

BY FAX & DESPATCH

MEMO

<i>From :</i> Secretary for Development	<i>To :</i> Distribution
<i>Ref :</i> DEVB(W) 516/71/01	<i>Attn :</i>
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<i>Fax No :</i> 2524 9308	<i>dated :</i> <i>Fax. No. :</i>
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Construction Site Safety Manual

DEVB TC(W) No. 3/2009 – Regulating Action against Contractors for Occurrence of a Serious Incident or Conviction for Site Safety or Environmental Offences

The Works Policies Coordination Committee (WPCC) supported the results of the Review of Safety Management System for Public Works Contracts which include revisions to the following areas:

- (a) To establish a new statistic “severe incidents” for replacing “reportable incidents” in tender evaluation;
- (b) Regulating actions against contractors for occurrence of a serious incident include:
 - (i) requiring the contractor to undertake independent safety audit immediately after the serious incident occurred;
 - (ii) considering the contribution of third party in determining the level of penalty;
 - (iii) pre-qualified contractor of a tendering exercise not being affected by the regulating action;
- (c) The items in the Bills for the Pay for Safety Scheme (PFSS); and
- (d) The Safety Score Card system.

2. To effect revisions (a), (b)(i) and (b)(ii) above, amendments to Chapter 9 of the Construction Site Safety Manual (the Manual) and DEVB TC(W) No. 3/2009 have been made and promulgated under this memo with immediate effect. This memo also promulgates the general updating of Chapters 3, 7 and 8 of the Manual. Revisions (b)(iii), (c) and (d) above would be dealt with separately, upon finalizing the administrative details of the proposed revisions, under the relevant chapters of the Manual and technical circulars.

3. The updated contractual provisions shall be incorporated in public works contracts for which tenders are to be invited on or after 15 June 2017. The major revisions promulgated under this memo are summarised below:

Appendix III of Chapter 3 – Particular Specification (PS)

- (i) Clause 2(1) – Updating of regulations/guidelines.
- (ii) Clause 8 – Adding requirements for training to workers carrying out road works; and updating of training for site management/supervisory staff and acceptance of revalidation course.
- (iii) Clause 13(2)&(6) – Requirement for reporting of severe incidents.
- (iv) Clause 14(22) – Requirement for wearing chin straps attached to safety helmets.
- (v) Clause 18 – Inclusion of PS related to Pay for Safety Performance Merit Scheme. Annex F of the guidelines promulgated under DEVB memo ref (02LSW-01-1) in DEVB (W) 516/70/03 dated 22 November 2013 attached to ETWB TC(W) No. 19/2005 and incorporated in Chapter 12 of the Manual as Appendix VI (Version November 2013) is hereby obsoleted.
- (vi) Clause 19 – Enhancement of safety on excavation works.
- (vii) Clause 20 – Requirement for site traffic safety management plan.
- (viii) Clause 21 – Reminder of inclusion of PS related to Site Safety Cycle (SSC) and welfare facilities for workers according to ETWB TC(W) No. 30/2002.

Paragraph 7.3 of Chapter 7 – Employment and Performance of Registered Safety Officers

- (i) Revision to the reporting mechanism making use of the PWP Construction Site Safety and Environmental Statistics (PCSES) system.

Appendix II of Chapter 8 – Contact List of Labour Department

- (i) Updating of the list of telephone and fax numbers and Addresses.

Chapter 9 – Accident Reporting

- (i) Paragraph 9.3.5 – New paragraph for the details of report of severe incidents.
- (ii) Appendix IV to VI – Revision to the reporting mechanism making use of the PCSES system.

DEVB TC(W) No. 3/2009

- (i) The last part of paragraph 11 is to be replaced by the following:

“11. ... Upon receipt of the information, DEVB will check whether the contractor(s) and the subcontractor(s) concerned are on the Lists. If so, DEVB will write to the LD or MD and/or other government departments as appropriate to obtain further information on the incident. In the meantime, for those serious incidents happened on or after 15 June 2017, DEVB will write to and request the contractor(s) to conduct at his own expense an independent safety audit on the contractor’s safety management system at the construction site where the serious incident occurred. The procedures are set out in **Annex C, Attachment 3**. Should the contractor(s) decline to conduct the independent safety audit, then the decline would be recorded and presented in the Information Paper referred to in paragraph 17 for Panel members’ reference when the Panel is convened. On the other hand, should the contractor(s) conducted the independent safety audit accordingly and completed it within a reasonable time, then the audit findings would be summarised and presented in the aforementioned Information Paper for Panel members’ reference when the Panel is convened and the similar regulating action stipulated in paragraph 4 of Annex C, Attachment 1 would not be repeated.”

- (ii) The first part of paragraph 31 is to be replaced by the following:

“31. This paragraph applies where the regulating action decided on by PS(W) is either a voluntary suspension or a mandatory suspension, with an improvement proposal and/or an independent safety audit. Notwithstanding the period of suspension imposed upon or accepted by the contractor, where DEVB has written to the contractor in accordance with PS(W)’s decision requesting various improvements to be carried out by the contractor as part of the improvement proposal or an improvement action plan and a situation report as part of the independent safety audit, the suspension will not be lifted unless the overall score of the audit is 80% or above, and until DEVB is satisfied that ...”

- (iii) Paragraph 40 is added:

“40. In case a contractor with on-going voluntary or mandatory suspension(s) agrees to the suspension under the provisions of this Circular, the suspension will take effect immediately after the lifting of those ongoing suspension(s).”

- (iv) The note before paragraph 4 of Annex C Attachment 1 regarding Independent Safety Audit is to be replaced by the following:

“Independent Safety Audit

(Applicable for serious incident for which the contractor declined to conduct the independent safety audit as requested in paragraph 11 of this Circular or site safety offences only)”

- (v) Annex C Attachment 2 is to be replaced by the revised Annex C Attachment 2.

4. The updated documents of the Manual and DEVB TC(W) No. 3/2009 can be downloaded from DEVB’s website. The revision history of the Manual is attached in **Appendix A**. In addition, a list of relevant pages in the Manual that need to be updated is attached in **Appendix B** for easy reference.

5. The revisions have incorporated comments from DSEAs and Contract Advisors. For further enquiry, please contact Mr Henry LAM at telephone no. 3509 8305.

(Vitus NG)
for Secretary for Development

Encl.

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Internal – *to note in file*

PSW

DS(W)2

**GUIDELINES AND CONSIDERATIONS IN RECOMMENDING
LENGTH OF VOLUNTARY SUSPENSION PERIOD**

Serious Incident

1. Voluntary suspension shall be recommended where the Panel considers that the contractor has caused or contributed (whether by act or omission) to the occurrence of the serious incident. If other contractor(s) or sub-contractor(s) is/are involved, the length of voluntary suspension period for each contractor involved if the Panel so considers will be considered separately.

2. The length of voluntary suspension period if recommended shall vary from one month to twelve months (or longer) depending on the degree that the contractor caused or contributed (whether by act or omission) to the occurrence of the serious incident, amongst that of the injured/deceased person(s) involved in the work of the incident and any other intervening factor(s), as given below:

- (a) If the Panel considers that the contractor has a **minor** degree of contribution to the occurrence of the serious incident, then the Panel may consider recommending the contractor to voluntarily suspend from tendering for public works under a category or categories of works to be specified by the Panel for a period **up to two months**.
- (b) If the Panel considers that the contractor has a **moderate** degree of contribution to the occurrence of the serious incident, then the Panel may consider recommending the contractor to voluntarily suspend from tendering for public works under a category or categories of works to be specified by the Panel for a period **up to four months**.
- (c) If the Panel considers that the contractor has a **major** degree of contribution to the occurrence of the serious incident than that of the injured/deceased person, then the Panel may consider recommending the contractor to voluntarily suspend from tendering for public works under a category or categories of works to be specified by the Panel for a period **up to eight months**.
- (d) If the Panel considers that the contractor has an **overwhelming** degree of contribution to the occurrence of the serious incident, then the Panel, taking into account the severity of the incident, may consider recommending the contractor to voluntarily suspend from tendering for public works under a category or categories of works to be specified by the Panel for a period of more than eight and **up to twelve months**. Where the serious incident or the conduct of the contractor which caused or contributed for the serious incident

is extremely serious, the Panel may recommend a longer voluntary suspension period or more severe regulating action against the contractor concerned.

3. The Panel in coming to its recommendation may take into account the following (not exclusive) factors:

- (a) the contractor's role in managing and controlling the construction site where the incident took place;
- (b) the number of injuries and/or fatalities caused by the incident and whether any member of the public is involved;
- (c) the severity of damage to works and/or adjacent property;
- (d) the consequence and inconvenience caused to the public due to the incident;
- (e) the reasonably practicable measures taken by the contractor before the incident to prevent its occurrence including the provision of information, instruction, supervision and training;
- (f) the safety conditions on the construction site and the contractor's performance and whether such conditions or performance caused or contributed to the incident;
- (g) the remedial measures and improvement actions taken to prevent recurrence of a similar incident;
- (h) by reference to the contractor's site records whether any other or similar such incidents have occurred on the contractor's construction site or sites; and
- (i) the contractor's record of attendance at Panels of Enquiry.

Conviction for Site Safety or Environmental Offences

4. Voluntary suspension shall be recommended where the Panel considers that the contractor took insufficient measures to prevent the site safety or environmental offences as appropriate and the contractor's effort in an attempt to prevent contravention leading to further convictions for similar offences at construction sites is not satisfactory.

5. The length of voluntary suspension period if recommended shall vary from one month to three months (or longer). The Panel in coming to its recommendation may take into account the following (not exclusive) factors:

- (a) the number of site safety or environmental offences as appropriate for the construction site and any other sites of the contractor;
- (b) the nature and severity of the offences pursuant to sub-paragraph (a) above and whether they have resulted in injuries, damages to properties or severe impact to the environment and/or the public where appropriate;
- (c) the reasonably practicable measures taken by the contractor to prevent the offences, including the provision of information, instruction, supervision and training;
- (d) the effectiveness and efficiency of the management system of the contractor to prevent the offences;
- (e) the site safety or environmental performance of the contractor as advised by the relevant law enforcement authority, departments, project officers and/or Departmental Safety and Environmental Advisors where appropriate;
- (f) the remedial measures and improvement actions taken to prevent recurrence of similar offences;
- (g) the contractor's record of attendance at Panels of Enquiry;
- (h) the size and complexity of the contract in which the offences were committed;
- (i) in the case of site safety offences, the accident statistics for public works contracts undertaken by the contractor.

○

MEMO

From Secretary for Development
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Date 11 February 2014

To Distribution
(Attn: _____*)*
Your Ref. _____
dated _____
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Total Pages 2 + Encl.

Alignment with the new Companies Ordinance (Cap. 622)

The new Companies Ordinance (Cap. 622), including Division 7 on execution of documents, will commence operation on 3 March 2014. To align with the provisions of the new Companies Ordinance (Cap. 622), amendments shall be made to the following documents.

	Documents	Amendments
(i)	GCT 29	Annex A
(ii)	Appendix C to ETWB TC(W) No. 54/2002	Annex B
(iii)	Paragraph 36 of ETWB TC(W) No. 22/2003	Annex C
(iv)	Paragraph 38 of DEVB TC(W) No. 3/2009	Annex D

2. Upon commencement of the new Companies Ordinance, a company incorporated in Hong Kong may execute a deed with or without a common seal. In this connection, for those documents required to be executed as a deed, the attestation clauses shall be drafted in accordance with the sample attestation clauses attached at Annex E and F where appropriate.

3. The amendments necessitated by the new Companies Ordinance on the Design & Build Administrative Procedures (DBAP), the Contractor Management Handbook (CMH), the Engineering & Associated Consultants Selection Board (EACSB) Handbook and the Architectural & Associated Consultants Selection Board (AACSB) Handbook will be incorporated to the new DBAP 2013, the coming revisions of the CMH, the EACSB Handbook and the AACSB Handbook respectively to be promulgated in due course.

4. All amendments promulgated in this memo shall take effect from 3 March 2014.

5. For enquiries, please contact Mr. Stanley C Y CHAN, AS(WP)12, at telephone no. 3509 8382.

(Kelvin LO)
for Secretary for Development

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Secretary, AACSB
SE/QM and Std., CEDD – Please update the relevant parts of the PAH, in particular Appendix 6.30 to Chapter 6 and the attestation clauses of the deeds at various appendices of the PAH.

Internal

LAD(W) (Attn : Mr. Raymond CHAN)

35. The standard Notes to Tenderers and Special Condition of Tender in **Annex D** shall be included in all tender invitations and documents if Marking Scheme tender evaluation is used. Departments shall confirm the site safety and environmental conviction records and records of any regulating action being taken on the potential successful tenderers at the tender assessment stage. This shall be done in conjunction with the checking of contractors' performance ratings, performance records and other tender assessment information.

36. A tender will not be considered if the tenderer or, if the tenderer is a partnership or an unincorporated or incorporated joint venture, any participant of the partnership or unincorporated joint venture or shareholder of the incorporated joint venture is suspended from tendering under the provisions of this Circular, the Contractor Management Handbook or other DEVB technical circulars as appropriate, unless the suspension is lifted by the date set for the close of tender, or if this has been extended, the extended date.

37. Departments shall include in the tender reports submitted to the relevant Tender Board a statement noting that the recommended tenderer is not suspended from tendering under the provisions of this Circular, the Contractor Management Handbook or other technical circulars as appropriate.

38. Where the tenderer is a company and in case the tenderer is a joint venture under which any shareholder or participant is a company, that company shall disclose any change of name made during the period of twelve months *[or other period specified by the Architect/Engineer/Supervising Officer/Maintenance Surveyor where appropriate]* prior to the tender closing date. The statement of convictions or statement of “no conviction” submitted pursuant to paragraph 34 of this Circular should take account of the period when the company is operating under a different name and should be accompanied by the relevant certificate evidencing change of name in accordance with the Companies Ordinance (Cap. 622).

香港特別行政區政府
The Government of the Hong Kong Special Administrative Region

政府總部
發展局
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Works Branch
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Ref. : DEVB(W) 516/14/02

Group: 2, 8, 12

13 March 2009

Development Bureau

Technical Circular (Works) No. 3/2009

Regulating Action against Contractors for Occurrence of a Serious Incident or Conviction for Site Safety or Environmental Offences

Scope

The Contractor Management Handbook (the Handbook) sets out the guidelines and procedures on administration and monitoring of the performance of contractors and supplies on the List of Approved Contractors for Public Works and List of Approved Supplies of Materials and Specialist Contractors for Public Works. This Circular is to be read in conjunction with the Handbook. It sets out the particular policy and procedure to be followed when considering regulating action against a contractor (including sub-contractors – see the definition of "contractor" at paragraph 2 (a) below) who has:

- (a) caused or contributed (whether by act or omission) to the occurrence of a serious incident on a construction site; or
- (b) been convicted of five (5) or more site safety offences counted by the date of commission and not the date of conviction, each arising out of separate incidents in any six (6) month period, committed by the contractor on a construction site or construction sites under the same contract (or sub-contract where the contractor is acting as a sub-contractor); or

- (c) been convicted of five (5) or more environmental offences counted by the date of commission and not the date of conviction, each arising out of separate incidents in any six (6) month period, committed by the contractor on a construction site or construction sites under the same contract (or sub-contract where the contractor is acting as a sub-contractor).

Site safety and environmental convictions shall be counted separately.

Definitions

- 2. For the purpose of this Circular, the following definitions shall apply:
 - (a) “contractor” means a contractor who is on the Lists and this Circular applies to a contractor whether:
 - (i) contracting independently or acting in joint venture whether such joint venture be unincorporated or incorporated ;
 - (ii) acting as a main contractor or as a sub-contractor (whether nominated, domestic, specialist, or otherwise);
 - (iii) engaged on a public or private sector construction site in Hong Kong.
 - (b) “the Lists” means the List of Approved Contractors for Public Works and/or the List of Approved Suppliers of Materials & Specialist Contractors for Public Works.
 - (c) “construction site” means the lands and other places including the sea under, over, on, in or through where construction work is undertaken and also any other lands or places which is used for the storage of materials or plant used or intended to be used for the purpose of the construction work, and includes both a public or private sector construction site in Hong Kong.
 - (d) “serious incident” means an incident involving either one or a combination of the following :

- (i) loss of life at a construction site;
 - (ii) serious bodily injury at a construction site:
 - resulting in a loss or an amputation of a limb; or
 - which has caused or is likely to cause permanent total disablement¹ to the injured;
 - (iii) dangerous occurrence or incident at a construction site leading to or resulting in an injury that is considered serious (but not up to the extent as described in sub-paragraph (d)(ii) above), or damage to works or property on or adjacent to the construction site that posed a potential threat to public safety as identified/notified by DEVB, Labour Department (LD) or Marine Department (MD).
- (e) a “site safety offence” means a conviction for any offence set out in the following Ordinances and their subsidiary legislation:
- (i) the Factories and Industrial Undertakings Ordinance (Cap. 59);
 - (ii) the Occupational Safety and Health Ordinance (Cap. 509);
 - (iii) the Shipping and Port Control Ordinance (Cap. 313);
 - (iv) the Merchant Shipping (Local Vessels) Ordinance (Cap. 548).
- (f) an “environmental offence” means a conviction for any offence set out in the following Ordinances and their subsidiary legislation:
- (i) the Air Pollution Control Ordinance (Cap.311);
 - (ii) the Noise Control Ordinance (Cap. 400);
 - (iii) the Waste Disposal Ordinance (Cap. 354);
 - (iv) the Water Pollution Control Ordinance (Cap.358);
 - (v) the Dumping at Sea Ordinance (Cap.466);
 - (vi) the Ozone Layer Protection Ordinance (Cap. 403);
 - (vii) the Environmental Impact Assessment Ordinance (Cap. 499);
 - (viii) the Hazardous Chemicals Control Ordinance (Cap. 595).

¹ For the purpose of this Circular, permanent total disablement means 100% total loss of earning capacity arising from injuries as listed in the First Schedule of the Employees’ Compensation Ordinance (Cap. 282). An injury causing the injured person to have total loss of feeling or total inability to act, move or operate the body for a period of 3 months or more from the date of the incident is deemed to be a serious bodily injury likely to cause permanent total disablement.

- (g) “separate incidents” means inspections carried out by a relevant law enforcement authority of a construction site or construction sites on different days and where each such inspection gives rise to one or more prosecutions against the contractor resulting in one or more convictions.
- (h) Any reference to persons in the singular in this Circular shall also include the plural and vice versa.
- (i) “Incorporated joint venture”, “unincorporated joint venture”, “shareholder” and “participant” have the same meanings as those given in paragraph 6 of the Environment, Transport and Works Bureau Technical Circular (Works) No. 50/2002 on Contractors’ Joint Venture.

Effective Date

3. This Circular shall take effect on 1 May 2009 and the standard Notes to Tenderers and Special Condition of Tender in **Annex D** are applicable to tender to be invited on or after 1 May 2009.

4. A Panel of Enquiry which is conducted after the effective date will follow the procedures stipulated in this Circular. Regarding the two newly included Ordinances referred to in paragraphs 2(e)(iv) and 2(f)(viii) above, an offence committed under them before the effective date of this Circular will not be counted as conviction records in respect of safety and environmental offences for the avoidance of doubt.

Effect on Existing Circulars

5. This Circular supersedes ETWB TCW Nos. 2/2003, 2/2003A, 2/2003B and 2/2003C which are hereby cancelled subject to the conclusion of any on-going regulating actions being taken under these Circulars.

6. This Circular should be read in conjunction with the Contractor Management Handbook and WBTC No. 50/2002 on “Contractors’ Joint Venture”.

Background

7. WBTC No. 22/94 introduces and sets out the procedures to be followed for taking regulating action against contractors who have been convicted of site safety offences under the Factories and Industrial Undertakings Ordinance Cap. 59. WBTC No. 3/99 supersedes WBTC No. 22/94 and extends the procedures for taking regulating action against contractors where serious incidents occurred on construction sites. WBTC No. 24/2000 supersedes WBTC No. 3/99 and further extends the procedures and regulating action against sub-contractor in addition to the main contractor. ETWB TCW No. 2/2003 supersedes WBTC No. 24/2000 and extends the procedures for taking regulating action against contractors who have been convicted of environmental offences. ETWB TCW No. 2/2003 is supplemented by ETWB TCW Nos. 2/2003A, 2/2003B and 2/2003C which refine the policy and procedure for convening the Panel of Enquiry.

8. This Circular has incorporated amendments to improve the procedures for conducting the Panel of Enquiry in particular on enhancing the clarity, consistency and transparency of the process. It also includes two safety and environment related ordinances in the monitoring list to reflect the latest enactment of the Ordinances.

Composition of the Panel of Enquiry

9. The Panel of Enquiry shall be chaired by the Deputy Secretary (Works) 2 and comprise members from Government departments and construction industry. Details of the membership are given in **Annex A**.

10. Where a serious incident or site safety offences are being considered, a representative from LD (preferably at D2 level or above) or a representative from MD (preferably at D2 level or above) if marine works are involved shall be invited to attend the Panel of Enquiry as a technical advisor to give expert advice and assistance to the Panel. Where environmental offences are being considered, a representative from Environmental Protection Department (EPD) (preferably at D2 level or above) shall be invited to attend the Panel of Enquiry as a technical advisor to give expert advice and assistance to the Panel.

Monitoring of Serious Incidents and Offences

11. DEVB will liaise with the LD or MD to obtain information regarding serious incidents on construction sites in Hong Kong. The information to be provided by the LD or MD for a serious incident includes, but is not limited to, the following:

- (i) the name of the main contractor of the construction site where the serious incident occurred;
- (ii) the name(s) of other contractor(s) including the subcontractor(s) of all tiers involved in the incident; and
- (iii) the nature and seriousness of the bodily injury or damage to works or property due to the incident.

Upon receipt of the information, DEVB will check whether the contractor(s) and the subcontractor(s) concerned are on the Lists. If so, DEVB will write to the LD or MD and/or other government departments as appropriate to obtain further information on the incident.

12. DEVB will also monitor the conviction records of site safety and environmental offences for contractors on the Lists.

Procedures to Initiate the Panel of Enquiry

13. The procedures for convening a Panel of Enquiry are illustrated in the flowchart in **Annex B**. The DEVB will consider whether there is sufficient information to show that a contractor may have caused or contributed (whether by act or omission) to the occurrence of a serious incident on a construction site, or has committed the site safety offences referred to and in the manner as stipulated in paragraph 1(b) or the environmental offences referred to and in the manner as stipulated in paragraph 1(c). If so, DEVB will initiate a Panel of Enquiry for the purpose of recommending to Permanent Secretary for Development (Works) (PS(W)) whether regulating action against the contractor is necessary and if so, the type and regulating action(s) and will write to the contractor concerned normally within 1 month after DEVB has obtained the conviction records from the relevant government

department(s) or, in the case of a serious incident, normally within 3 months after obtaining relevant investigation findings from the relevant government department(s), advising the contractor of its intention to convene a Panel of Enquiry and giving brief reasons for doing so. DEVB will in the same letter invite the contractor to make written representations within four weeks and attend the Panel of Enquiry where oral representations can be made.

14. In the case of a serious incident, if the contractor considers that other contractor(s) or subcontractor(s) is responsible or partly responsible, he may advise DEVB within two weeks from the date of DEVB's letter mentioned above. Provided that the other contractor or subcontractor is on the Lists, DEVB will consider whether there is sufficient information to show that the contractor or subcontractor may also have caused or contributed (whether by act or omission) to the occurrence of a serious incident. If so, DEVB may consider whether to invite the contractor or subcontractor to make written representations and attend the Panel of Enquiry following the same procedures as stipulated in this Circular. See also paragraph 3 in **Annex C**.

15. Any reference to "the contractor" in paragraphs 16 to 33 shall be read to include, where applicable, the other contractor(s) and/or sub-contractor(s) referred to in paragraph 14.

Submission of Information by the Contractor

16. The contractor's written representations shall contain details and circumstances leading to the serious incident or the offences, analysis of the facts and the causes, measures taken before the occurrence and why such measures failed, and the remedial measures and improvement actions taken to prevent recurrence and any other information that he considers to be relevant. The contractor shall also prepare an executive summary of his representations for incorporation in the Information Paper referred to in paragraph 17.

Information Paper for Panel Members

17. DEVB will prepare an Information Paper which may include but is not limited to the following:

- (a) circumstances and probable causes of the serious incident or the offences;
- (b) the executive summary of the contractor's written representations;
- (c) reports on the contractor's performance under public works contracts;
- (d) in the case of serious incident or site safety offences, the accident statistics for public works contracts undertaken by the contractor;
- (e) the conviction records of the contractor's site safety or environmental offences as appropriate;
- (f) previous record of attendance of Panel of Enquiry by the contractor; and
- (g) comments on the contractor's site safety/environmental performance in on-going contracts from :
 - (i) the Architect/Engineer/Supervising Officer/Maintenance Surveyor of the public works contracts undertaken by the contractor;
 - (ii) the Safety & Environmental Advisor of works departments (for public works contracts undertaken by the contractor);
 - (iii) the Director of Housing and/or Head of other departments as appropriate if the serious incident or offences occurred within a HD or other department's site;
 - (iv) the Commissioner for Labour and/or Director of Marine (for serious incident or site safety offences); and
 - (v) the Director of Environmental Protection (for environmental offences).

18. The Information Paper and the written representations submitted by the contractor will be provided to Panel members and the technical advisor about 2 weeks before the Panel meeting. The Information Paper will also be sent to the contractor concerned at the same time.

Panel Meeting

19. As the Panel meeting is an administrative enquiry and not a legal proceeding, no legal representation at the Panel meeting is allowed.

20. The Members and the technical advisor shall meet in a pre-meeting session prior to the contractor attending the Panel meeting to make their declarations in respect of confidentiality and conflict of interest as referred to in paragraph 32 of the Circular. In addition, members will be given an outline of facts in relation to the serious incident or the site safety offences/environmental offences that are the subject of the Panel of Enquiry. At the beginning of the Panel meeting the contractor will be informed of the Panels' preliminary observations and any new information that has come to the knowledge of the Panel at the pre-meeting (including without limitation to the advice from and/or other information provided by the technical advisor). The contractor will be entitled to give its response thereto.

21. The contractor will be invited to make an oral presentation for about 15 minutes, or such longer time as the Panel at its discretion may allow. Panel members and the technical advisor may then ask the contractor any questions or raise further issues relating to the incident or offences for clarification. The contractor will be given the opportunity to respond in full.

22. The contractor should include all relevant information in its written representations and oral presentations at the Panel meeting. If the contractor wishes to submit further information, he should request the Panel's permission at the Panel meeting and, if permission is granted by a majority decision of the Panel members (and in the case of an equality of votes the Chairman of the Panel shall have a casting vote), submit any further information to the Secretary of the Panel within five working days after the date of the Panel meeting, or such other period as agreed by the Panel at the Panel meeting. Otherwise, any request for the submission of further information or further information submitted by the contractor after the Panel meeting shall not be considered.

23. Additional information submitted by the contractor with the permission of the Panel and within the permitted time will be circulated to Panel members, who shall consider the said information and make the recommendation accordingly. If the circumstances so warrant, another Panel meeting may be reconvened and the procedure in paragraphs 25 and/or 26 below will be followed.

24. If the contractor fails to provide written representations and/or fails to attend the Panel meeting, the Panel may, by a majority decision of the Panel members (and in the case of an equality of votes the Chairman of the Panel shall have a casting vote), decide whether to proceed with the Panel meeting without such written representations and/or in the contractor's absence.

Recommendation of the Panel of Enquiry

25. After the contractor has made his oral presentations and responded to questions from the Panel members and the technical advisor, the Panel will then meet in a private session to review the information received and the circumstances of the incident in the absence of the contractor. The technical advisor will also be present at the private session and may clarify his previous advice to Panel members. If as a result of the discussions the Panel members or the technical advisor wish the contractor to address additional issues or questions or if the technical advisor has clarified his earlier advice or tendered any new advice, the contractor will then be called back to the meeting venue. The contractor will be informed accordingly and given the opportunity to respond thereon. If necessary, the contractor can make a request to submit further information in accordance with paragraph 22 above. Otherwise, the Panel meeting is closed and the contractor may leave the meeting venue.

26. Members will decide whether and if so what regulating action will be recommended based on the Information Paper, the contractor's written representations, further representations made by the contractor during the Panel meeting, further information submitted after the Panel meeting in accordance with paragraphs 22 and 23 (if any), and relevant factors and considerations as given in **Annex C**.

27. If the recommendation of the Panel of Enquiry is a mandatory suspension, DEVB will notify the contractor of the recommendation. The contractor will be invited to make written representations on the recommended regulating action, and any such representations must be received by DEVB within five working days of the contractor receiving notification of the recommendation.

28. After receiving the recommendation from the Panel of Enquiry and the contractor's written representations under paragraph 27, if applicable, PS(W) will decide on the regulating action (if any) but not limited to those as set out in **Annex C, Attachment 1**. DEVB will notify the contractor of the decision and such decision will usually be notified within about four (4) weeks after the Panel meeting. The regulating action will take effect after five working days from the date of notification. Save for the provisions of paragraph 29 the decision on the regulating action shall be final.

Contractor's refusal to agree to a Voluntary Suspension

29. In the event of PS(W) deciding on a voluntary suspension, with or without other regulating actions as set out in **Annex C, Attachment 1**, the contractor will be given five working days to notify DEVB in writing whether the voluntary suspension is agreed and will be warned that if a voluntary suspension is not accepted, a more severe regulating action, such as, mandatory suspension, removal, downgrading or demotion may be imposed instead of the voluntary suspension. In the event that a voluntary suspension is not agreed by the contractor, it shall give written notification of its refusal together with any further submissions it wishes to make to DEVB within the said five working days. PS(W) will then decide on the regulating action(s). If a mandatory suspension is imposed, it will be published in both the Government Gazette and DEVB web site.

Joint Venture

30. If the contractor in respect of whom the Panel of Enquiry is convened is a joint venture (whether an incorporated joint venture or an unincorporated joint venture), then each shareholder or participant of the joint venture shall be subject to the same regulating action recommended by the Panel and decided on by PS(W), except where the shareholders or participants of the joint venture are on different categories in a List or

on different Lists, the Panel will recommend and PS(W) will decide on the manner of applying the regulating action, if any, to the participants of the joint venture in the different categories or Lists.

Lifting of Suspension

31. This paragraph applies where the regulating action decided on by PS(W) is either a voluntary suspension or a mandatory suspension, with an improvement proposal and/or an independent safety audit. Notwithstanding the period of suspension imposed upon or accepted by the contractor, where DEVB has written to the contractor in accordance with PS(W)'s decision requesting various improvements to be carried out by the contractor as part of the improvement proposal or an improvement action plan and a situation report as part of the independent safety audit, the suspension will not be lifted until DEVB is satisfied that:

- (a) the contractor has properly carried out such improvements as required in the improvement proposal; and/or
- (b) the contractor has submitted the improvement action plan and the situation report as required in the independent safety audit and has properly carried out the activities mentioned therein, where applicable.

Provided that where the contractor has genuine reasons for being unable to comply with (a) and/or (b) above, DEVB may at its discretion defer compliance by the contractor to a later date and the voluntary or mandatory suspension can be lifted in the meantime. See paragraphs 4 and 5 of **Annex C, Attachment 1**.

For this purpose, DEVB or its authorised representatives may conduct inspections on construction site or sites controlled by the contractor during the suspension period to verify improvements and/or activities allegedly carried out by the contractor in purported compliance with the improvement proposal and/or the independent safety audit.

Confidentiality and Potential Conflict of Interest

32. The Panel of Enquiry shall operate in strict confidence. Prior to the commencement of the Panel meeting all members and the technical advisor are required to declare that all information arising out of or in relation to the Panel of Enquiry will be kept confidential and whether, to the best of their knowledge and belief, they have any actual, potential or perceived conflict of interest in relation to the Panel of Enquiry. If during the course of the meeting a member or the technical advisor becomes aware of any conflict of interest as referred to in this paragraph, the member or, as the case may be, the technical advisor shall bring this to the attention of the Panel as soon as possible for its consideration.

33. All information collected, presented and discussed before and during the meeting shall be used solely for the purposes of convening the Panel and making the Panel's recommendation and decision by PS(W). The information shall not be disclosed, exhibited or published in any form or for any occasion, except as may be required by law or for internal audit purposes, or where there is a formal request for release of such information from the Legislative Council or one of its Committees or Panels. The contractor's written representations and the executive summary will be destroyed after 6 years of the date of PS(W)'s decision.

Tendering

34. Tenderers shall be required to submit with their tenders either a statement of "no conviction" or a statement of all convictions for site safety offences and environmental offences for each site during the period of twelve months *[or other period specified by the Architect/Engineer/Supervising Officer/Maintenance Surveyor where appropriate to cope with the assessment period for tender evaluation]* prior to the tender closing date. The statement of all convictions shall include site addresses, contract numbers, contract titles, the legislation contravened, dates of offences, dates of convictions and the associated fine imposed by the court. If the tenderer is a joint venture, each shareholder or participant of the joint venture shall submit such a statement.

35. The standard Notes to Tenderers and Special Condition of Tender in **Annex D** shall be included in all tender invitations and documents if Marking Scheme tender evaluation is used. Departments shall confirm the site safety and environmental conviction records and records of any regulating action being taken on the potential successful tenderers at the tender assessment stage. This shall be done in conjunction with the checking of contractors' performance ratings, performance records and other tender assessment information.

36. A tender will not be considered if the tenderer or, if the tenderer is a partnership or an unincorporated or incorporated joint venture, any participant of the partnership or unincorporated joint venture or shareholder of the incorporated joint venture is suspended from tendering under the provisions of this Circular, the Contractor Management Handbook or other DEVB technical circulars as appropriate, unless the suspension is lifted by the date set for the close of tender, or if this has been extended, the extended date.

37. Departments shall include in the tender reports submitted to the relevant Tender Board a statement noting that the recommended tenderer is not suspended from tendering under the provisions of this Circular, the Contractor Management Handbook or other technical circulars as appropriate.

38. Where the tenderer is a company and in case the tenderer is a joint venture under which any shareholder or participant is a company, that company shall disclose any change of name made during the period of twelve months *[or other period specified by the Architect/Engineer/Supervising Officer/Maintenance Surveyor where appropriate]* prior to the tender closing date. The statement of convictions or statement of “no conviction” submitted pursuant to paragraph 34 of this Circular should take account of the period when the company is operating under a different name and should be accompanied by the relevant certificate evidencing change of name in accordance with the Companies Ordinance (Cap. 32).

Arrangement for approval of Domestic Sub-contract

39. Before an Architect/Engineer/*Supervising Officer/Maintenance Surveyor* advises a contractor under a works contract whether he has an objection with respect to a proposed domestic sub-contractor, he shall check and ensure that the sub-contractor has not been suspended from tendering or removed from the Lists.

(MAK Chai-kwong)
Permanent Secretary for Development (Works)

Membership of the Panel of Enquiry

Chairman : Deputy Secretary (Works) 2
Secretary : Chief Assistant Secretary (Works) 5

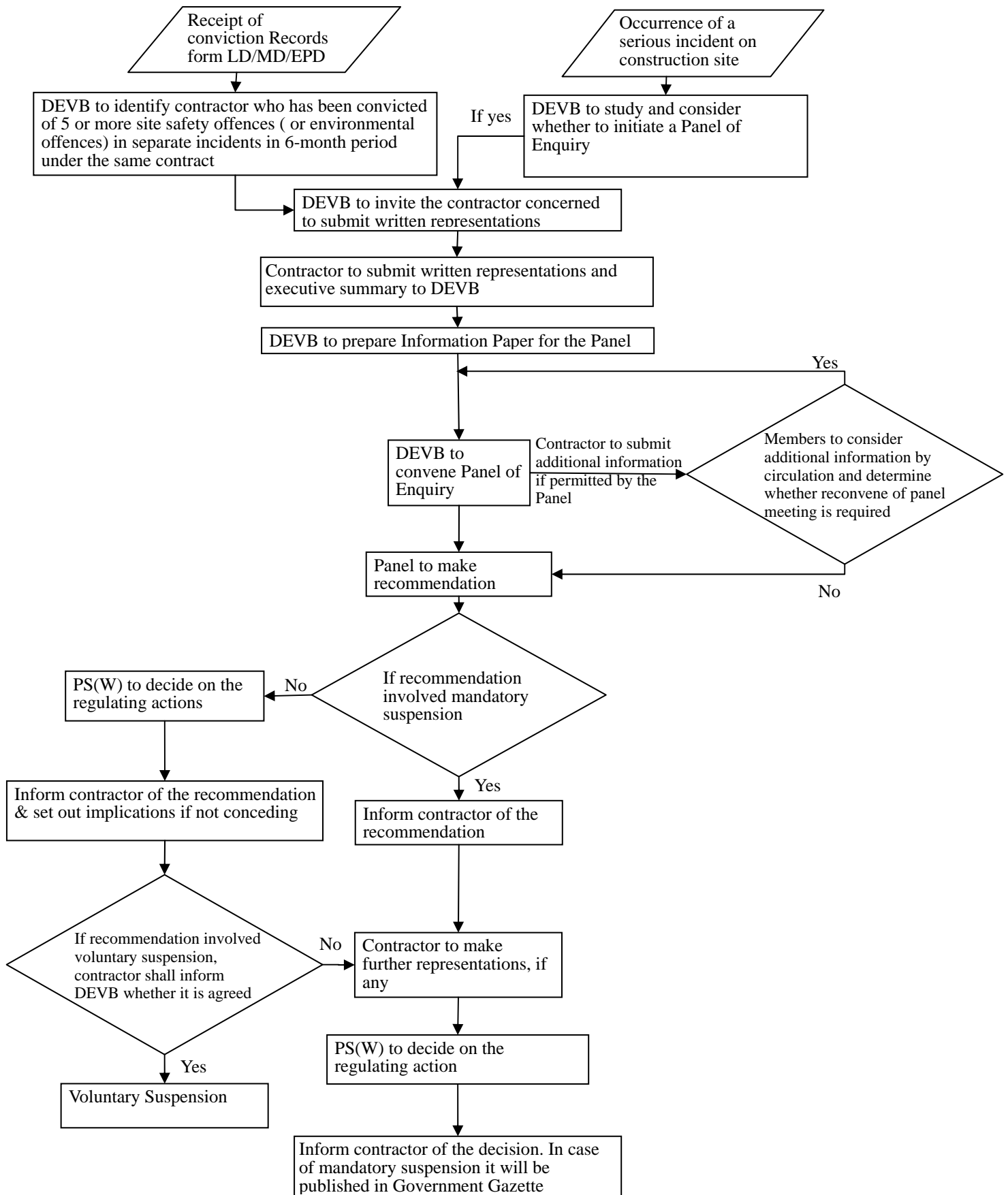
Basic Members

- (a) a representative of the Hong Kong Construction Association (HKCA) who is not an employee, officer or shareholder of the contractor invited to make representation to the Panel;
- (b) the Principal Assistant Secretary (Works) 3;
- (c) the Principal Assistant Secretary (Works) 4;
- (d) the Chairperson of the Managing Review Committee responsible for the category of works in respect of which the Panel of Enquiry is to be convened for the contractor;

Ad-hoc Members

- (e) where a contractor in respect of whom the Panel of Enquiry is to be convened is a building services, electrical or mechanical contractor, a representative of the Hong Kong Electrical and Mechanical Contractors' Association who is not an employee, officer or shareholder of the contractor invited to make representation to the Panel;
- (f) where the construction sites(s) is a Housing Department (HD) or Housing Authority site, a representative from HD (preferably at D2 level or above);
- (g) where the construction site is a public works site under a works department different from the works department of the Chairperson of the Managing Review Committee enlisted in (d) above, the Chairperson of the Reporting Review Committee of the works department operating the construction site.

Flowchart for convening a Panel of Enquiry



Factors and Considerations for Determination of Regulating Action

1. Regulating action can be either one or a combination of the following :
 - Warning letter;
 - Voluntary suspension from tendering
 - Independent safety audit
 - Improvement proposal
 - Other regulating actions including mandatory suspension from tendering

2. If Members intend to recommend regulating action, each of the options for taking such action should be considered. Full details of the different types of regulating action are set out in **Attachment 1**. Further, if Members intend to recommend voluntary suspension from tendering, the guidelines and considerations on the length of the suspension period in **Attachment 2** should also be considered, provided that the Panel reserves a discretion to recommend a regulating action that deviates from the guidelines, factors and considerations as set out in **Annex C and its attachments**, where the circumstances so warrant.

3. In case a serious incident involves another contractor or sub-contractor on the Lists, the Panel should consider whether they have caused or contributed, by act or omission, to the serious incident. If so, the Panel may consider recommending regulating action against the other contractor and/or the sub-contractor. If the Panel has decided that a main contractor's sub-contractor has caused or contributed, by act or omission, to the serious incident, the Panel may consider whether the main contractor has failed to exercise supervision, monitoring and control of the sub-contractor and, if so, consider to recommend regulating action against the main contractor as well. The length of voluntary suspension period of the main contractor, the other contractor and the sub-contractor will be considered separately.

4. Paragraphs 4 and 5 apply where the regulating action to be taken against the contractor will be a voluntary or mandatory suspension from tendering. If the Panel is convened for a serious incident or offences arising out of works which are carried out under a public works contract, the usual position is that the applicable category or categories of work for the suspension will be the category or categories in the Lists under which the said contract was invited for tender rather than the specific task involved in the serious incident or the offences.

5. If the Panel is convened for works which are not carried out under a public works contract, it is the nature of the contract works that will determine for which category or categories in the Lists to apply the voluntary or mandatory suspension from tendering, rather than the specific task involved in the serious incident or the offences. If there is/are no appropriate category or categories in the Lists to apply, the voluntary or mandatory suspension may be applied to any category or categories for which the contractor is listed.

Types of Regulating Action that can be recommended by the Panel

1. Regulating action can be either one and/or a combination of the following :

Warning Letter

2. A warning letter may be recommended where the Panel considers that:
 - (a) in the case of a serious incident, the injured/deceased person has substantially contributed to the serious incident and that the contractor before the incident had taken all reasonable practicable measures and/or provided a safe system of work including provision of information, instruction, supervision and training to prevent such incident to occur;
 - (b) in the case of site safety or environmental offences, the contractor had taken reasonably practicable measures to prevent the offences and more proactive measures have been taken to prevent further contravention of similar offences to occur at all construction sites under his control and the relevant law enforcement authority is satisfied with the contractor's improved performance.

Voluntary suspension from tendering

3. Voluntary suspension from tendering for public works under a specified category or categories may be recommended where the Panel considers that:
 - (a) in the case of a serious incident, the contractor has caused or contributed (whether by act or omission) to the serious incident. The length of voluntary suspension period if recommended may vary from one month to twelve months (or longer) depending on the degree of the contractor's contribution to the serious incident;
 - (b) in the case of the site safety or environmental offences, the contractor had taken insufficient measures to prevent the offences and/or the contractor's effort in an attempt to prevent contravention leading to further convictions

for similar offences at construction sites is not satisfactory. The length of voluntary suspension period if recommended may vary from one month to three months (or longer) depending on the circumstances of each case.

Independent Safety Audit

(Applicable for serious incident or site safety offences only)

4. The Panel may recommend that the contractor arranges and conducts at his own expense an independent safety audit on the contractor's safety management system at any or all construction sites that the contractor is working on. The construction site or sites to be audited and the site auditor have to be agreed by DEVB. The procedures are set out in **Attachment 3**. Should the contractor fail to complete the independent safety audit within a reasonable time, then subject to the contractor's written submissions or explanations in this regard to PS(W) who after consideration may impose a mandatory suspension in accordance with the provision in clause 5.2.3(d)(v) of the Contractor Management Handbook.

Improvement Proposal

5. The Panel may recommend that the contractor submits an improvement proposal on particular aspects of his working arrangements recommended by the Panel. Should the contractor fail to submit an improvement proposal to the satisfaction of DEVB within a reasonable time, then subject to the contractor's written submissions or explanations in this regard to PS(W) who after consideration may impose a mandatory suspension in accordance with the provision in clause 5.2.3(d)(v) of the Contractor Management Handbook.

Other regulating action

6. Where a contractor has a record of repeated attendance at the Panels of Enquiry and, in the majority opinion of the Panel, has not taken reasonable steps to prevent further occurrences of serious incidents, site safety or environmental offences, or where the serious incident or the conduct of the contractor which caused or contributed to the serious incident is extremely serious, the Panel may, recommend mandatory suspension or a longer voluntary suspension period than those given in **Attachment 2**.

**GUIDELINES AND CONSIDERATIONS IN RECOMMENDING
LENGTH OF VOLUNTARY SUSPENSION PERIOD**

Serious Incident

1. Voluntary suspension shall be recommended where the Panel considers that the contractor has caused or contributed (whether by act or omission) to the occurrence of the serious incident. If other contractor(s) or sub-contractor(s) is/are involved, the length of voluntary suspension period for each contractor involved if the Panel so considers will be considered separately.
2. The length of voluntary suspension period if recommended shall vary from one month to twelve months (or longer) depending on the degree that the contractor caused or contributed (whether by act or omission) to the occurrence of the serious incident as given below:
 - (a) If the Panel considers that the contractor has caused or contributed (whether by act or omission) to the occurrence of the serious incident but to a lesser degree than that of the injured/deceased person(s) involved in the work of the incident (which for the convenience of this Attachment will be referred to hereinafter in the singular, i.e. the injured/deceased person), then the Panel may consider recommending the contractor to voluntarily refrain from tendering for public works under a category or categories of works to be specified by the Panel for a period up to two months.
 - (b) If the Panel considers that the contractor and the injured/deceased person have more or less the same degree of contribution to the occurrence of the serious incident, then the Panel may consider recommending the contractor to voluntarily refrain from tendering for public works under a category or categories of works to be specified by the Panel for a period up to four months.
 - (c) If the Panel considers that the contractor has a greater degree of contribution to the occurrence of the serious incident than that of the injured/deceased person, then the Panel may consider recommending the contractor to voluntarily refrain from tendering for public works under a category or categories of works to be specified by the Panel for a period up to eight months.
 - (d) If the Panel considers that the serious incident is solely due to the default of the contractor, then the Panel, taking into account the severity of the incident, may consider recommending the contractor to voluntarily refrain from

tendering for public works under a category or categories of works to be specified by the Panel for a period of more than eight and up to twelve months. Where the serious incident or the conduct of the contractor which caused or contributed for the serious incident is extremely serious, the Panel may recommend a longer voluntary suspension period or more severe regulating action against the contractor concerned.

3. The Panel in coming to its recommendation may take into account the following (not exclusive) factors:

- (a) the contractor's role in managing and controlling the construction site where the incident took place;
- (b) the number of injuries and/or fatalities caused by the incident and whether any member of the public is involved;
- (c) the severity of damage to works and/or adjacent property;
- (d) the consequence and inconvenience caused to the public due to the incident;
- (e) the reasonably practicable measures taken by the contractor before the incident to prevent its occurrence including the provision of information, instruction, supervision and training;
- (f) the safety conditions on the construction site and the contractor's performance and whether such conditions or performance caused or contributed to the incident;
- (g) the remedial measures and improvement actions taken to prevent recurrence of a similar incident;
- (h) by reference to the contractor's site records whether any other or similar such incidents have occurred on the contractor's construction site or sites; and
- (i) the contractor's record of attendance at Panels of Enquiry.

4. If no injured/deceased person was involved in the incident or the injured/deceased person was not involved in the work of the incident, the degree of default of the contractor will be determined by the degree of the contractor's effort in preventing the serious incident from occurring.

Conviction for Site Safety or Environmental Offences

5. Voluntary suspension shall be recommended where the Panel considers that the contractor took insufficient measures to prevent the site safety or environmental offences as appropriate and the contractor's effort in an attempt to prevent contravention leading to further convictions for similar offences at construction sites is not satisfactory.

6. The length of voluntary suspension period if recommended shall vary from one month to three months (or longer). The Panel in coming to its recommendation may take into account the following (not exclusive) factors:

- (a) the number of site safety or environmental offences as appropriate for the construction site and any other sites of the contractor;
- (b) the nature and severity of the offences pursuant to sub-paragraph (a) above and whether they have resulted in injuries, damages to properties or severe impact to the environment and/or the public where appropriate;
- (c) the reasonably practicable measures taken by the contractor to prevent the offences, including the provision of information, instruction, supervision and training;
- (d) the effectiveness and efficiency of the management system of the contractor to prevent the offences;
- (e) the site safety or environmental performance of the contractor as advised by the relevant law enforcement authority, departments, project officers and/or Departmental Safety and Environmental Advisors where appropriate;
- (f) the remedial measures and improvement actions taken to prevent recurrence of similar offences;
- (g) the contractor's record of attendance at Panels of Enquiry;
- (h) the size and complexity of the contract in which the offences were committed;
- (i) in the case of site safety offences, the accident statistics for public works contracts undertaken by the contractor.

ARRANGEMENT FOR INDEPENDENT SAFETY AUDIT

1. The Panel may recommend the contractor to conduct an independent safety audit on its safety management system and its implementation on site. The site to be audited and the safety auditor shall be agreed by DEVB.
2. The system to be used for carrying out the independent safety audit shall be the Works Bureau Safety Auditing System maintained by the Occupational Safety & Health Council (OSHC). To arrange for the audit, the contractor shall propose the names of three safety auditors from the List of Accredited Safety Auditors (ASA) maintained by the OSHC who is appointed by DEVB as the Scheme Manager for administering the Works Bureau Safety Auditing System. The contractor shall check with the Scheme Manager on the workload situation of the proposed ASAs before making nominations and submit together with the list of construction sites suitable for the audit to DEVB for selection. DEVB will select one ASA for appointment by the contractor and confirm the site to carry out the safety audit. The ASA shall then propose an audit assistant from the List of ASA or Safety Auditor Assistant (SAA) maintained by the Scheme Manager for the safety audit. Both the ASA and SAA shall have to declare that they have no conflict of interest with the contractor to DEVB before the appointment.
3. As one single set of audit criteria cannot satisfy the safety audit for different types of contracts, the ASA shall determine the scope and level of the safety audit with due consideration to the site safety aspects recommended by the Panel given in DEVB's letter to the contractor. The ASA shall use the Works Bureau Safety Auditing System as the basis and modify it as he/she sees fit to develop additional audit questionnaire for the safety audit with particular regard to the aspects given in DEVB's letter to the contractor. The ASA shall prepare a safety audit plan and the additional audit questionnaire and submit to DEVB for approval before the commencement of the safety audit.
4. A representative from DEVB may attend the safety audit. After the audit, the safety auditor shall provide a report to the contractor with a copy to DEVB. The report shall include, but is not limited to, details of scores on various aspects of the contractor's safety management system albeit these will not be the sole criteria to determine whether the audit results are satisfactory. The safety auditor shall also include in the report his/her professional opinion on the site safety performance and standards, strengths and weaknesses of the contractor's safety management system and its implementation and the recommendations for improvements. Upon receipt of the audit report, the contractor shall draw up an improvement action plan to address the weaknesses and deficiencies identified, and to submit together with a situation report on the measures and improvements taken on sites to DEVB for consideration.

Standard Notes to Tenderers and Special Condition of Tender

Notes to Tenderers: (To be used in conjunction with the SCT below.)

Convictions under

**the Factories and Industrial Undertakings Ordinance (Cap 59),
the Occupational Safety and Health Ordinance (Cap 509),
the Shipping and Port Control Ordinance (Cap 313),
the Merchant Shipping (Local Vessels) Ordinance (Cap. 548),
the Air Pollution Control Ordinance (Cap 311),
the Noise Control Ordinance (Cap 400),
the Waste Disposal Ordinance (Cap 354),
the Water Pollution Control Ordinance (Cap 358),
the Dumping at Sea Ordinance (Cap 466),
the Ozone Layer Protection Ordinance (Cap. 403),
the Environmental Impact Assessment Ordinance (Cap. 499)
and the Hazardous Chemicals Control Ordinance (Cap. 595)**

Tenderers' attention is drawn to the Special Condition of Tender requiring a statement of “no conviction” or a statement of all convictions under the Factories and Industrial Undertakings Ordinance (Cap 59), the Occupational Safety and Health Ordinance (Cap 509), the Shipping and Port Control Ordinance (Cap 313), the Merchant Shipping (Local Vessels) Ordinance (Cap. 548), the Air Pollution Control Ordinance (Cap 311), the Noise Control Ordinance (Cap 400), the Waste Disposal Ordinance (Cap 354), the Water Pollution Control Ordinance (Cap 358), the Dumping at Sea Ordinance (Cap 466), the Ozone Layer Protection Ordinance (Cap. 403), the Environmental Impact Assessment Ordinance (Cap. 499), and the Hazardous Chemicals Control Ordinance (Cap. 595). The statement need take no special form.

Special Condition of Tender :

This clause is only needed if Marking Scheme tender evaluation is used.

Statement Of Convictions Under The Factories And Industrial Undertakings Ordinance (Cap 59), The Occupational Safety And Health Ordinance (Cap 509), The Shipping And Port Control Ordinance (Cap 313), The Merchant Shipping (Local Vessels) Ordinance (Cap. 548), The Air Pollution Control Ordinance (Cap 311), The Noise Control Ordinance (Cap 400), The Waste Disposal Ordinance (Cap 354), The Water Pollution Control Ordinance (Cap 358), The Dumping At Sea Ordinance (Cap 466), The Ozone Layer Protection Ordinance (Cap. 403), The Environmental Impact Assessment Ordinance (Cap. 499) and The Hazardous Chemicals Control Ordinance (Cap. 595)

- (1) The tenderer shall submit with the tender, either a statement of “no conviction” or a statement of all convictions for site safety and environmental offences under the Factories and Industrial Undertakings Ordinance (Cap 59), the Occupational Safety and Health Ordinance (Cap 509), the Shipping and Port Control Ordinance (Cap 313), the Merchant Shipping (Local Vessels) Ordinance (Cap. 548), the Air Pollution Control Ordinance (Cap 311), the Noise Control Ordinance (Cap 400), the Waste Disposal Ordinance (Cap 354), the Water Pollution Control Ordinance (Cap 358), the Dumping at Sea Ordinance (Cap 466), the Ozone Layer Protection Ordinance (Cap. 403), the Environmental Impact Assessment Ordinance (Cap. 499) and the Hazardous Chemicals Control Ordinance (Cap. 595) for each site during the period of twelve months* prior to the date set for the close of tender, or if this has been extended, the extended date, based on the date of conviction. The statement of all convictions shall include the legislation contravened, dates of offences, dates of convictions and the associated fine imposed by the court, site addresses, contract numbers and contract titles (including sub-contracts where the contractor has acted as a sub-contractor). The statement shall be certified by a person authorized to sign Government contracts on the tenderer’s behalf. #[, or in case of EMSTF’s tender, a person authorized to sign the Service Level Agreement.]

- (2) If the tenderer is a joint venture, each participant or shareholder of the joint venture shall submit such a statement separately.
- (3) Where the tenderer (including shareholders and participants in joint ventures) is a company it shall disclose any change of name made during the period of twelve months* prior to the date set for the close of tender, or if this has been extended, the extended date, and shall include in its statement of all convictions any conviction recorded under any previous name.
- #(4) For tenders submitted by EMSTF, the letters of “non-compliance” issued by the relevant regulatory authorities shall also be treated as conviction records.
- # For use in tenders which EMSTF is eligible to bid
- * [or other period specified by the Architect/Engineer/Supervising Officer/Maintenance Surveyor where appropriate to cope with the assessment period for tender evaluation]