

For information

Legislative Council Panel on Manpower

Debarment mechanism applicable to government service contracts engaging non-skilled workers¹

Purpose

This paper briefs Members on the Government's plan to refine the debarment mechanism applicable to government service contracts engaging non-skilled workers.

Background

2. To better protect the statutory entitlements of non-skilled workers employed by government service contractors, a debarment mechanism has been put in place for government service contracts engaging non-skilled workers. Under the mechanism, bidders who have committed any relevant offence² will be debarred from participating in the tendering for procurement of government service contracts engaging non-skilled workers for five years from the date of conviction. The debarred contractors may apply to the Central Tender Board (CTB) for a review for reduction of the debarment period.

¹ i.e. government service contracts that rely heavily on the deployment of non-skilled workers.

² Relevant offence includes:

- (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);
- (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 the 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).

3. Over the past year, the volatile situation of the COVID-19 epidemic has seriously impacted various sectors, in particular small and medium enterprises. We have therefore introduced a series of measures to support enterprises and safeguard jobs to provide assistance to various sectors. Nevertheless, trade representatives recently expressed concerns to the Government that the across-the-board five-year debarment period under the current debarment mechanism is excessively stringent, and that the Government should review the mechanism in light of the prevailing economic conditions.

4. The five-year debarment period has been implemented since 2006. To move with the times, we consider it an appropriate time for review of this arrangement.

5. We have completed the relevant review and consider that there is room for adjusting the length of the debarment period. We strive to strike a reasonable balance between upholding the policy objective of protecting non-skilled workers and respecting bidders' right to participate in government tenders (to a further extent the job opportunities of their employees).

Refinement measures

6. We would adopt a two-tier approach and determine the length of the debarment period to be imposed on convicted contractors with reference to the statutory maximum fines³ of the relevant offences concerned as follows:

Statutory maximum fines of the relevant offences	Debarment period
Over \$200,000 (Examples: Failing to enrol an employee in a Mandatory Provident Fund (MPF) scheme, Default on MPF contributions,	5 years

³ The maximum fines of the relevant offences applicable under the debarment mechanism range from \$50,000 to \$500,000 in general.

Statutory maximum fines of the relevant offences	Debarment period
<p>Contravening a suspension notice under the Occupational Safety and Health Ordinance (OSHO), Failing to pay wages or termination payments to an employee wilfully and without reasonable excuse, Employing a person who is not lawfully employable, etc.)</p>	
<p>\$200,000 or below</p> <p>(Examples: Failing to take out employees' compensation insurance policy, Failing to pay compensation payments, Aiding and abetting an employee to breach a condition of stay, Making a false statement under the Mandatory Provident Fund Schemes Ordinance, Failing to ensure safety and health of employees under the OSHO, Failing to notify an Occupational Safety Officer of a serious accident, Terminating the employment of an employee by reason of fact that employee has given evidence under the Factories and Industrial Undertakings Ordinance, Failing to grant maternity leave to a pregnant employee or failing to pay maternity leave pay to an employee, Failing to grant rest days to an employee without reasonable excuse, etc.)</p>	<p>3 years</p>

7. To achieve the policy objective of protecting non-skilled workers, contractors who are sentenced to imprisonment (including a suspended sentence) will all be subject to a five-year debarment period.

8. Upon implementation of the two-tier debarment mechanism, affected contractors may still apply to the CTB for review of the debarment period. In processing a review application, the CTB shall take into account 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.

The above considerations will be made available on the website of the Financial Services and the Treasury Bureau⁴ to enhance objectivity and transparency of the review.

9. Taking into account the bidders concerned have committed relevant offence(s) and have been convicted by court, in order to reflect the policy intent of the debarment mechanism, the revised debarment period after a CTB review should be no less than six months.

10. The above new arrangements will be applicable to government service contracts engaging non-skilled workers of which tenders or quotations are invited on or after 1 September 2021. The corresponding new review mechanism will take effect on the same day, and contractors who are currently being debarred may apply to the CTB for a review on the length of the debarment period.

⁴ Our website is https://www.fstb.gov.hk/tb/en/business/gov_procurement/government-procurement-policy-procedures.htm.

Publicising and monitoring measures

11. Labour Department and major procuring departments would meet with and disseminate information to non-skilled workers engaged by government service contractors from time to time to explain their labour entitlements. Major procuring departments would also organise working meetings with contractors to monitor their performance and remind contractors to ensure the entitlements of their employees are protected. Moreover, the aforesaid departments would conduct on-site inspections or surprise checks to ensure contractors' compliance with the relevant labour legislation and employment contracts. Labour Department and major procuring departments would handle employees' complaints of unreasonable treatment or employers' failure to carry out employment contractual obligations. The departments would also notify each other of cases involving suspected breaches of labour legislation by contractors.

12. Members are invited to note the content of this paper.

Financial Services and the Treasury Bureau
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