

INFORMATION ON DEBARMENT – REVENUE CONTRACTING

AUTHORITY AND RATIONALE FOR DEBARMENT

- 1 The authority for debarment lies with the Standing Committee on Debarment (“SCOD”). The members of this Committee are:

Chairman	a) Chief of Government Procurement
Members	b) Senior officer appointed by any Deputy Secretary of the Ministry of Transport; c) Senior officer appointed by any Deputy Secretary of the Ministry of Sustainability and the Environment; d) Senior officer appointed by any Deputy Secretary of the Ministry of National Development; e) Senior officer appointed by Chief Executive of Building and Construction Authority; f) Senior officer appointed by the Solicitor-General of the Attorney-General’s Chambers; and g) Senior officer appointed by Director, Corrupt Practices Investigation Bureau.

- 2 Generally, in determining the debarment period, SCOD will consider (a) the financial or material losses suffered by public sector agencies, (b) the need to protect the interests of public sector agencies (e.g., not contracting with persons who are assessed not to have the integrity or ability to fulfil their obligations under the contract), and (c) the need to deter similar infringements or defaults.
- 3 Debarred persons (except where the debarment is under ground 2 in paragraph 5 (arrears under rental agreements, licenses or leases)) will be barred from all lines of business (both procurement and revenue-earning contracts) with public sector agencies.
- 4 In this document,

“person” includes any company or association or body of persons, corporate or unincorporate; and

“public sector agency” includes the Government (including any Ministry, department or organ of state) and any statutory board.

“revenue-earning”, in relation to a tender, quotation, auction or contract, means a tender, quotation, auction or contract (as the case may be) in which a public sector agency

sells or supplies goods or other forms of property or services, or lets out or licenses land, rights relating to land, movable property, intangible property or other forms of property.

“statutory board” means a body corporate or organisation established by or under written law from time to time to perform or discharge any public function. For avoidance of doubt, “statutory board” does not include the National University of Singapore or the Nanyang Technological University or any town council established under the Town Councils Act 1988.

A reference to a written law is to be read as a reference to the written law as amended from time to time.

GROUPS OF DEBARMENT

(A) Grounds of Debarment

5 The grounds of debarment are broadly as follows:

S/N	Ground	Detailed Description of Infringements, Default or Circumstance
1	Withdrawal of Tender Offer Before Award of Contract	Where, after making an offer for a revenue-earning tender, quotation, auction or contract, the person withdraws its offer at any time after the closing date, but before the date of award.
2	Contract Breach	The person has breached any contract with any public sector agency which would, at any time after the breach, have entitled the public sector agency to terminate or discharge the contract. An example is where the person has, by words or conduct, evinced an intention not to perform the contract (i.e. abandon the contract) or has expressly declared that it is or will be unable to perform its obligations under the contract in a material respect

3	Arrears under tenancy agreements, licences or leases	<p>Persons that owe arrears in rent, licence fees, or any other amounts due (including any applicable late payment interest) under any tenancy agreement, licence or lease with any public sector agency shall be debarred from future tenancies, licences or leases with any public sector agency (regardless of whether through tenders, "to-let" notices or leases through managing agents), until they have paid up the outstanding sums (including any applicable late payment interest).</p> <p>In this ground, "licence" means any licence to use or occupy land.</p>
4	Cheating or Attempted Cheating	<p><u>Cheating</u></p> <p>The person has committed any act or omission (whether in Singapore or another country or territory) that has resulted or will result in a violation of one or more of the following laws (each, a "Cheating Law"): </p>

		<ul style="list-style-type: none"> (i) section 415, 416, 416A, 418, 420 or 420A of the Penal Code 1871; or (ii) any other applicable law including any foreign law that is broadly equivalent to the laws mentioned in paragraph (i) or that has as its objective the prevention of cheating. <p><u>Attempted Cheating</u></p> <p>The person has attempted (whether in Singapore or another country or territory) to violate any Cheating Law. A person attempts to violate a Cheating Law if that person, with the intention of committing the act or omission that will result in a violation of the Cheating Law, takes a substantial step towards the commission of that act or omission. An act or omission is a substantial step towards the commission of another act or omission if it is strongly corroborative of an intention to commit that latter act or omission.</p>
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5	Corruption	<p>The person has committed any act or omission (whether in Singapore or another country or territory) that has resulted or will result in a violation of one or more of the following laws:</p> <ul style="list-style-type: none"> (i) Chapter 9 of the Penal Code 1871; (ii) the Prevention of Corruption Act 1960; or (iii) any other applicable law including any foreign law that: <ul style="list-style-type: none"> (A) prohibits the conferring of any gift, payment or other benefit on any person; or (B) is broadly equivalent to the laws mentioned in paragraph (i) or (ii) or that has as its objective the prevention of corruption.
6	Compromise of national security or public interest	The person has engaged in any activity or conduct that has resulted or is likely to result in national security or the public interest being compromised.
7	Bid-Rigging	<p>1. The person has engaged in any activity or conduct (including entering into an agreement with any other person or persons), that may result in the prevention, restriction or distortion of competition, whether in Singapore or any other country or territory.</p>
		<p>2. Without limiting paragraph 1, an activity or conduct which may result in the prevention, restriction or distortion of competition includes one that –</p> <ul style="list-style-type: none"> (i) directly or indirectly fixes purchase or selling prices or any other trading conditions; (ii) limits or controls production, markets, technical development or investment; (iii) shares markets or sources of supply; or (iv) applies dissimilar conditions to an equivalent transaction with a trading party, thereby placing the party at a competitive disadvantage.

8	Unauthorised sub-letting	The person has breached the contract by sub-letting to any other person any land which was let out or licensed to the person under any contract with any public sector agency.
9	Giving False or Misleading Information	The person has given false or misleading information to any public sector agency, in relation to any revenue-earning tender, quotation, auction or contract, or any intended revenue-earning tender, quotation, auction or contract.
10	Debarment for reasons listed in Regulation 13(4)(a)-(g)	<p>Where the case falls within any of the grounds stated in Regulations 13(4)(a)-(g) of the Government Procurement Regulations 2014.</p> <p>For the purpose of this ground, references in Regulation 13(4)(a)-(g) of the Government Procurement Regulations 2014 to the “supplier” should be read as a reference to the person liable to be debarred instead.</p> <p>This ground does not limit the generality of grounds 1-9 above.</p>

- 6 In addition to the grounds of debarment listed above, a person who has been debarred pursuant to the [“Debarment for Expenditure Contracts”](#) is not eligible for award of any procurement contract or revenue-earning tender, quotation, auction or contract during the period of the debarment.

(B) Debarment of Responsible Persons

- 7 Where a person (“**Defaulter**”) is liable to be debarred under any ground of debarment set out in paragraph 5, the following other persons are also liable to be debarred:
- (i) A person who:
- (A) consented or connived to cause the infringement or default that is the subject of the ground of debarment (the “**Default**”); or
 - (B) knew or ought reasonably to have known that the Default (or an infringement or a default of a similar nature) would be or was being committed, and failed to take all reasonable steps to prevent or stop the commission of the Default,
- (such a person, a “**Responsible Person**”).

A Responsible Person may include a director, a shareholder, a partner, a member or an employee of the Defaulter, or any person whose directions, whether formal or informal, the Defaulter is accustomed or obliged to follow.

- (ii) Any entity in which a Responsible Person (whether alone or jointly with any other persons) is in a position to control or direct the management and policies of the entity, whether through ownership of Interest in the entity or otherwise.
- (iii) Any entity in which the Defaulter (whether alone or jointly with any other persons) is in a position to control or direct the management and policies of the entity, whether through ownership of Interest in the entity or otherwise.

8 For the purposes of sub-paragraphs (ii) and (iii) above, “**Interest**” means –

- (i) in relation to a corporation – a voting share in that corporation; and
- (ii) in relation to an entity other than a corporation – any right or interest, whether legal or equitable, in that entity (by whatever name called) which gives the holder of that right or interest voting power in that entity.

9 A person who is liable to be debarred under this rule may be subject to a different debarment period (including a longer debarment period) from that which the Defaulter is subject to, for example, if there are aggravating or mitigating factors that warrant a longer or shorter debarment period for that person.

(C) Infringements/Defaults committed by persons responsible for the management and conduct of the Defaulter’s business

10 Person “A” will be deemed to have committed an infringement or default if person “B”, a person (whether an agent, sub-contractor, employee or otherwise) responsible for the management and conduct of the business, or part of the business of, person A, has committed the infringement or default (whether with or without the knowledge of the person A).

Example: Company A’s general manager, who is an employee responsible for the management and conduct of the business of Company A, commits an offence under the Prevention of Corruption Act 1960. Company A will be deemed to have committed an infringement under ground 5 (Corruption).

(D) Defaulting repeatedly

11 Where a person –

- (i) has been debarred (called the first debarment); and

- (ii) is, before the end of the debarment period for the first default, subject to a separate order by SCOD to be debarred (called the subsequent debarment) (whether or not the infringement, default or circumstances justifying the subsequent debarment arose before, at the same time or after the infringement, default or circumstances justifying the first debarment),

then SCOD may order that the debarment period for the subsequent debarment start before, on or after the end of the debarment period for the first debarment.

- 12 If a person is debarred three or more times (whether in a single set of proceedings or multiple sets of proceedings), where the underlying infringements, defaults or circumstances (whether of similar or different nature) arose within any consecutive period of 365 calendar days, SCOD may, in addition to the existing debarment periods, debar the person for a further period of up to 12 months (the “**Further Debarment Period**”). In making its determination, SCOD will consider all the relevant facts and circumstances, including the reason(s) for the infringements, defaults or circumstances and the person’s track record (if any).
- 13 Unless otherwise ordered by SCOD, the Further Debarment Period will start on the day immediately after the last day when all the earlier debarment periods have ended.

(E) Other penalty or action

14 Debarment is without prejudice to any other action that may be taken (e.g. prosecution in court where a criminal offence is detected or a claim for damages where there are grounds for a civil suit).

PROCEDURES FOR DEBARMENT

15 If a person has committed any infringement or default under any of the grounds of debarment listed in paragraph 5, the public sector agency must put up a recommendation as to whether or not to debar the person (and any other persons liable to be debarred) to SCOD through the Secretary to SCOD. The Secretary to SCOD may also, on its own initiative, recommend debarment action. In such cases, the Secretary to SCOD will ensure that the officers making the debarment recommendation report are not involved in SCOD’s decisionmaking process.

16 Before a public sector agency puts up a recommendation relating to the debarment of a person to SCOD, the public sector agency must notify the person in writing of the public sector agency’s intent to recommend debarment of the person, the relevant facts constituting the case against the person, and the applicable ground(s) of debarment arising from those facts. Where the ground of debarment is Ground 10 (Debarment for reasons listed in Regulation 13(4)(a)-(h)), the notice must also state the relevant subsection of Regulation 13(4). The purpose of the notification is to provide the person with an opportunity to be heard

before debarment action is taken against the person, and to allow the public sector agency to properly determine whether the grounds of debarment have been satisfied.

17 If the public sector agency assesses that it is not in the public interest to disclose information to the person (for example, if disclosure will compromise future investigations), the public sector agency may disclose a redacted or revised version of such information instead.

18 Where an act or omission falls within more than one ground of debarment listed in paragraph 5, the public sector agency may justify its recommendation by reference to any or all the grounds of debarment that apply i.e., if a supplier is convicted of violating a Cheating Law in Singapore, the public sector agency may rely on both Grounds 4 (Cheating or Attempted Cheating) and 10 (Regulation 13(4)(e)) or just one of the two.

19 After SCOD has made a decision to debar a person and on the period of debarment, the Secretary to SCOD will notify the person in writing of SCOD's decision, and the reasons for such decision (including the effective date of the debarment).

PROCEDURES FOR APPEAL

20 A person aggrieved by –

- (i) a decision of SCOD to debar the person in relation to one or more infringements or defaults committed (or deemed to have been committed) by the person; or
- (ii) the period of debarment imposed by SCOD,

may, within 14 calendar days after the date the person is notified of the decision, appeal to the Ministry of Finance. The appeal must state the substance of the decision appealed against and must contain sufficient particulars of any point made by the appellant in support of the appeal.

21 All appeals will be considered by a Permanent Secretary of the Ministry of Finance, whose decision is final.