

TABLE OF CONTENTS

DESCRIPTION	PAGE NO.
THE DEBARMENT (OF CORRUPT FIRMS) RULES, 2008.....	2
CHAPTER I.....	2
PRELIMINARY.....	2
<i>Short Title</i>	2
<i>Commencement</i>	2
<i>Coverage</i>	2
<i>Purpose</i>	2
CHAPTER II.....	3
THE DEBARMENT COMMITTEE.....	3
<i>The committee designation</i>	3
<i>Quorum</i>	3
<i>Impartial decision</i>	3
<i>Investigating officer designation</i>	3
CHAPTER III.....	3
GROUND FORS DEBARMENT.....	3
<i>Grounds for debarment</i>	3
<i>Evidence of grounds</i>	5
CHAPTER IV.....	5
INVESTIGATION AND COLLECTION OF EVIDENCE.....	5
<i>Prompt procedures establishment</i>	5
<i>Receipt of complaint or other information</i>	5
<i>Log Contents</i>	5
<i>Evaluation of complaint or information</i>	5
<i>Insufficient evidence</i>	6
<i>Sufficient evidence</i>	6
<i>No further proceedings</i>	6
<i>Further proceedings</i>	6
<i>Proposed debarment notice contents</i>	6
<i>Suspension till end of debarment proceedings</i>	7
<i>Effect and scope of suspension</i>	7
<i>Full investigation</i>	7
<i>Informal conference</i>	8
<i>Opportunity to contest proposed debarment</i>	8
<i>Additional proceedings as to disputed material facts</i>	8
<i>No additional proceedings necessary</i>	9
CHAPTER V.....	9
THE DEBARMENT PROCEEDINGS.....	9
<i>Procedural fairness</i>	9
<i>Time frames</i>	9
<i>Procedures when there is no request for hearing</i>	10
<i>Procedures when there is request for hearing</i>	10
<i>Standard of proof</i>	11
<i>Burden of proof</i>	11
<i>Final decision</i>	11
<i>Decision criteria</i>	12
<i>Review process</i>	12
<i>Decision disclosure</i>	13
<i>Administrative review on appeal</i>	13
<i>Hearing</i>	13
<i>Decision</i>	14
<i>Judicial review</i>	14
CHAPTER VI.....	15
DEBARMENT EFFECT, SCOPE AND PERIOD.....	15

<i>Firm debarment</i>	15
<i>Firm's affiliates debarment</i>	15
<i>Excluded firms list review</i>	15
<i>Imputation of knowledge and conduct</i>	15
<i>Debarment effects</i>	16
<i>Debarment period</i>	16
<i>Debarment period extension</i>	16
<i>Existing contracts continuation</i>	17
<i>Concurrent debarment</i>	17
<i>Reinstatement</i>	17
CHAPTER VII	17
MISCELLANY	17
<i>Excluded firms list system administration</i>	17
<i>List contents</i>	17
<i>List publication</i>	18
<i>Committee's responsibilities</i>	18
<i>Definitions</i>	18

The Debarment (of Corrupt Firms) Rules, 2008

In exercise of power conferred by section 133 of the Anti-Corruption Act of Bhutan, 2006, (Act) the Anti-Corruption Commission hereby makes these rules for providing further provisions or setting procedures regarding the debarment of a corrupt firm from contracting with any government agency.

Chapter I Preliminary

Short Title

1. These rules may be called the Debarment (of Corrupt Firms) Rules, 2008.

Commencement

2. These rules shall take effect immediately upon adoption by the commission.

Coverage

3. These rules shall apply to all firms, national or foreign, who have participated, are currently participating or may reasonably be expected to participate in transactions with any government agency.

Purpose

4. These rules implement section 45(i) of the Act by:
 - (a) establishing the committee and its procedures in every government agency;
 - (b) prescribing the grounds for debarment or suspension and minimum due process that each committee or head of agency shall follow;
 - (c) setting forth the consequences of a debarment and the excluded firms list system; and
 - (d) offering such other guidance as necessary for the effective implementation and administration of these rules.

Chapter II

The debarment committee

The committee designation

5. The existing Tender Committee of every government agency shall be designated as a Debarment Committee of that agency.

Quorum

6. A majority of the members of the committee shall constitute a quorum for the transaction of its business.
7. The committee shall decide all matters by 2/3 majority of the members present and voting and if there is a tie, the chairperson shall decide by a casting vote.

Impartial decision

8. A member of committee shall be an impartial decision maker and he shall not form a prejudgment on the case and have a pecuniary interest or personal bias in the outcome of the proceeding.
9. If a complaint is filed against any member of the committee, then that member shall not participate in the committee's business.

Investigating officer designation

10. The committee shall designate one of its members as an investigating officer to investigate the grounds for debarment.

Chapter III

Grounds for debarment

Grounds for debarment

11. The committee, or by a head of agency on appeal, shall debar a firm if it is found, after appropriate investigation and a formal hearing, that the firm has:
 - (a) abused the solicitation process by repeatedly withdrawing bids before contracts are issued or failed to accept orders based upon firm bids;
 - (b) engaged in misconduct relating to the submission of bids, including corruption, price fixing, a pattern of under-pricing bids, breach of confidentiality, misconduct relating to execution of procurement contracts;
 - (c) lacked financial responsibility, such as unpaid debts, unfulfilled insurance or bond obligations or other evidence of financial instability or irresponsibility;
 - (d) failed to timely submit bond, contract documents, insurance documents or any other item required by the committee, acceptable to the committee which conform to bid, request for proposal and/or contract requirements.

- (e) submitted a bid, proposal, insurance policy, bond, guarantee or other document that is known, or should be known, by such person to be false, misleading or nonmeritorious or to contain false information;
- (f) submitted any false, misleading or non-meritorious claim, demand or lawsuit against any public agency;
- (g) deliberately failed, without good cause, to perform a contract or warranty according to its terms, conditions, and specifications within specified time limits including repeated unexcused delays or a failure to complete work within the contract price;
- (h) unsatisfactorily performed a contract or warranty even if the discovery of such defect is subsequent to acceptance of the project and expiration of the warranty thereof;
- (i) failed to cooperate in monitoring contract performance by refusing to provide information or documents required in a contract or failed to respond and correct matters related to complaints to the firm;
- (j) failed wilfully to cooperate in the hearing of the proposed debarment;
- (k) attempted to influence a public official to breach ethical code of conduct or related laws;
- (l) colluded with other firms or any tender committee official to restrain the participation of other competing firms;
- (m) been convicted, or civil judgment for commission of a criminal offence arising out of obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
- (n) been criminally convicted or civil judgment for violations of laws requiring disclosure of true campaign donor;
- (o) been convicted for antitrust offences involving public contracts or the submission of offers or bid proposals;
- (p) willfully submitted false or misleading information in connection with the application for or performance of a public contract, or lawsuit against any agency;
- (q) failed to pay a single substantial uncontested debt, or a number of outstanding owed to any agency or submitted two or more claims of computational or other error.
- (r) performed a contract in violation of environmental, immigration, labor or safety statutes and rules;
- (s) knowingly done or doing business with a debarred or suspended firm in performance of the agency's contract awarded after debarment or suspension of such debarred firm;
- (t) committed any other act which the committee, or a head of agency on appeal, determines to significantly affect the integrity of the contractual transaction or impair the firm's responsibility or reliability of any public or private contract performance.

Evidence of grounds

12. Evidence of grounds for debarment may be determined to exist if:
- (a) Within the last ten (11) years, the firm has been convicted of a criminal charge for any act or omission described in rule (11) whether entered upon a judgment or a plea, including a plea of nolo contendere;
 - (b) Within the last five (5) years, a civil judgment has been entered against the firm for any act or omission described in rule (11); or
 - (c) the committee, or a head of agency on appeal, finds that based upon a preponderance of the evidence presented, such grounds exist.

Chapter IV Investigation and collection of evidence

Prompt procedures establishment

13. Every agency shall establish procedures for the prompt reporting, investigation, and referral to the committee of information concerning the existence of a ground for debarment from any source for that committee's consideration.

Receipt of complaint or other information

14. Any person who, based on available evidence, has reason to believe that a firm has committed any act or omission relating to any ground for debarment specified in rule (11), may lodge a written complaint with the committee.
15. The committee shall record in a chronological log any information received under rule (14) or otherwise, which shall be permanently maintained.

Log Contents

16. The log shall include the following items:
- (a) the name and address of a complained firm ;
 - (b) the source of the information; and
 - (c) a description of the complaint or information.
17. A separate folder shall be maintained for each firm, separate from the regular administrative files.

Evaluation of complaint or information

18. The committee shall evaluate the complaint or other information and the supporting evidence to determine whether or not a further proceeding is required.

Insufficient evidence

19. If the committee determines that the evidence submitted is insufficient or that the complaint is not an appropriate basis for debarment or suspension, the complainant shall be so advised by a letter over the signature of the committee's chair.
20. The letter under rule (19) shall indicate that,:
 - (a) for future reference, a file has been created concerning the complaint;
 - (b) the evidence submitted is not sufficient to initiate debarment proceedings; and
 - (c) additional evidence may be submitted.

Sufficient evidence

21. If the committee determines that the documented complaint is sufficient, or that the additional evidence submitted is adequate, to show a violation prima facie, a copy of the complaint, together with the supporting evidence, shall be sent to the firm for comment.
22. When a reply is received from the firm, the committee shall reevaluate the complaint and make a determination on whether or not to proceed further.

No further proceedings

23. If the committee decides not to impose debarment, the firm shall be given prompt notice of that decision which shall be without prejudice to a subsequent imposition of debarment by any other agency.
24. The letter under rule (21) shall include:
 - (a) a copy of the reply from the firm;
 - (b) the decision of the committee, that debarment proceedings will not be initiated; and
 - (c) that decision is final and not subject to appeal or formal hearing.

Further proceedings

25. If the committee determines that further proceedings are warranted, it shall then send a proposed debarment notice to the firm.

Proposed debarment notice contents

26. The proposed debarment notice to a firm shall include:
 - (a) a concise statement of the grounds upon which debarment may be based;

- (b) a summary of facts or documents relied upon as justification for the proposed action;
- (c) a concise statement of the committee's proposed sanctions;
- (d) a notice that the committee shall deem the allegations to be true and shall order debarment of the firm without conducting further proceedings if the firm fail to provide written answer to notice within the time specified in rule (...);
- (e) advise the firm of its right to request an informal conference under rules thirty (31) through thirty four (35);and
- (f) the name and address of the committee member who shall be responsible for receiving the answer from the firm.

27. The proposed debarment notice shall be served by registered mail return receipt requested, in order to document the date of receipt.

Suspension till end of debarment proceedings

28. The committee may, by order, temporarily suspend a firm pending the completion of an investigation or ensuing debarment proceedings, unless terminated sooner by the committee.

29. The suspension order shall be served to a firm along with a proposed debarment notice.

30. If debarment proceedings are not initiated within 12 months after the date of the suspension notice, the suspension shall be terminated unless an investigating officer requests its extension in writing, in which case it may be extended for an additional six months.

31. In no event may a suspension extend beyond 18 months, unless such proceedings have been initiated within that period.

Effect and scope of suspension

32. The effects and scope of suspension shall be the same as that for debarment.

Full investigation

33. The committee shall order an investigating officer to investigate the ground for debarment after issuing the proposed debarment notice.

34. An investigating officer may request from any source, information or evidence concerning possible grounds for suspension or debarment of a firm.

35. An agency which is requested to submit information under paragraph above shall provide the information or document which is in its possession within a reasonable time period.

Informal conference

36. Any firm may request for an informal conference within 7 days after the receipt of the proposed debarment notice.
37. If a firm does not request an informal conference or a hearing within the time prescribed in rule (14), the preliminary determination shall become final.
38. Within 5 days after the receipt of request, the committee shall notify the firm of the time and place where the conference will be held.
39. At the informal conference, an investigating officer and the firm shall both have an opportunity to state their case, seek to narrow the issues, and explore the possibilities of settlement or compromise.
40. The committee may modify, withdraw, or affirm the preliminary determination in writing, a copy of which shall be provided to the firm and investigating officer within 7 days of the conclusion of the informal conference.

Opportunity to contest proposed debarment

41. Within 10 days after receipt of the proposed debarment notice, a firm shall submit, under oath, in person or through a representative, in writing, an answer either opposing the debarment and/or suspension, which may dispute the committee's formal, written findings of substantial and material noncompliance, identify any remedial measure or mitigating factors, or both.
42. If a firm does not make an answer to the proposed debarment notice, the committee may use the information described in rule ... as the findings of fact.

Additional proceedings as to disputed material facts

43. In debarment proceedings not based upon a conviction or civil judgment, if the committee determines that a firm's submission in opposition raises a genuine dispute over facts material to the proposed debarment, a firm shall be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses, and confront any witness an investigating officer presents within 10 days after the submission of answer contesting the proposed debarment.

44. The committee shall evaluate the evidence already collected together with additional information submitted by a firm and then make written findings of fact and a decision on whether or not to proceed with the debarment.
45. A transcribed record of any additional proceedings shall be made available free of charge to a firm, upon request, unless the firm and the committee, by mutual agreement, waive the requirement for a transcript.
46. The fact that a firm has been convicted of a crime described in rule (11), or suspended or has resigned in lieu of suspension, from participating in any government contract, shall be a prima facie basis for a finding of fact.
47. The committee may refer disputed material facts to an investigating officer for findings of fact.
48. The committee may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.
49. The committee's decision shall be made after the conclusion of the proceedings with respect to disputed facts.

No additional proceedings necessary

50. In debarment proceedings based upon a conviction or civil judgment, or in which there is no genuine dispute over material facts, the committee shall make a decision on the basis of all the information in the administrative record, including any submission made by a firm.
51. The decision shall be made within 45 days after receipt of any information and argument submitted by a firm, unless the committee extends this period for good cause.

Chapter V
The debarment proceedings

Procedural fairness

52. The committee shall process debarment proceedings as informally as practicable, consistent with the principles of fundamental fairness, using the procedures in described in this chapter.

Time frames

53. The committee or a head of agency on appeal shall give debarment or suspension matters a high priority and shall take appropriate action expeditiously.

Procedures when there is no request for hearing

54. The committee shall issue the debarment decision without a hearing and shall notify a firm of the decision by registered mail, return receipt requested if the firm does not respond with a request for a hearing within the time required by rule (...).

Procedures when there is request for hearing

55. A firm or its authorized representative may, either in person or through a representative, submit a written request for a hearing within fifteen days after receipt of the proposed debarment notice or within 15 days of receipt of the written determination issued by the committee after the conclusion of the informal conference.
56. Any such written request to be heard shall be filed with the committee member responsible for receiving the answer from the firm specifying the name and address of the person to which all subsequent notices and communications should be mailed.
57. The committee shall, within fifteen (15) calendar days after the receipt of the written request to be heard, notify a firm of the time, date and location of the scheduled hearing.
58. The hearing shall commence within ninety (90) days of the date the committee served the proposed debarment notice, which shall be extended only upon good cause shown.
59. Failure of a firm or its authorized representative to appear for a requested hearing that has been duly noticed, shall be deemed admission by the firm to the allegations of the complaint.
60. The committee may, in its sole discretion, direct a firm to submit in advance of the hearing, statements, legal analyses, lists of witnesses, exhibits, documents or any other information the committee deems pertinent to the determination of willful misconduct.
61. If the committee determines that the hearing shall be by written presentation, then all final writings shall be due no later than ninety (90) days of the date the committee served the proposed debarment notice.
62. All notices and writings required to be served under this rule shall be delivered by personal service or registered mail in a manner ensuring written confirmation of delivery or acquiescence.

63. The hearing shall be open to the public unless, for good cause and the interests of justice, the committee determines otherwise.
64. A firm, representative or legal counsel shall be given a full opportunity to submit and respond to papers and pleadings, to present evidence and argument, and to conduct cross-examination of witnesses.
65. At the hearing, an investigating officer and a firm each may present its case by oral or documentary evidence, conduct examination and cross-examination of witnesses, examine any documents submitted, and submit rebuttal evidence.
66. The committee or head of agency shall not be bound by the technical rules of evidence and may make any procedural or evidentiary ruling that may help to insure full disclosure of the facts, to maintain order, or to avoid delay. Irrelevant, immaterial, repetitious or unduly prejudicial matter may be excluded.

Standard of proof

67. In any debarment proceeding in which the proposed debarment is not based upon a conviction or civil judgment, the cause for debarment shall be established by a preponderance of the evidence.
68. Where the proposed debarment is based upon a conviction or civil judgment, the standard shall be deemed to have been met.

Burden of proof

69. The committee shall have the initial burden to show grounds for a debarment or suspension.
70. The burden of persuasion shall then shift to a firm to show by a preponderance of evidence on the record that it should not be debarred or suspended.

Final decision

71. The committee shall issue a written decision within 20 calendar days after the conclusion of the hearing, which 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 of debarment; and/or
 - (d) state about the availability and time limits of appeals procedures.
72. Debarment shall be effective upon issuance and receipt of the final decision by the firm.

Decision criteria

73. The committee or a head of agency on appeal shall, in determining whether or not a firm should be debarred, and the duration for any debarment, may consider in addition to any other relevant factors, the following:
- (a) Whether the firm had effective standards of conduct and internal control systems in place at the time of the activity which constitutes cause for debarment or had adopted such procedures prior to any government investigation of the activity cited as a cause for debarment;
 - (b) Whether the firm brought the activity cited as a cause for debarment to the attention of the appropriate government agency in a timely manner;
 - (c) Whether the firm has fully investigated the circumstances surrounding the cause for debarment and, if so, made the result of the investigation available to the debarring official;
 - (d) Whether the firm cooperated fully with government agencies during the investigation and any court or administrative action;
 - (e) Whether the firm has paid or has agreed to pay all criminal, civil, and administrative liability for the improper activity, including any investigative or administrative costs incurred by the government, and has made or agreed to make full restitution;
 - (f) Whether the firm has taken appropriate disciplinary action against the individuals responsible for the activity which constitutes cause for debarment.
 - (g) Whether the firm has implemented or agreed to implement remedial measures, including any identified by the government;
 - (h) Whether the firm has instituted or agreed to institute new or revised review and control procedures and ethics training programs;
 - (i) Whether the firm has had adequate time to eliminate the circumstances within a firm's organization that led to the cause for debarment; and
 - (j) Whether the firm's management recognizes and understands the seriousness of the violation giving rise to the cause for debarment and has implemented programs to prevent recurrence.
74. The committee may take into account some or all of these criteria but it remains open to the committee to conclude that debarment or suspension is warranted by virtue of only some, or even only one, of these criteria.

Review process

75. A firm may request the committee to reverse the debarment decision or to reduce the period or scope of debarment, which shall be in writing and supported by documentation.
76. The committee may grant such a request for reasons including the following:

- (a) newly discovered material evidence;
- (b) reversal of the conviction or civil judgment upon which the debarment was based;
- (c) bona fide change in ownership or management of a firm;
- (d) elimination of other causes for which the debarment was imposed; or
- (e) other reasons the committee deems appropriate.

Decision disclosure

77. A decision of the Committee on debarment or suspension of a firm shall be widely published in the press for dissemination of information to public.

Administrative review on appeal

78. Any decision of the committee may be appealed, in writing, to a head of agency, which shall be:

- (a) received and signed by the head of agency no later than ten business days after a firm receives a decision;
- (b) describe why a firm believes the decision is erroneous;
- (c) identify information in the record that a firm would like the head of agency to consider; and
- (d) specify a desired remedy.

79. A head of agency shall not entertain any claim on appeal that has not first been asserted before the committee.

80. The committee's decision shall be presumed to be correct and the firm shall have the burden of showing that the decision is not supported by substantial evidence.

Hearing

81. A head of agency shall:

- (a) schedule a hearing of appeals;
- (b) give the appellant at least seven (14) days' advance written notice of the time and place of this hearing; and
- (c) the appellant may personally appear at the hearing, who shall be given an opportunity to present oral argument to a head of agency.

82. No witnesses may be examined during appeal hearing.

Decision

83. A head of agency's decision shall be in writing and is final issued within fifteen days after receipt of the appeal, which shall be binding on a firm and other parties subject to only judicial review.

Judicial review

84. Any final order of a head of agency may be judicially reviewed by a court of competent jurisdiction.

85. Except to the extent that this chapter or another statute provides otherwise:

- (a) the burden of demonstrating the invalidity of agency action is on the firm asserting invalidity;
- (b) the validity of the committee or a head of agency's decision shall be determined in accordance with the standards of review provided in this rule, as applied to the agency action at the time it was taken;
- (c) the court shall make a separate and distinct ruling on each material issue on which the court's decision is based; and
- (d) the court shall grant relief only if it determines that a person seeking judicial relief has been substantially prejudiced by the action complained of.

86. The court may receive evidence in addition to that contained in the agency record for judicial review, only if it relates to the validity of the agency action at the time it was taken and is needed to decide disputed issues regarding:

- (a) Improper constitution as a decision-making body or grounds for disqualification of those taking the agency action;
- (b) Unlawfulness of procedure or of decision-making process; or
- (c) Material facts in rule making, brief adjudications, or other proceedings not required to be determined on the agency record.

87. The court may remand a matter to a head of agency, before final disposition of a petition for review, with directions that the agency conduct fact-finding and other proceedings the court considers necessary and that the agency take such further action on the basis thereof as the court directs, if:

- (a) the agency was required by this chapter or any other provision of law to base its order exclusively on a record of a type reasonably suitable for judicial review, but the agency failed to prepare or preserve an adequate record;
- (b) the court finds that (i) new evidence has become available that relates to the validity of the agency order at the time it was taken, that one or more of the parties did not know and was under no duty to discover or could not have

- reasonably been discovered until after the agency order, and (ii) the interests of justice would be served by remand to the agency;
- (c) the agency improperly excluded or omitted evidence from the record; or
 - (d) a relevant provision of law changed after the agency order and the court determines that the new provision may control the outcome.

Chapter VI

Debarment effect, scope and period

Firm debarment

88. A debarred or suspended firm shall be disqualified from entering into contract in any manner with any government agency for the duration of the debarment or suspension.

Firm's affiliates debarment

89. A debarred or suspended firm's divisions, subsidiaries, affiliates and parent corporations shall also be disqualified from entering into contract in any manner with any government agency for the duration of the debarment or suspension.

Excluded firms list review

90. The committee shall, to ensure that no award is made to a listed firm, review the excluded firms list:
- (a) after the opening of bids or receipt of any proposals, quotations or offer; and
 - (b) immediately prior to award and reject those bids, proposals, quotations or offer received from the listed firms.

Imputation of knowledge and conduct

91. The fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a firm may be imputed to the firm when the conduct occurred in connection:
- (a) with the individual's performance of duties for or on behalf of the firm; or
 - (b) with the firm's knowledge, approval, or acquiescence, which shall be evidenced by the firm's acceptance of the benefits derived from the conduct.
92. The fraudulent, criminal, or other seriously improper conduct of a firm may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the firm who participated in, knew of, or had reason to know of the firm's conduct.
93. The fraudulent, criminal or other seriously improper conduct of one (1) firm participating in a joint venture or similar arrangement may be imputed to other

participating firms if the conduct occurred for, on approval of, or acquiescence of these firms, which shall be evidenced by the firm's acceptance of the benefits derived from the conduct.

Debarment effects

94. Debarment or suspension of a firm by one agency shall have governmentwide effect and no agency shall:
- (a) solicit offers from, award contracts to, and consent to subcontracts with a debarred firm; or
 - (b) consider offers or quotations submitted by a debarred firm prior to its suspension or debarment.
95. Administrative debarment or suspension shall neither exclude nor preclude any other administrative or legal action that might be taken by the committee.

Debarment period

96. Debarment shall be for a period proportionate to the seriousness of the grounds, as determined by the committee or by a head of agency on appeal, except that an initial period of debarment shall not less than one (1) nor exceed three (3) years.
97. If a suspension precedes a debarment, the suspension period shall be considered in determining the debarment period.

Debarment period extension

98. The committee may, at the end of a debarment period, review any additional information or evidence relevant to a review of the debarment received by it prior to such review.
99. The committee may extend any existing debarment for an additional period of up to two (2) years, if upon 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.

The period of ineligibility will be extended by three years if the Sanctions Board determines that GENITE has failed to promptly put in place an effective corporate compliance program acceptable to the World Bank and to implement this program in a manner satisfactory to the World Bank.

Existing contracts continuation

100. Debarment or suspension of a firm may not affect contracts or subcontracts in existence at the time the firm was debarred or suspended unless the committee decides otherwise.

Concurrent debarment

101. If a firm is debarred by more than one agency on the same or different grounds, the period of debarment shall run concurrently.

Reinstatement

102. The debarment shall automatically terminate upon the expiration of the debarment period in totality unless the committee:

- (a) extends the debarment pursuant to rules (93) and (94); or
- (b) finds that there is reasonable assurance that the basis for the debarment will reoccur.

Chapter VII Miscellany

Excluded firms list system administration

103. The ministry of finance shall be designated as a central administrative agency, which shall compile, maintain, and distribute a list of all firms who have been debarred or suspended under these rules.

104. The administrative agency shall operate the web-based excluded firms list system and provides technical assistance to committees in the use of the system.

List contents

105. The excluded firm list system shall indicate:

- (a) names and addresses of all debarred or suspended firms, in alphabetical order, with cross-references when more than one name is involved in a single action;
- (b) type of action;
- (c) ground for the action;
- (d) scope of the action;
- (e) name of the committee taking the action;
- (f) effect of the action;
- (g) termination date for each listing; and

- (h) agency and name and telephone number of the official responsible for its maintenance and distribution.

List publication

- 106. The administrative agency shall establish procedures to provide for the effective use of the list to ensure that a government agency does not do business with debarred or suspended firms, including issuance of an updated list of debarred and suspended firms to all committees and post on website.
- 107. An administrative agency shall annually publish a list of debarred or suspended firms or otherwise make the list available for public inspection and copying during regular business hours.

Committee's responsibilities

- 108. The committee shall enter the information required by rule (105) within a working day after the order becomes effective.
- 109. The committee shall maintain a register of all suspended or debarred firms which shall:
 - (a) specify the name and addresses of every debarred or suspended firms;
 - (b) type of action;
 - (c) ground for the action;
 - (d) scope of the action;
 - (e) name of the committee taking the action;
 - (f) effect of the action; and
 - (g) termination date for each listing.
- 110. The register or copy thereof shall be made available to the public at office hours free of charge.

Definitions

- 111. As used in these rules:
 - (a) Administrative Agency means the ministry of finance, the government of Bhutan.
 - (b) Agency means any...
 - (c) Firm means any individual or other legal entity that:
 - (i) directly or indirectly, submits offers for or is awarded, or reasonably may be expected to submit offers for or be awarded, a government contract; or

- (ii) conducts business, or reasonably may be expected to conduct business, with the government as an agent or representative of another firm.
- (d) Adequate evidence means information sufficient to support the reasonable belief that a particular act or omission has occurred.
- (e) Conviction means a judgment of conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, including a plea of nolo contendere.
- (f) Notice means a written communication served in person or sent by certified mail, return receipt requested, or its equivalent, to the last known address of a party, its identified counsel, its agent for service of process, or any partner, officer, director, owner, or joint venturer of the party. Notice, if undeliverable, shall be considered to have been received by the addressee five days after being properly sent to the last address known by the agency.
- (g) Preponderance of the evidence means proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.
- (h) Adequate evidence means information sufficient to support the reasonable belief that a particular act or omission has occurred.
- (i) Affiliate means a firm who:
 - (i) is the assignee, successor, subsidiary of, or parent company, of another firm; or
 - (ii) is a controlling stockholder; or
 - (iii) has the same or similar management of the debarred firm; or
 - (iv) directly or indirectly controls, or has the power to control another firm, or is directly or indirectly controlled by third firm or has the power to control both.
- (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 affirm 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.
- (j) Contract means any written agreement in any form between an agency and firm and includes, but is not limited to, public works contracts, agreements, leases, licenses, purchase orders or lease-purchase agreements.
- (k) 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 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.

- (l) Debarment" means the administrative determination against a firm declaring such firm to be irresponsible and disqualified from:
 - (i) bidding on a contract;
 - (ii) submitting responses to any agency's requests for proposals or qualifications;
 - (iii) being awarded a contract;
 - (iv) executing a contract;
 - (v) 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 debarment order issued by the debarment hearing board;
 - (vi) directly or indirectly submitting offers for, or executing contracts, or subcontracts with any agency; or
 - (vii) conducting business with any agency as an employee, agent, or representative of another person.
- (m) Committee means the designated debarment committee of an agency to hold hearings, take evidence, and to make determinations about debarment for the agency.
- (n) Preponderance of the evidence means proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.
- (o) Suspension means the debarment of a person for a temporary period of time pending the completion of an investigation and any proceeding before a debarment committee and any appeals therefrom.