

The Debarment Rules 2009

In exercise of the power conferred by section 133 of the Anti-Corruption Act of Bhutan 2006, ACC hereby makes these Rules for providing policies and procedures governing the debarment of an individual or entity.

Chapter I Preliminary

Short Title

1. These Rules may be called the Debarment Rules 2009.

Commencement

2. These Rules shall come into force with effect from such date as announced by ACC by an order.

Coverage

3. These Rules shall apply to any person, including any individual or entity, irrespective of nationality, that has entered into a contract with any Government agency or seeking to or may enter into contract with any government agency; or is serving as a subcontractor or supplier on a Government contract.

Purpose

4. These Rules implement section 45(i) of the Act by:
 - (a) establishing the Debarment Committee of the Government and its procedures;
 - (b) stating the Causes for Debarment or suspension and the consequences thereof;
 - (c) requiring the Committee to follow or guaranteeing the parties involved a minimum due process;
 - (d) creating the Debarment Registration System and public access thereto; and
 - (e) offering such other guidance as necessary for the effective implementation of these Rules.

Chapter II Administration and Organization

Constitution of the Committee

5. There shall be a Debarment Committee of the Royal Government to review and take decisions in debarment cases and perform such other detailed functions and responsibilities as prescribed by these Rules.

6. The Committee shall decide whether it has the jurisdiction to handle a particular matter under these Rules, if there is a dispute as to whether it has competence over such matter.
7. The Committee shall comprise five (5) members and shall be governed by such Conflict of Interest Guidelines as may be prescribed and amended from time to time.

Composition of the Committee

8. The Committee members shall be selected from ACC; the Construction Development Board; the Office of Attorney General; such other Government agencies dealing in large procurement of works, goods and services; and from outside the public service.
9. Agency Heads concern shall appoint a person familiar with matters such as procurement, law, finance or construction as the Committee members, except that the Committee member from ACC shall be one of the ACC Commissioners.
10. All the Committee members are ex-officio and they shall automatically resign from the Committee's membership when they vacate their Offices, except the member from outside the public service.
11. All the Committee members shall serve for a period of three (3) years and are not eligible for reappointment.
12. The Committee members' term of appointment shall begin as stipulated in their letter of appointment and they shall hold office until their replacement or earlier resignation.
13. The Committee member appointed to replace another whose term of office has not expired shall hold office for the remainder of the predecessor's term.

Chairperson of the Committee

14. The Committee members shall elect one of the members as a Chair of the Committee who shall:
 - (a) direct the work of the Committee;
 - (b) represent the Committee in all administrative matters; and
 - (c) preside at all sessions of the Committee.

15. If unable to act, the Committee Chair shall designate another member as acting Committee Chair.

Quorum of the Committee

16. Four (4) Committee members shall constitute a quorum for the transactions of its business.

Plenary Session of the Committee

17. The Committee Chair may convene a plenary session of the Committee when:
 - (a) he determines that the complexity of a case so requires;
 - (b) it is necessary to handle a question affecting the Committee's operation including the rules on confidentiality;
 - (c) dealing with a question of its competence under Rule 6; or
 - (d) any other matter that warrants consideration by the Committee's plenary session.
18. Notice of the convening of a plenary session shall be given to the Committee members at least fifteen (15) days in advance of the date of the opening of such a session.
19. The Committee shall not hear any case except under the Chairmanship of the Committee Chair or acting Committee Chair.

Remuneration of the Committee Members

20. The Committee members shall not be entitled to any other benefits other than actual traveling and daily allowances to be paid by their respective Offices in accordance with applicable rules or laws, except the member from outside the public service.
21. The Committee member from outside the public service shall receive such reasonable benefits as determined by an appropriate Government agency.

Proceedings of the Committee

22. The Committee Chair shall fix dates and places for the Committee's sessions to be held in accordance with Rules 7 and 16 through 19.

23. Committee hearings will be in the form of oral proceedings. Such proceedings, including the Committee's hearings and deliberations, shall be confidential and shall not be open to the public.

Decisions of the Committee

24. The Committee shall decide on any matter by consensus, as far as possible; failing which it shall take decisions by a majority of the Committee members present and voting.
25. If there is a tie, the Committee Chair shall have the deciding vote.
26. The Committee shall issue its reasoned decision in writing within seven (7) working days after the conclusion of the hearing.
27. The Committee's decision may:
 - (a) contain findings of the significant and relevant facts;
 - (b) state the reasons for the decision;
 - (c) state the effective date and the period or scope of debarment; and/or
 - (d) state the availability and time limit of appeals procedures.
28. Debarment shall be effective upon issuance and receipt of the final decision of the Committee by the Respondent pursuant to Rule 140.

The Committee Secretary

29. Agency that provides Office for the Committee shall appoint one of its staffs as a Committee Secretary to assist the Committee. Specifically, the Secretary shall:
 - (a) schedule all Committee meetings and hearings relating to debarment proceedings;
 - (b) brief the Committee members on all aspects of a matter;
 - (c) assist the Committee during its deliberations and keep the minutes of such deliberations;
 - (d) draft the Committee's written decision pertaining to each matter brought before the Committee, as directed by the Committee;
 - (e) convey the decisions of the Committee to the appropriate person or authority;
 - (f) perform other duties assigned to the Committee Secretary by these Rules; and

- (g) assist the Committee in other ways not inconsistent with these Rules.

- 30. The Committee Secretary, if unable to act, shall be replaced by another Committee member.

- 31. The Committee Chair shall supervise the work of the Committee Secretary.

Chapter III Causes for Debarment

Debarment only for Stated Causes

- 32. The Committee shall impose debarment only for the causes and in accordance with the procedures set forth in these Rules.

- 33. The serious nature of debarment requires that the measure be used for the purpose of protecting the interest of the State and not for punishment.

Causes for Debarment

- 34. The Committee may debar any individual or entity for:
 - (a) a coercive practice which means 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 a party;
 - (b) a collusive practice, that is, an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
 - (c) a corrupt practice defined here as the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
 - (d) a fraudulent practice meaning any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
 - (e) an obstructive practice, that is, (i) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede ACC's investigation into allegations

- of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or (ii) acts intended to materially impede the exercise of the Acc's contractual rights of audit or access to information; or
- (f) conviction of, or civil judgment for commission or attempted commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a private or public contract or subcontract.

Effects of Suspension or Debarment

35. Every Government agency shall solicit offers from, award contracts to, or consent to subcontracts and supply agreements only with a responsible individual or entity.
36. Every Government agency shall, to ensure that no award is made to the parties subject to debarment, review the Debarment List:
- (a) after the opening of bids or receipt of any proposals, quotations or offer; and
 - (b) immediately prior to award; reject those bids, proposals, quotations or offer received from parties subject to debarment, for the duration of suspension or debarment.

Effects on Existing Contracts

37. The Respondent's suspension or debarment under Rules shall not affect any existing contract entered into between the Respondent and a Government agency.

Chapter IV Investigation and Proposal for Debarment

Management of Complaints

38. Any person who, based on available evidence, has reason to believe that any individual or entity has committed any act or omission constituting a Cause for Debarment as specified 152(b) and defined in chapter III of these Rules, may lodge a complaint with ACC in a manner and using the same procedures established for lodging corruption complaint to ACC.
39. ACC shall process all complaints received in accordance with its corruption complaint management procedures.

Investigations

40. ACC shall have an overall responsibility in investigating all allegations of acts constituting Causes for Debarment in the process of obtaining a contract from any Government agency or in connection with any Government contract.
41. ACC's investigation of such allegations, to determine if an act constituting a Cause for Debarment was committed, and the manner of such investigation shall be in accordance with ACC's Investigation Manual.

Referrals to the Committee

42. If, upon such investigation, ACC believes that there is reasonably sufficient evidence to support a finding that an act constituting a Cause for Debarment was committed, ACC shall present to the Committee through the Committee Secretary a Proposal for Debarment.

Contents of Proposal for Debarment

43. A proposal for debarment shall:
 - (a) specify the name and address of the Respondent;
 - (b) recommend the period of debarment;
 - (c) recommend the suspension of the Respondent from entering into new contracts with any Government agencies, pending the final disposition of the debarment matter;
 - (d) specify the causes of proposed debarment;
 - (e) be accompanied by a factual record, which shall include all evidence and information in the possession of, or known to ACC, relating to the proposed debarment.

Disclosures of Exculpatory or Mitigating Evidence

44. ACC's Proposal for Debarment to the Committee and all written submissions to the Committee shall contain all relevant evidence in its possession or knowledge that would reasonably tend to exculpate the Respondent or mitigate the Respondent's culpability.

CHAPTER V

Commencement of Debarment Proceedings

Review of Proposal for Debarment

45. The Committee shall, within ten (10) days after receipt from ACC, review the Proposal for Debarment and determine whether or not there is sufficient evidence to support a finding that the Respondent has committed an act constituting a Cause for Debarment.
46. The Committee shall consider all the facts and arguments presented in the Proposal for Debarment and assume the facts alleged there to be true for the purposes of such review and determination.
47. The Committee shall close the matter and shall notify ACC accordingly if the Proposal for Debarment pertains to a contract whose execution has been completed for more than five (5) years prior to the date on which the Notice would be issued provided that value of the contract involved is equivalent to an offense of petty misdemeanor or below as classified in the Penal Code of Bhutan.

Referral Back to ACC

48. If the Committee determines that the Proposal for Debarment under Rule 43 presented by ACC does not contain sufficient evidence to support a finding that the Respondent committed an act constituting a Cause for Debarment, the Committee shall not issue the Notice.
49. The Committee shall notify ACC of its decision not to issue the Notice and the basis therefor and advise ACC to submit additional evidence.
50. ACC may resubmit a Proposal for Debarment to the Committee after making appropriate amendments notwithstanding the Committee's decision under Rule 48.
51. If ACC resubmits a Proposal for Debarment, the procedures set out in Rules 43 through 44 shall apply to such resubmitted Proposal.

Issuance of Notice of Debarment Proceedings

52. If the Committee determines that the Proposal for Debarment contains sufficient evidence to support a finding that the Respondent committed an act constituting a Cause for Debarment, the Committee shall issue the Notice to the Respondent and shall notify ACC.
53. Service of Suspension Notice shall be either by delivery, registered mail or personal service and provide proof of service in the record.

54. If the Notice is sent by registered mail, return receipt requested or similar means, the Notice shall be presumed to have been received within ten (10) days.

Contents of Notice of Debarment Proceedings

55. Notice of Debarment Proceedings may be issued under any Cause for Debarment, as defined in chapter III and specified in Rule 152(b).

56. The Notice of Debarment Proceedings shall:

- (a) include ACC's concise statement of the facts constituting the Cause for Debarment and ACC's designation of each Respondent alleged to have committed such acts;
- (b) identify the evidence that ACC intends to present to the Committee in support of its allegations, including any exculpatory or mitigating evidence, as envisaged in Rule 44;
- (c) state ACC's recommendation on the period of debarment;
- (d) advise the Respondent to notify the Committee Secretary of his desire to contest the allegations and/or the recommendation on period of debarment in the manner described in Rules 53 and 54;
- (e) state that the Committee shall deem the allegations to be true and shall order debarment of the Respondent upon review of available records if the Respondent failed to provide written response to Notice within the time stipulated in Rule 67;
- (f) inform the Respondent of the suspension from entering into new contracts with any Government agencies, pending the final disposition of the debarment matter;
- (g) from entering into new contracts with any Government agencies, pending the final disposition of the debarment matter;
- (h) contain the name and address of the Committee Secretary to whom the Respondent may respond to the allegations and/or recommended period of debarment as described in Rule 43; and
- (i) inform that the Committee will provide a copy of these Rules, as then in effect, if the Respondent so requests.

Respondent's Explanation Opposing Suspension

57. The Respondent may, within twenty (20) days after the date of issuance of the suspension notice, explain in writing to ACC why he believes that the proposed temporary suspension should not be effected, pending a final disposition of the debarment matter, notwithstanding the evidence set forth in the Notice.

58. The standard of proof shall be the same as described in Rules 124 and 125, except that the burden of proof shall on the Respondent.

Temporary Suspension

59. Unless the Committee determines, upon consideration of an Explanation submitted by the Respondent pursuant to Rule 57 that temporary suspension shall not come into effect, the Respondent shall, twenty (20) days after the date of issuance of the Notice, automatically be temporarily suspended, pending a final disposition of the debarment matter.
60. The Committee may consider the views of affected Government agency when determining whether the Respondent should be so temporarily suspended.
61. No temporary suspension shall go into effect until after the time for response has passed, or in the case of a response, until the Committee issues a decision on the application of the temporary suspension.
62. If the Respondent can prove that he did not receive notice pursuant to Rule 56, he may, within seven (7) days of a temporary suspension going into effect without Respondent response, seek reconsideration of the temporary suspension.
63. Any temporary suspension put in place under Rule shall remain in effect no longer than when a final debarment decision is rendered pursuant to chapter IX.

Public Access to Temporary Suspension

64. A suspension from eligibility to enter into new contracts shall be accessible only to a Government agency for procurement purposes.

Contested Proceedings

65. The Respondent shall inform the Committee pursuant to Rules 79 and 80 his desire to contest the allegations and/or the period of debarment recommended by the Committee in the Notice.
66. The Committee Secretary shall, upon receiving such information, notify Committee Chair and ACC accordingly, and the matter shall be referred to the Committee for its review and decision pursuant to chapter II of these Rules.

Decision in Uncontested Proceedings

67. If the Respondent does not inform the Committee his desire to contest the allegations and/or the period of debarment recommended by ACC within fifteen (15) days after the date of issuance of the Notice pursuant to Rules 77 and 78 (including in those cases where, pursuant to Rule 59, the Committee has determined that the temporary suspension shall not come into effect), the Committee shall issue its decision imposing the debarment recommended by ACC in the Proposal for Debarment through the Committee Secretary, without need of a hearing.

Withdrawal of Notice

68. The Committee may, within fifteen (15) days after the date of the submission of Respondent's Explanation, withdraw the Notice if he concludes that there is manifest error or clear basis for supporting a finding of insufficiency of evidence against the Respondent.
69. The Committee shall, in such a case, notify the parties of the withdrawal of the notice and the reasons therefor, and the proceedings shall be closed.
70. Such withdrawal and closure shall be subject to ACC's opportunity to submit a revised Proposal for Debarment on the basis of additional information not contained in the original Proposal, in which case the matter shall proceed in accordance with the procedures set forth in Rule 50.

Chapter VI

Written Submissions by ACC and the Respondent

Respondent's Explanation against Temporary Suspension

71. The Respondent's Explanation against a temporary suspension must be in writing and shall:
- (a) consist of a single document not exceeding twenty single-sided pages, unless the Committees approves a longer submission;
 - (b) present admission, denial, or other responses to each of the allegations in the Notice;
 - (c) include all the facts, arguments, or other basis upon which the Respondent contests the debarment; and
 - (d) all supporting documentation, if any.
72. Should the Respondent fail to file a timely answer to the Notice of Proposed Debarment or the omission to present admission, denial, or

other responses to each of the allegations in the Notice, all of the allegations of the notice shall be deemed to be admitted.

73. The Respondent shall not have any other opportunity to oppose a temporary suspension, either orally or in writing, except as provided for by Rule 72.
74. The Respondent shall submit, by delivery or sending by registered mail or reputable, established private delivery service or personal service, his Explanation against temporary suspension to the Committee no more than fifteen (15) days after receipt of the Notice.
75. Date of delivery will be the date of receipt, if by personal service, or the date of mailing or placing with a private delivery service, with proof of mailing or placement.
76. Deliveries will be accepted only during the regular office hours of the Committee.

Respondent's Response to Notice of Debarment Proceedings

77. The Respondent may, within twenty (20) days after issuance of the Notice, submit to the Committee through the Committee Secretary a written response to the allegations and recommended debarment contained in the Notice.
78. The Response may contain written arguments and evidence, subject to Rule 111, and shall contain a certification, signed by an individual Respondent or an authorized officer of a Respondent that is an entity, that the information contained therein is true, complete and correct to the best of the Respondent's knowledge after the exercise of reasonable due diligence in reviewing the matter and his records within his possession or control.

ACC's Reply in Support of the Notice of Debarment Proceedings

79. ACC may, within **thirty** (30) days after the Respondent's submission of a Response, submit to the Committee through the Committee Secretary a written reply to the arguments and evidence contained in the Response.

Submission of Additional Materials

80. At any time after the Notice of proposed Debarment is issued, the Committee Chair may, subject to Rule 0 as a matter of discretion, authorize an additional material evidence that came to the parties' possession after the applicable deadlines for the submission of written

materials have passed, together with a brief argument predicated upon such evidence to be submitted to the Committee subject to the condition that such submission is prior to the conclusion of the hearing to be held on the matter.

81. The Committee Chair may also authorize either parties to submit, within a reasonable timeframe, additional arguments and evidence in response to the evidence and arguments contained in the additional materials presented by the other party.

Language

82. The parties shall submit all written materials required to be submitted to the Committee through the Committee Secretary either in English or Dzongkha.

Time Period for Filing Submissions

83. Time periods for filing submissions shall be those specified in chapters V and VI of these Rules, subject to any reasonable extension of time granted as a matter of discretion by the Committee Chair.
84. Any deadline in these Rules may be extended in the discretion of the Committee.
85. Written requests for extension of deadlines shall be in writing to the Committee Chair.
86. The Committee shall issue a response within five days of receipt of the request by the Committee.
87. The Committee through the Committee Secretary shall notify the Respondent and ACC's representative of any extensions.
88. The Committee Chair shall set reasonable limits for the length of written submissions.

Admissibility of Culpability

89. The Respondent may admit either partially or fully any allegation specified in the Notice and may also present evidence and arguments of mitigating circumstances, the intervening implementation of programs to detect or prevent Causes for Debarment or other facts relevant to the Committee's decision

Distribution of Written Materials to Parties

90. The Committee Secretary shall provide to the parties, in a timely manner, copies of all written submissions and evidence, records of

any related proceedings, and any other materials received or issued by the Committee relating to the proceedings, except as provided in Rules 94 and 95.

91. The Respondent shall, however, have no right to review or obtain any other information or documents in the Committee's possession.

Distribution of Written Materials to Other Respondents

92. The Committee Secretary may at any time, upon approval of the Committee, make available all materials submitted to the Committee in a Respondent's debarment proceedings to other Respondents in debarment proceedings involving related allegations, facts, or matters.
93. The Committee shall, in determining whether to approve the disclosure of such materials, consider, among other factors, the standard for withholding sensitive materials set forth in Rules 94 and 95.

Distribution of Sensitive Materials

94. The Committee shall provide to the Respondent, all evidence presented to the Committee by ACC, including all relevant evidence in ACC's possession or known to ACC that would reasonably tend to exculpate the Respondent or mitigate the Respondent's culpability.
95. The Committee may, however, in its discretion and upon ACC's request, withhold particular evidence upon a determination that there is a reasonable basis to conclude that revealing the particular evidence might endanger the life, health, safety, or well-being of a person.

Contents of Record

96. The Committee shall consider the record such as the Notice, the Response, the Reply, all other related written submissions of arguments and evidence, and all arguments presented at any hearing before the Committee, including any Explanation submitted pursuant to Rules 71 and 72 and such record shall be confidential and not be available to the public.

Chapter VII Conduct of Debarment Hearings

Procedural Fairness

97. The committee shall conduct debarment hearings as informally as practicable, consistent with the principles of fundamental fairness, using the procedures in described in this chapter.

Applications

98. The Respondent's response or ACC's reply shall, within fifteen (15) days after the receipt of the proposed debarment notice, request the Committee to hold a hearing on the allegations against the Respondent.
99. If no such request is made, the Committee shall review the case and render its decision on the basis of the existing records, as defined under Rule 96, without a hearing.
100. If a request for a hearing is made, the Committee Secretary shall, after consulting with the Committee Chair, provide the parties reasonable notice of the date, time and location of the scheduled hearing.
101. The hearing shall commence within thirty (30) days of the date the Committee served the proposed debarment notice, which shall be extended only upon good cause shown.
102. Failure of a parties or their authorized representative to appear for a requested hearing that has been duly noticed, shall be deemed admission by the parties to the allegations of the complaint unless the Respondent shows good cause.
103. Good cause for non-appearance of the Respondent shall be limited to military or other official service or duties preventing attendance, death, serious illness, or other similar impediment and shall be determined within the sole discretion of the Committee.

Parties' Representations

104. ACC shall be represented in a debarment proceeding by a representative who may or may not be its staff.
105. A Respondent may be self-represented or represented by an attorney or any other individual authorized by the Respondent, at the Respondent's own expense.

Parties' Attendance

106. The parties or their representatives may be present throughout the hearing.
107. The hearing including the submissions shall remain confidential and not be open or available to the public.
108. Neither parties nor their representatives shall be present for or participate in the Committee's deliberations.

Order of Representations

109. ACC shall present its case first followed by the Respondent or Respondent's representative, subject to ACC's right to reply.

Length of Representations

110. The Committee Chair shall set a reasonable period of time for each presentation.

Form of Representations

111. The parties' presentations shall be as informal as possible and shall be limited to arguments and evidence contained in the written submissions filed with the Committee, and may rely upon or refute individual items of evidence.

Live Testimony

112. The Committee members may only call and question one or more witnesses but no live witness testimony shall be taken.

113. The Respondent who appears in person or, in the case of a Respondent that is an entity, through an authorized representative, may make a statement during the hearing.

114. There shall be no cross-examination, although rebuttal evidence may be presented during the hearing.

Mitigating or Aggravating Circumstances

115. The parties may present evidence of mitigating or aggravating factors relating to the appropriateness of a proposed debarment.

Questions by the Committee

116. The Committee may question representatives of either party or the party's refusal to answer, or failure to answer truthfully or credibly, may be construed against that party.

Chapter VIII Rules of Evidence

Forms of Evidence

117. Any kind of evidence may form the basis of arguments presented in a debarment proceeding and conclusions reached by the Committee.

118. The Committee shall have discretion to determine the relevance, materiality, weight, and sufficiency of all evidence offered to ensure full disclosure of the facts, maintain order, or to avoid delay.

119. The Committee shall give hearsay evidence or documentary evidence weight as it deems appropriate.
120. The Committee shall have the discretion to infer purpose, intent and/or knowledge on the part of the Respondent, or any other party, from circumstantial evidence before it, subject to the generality of the foregoing Rules 117 through 119.
121. The Committee shall not be bound by the technical rules of evidence.

Privileged Information

122. Communication between an attorney, or a person acting at the direction of an attorney, and a Respondent for the purpose of providing or receiving legal advice and writings reflecting the mental impressions, opinions, conclusions or legal theories of an attorney in connection with a legal representation shall be privileged and exempt from disclosure.

Chapter IX Findings and Debarment Decision

Scope of the Committee's Review and Deliberations

123. The Committee's review and deliberation shall be limited to the record as defined in Rule 96 and to other facts contained in the public record.

Standard of Proof

124. In any debarment proceeding in which the proposed debarment is not based upon a conviction or civil judgment, the Committee shall determine whether the evidence presented by ACC, as refuted the Respondent, supports the conclusion that it is more likely than not that Respondent committed an act constituting a Cause for Debarment.
125. Where the proposed debarment is based upon a conviction or civil judgment, the standard shall be deemed to have been met.

Burden of Proof

126. ACC shall have the initial burden of proof to present evidence sufficient to establish that it is more likely than not that the Respondent committed an act constituting a Cause for Debarment.

127. Upon such establishment by ACC, the burden of proof shall shift to the Respondent to demonstrate that it is more likely than not that the Respondent's act did not constitute a Cause for Debarment.

Insufficient Evidence

128. If the Committee determines that it is more likely than not that the Respondent did not commit an act constituting a Cause for Debarment, the Committee shall notify ACC and the Respondent accordingly in writing over the signature of the Committee Chair, and the proceedings shall be closed.

The Committee's Decision

129. If the Committee determines that it is more likely than not that the Respondent did commit an act constituting a Cause for Debarment, the debarment shall be imposed on the Respondent.
130. The Committee shall not be bound by the ACC's recommendation under Rule 43 in determining the appropriateness of the debarment period.
131. In actions based upon a conviction or civil judgment, the Committee shall make a decision on the basis of such conviction or judgment and/or other information available to the Committee including any submission made pursuant to these Rules.
132. The Committee's decision shall include information:
- (a) referring to the Notice of Proposed Debarment;
 - (b) specifying the reasons for debarment with reference to record facts;
 - (c) stating the period and type of debarment, including effective dates;
 - (d) stating the effect of the debarment on the Respondent's existing contracts with the Government agency;
 - (e) stating the effect of the debarment on the Respondent's eligibility to act as a subcontractor or supplier on any existing and/or future contracts with other individual or entity that has contract with any other Government agency; and
 - (f) stating the effect of the debarment on affiliates or any other individuals.

Debarment Decision Criteria

133. The Committee, in determining whether the debarment should be imposed on the Respondent, shall consider the following criteria:

- (a) Outrageousness and severity of the Respondent's act;
- (b) degree of involvement of the Respondent in the act constituting a Cause for Debarment (including whether the act involved was active or passive);
- (c) magnitude of any losses caused by the Respondent and damage caused by the Respondent to the credibility of the procurement process;
- (d) past act of the Respondent involving an act constituting a Cause for Debarment;
- (e) mitigating circumstances, including the extent to which the Respondent cooperated in the investigation and whether such cooperation is of substantial benefit to Government;
- (f) savings of Government resources or facilitation of an investigation that was occasioned by the Respondent's admission of culpability or cooperation in the investigation or debarment process;
- (g) period of temporary suspension already served by the Respondent;
- (h) compliance with certain remedial, preventative or other measures;
- (i) New or revised review and control procedures and ethics training programs;
- (j) introduce and/or implement corporate compliance or ethics programs, compliance with procurement requirements, or other measures.
- (k) make restitution of diverted funds to the Government or to any other party; and
- (l) any other factor that the Committee deems relevant.

134. The Committee may take into account some or all of these criteria but it shall be open to the Committee to conclude that debarment is warranted by virtue of only some, or even only one, of these criteria.

Period of Debarment

135. Debarment shall be for a period commensurate with the seriousness of an act constituting a Cause for Debarment.

136. Initial debarment period shall not be less than three (3) nor exceed five (5) years, except that any Respondent who commits an act

constituting a Cause for Debarment more than once shall be compulsorily debarred for a period up to 5 years.

Parties Subject to Debarment

137. When the Committee imposes a debarment on a particular Respondent, the Committee may also extend the same to any individual or entity under the Respondent's direct or indirect control.

138. The Parties subject to debarment shall be disqualified from:

- (a) bidding on a contract;
- (b) submitting responses to any Government agency's requests for proposals or qualifications;
- (c) being awarded a contract;
- (d) participating in a contract as a subcontractor, material supplier, or employee of a prime firm or another subcontractor for a period of time specified in the Committee's debarment order;
- (e) directly or indirectly submitting offers for, or executing contracts, or subcontracts with any Government agency; or
- (f) conducting business with any Government agency as an employee, agent, or representative of another person.

Notification of the Committee's Decision

139. The Committee Secretary shall promptly notify the Committee's decision to the Respondent and ACC by registered mail, return receipt requested or by comparable means or by personal service with attestation in the record.

Extension of Debarment Period

140. The Committee may, during the duration of a period of debarment, extend the duration and/or broaden the scope of the debarment if upon review of any additional information or evidence relevant to a review of the debarment received by it prior to such review the Committee determines that:

- (a) adequate evidence supporting an extension of the debarment exists; and
- (b) such extension is necessary to protect the public interest in accordance with the debarment procedures set out in these Rules.

141. Prior to a decision to extend the duration and/or broaden the scope of an existing debarment, the Respondent shall be provided with notice of the extension and an opportunity to respond.

Suspension of Debarment

142. The Committee may suspend a debarred Respondents' ineligibility to contract with the Government agency in whole or in part in order to allow execution of a specific contract or type of contract with the Respondent, upon written application by a head of Government agency whose agency is affected by the proposed contract, setting forth facts and providing documentation sufficient in the judgment of the Committee to establish:

- (a) that the public health, safety or welfare of that Government agency requires the goods or services of the Respondent, or that it is otherwise in the best interest of that Government agency to use the goods or services of the Respondent; or
- (b) that that Government agency is unable to acquire the goods or services at comparable price and quality, or in sufficient quantity from other sources.

Reinstatement

143. The debarment shall automatically terminate upon the expiration of the debarment period in totality unless the Committee:

- (a) extends the debarment pursuant to Rule 140; or
- (b) finds that there is reasonable assurance that the basis for the debarment will reoccur.

Review Process

144. The parties subject to debarment may, in writing, request the Committee to reverse the debarment decision or to reduce the period or scope of debarment, supported by documentation.

145. The Committee shall grant such request for the following reasons:

- (a) reversal of the conviction or civil judgment by higher Court of law upon which the debarment was based;
- (b) reversal of the Committee's decision by a Court of law upon appeal therefrom; or
- (c) Newly discovered material evidence or documentable error in the Committee's findings.

Judicial Review

146. The Committee's decision shall be final and shall take effect immediately subject only to judicial review by a court of competent jurisdiction upon appeal by the parties within ten (10) days after the date of the Committee's decision.

Chapter X Miscellany

Administration of the Debarment Registration System

147. The Committee Secretary shall, within three (3) working days after the date of the Committee's decision, enter information in the Debarment Register required by Rule 148 which may be both in the manual or the web-based form.

Contents of the Register

148. The Debarment Register shall indicate:

- (a) the names and addresses of all debarred Respondents, in alphabetical order, with cross-references when more than one name is involved in a single debarment case;
- (b) names and addresses of the Government agency affected by the Respondent's acts constituting Causes for Debarment;
- (c) ground for the debarment;
- (d) scope of the debarment;
- (e) name of the Committee imposing the debarment;
- (f) effect of the debarment;
- (g) termination date for each debarment; and
- (h) name and telephone number of the Committee Secretary.

Public Disclosures of the Debarment Register

149. The Committee shall publicly disclose any information concerning the identity of the parties subject to debarment and the debarment imposed, including issuance of an updated list to all agencies or uploads the list on website.

150. The Committee shall establish procedures to provide for the effective use of the information contained in the Debarment Register to ensure that a government agency does not do business with the parties subject to debarment.

Rules of Construction

151. In these Rules, the singular shall include the plural and the masculine shall include the feminine and vice versa.

Definitions

152. As used in these Rules:

- (a) ACC means the Anti-corruption Commission established pursuant to the Anti-corruption Act 2006;

- (b) Cause for Debarment means any corrupt, fraudulent, coercive, collusive or obstructive practices in a Government transaction as defined in chapter III of these Rules.
- (c) Committee means the Debarment Committee of the Government established pursuant to Rule 5;
- (d) Control means and includes interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the suspension or debarment of a firm having the same or similar management, ownership, or principal employees as the suspended or debarred firm or the firm created after the debarment or suspension in a manner designed to evade the application of these Rules or to defeat the purpose of these Rules.
- (e) Days mean calendar days, unless otherwise specified;
- (f) Firm means any individual person or business entity, firm, partnership, corporation, or combination thereof who submits a qualification statement, proposal, bid or quote or who contracts directly or indirectly with any Government agency for the purpose of providing any goods, services, labor and materials to or for the agency in exchange for government funds, including without limitation any firm, subcontractor, consultant, subconsultant or supplier. The term “firm” shall include any responsible managing corporate officer who has personal involvement and/or responsibility in obtaining a contract with the agency or in supervising and/or performing the work prescribed by the contract.
- (g) Government Contract means any agreement, subject to the Procurement Rules and Regulations 2009 or whose costs is to be paid directly or indirectly from the funds belonging to or administered in whole or part by the Government of Bhutan, regardless of source, between the Government and any individual or entity. Contracts include all amendments, modifications, and extensions of contracts.
- (h) More likely than not means that, upon consideration of all the relevant evidence, a preponderance of the evidence supports a finding that the Respondent committed an act constituting a Cause for Debarment.
- (i) Respondent means a firm or individual alleged to have committed an act constituting a Cause for Debarment and who has been designated as such in a Notice.

- (j) Subject of debarment means the Respondent, or any individual or entity under the Respondent's control against which the Committee imposes a debarment; and
- (k) Suspension means the debarment of an individual or entity for a temporary period of time pending the final disposal of debarment proceeding or appeals therefrom.