Exclusion System Summary
El Salvador

I. Government-Wide Legal and Institutional Framework

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

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

** Governing Policy:**

- Arts. 25, 158, and 160 of the Law of the Public Administration Procurement/Ley de Adquisiciones y Contrataciones de la Administración Pública (“LACAP”).

**Primary Legal Foundation:**

- Administrative/Regulatory Law.

**Related Law and Regulation:**

- Statutory Provisions/Reglamento de LACAP.
- Administrative Procedures Law/Ley de Procedimientos Administrativos.
- Law of the Contentious-Administrative Jurisdiction/Ley de la Jurisdicción Contencioso Administrativa.

**Decision-Maker:** Agency Level; Not Functionally Independent from Senior Procurement Officials.

- Each public agency may exclude suppliers pursuant to LACAP.

**Qualification:**

- None stated in the legal framework.

**Independence:**

- While each public institution maintains a high degree of independence from the central government (the Ministry of Finance), the head of each public institution is the final decision-maker for both procurement and exclusion decisions, irrespective of any delegation of responsibility to subordinate officials.
II. Functioning and Enforcement of the Government-Wide Exclusion System

General Provisions:

Type of Procedures: Administrative.
Decision Deadline: Decision-maker must make a final determination within nine months.
Provisional Exclusions: None.

Commencement of Proceedings: Ability to Initiate an Exclusion Proceeding.
- The decision-maker cannot initiate an exclusion proceeding without a prior referral.
- Non-governmental parties can submit complaints and/or evidence to the decision-maker.
  - Note: While LACAP does not explicitly authorize third parties to file complaints or submit evidence, there are also no provisions prohibiting such submissions.

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

Notice:
- Suppliers receive notice when the decision-maker decides that grounds exist.
- Notice must contain the grounds for exclusion.
- Decision-maker must make reasoning available to the supplier only, but the exclusion grounds are included in the publicly available exclusion list.

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;
  - Call witnesses to an in-person hearing to testify on the supplier’s behalf.


Means Available to the Supplier: As part of appellate review, suppliers may:
- Obtain the evidentiary record.
- Make a written submission to the appellate body.
- Request an in-person hearing with the appellate body.
- Call witnesses to an in-person hearing to testify on the supplier’s behalf.

Duration of Appeal Process: One to two years.

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:

**Automatic Exclusion**: Yes.
Based on a criminal or civil judgement against the supplier for the following:
- Corruption;
- Fraud;
- Obstruction of an investigation;
- Theft or embezzlement;
- Money laundering;
- Tax-related offenses;
- Labor-related offenses (specifically related to non-payments of social security).

Based on an administrative finding against the supplier for the following:
- Corruption;
- Fraud;
- Collusion and/or infringing competition;
- Poor performance, non-performance, and/or failure to perform on public contracts.

Other automatic exclusion grounds:
- Illegal incorporation by foreign companies;
- Outstanding and due debt to the municipality;
- Insider trading (i.e., illegally obtaining privileged information that grants the supplier a competitive advantage).

**Discretionary Exclusion**: None.

**Exclusion based on Bankruptcy and Cross-Debarment**: Automatic & None.

IV. Scope and Effect of Government-Wide Exclusion:

**Types of Excluded Suppliers**:
- Individuals and Corporations.

**Scope of Exclusion**:

**Extension to Other Agencies and Organizations**:
- Exclusions prohibit the supplier from contracting with any federal agency.
- Exclusions automatically extend to subnational governments.
- No known countries or international organizations that automatically recognize and apply exclusions from El Salvador.

**Effect on Ongoing Contracts**:
- Ongoing contracts are **not** automatically cancelled.
- Subsequent modifications to ongoing contracts are **not** affected by a supplier’s exclusion.
Effect on Subcontracting:
• Excluded supplier **cannot** serve as a subcontractor.

Effect on Excluded Individuals:
• Excluded individuals **may** be employed by a corporate supplier in a role that is not directly related to the supplier’s ongoing contracts.
• Exclusion **must** extend to companies controlled by the excluded individual.

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 **must** extend to affiliated companies controlled by the supplier and may extend to affiliated companies that control the supplier or are under common control with the supplier.
  o **Note:** LACAP is not clear as to the scope of an exclusion, which extends to all individuals or companies that have a “control relationship” with the excluded entity. It could be argued that this “control relationship” includes parent companies.
• Affiliated companies **must** be given an opportunity to contest the action.

Extension to Affiliated Individuals:
• Exclusion of a corporate supplier **must** extend to individuals that own or control the supplier and executive officers and **may** extend to managers and employees.
• Affiliated individuals **must** be given an opportunity to contest the action.

Duration of Exclusions:

*Duration Specified in Legal Framework:* Between one and five years.

*Duration Depends on Applicable Exclusion Ground?* Yes.
• One year:
  o Bid rigging during the procurement process.
• Two years:
  o Jeopardizing procurement procedures; and
  o Contract breach or non-performance.
• Three years:
  o Failing to enter into the contract without any justification; and
  o Illegally obtaining confidential information to gain an advantage.
• Four years:
  o Offering or providing gifts to public officials involved in the procurement process; and
  o Alleging falsely that a contract has been concluded or performed.
• Five years:
  o Providing false information to obtain a procurement contract; and
  o Participating, directly or indirectly, in a procurement process after being excluded.

_Discretion to Deviate?_
• No. The decision-maker does not have discretion to deviate from the duration specified in the legal framework.

_Exceptions/Waivers to Exclusions:_
• No. There is not a legal mechanism whereby a contract might still be awarded to an excluded supplier during the period of exclusion.

_Other Sanctions:_
• Contract termination when a supplier breaches the terms; Monetary damages.

_V. Government-Wide Transparency and Exclusion List:_

_Official List of Excluded Suppliers? Yes, and it is publicly available._
• _Sanctions list_ on El Salvador’s e-procurement system, CompraSal.
• Public list provides information on the grounds for each listed exclusion.

_Procurement Checks:_ Yes. Procuring entities must check a list of excluded suppliers before awarding a contract.

_Reporting on Exclusions:_
  _Number of Exclusions:_ Figures unknown (but discernable from public exclusion list).
  _Regular Reporting:_ No requirement for regular reporting on exclusions.
  _Other Transparency Mechanisms:_ None.

_VI. Limited Scope Exclusion Systems:_

_Entity-Wide (e.g., Single-Agency) Exclusion? No._

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

_Subnational Exclusions:_ No. Exclusion mechanisms exist only at the national level.