

# 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

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### 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.

### Appellate Review of Exclusion Decisions:

 Yes.

*Nature and Forum of Review:* Administrative and Judicial (after exhaustion of administrative process).

*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:

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**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:

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**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.
  - *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:
  - Bid rigging during the procurement process.
- Two years:
  - Jeopardizing procurement procedures; and
  - Contract breach or non-performance.
- Three years:
  - Failing to enter into the contract without any justification; and
  - Illegally obtaining confidential information to gain an advantage.
- Four years:
  - Offering or providing gifts to public officials involved in the procurement process; and
  - Alleging falsely that a contract has been concluded or performed.

- Five years:
  - Providing false information to obtain a procurement contract; and
  - 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:

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**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:

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**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.