



# Exclusion System Summary

## Brazil

### I. Government-Wide Legal and Institutional Framework:

#### Government-Wide Exclusion Framework? Yes.

- Exclusion decisions are generally made outside the procurement process and according to national legislation or centralized regulations. Exclusions have government-wide effect.

*Governing Policy:* The following laws provide exclusion as a penalty for violations:

- [Art. 12 of Law 8,429 of 1992 \[Unofficial English Translation\]](#) – Administrative Improbity Law.
- [Art. 46 of Federal Law No. 8,443 of 1992](#) – Organic Law of the Federal Court of Accounts.
- [Art. 156 \(items III and IV\) of Federal Law No. 14,133 of 2021](#) – New Public Procurement Law.
- [Art. 87 \(items III and IV\) and art. 88 of Federal Law No. 8,666 of 1993](#) – Public Procurement Law (to be revoked by Art. 193 of the New Public Procurement Law after a two-year transition period starting in April 2021).
- [Art. 10 of Federal Law No. 9,605 of 1998 \[Unofficial English Translation\]](#) – Criminal and Administrative Penalties for Acts Harmful to the Environment.
- [Art. 7 of Federal Law No. 10,520 of 2002](#) – Reverse Auctions Law.
- [Art. 38, item II of Federal Law No. 12,529 of 2011 \[Unofficial English Translation\]](#) – Protection of Competition Law.
- [Art. 16 of Federal Decree No. 8,420 of 2015](#) – Administrative Accountability of Legal Entities for the Practice of Acts Against Public Administration.
- [Art. 38 of Federal Law No. 13,303 of 2016](#) – Public Companies Law.

*Primary Legal Foundation:*

- Administrative/Regulatory Law.

**Decision-Maker:** Both Centralized and at Agency Level, can be Judicial Authority; Not Functionally Independent from Senior Procurement Officials.

- Decision-maker is decided by the law being considered.
- Violations based on [Federal Laws No. 8,429 of 1992](#) and [No. 9,605 of 1998](#) are litigated by the Public Prosecutor's Office before a **Judicial Authority** in the course of a specific lawsuit.

- Violations based on [Federal Law No. 8,443 of 1992](#) are decided by the **Federal Budget Oversight Board**, a centralized entity.
- Violations based on [Federal Law No. 12,529 of 2011](#) are decided by the **Administrative Tribunal of Economic Defense**, a centralized entity.
- Violations based on [Federal Law No. 14,133 of 2021](#), [Federal Law No. 8,666 of 1993](#) (during the two-year transition period), [Federal Law No. 10,520 of 2002](#), [Federal Decree No. 8,420 of 2015](#), and [Federal Law No. 13,303 of 2016](#) are decided at the **agency level**.
- Multiple decision-makers may have jurisdiction over the same offense(s).

*Qualification:*

- None stated in the legal framework.

*Independence:*

- Not functionally independent from senior procurement officials.

## II. Functioning and Enforcement of the Government-Wide Exclusion System:

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### General Provisions:

*Type of Procedures:* Administrative and Civil Law.

- Exclusions are largely administrative.
- However, exclusions based on violations of Federal Law No. 8,429 of 1992 (Administrative Improbity Law) or Federal Law No. 9,605 of 1998 are imposed only through a civil lawsuit filed by the Public Prosecutor's Office.

*Decision Deadline:* No stated deadline for decision-maker to make a final determination.

*Provisional Exclusions:* Yes, but only as part of civil lawsuits, during which the Public Prosecutor's Office may request a temporary injunction.

**Commencement of Proceedings:** Ability to Initiate an Exclusion Proceeding.

- The decision-maker can initiate an exclusion proceeding without a prior referral.
- Non-governmental parties can submit complaints and/or evidence to the decision-maker.

**Notice Requirements & Opportunity to be Heard:** Yes & Yes.

*Notice of Proceedings:*

- Suppliers receive notice when:
  - An investigation into the underlying grounds is commenced; and
  - A formal proceeding begins (e.g., filing of a claim before a judicial authority).
- Notice of proceedings must contain the grounds for exclusion.
- Decision-maker must make reasoning available to the supplier; certain decisions may be publicly available.

*Opportunity to be Heard:*

- Suppliers are entitled to present a defense to the decision-maker and may:
  - Obtain the evidentiary record.

- Make a written submission to the decision-maker.
- Request an in-person hearing with the decision-maker (*Note: In administrative proceedings, actual hearings are rarely granted and seldom take place*).
- Call witnesses to an in-person hearing to testify on the supplier's behalf.

**Appellate Review of Exclusion Decisions:** Yes.

*Nature and Forum of Review:* Administrative and Judicial.

- Exclusions based on Federal Laws No. 14,133 of 2021, No. 8,666 of 1993 (during the two-year transition period), No. 8,443 of 1992, No. 10,520 of 2002, No. 12,529 of 2011, No.13,303 of 16 or the Federal Decree No. 8,420 of 2015 are subject to an initial administrative review that must be exhausted before appealing to a judicial forum. The judicial review is limited to legal questions aimed at invalidating the administrative ruling.
- Proceedings based on Federal Laws No. 8,429 of 1992 and No. 9,605 of 1998 are entirely judicial (including appeals).

*Means Available to the Supplier:* As part of appellate review, suppliers may:

- Obtain the evidentiary record.
- Make a written submission to the appellate body.

*Duration of Appeal Process:* One to six months for administrative review; greater than two years for judicial review.

**Legal Representation:** A supplier **may** be represented by counsel.

**Subsequent Modification of Exclusion Decision:** No.

- A supplier is not entitled to any opportunity to seek a modification or early termination of exclusion after it goes into effect.

### III. Substantive Grounds for Government-Wide Exclusion:

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**Automatic Exclusion:** Yes.

Based on a criminal or civil judgement against the supplier for the following:

- Corruption;
- Fraud;
- Collusion and/or infringing competition;
- Coercion or intimidation;
- Obstruction of an investigation;
- Theft or embezzlement;
- Tax-related offenses (only for certain offenses that foresee exclusion as an applicable penalty);
- Labor-related offenses.

Based on an administrative finding against the supplier for the following:

- Corruption;
- Fraud;
- Collusion and/or infringing competition;
- Coercion or intimidation;
- Obstruction of an investigation;
- Theft or embezzlement;
- Tax-related offenses;
- Labor-related offenses.

**Discretionary Exclusion:** Yes.

Based on a civil or administrative judgement against the supplier for the following:

- Poor performance, non-performance, and/or failure to perform on public contracts;
- Criminal conviction for tax fraud;
- Illicit acts aiming to defraud tender proceedings; and
- Lack trustworthiness (“idoneidade” in Portuguese) to enter into agreements with the Public Administration due to illicit acts committed in the past.

When a discretionary exclusion ground exists, the decision-maker may (i) decide not to exclude a supplier if in the public’s interest or (ii) enter into a settlement agreement (administrative improbity lawsuits or violations of Federal Laws No. 14,133 and No. 8,666 only).

**Exclusion based on Cross-Debarment:** None.

**Note regarding Tax Offenses and Bankruptcy:** To participate in tenders, companies must submit certificates of financial good standing and will thus be disqualified from the procurement process if they are not in good standing with the tax authority or are facing bankruptcy or reorganization proceedings.

## IV. Scope and Effect of Government-Wide Exclusion:

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### **Types of Excluded Suppliers:**

- Individuals and Corporations.

### **Scope of Exclusion:**

*Extension to other Government Agencies:*

- Exclusions prohibit the supplier from contracting with any federal agency.
- Exclusions automatically extend to subnational governments (per case law).
- No known countries or international organizations that automatically recognize and apply exclusions from Brazil.

#### *Effect on Ongoing Contracts:*

- Ongoing contracts are **not** automatically cancelled, but they can be terminated on a case-by-case basis.
- Subsequent modifications to ongoing contracts are **not permitted**; ongoing contracts cannot be extended (extensions are considered to be new contracts).

#### *Effect on Subcontracting:*

- Excluded supplier **can** serve as a subcontractor to the extent permitted by the contract.

#### *Effect on Excluded Individuals:*

- Generally, excluded individuals **may be** employed by a corporate supplier in any capacity. However, if the corporate supplier falls within the scope of the Law on Corporations, excluded individuals **must not** be employed as **corporate directors**. (See Federal Law No. 6385/1976, art. 11)
- Exclusion **may** extend to companies controlled by the excluded individual when the individual uses companies as fraudulent means to circumvent the exclusion.

#### *Tailoring Exclusion:*

- No option to tailor the exclusion to certain divisions, operating units, or business lines within a corporate supplier.

### **Effect on Affiliates:**

#### *Corporate Affiliates:*

- Exclusion **may** apply to affiliated companies.
  - *Scope:* Controlled companies (under Federal Law No. 8,429/92 only), the affiliated companies that benefited from the sanctionable practice, and affiliates whose sole purpose is to circumvent and avoid the exclusion.
- Affiliated companies **must** be given an opportunity to contest the action.

#### *Extension to Affiliated Individuals:*

- Exclusion of a corporate supplier **does not** extend to individuals that own or control the supplier or executive officers.

### **Duration of Exclusions:**

#### *Duration Specified in Legal Framework:*

- Between one and five years, although suspension penalties may last up to ten years. Certain debarments do not have a defined length and remain until the supplier satisfies certain requirements.

*Duration Depends on Applicable Exclusion Ground? Yes.*

#### *Discretion to Deviate?*

- No. The decision-maker has discretion to impose an exclusion of any length up to the maximum duration provided in the legal framework but cannot go beyond the maximum duration.

#### **Exceptions/Waivers to Exclusions:**

- Normally, no. However, pursuant to art. 4, para. 3 of Federal Law No. 13,979 of 2020, a contract may still be awarded to an excluded supplier during the COVID-19 pandemic.

#### **Other Sanctions:**

- Including, but not limited to, fines and termination of ongoing contracts.

## **V. Government-Wide Transparency and Exclusion List:**

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**Official List of Excluded Suppliers?** Yes, and it is publicly available.

- Brazil's [public exclusion list](#) provides information on the grounds for each listed exclusion.

**Procurement Checks:** Yes. Procuring entities must check the list of excluded suppliers before awarding a contract.

#### **Reporting on Exclusions:**

*Number of Exclusions:* Federal exclusions are shown on the [public exclusion list](#), but there is no comprehensive analysis on the exact number of exclusions across all government entities.

*Regular Reporting:* No requirement for regular reporting on exclusions.

*Other Transparency Mechanisms:* None.

## **VI. Limited Scope Exclusion Systems:**

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**Entity-Wide (e.g., Single-Agency) Exclusion?** Yes, under art. 156, sec. 4 of Federal Law No. 14,133.

**Contract-By-Contract (e.g., Single-Tender) Exclusion?** No.

#### **Subnational Exclusions:**

- Exclusion mechanisms exist at the Provincial/State and Municipal/Local levels.
- In practice, exclusion decisions of one subnational body may be recognized by all other Provinces/State/Municipal levels. However, as the existing legal framework does not explicitly provide so, the courts have not ruled on the lawfulness of this practice.