Relevant Offence individually carries under the relevant ordinance in accordance with the following table –

Level of Maximum Fine of the Relevant Offence	Debarment Period
More than \$200,000	5 years from the date of conviction
\$200,000 or below	3 years from the date of conviction

5. As the fine levels of the Relevant Offences may be adjusted from time to time, procuring departments will refer to the level of maximum fine which is in force on the date of conviction. When determining the length of

the Debarment Period, the actual sentence on fine imposed by the court is irrelevant.

Review Mechanism of the Debarment Period

6. The Government has put in place a review mechanism whereby applications may be submitted to the Central Tender Board (CTB) for a review of the length of the Debarment Period imposed on convicted contractors having regard to the circumstances of individual cases (Review Mechanism). Under the Review Mechanism, contractors convicted of the Relevant Offences are subject to the Debarment Period unless and until their applications for reducing the Debarment Period have been accepted by CTB.

7. For contractors whose Debarment Periods have not expired at the time when this new Review Mechanism takes effect, they may request the CTB to review their Debarment Periods even if the same have previously been reviewed and, if applicable, shortened by the CTB under the review mechanism previously in force.

8. The Debarment Period as reviewed by the CTB shall be no less than six months.

9. In considering whether there is a case for reducing the Debarment Period, CTB will take into account a basket of factors including but not limited to the following -

- (a) magnitude of the offence;
- (b) frequency of the offence;
- (c) subsequent rectification or mitigation implemented by the contractor;
- (d) comparison of the fine imposed by the court with the average actual fine (if available) imposed on other convictions of the same or similar offences, and with the maximum fine of the same offence;
- (e) whether the contractor demonstrates a high standard of corporate governance in general to prevent recurrence of such offence; and

- (f) any other considerations considered relevant by the CTB (e.g. extenuating circumstances such as why and how the offence was committed).

10. Convicted contractors who want their cases to be considered under the Review Mechanism may submit their applications in writing to the CTB (Attn: the Secretary) at the Tender Division, Treasury Branch of the Financial Services and the Treasury Bureau, 24/F, Central Government Offices, West Wing, 2 Tim Mei Avenue, Tamar, Hong Kong (Fax No.: 2869 4519). An application should be signed by an authorised signatory of the applicant and stamped with a company chop (if applicable), and includes but not limited to the following information –

- (1) name of the applicant in Chinese and English;
- (2) Business Registration Number of the applicant;
- (3) name of the authorised signatory of the applicant in Chinese and English;
- (4) contact information (correspondence address, telephone number, fax number, etc.) of the applicant;
- (5) grounds of the review;
- (6) details of the conviction(s) to which the debarment under review relates, including the date and location of the offence(s), the relevant section(s) of the Ordinance(s) breached, the date and number of conviction(s), as well as amount of fines of each and every such conviction;
- (7) number of employees to whom the conviction(s) relate(s) and the total number of employees employed by the applicant at the time of the offence(s);
- (8) status and result of the appeal (if the applicant has filed an appeal against the conviction(s) or the sentence);
- (9) name of procuring bureau/department together with contract number and nature of contract (e.g. cleansing, security and gardening services) (if the conviction(s) is/are in respect of a government contract);

- (10) details of convictions (if any) related to all Relevant Offences in the past five years preceding the date of the conviction;
- (11) transcript (as well as verdict and sentence, if applicable) of the relevant court proceedings and the brief facts of the case;
- (12) the duly completed [consent form](#) for disclosure of information; and
- (13) other supporting or relevant documents/information.

11. Upon receipt of an application for review, the Secretariat of the CTB will acknowledge receipt and request additional information/clarification from the applicant, as may be required. If the applicant does not respond to the request for additional information/clarification within a specified period of time, the CTB may not consider the application further or may consider it as is.

12. Based on the application made by the applicant and other relevant information, the Secretariat of the CTB will make an initial recommendation for consideration by the CTB.

13. After obtaining the CTB's agreement to the initial recommendation, the Secretariat of the CTB will invite the applicant to make written representations within a specified period in response to the recommendation as well as information that is relevant to the formulation of the recommendation. Upon receipt of the representations from the applicant or after the specified deadline, the Secretariat of the CTB will submit the case to the CTB for making a final decision on the period of debarment.

14. After the review has been completed, normally within three months upon receipt from the applicant of all information/clarification required, the Secretariat of the CTB will arrange to inform the applicant of the CTB's decision. The Debarment Period shall stand until and unless it is reduced or revised by the CTB. The revised Debarment Period as decided by CTB will not be applicable to tenders/quotations closed on or before the date of CTB's decision. The CTB reserves the right not to review convicted cases which are the subject of review/appeal before the court.

15. For the avoidance of doubt, a convicted sub-contractor may also make an application under the Review Mechanism for a review of the length of the Debarment Period imposed on it.

16. Subsequent to the CTB's decision to reduce its Debarment Period, if a contractor is newly convicted of another Relevant Offence before the expiry of the revised Debarment Period, the revised Debarment Period will become invalid on the date of the new conviction. The contractor will be debarred for a maximum period of five years from the date of its latest conviction (to be determined in accordance with paragraphs 3 to 5 above). If the contractor wishes to apply for a reduction of the Debarment Period in respect of its latest conviction, it has to submit a fresh application to CTB.

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