



# Global Suspension & Debarment D I R E C T O R Y



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## Introduction to the Global Suspension & Debarment Directory:

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We are pleased to introduce the Global Suspension & Debarment Directory, the first ever consultative resource on exclusion systems. This Directory is the product of the 2020 Global Suspension & Debarment Survey, a global survey launched in March 2020 that captured data and information on the exclusion systems of 23 different jurisdictions and institutions. Using the Survey responses, we created this Directory for anyone interested in learning about how these jurisdictions employ exclusion mechanisms to prevent certain suppliers from accessing public funds. The Directory summarizes each jurisdiction's exclusion regime and includes references and links (if available) to the relevant laws and regulations. Each jurisdiction's summary presents information on six key areas relating to the exclusion system's structure and operation:

- i. Government-Wide Legal and Institutional Framework
- ii. Functioning and Enforcement of the Government-Wide Exclusion System
- iii. Substantive Grounds for Government-Wide Exclusion
- iv. Scope and Effect of Government-Wide Exclusion
- v. Government-Wide Transparency: The Exclusion List
- vi. Limited Scope Exclusion Systems

The idea for an exclusion survey first came about in 2015, when the World Bank Office of Suspension and Debarment ("OSD") began to systematically study how exclusion mechanisms are used by countries and organizations globally. OSD's research discovered a lack of commonality across jurisdictions and a significant gap in interdisciplinary research on exclusion mechanisms. Indeed, many different terms have been used to describe this remedy, such as "debarment," "disqualification," "suspension," "exclusion," or "blacklisting." Whatever the label, the general intent of these mechanisms is to remove a wayward supplier from participating in a specific procurement process or from accessing public funds for a period of time. OSD's efforts eventually led to the development of a survey questionnaire to gather knowledge and comparable data on exclusion systems from as many jurisdictions as possible.

In 2018, OSD partnered with the Sanctions Officer for the Inter-American Development Bank Group ("IDB") (comprised of the IDB, IDB Invest, and IDB Lab) and Le Bureau de l'Inspecteur General de la Ville de Montréal to form a Working Group under the International Bar Association's ("IBA") Anti-Corruption Committee. Between May and October 2018, the Working Group launched and tested a pilot of the Global Suspension & Debarment Survey to formalize the questionnaire.

In March 2020, the first formal round of the Survey was officially launched under the auspices of the newly formed Debarment and Exclusions Subcommittee of the IBA's Anti-Corruption Committee. Thanks to the invaluable input from the Survey's responders and a team of devoted researchers, this Directory marks the first dedicated taxonomy of exclusion systems and will aid future efforts to identify commonalities and differences across jurisdictions. More information, including an interactive table of jurisdictions and their summaries, are accessible online at [www.worldbank.org/exclusionsurvey](http://www.worldbank.org/exclusionsurvey).

## Acknowledgments:

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***Collin David Swan***

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*Senior Counsel (Sanctions), The World Bank Office of Suspension and Debarment*

*Vice-Chair, IBA Debarment and Exclusions Subcommittee*

A map of Australia and surrounding regions, including parts of Indonesia, Papua New Guinea, and the Indian Ocean. The map shows major cities, state boundaries, and geographical features like the Great Australian Bight. A legend in the bottom left corner identifies symbols for islands, selected towns and cities, national capitals, and international boundaries. A scale bar at the bottom indicates distances in kilometers and miles. The text 'Exclusion System Summary' and 'Australia' is overlaid in large blue font across the map.

# Exclusion System Summary

## Australia

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

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### Government-Wide Exclusion Framework? No.

- Australia does not have a government-wide exclusion framework at the Commonwealth level. Exclusions are generally rare, and any exclusions would be *ad hoc* depending on the agency involved.

#### *Related Law and Regulations:*

- [Commonwealth Procurement Rules \("CPRs"\)](#) (Dec. 14, 2020).

### **Decision-Maker:** Individual Contracting Officer.

#### *Qualification:*

- None.

#### *Independence:*

- Not required.

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

---

### **General Provisions:**

*Type of Procedures:* Administrative.

*Decision Deadline:* Not addressed.

*Provisional Exclusions:* None.

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

- Exclusion proceedings are *ad hoc* depending on the agency involved, which may (or may not) require a referral to initiate proceedings.
- Non-governmental parties are able to submit complaints and/or evidence.

**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.

*Opportunity to be Heard:*

- Suppliers are entitled to procedural fairness and may present a defense to the decision-maker by:
  - Making a written submission to the decision-maker.
  - Requesting an in-person hearing with the decision-maker.

**Appellate Review of Exclusion Decisions:** Yes (Judicial Review of Government Decisions).

*Nature and Forum of Review:* Any decision by a Commonwealth public official is subject to judicial review after exhausting the 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 (on average).

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

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

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

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**Unsatisfied Judicial Decisions:**

- Section 6.7 of the CPRs prohibits covered Commonwealth agencies from entering into contracts with suppliers "who have had a judicial decision against them (not including decisions under appeal) relating to employee entitlements and who have not satisfied any resulting order."

**No Other Shared Substantive Grounds or Commonwealth-Wide Exclusion Program:**

- Aside from the above, each agency sets its own exclusion grounds and decides whether to follow another agency's exclusions.
- Exclusion decisions are entirely discretionary.

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

---

**Types of Excluded Suppliers:** Corporations only.

**Scope of Exclusion:**

*Extension to other Government Agencies:* No.

- Exclusions do **not** automatically extend to subnational governments.
- No known countries or international organizations that automatically recognize and apply exclusions from Australia.

*Effect on Ongoing Contracts:*

- **No** automatic cancellation of ongoing contracts.
- Subsequent modifications to ongoing contracts are **not** affected by a supplier's exclusion.

*Effect on Subcontracting:*

- An exclusion **does not** prevent the supplier from acting as a subcontractor.

*Effect on Excluded Individuals:* N/A.

*Tailoring Exclusion:*

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

**Effect on Affiliates:**

- Does not extend to affiliated companies or individuals.

**Duration of Exclusions:** No set duration.

**Exceptions/Waivers to Exclusions:** Not addressed.

**Other Sanctions:** Not addressed.

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

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**Official List of Excluded Suppliers?** No.

**Procurement Checks:** No. Procuring entities are not required to check a list of excluded suppliers before awarding a contract.

**Reporting on Exclusions:**

*Number of Exclusions:* Figures unknown.

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

*Other Transparency Mechanisms:* No (except potentially requests to individual agencies under the Freedom of Information Act).

## 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?**

- Any exclusions would be *ad hoc* depending on the agency involved, which may include contract-by-contract exclusions

**Subnational Exclusions:**

- Exclusion mechanisms may exist at the Provincial/State levels.
- States also have their own independent anti-corruption commissions to which people can report allegations of serious corrupt conduct by public officials or the misuse of public funds.

# 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:

---

### 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:

---

**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:

---

### **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:

---

**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.



# Exclusion System Summary Canada

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

### Government-Wide Exclusion Framework? Yes (policy-based only).

- The exclusion framework is mandatory for the core public service departments and agencies but voluntary for other federal entities (e.g., Agents of Parliament and Crown Corporations). Exclusion decisions are made outside the procurement process and according to national policy. Exclusions have government-wide effect.

#### Governing Policy:

- [The Ineligibility and Suspension Policy](#) (issued April 4, 2016).

#### Primary Legal Foundation:

- Contract Law. [Supply Manual, § 4.21 – Integrity Provisions](#) must be included in applicable solicitations (described further in Section 4 of the Policy).

#### Related Law and Regulation:

- [The Department of Public Works and Government Services \(“PSPC”\) Act § 7\(1\)\(a\)](#). The Minister of PSPC has the legislative authority to “investigate and develop services for increasing the efficiency and economy of the federal public administration and for enhancing integrity and efficiency in the contracting process.”

### Decision-Maker: Centralized; Functionally Independent from Senior Procurement Officials.

- The decision-maker is the Registrar of Ineligibility and Suspension within PSPC.

#### Qualification:

- None stated in the legal framework.

#### Independence:

- Not legally required, but PSPC has taken steps to ensure the independence of the Registrar (e.g., Registrar has limited contracting authority, and no exclusion-based responsibilities are assigned to any other high-ranked official).

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

---

### General Provisions:

*Type of Procedures:* Administrative.

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

*Provisional Exclusions:* Yes. A supplier can be suspended for up to 18 months if charged with (or admits guilt of) a listed offense. The suspension can be extended pending final disposition of the charges. If the supplier is convicted, the Registrar will make a final determination of ineligibility.

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

- The Registrar cannot initiate a proceeding without a referral from PSPC.
- PSPC may make referrals upon its own initiative or upon receiving a request from a supplier or contracting authority.

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

*Notice of Proceedings:*

- Suppliers receive notice of proceedings when:
  - The decision-maker decides that grounds exist to initiate a review;
  - The exclusion, including any provisional exclusions or suspensions, becomes effective.
- Notice of proceedings must contain the grounds for exclusion.
- Decision-maker must make reasoning available to the supplier (not to the public).

*Opportunity to be Heard:*

- Suppliers are entitled to respond to the decision-maker and may:
  - Make a written submission to the decision-maker.
  - Present evidence to the decision-maker.

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

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

- Judicial review of a decision of the Registrar.
- Administrative review of a determination of ineligibility based on the supplier's affiliation with the convicted party (*i.e.*, whether the supplier directed, influenced, authorized, assented to, acquiesced in, or participated in the offence(s) of which its Affiliate was convicted).

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

- Make a written submission to the appellate body.
- Request an in-person hearing with the appellate body (judicial review).

*Duration of Appeal Process:* Not known.

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

**Subsequent Modification of Exclusion Decision:** Yes.

- A supplier may at any time request to have its ineligibility period reduced through an Administrative Agreement.
- The supplier must demonstrate that it cooperated with law enforcement authorities or has undertaken remedial actions to address the wrongdoing.

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

---

**Automatic Exclusion:** Yes.

Based on a supplier's conviction in the past three years for the following:

- Corruption-related offences;
- Bribery (including foreign public officials);
- Fraud;
- Collusion and/or infringing competition;
- Money laundering;
- Tax-related offenses;
- Criminal breach of contract;
- Organized crime-related offences;
- Trafficking in controlled substances;
- Lobbying violations;
- Subcontracting with an ineligible first-tier subcontractor.

**Discretionary Exclusion:** Yes.

- Being charged with a listed offence (provisional exclusion only);
- Breaching any term of an Administrative Agreement; or
- Based on the conviction of a supplier's affiliate within the past three years for the following and, in the decision-maker's opinion, the supplier directed, influenced, authorized, assented to, acquiesced in, or participated in the offence:
  - Corruption-related offences;
  - Bribery (including of foreign public officials);
  - Fraud;
  - Collusion and/or infringing competition;
  - Money laundering;
  - Tax-related offenses.

**Exclusion based on Bankruptcy and Cross-Debarment:** Canada does **not** exclude suppliers based on Bankruptcy, Insolvency, or Debarments imposed by other jurisdictions.

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

---

**Types of Excluded Suppliers:**

- Individuals and Corporations.

**Scope of Exclusion:**

*Extension to other Government Agencies:*

- Exclusions prohibit suppliers from contracting with all departments and agencies within the Government of Canada (federal level).
- Adoption of the Integrity Regime is voluntary for federal entities outside of the core public service (e.g., Crown Corporations).

- Exclusions do **not** automatically extend to subnational governments.
- No known countries or international organizations that automatically recognize and apply exclusions from Canada.

*Effect on Ongoing Contracts:*

- Ongoing contracts are **not** automatically cancelled; the contracting authority has discretion to terminate ongoing contracts as a business decision.
- Subsequent modifications to ongoing contracts are **not** affected by a supplier's exclusion.

*Effect on Subcontracting:*

- Excluded supplier **cannot** serve as a first-tier subcontractor except to provide commercially available "off-the-shelf" goods.

*Effect on Excluded Individuals:*

- Excluded individuals **must not** be employed by a corporate supplier as a **senior manager** or **corporate director**.
- Exclusion **may** 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 **may** apply to affiliated companies (controlling, controlled, under common control) if it is determined that the affiliate directed, influenced, authorized, assented to, acquiesced in, or participated in the offense.
- Affiliated companies must be given an opportunity to contest the action.

*Extension to Affiliated Individuals:*

- Exclusion of a corporate supplier **may** extend to individuals that own or control the supplier and executive officers.
- Affiliated individuals **must** be given an opportunity to contest the action.

**Duration of Exclusions:**

*Duration Specified in Legal Framework:*

- Ten years, possibly reduced by five years in specific circumstances.

*Duration Depends on Applicable Exclusion Ground?*

- Yes. In a limited number of instances, a supplier may be excluded indefinitely.

*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:**

- Yes. A contract may still be awarded to an excluded supplier through a Public Interest Exception (PIE) related to emergencies, public safety, and national security.

**Other Sanctions:** Not addressed.

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

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

- The [Public list](#) for corporate suppliers only; excluded individuals are not publicly available due to privacy considerations.
- The Public list does **not** provide information on the grounds for each listed exclusion.

### **Procurement Checks:**

- Yes. Procuring entities must check the list of excluded suppliers before awarding a contract (verifications are conducted through a web-based portal containing information on specific convictions, charges, and exclusions).

### **Reporting on Exclusions:**

*Number of Exclusions:* Figures are known through other means (tracked internally).

*Regular Reporting:* No requirement for regular reporting on exclusions, but PSPC publishes [an annual report](#) on the operation of the Integrity Regime.

*Other Transparency Mechanisms:* Government operations are subject to regular public reporting to Parliament and Access to Information Act.

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

---

**Entity-Wide (e.g., Single-Agency) Exclusion?** No.

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

### **Subnational Exclusions:**

- Exclusion mechanisms exist at the Provincial/State and Municipal/Local levels.
- Exclusion decisions of one subnational body do not extend to other subnational bodies.



# Exclusion System Summary China

## 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. Most exclusions have government-wide effect, while others apply only to the procurement at issue.

*Governing Policy:* Two primary pieces of legislation.

- The Bidding Law: Generally applicable to select works and construction projects:
  - Art. 53, Art. 54, and Art. 60 ([Eng & Chi](#)).
  - Art. 67 and Art. 68 of Implementing Regulations (Partial [Eng / Chi](#)).
- The Government Procurement Law: Applicable to all procurements not covered by the Bidding Law:
  - Art. 13, Art. 22, and Art. 77 ([Eng / Chi](#)).
  - Art. 19, Art. 73, and Art. 74 of Implementing Regulations ([Eng / Chi](#)).

*Other Related Regulations:*

- Administrative Procedure Law ([Eng / Chi](#)).
- Administrative Reconsideration Law ([Eng / Chi](#)).
- Measures for Challenges and Complaints against Government Procurement (Partial [Eng / Chi](#)).

*Primary Legal Foundation:*

- Administrative/Regulatory Law.

**Decision-Maker:** Centralized; Functionally Independent from Senior Procurement Officials.

- The finance departments at all levels of government are charged with supervising procurement activities and making exclusion decisions.

*Qualification:* The Government Procurement Law generally requires procurement personnel to possess relevant professional qualities and skills.

*Independence:* Yes. The Government Procurement Law requires a separation between the finance departments and procurement 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 30 days.

*Provisional Exclusions:* Yes, but provisional exclusions may not exceed 30 days.

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

- Decision-maker can initiate an exclusion proceeding without a prior referral.
- Non-governmental parties can submit complaints to the decision-maker.

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

*Notice of Proceedings:*

- Suppliers receive notice of proceedings when:
  - An investigation into the underlying grounds is commenced.
  - Decision-maker decides that grounds exist.
- Notice of proceedings is required to contain the grounds for exclusion.
- Decision-maker must make reasoning available to the supplier; relevant details are also included in the public 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 (although complaints are generally addressed on the written record only).
  - Call witnesses to an in-person hearing to testify.

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

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

- Suppliers can request reconsideration before the relevant administrative body.
- Suppliers can also initiate an action for review before the people's court, with or without first requesting reconsideration before the administrative body.

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

*Duration of Appeal Process:* Within 60 days for administrative reconsiderations.

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

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

- Except through the appeal process described above, 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.

*Bidding Law:*

Based on an administrative finding that the supplier engaged in the following:

- Corruption;
- Fraud;
- Collusion and/or infringing competition.

*Government Procurement Law:*

Based on a supplier's criminal, civil, or administrative judgement for the following grounds pursuant to Art. 77:

- Corruption;
- Fraud;
- Collusion and/or infringing competition;
- Coercion or intimidation;
- Refusing to sign public contracts after award without proper justification;
- Falsifying information and/or using illegally obtained information in filing a complaint against another supplier.

Based on a supplier's administrative or criminal judgment for the following grounds pursuant to Art. 22:

- Tax-related offenses; and
- Material malpractices and illegal acts, including but not limited to:
  - Obstructing an investigation;
  - Theft or embezzlement;
  - Money laundering;
  - Labor-related offenses;
  - Social harms;
  - Terrorist offenses or offenses linked to terrorism;
  - Commercial regulatory violations.

**Discretionary Exclusion:** Yes.

*Bidding Law & Government Procurement Law:*

Based on an administrative finding that the supplier engaged in:

- Poor performance, non-performance, and/or failure to perform on public contracts.

When a basis for discretionary exclusion is established, the decision-maker may decide not to exclude a supplier depending on the severity of the supplier's actions. A supplier may also avoid exclusion by implementing remedial measures to address its adherence to certain non-substantive requirements in a procurement process.

**Exclusion based on Bankruptcy and Cross-Debarment:** Discretionary & Automatic.

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

---

### Types of Excluded Suppliers:

- Individuals and Corporate Suppliers.

### Scope of Exclusion:

#### *Extension to Other Agencies and Organizations:*

- Exclusions based on Art. 22 of the Government Procurement Law do **not** prohibit the supplier from contracting with other federal agencies (exclusion decisions are contract-by-contract), although the same facts could constitute an exclusion ground in every subsequent tender process.
- All other exclusions prohibit the supplier from contracting with any government agency and automatically extend to subnational governments.
- No known countries or international organizations that automatically recognize and apply exclusions from China.

#### *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 procurement activities.

#### *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 does **not** automatically extend to affiliated companies (controlling, controlled, under common control). In practice, and depending on the nature of the relationship, it is possible that a contracting authority may refuse to accept a bid from a controlled affiliate of a sanctioned supplier.

#### *Extension to Affiliated Individuals:*

Exclusion of a corporate supplier **may** extend to the supplier's project manager in certain cases in which the exclusion was based on violation of regulations during the contract's **performance**.

### **Duration of Exclusions:**

*Duration Specified in Legal Framework:*

- Bidding Law: Between one and five years.
- Government Procurement Law: Between one and three years.

*Duration Depends on Applicable Exclusion Ground?*

- Bidding Law: Yes.
  - One to three years for corruption, fraud, and collusion.
  - Two to five years for poor performance or non-performance of a contract.
- Government Procurement Law: No, duration will depend on the circumstances of each case.

*Discretion to Deviate?*

- No, the decision-maker does not have discretion to deviate from the durations specified in the legal framework.

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

- No, there are no exceptions in which a contract could be awarded to an excluded supplier.

**Other Sanctions:** Imposition of fines.

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

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**Official List of Excluded Suppliers?** Yes, for exclusions under the Government Procurement Law only; the exclusion list is publicly available.

- <http://www.ccgp.gov.cn/search/cr>
  - Most exclusions on public list are based on Art. 77 of the Government Procurement Law.
  - Public list provides information on the grounds, punishment results, punishment date, and law enforcement authorities for each listed exclusion.
- While there is no consolidated list for exclusions under the Bidding Law, the relevant local government will generally publicize their exclusion decisions. Other government departments also maintain databases related to their integrity actions. For example, the Ministry of Housing and Urban-Rural Development maintains a database of actions against construction entities (<http://jzsc.mohurd.gov.cn/since/index>).

**Procurement Checks:** Suppliers are required to provide relevant certifications to support their eligibility to participate in a procurement; procuring entities may use this information to investigate the supplier's qualifications.

### **Reporting on Exclusions:**

*Number of Exclusions:* Figures are discernible from the [public exclusion list](#) for the Government Procurement Law. As of March 19, 2021, there were 648 names on the list.

*Regular Reporting:* Under the Government Procurement Law, decisions made by finance departments shall be published on the media designated by the finance department under the people's government above the provincial level.

*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?** Yes, per Art. 22 of the Government Procurement Law.

### **Subnational Exclusions:**

- Exclusion mechanisms exist at the Provincial/State and Municipal/Local levels.
- Exclusion decisions of one subnational body are recognized by other Provinces/State/Municipal/Local levels.

# Exclusion System Summary Costa Rica



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

### Government-Wide Exclusion Framework? Yes.

- Exclusion decisions are generally made both as part of a procurement process and outside the procurement process as governed by national legislation or centralized regulations. Certain exclusions have government-wide effect while others apply only to the procuring entity that imposed the exclusion.

#### Governing Policy:

- Arts. 100 to 103 of [the Public Procurement Law](#) and Arts. 223 to 226 of [Regulation to the Public Procurement Law](#).

#### Primary Legal Foundation:

- Administrative/Regulatory Law.

#### Related Law and Regulation:

- Art. 19 of [Regulation to the Public Procurement Law](#).

**Decision-Maker:** Both Centralized and Individual Contracting Officers; Not Functionally Independent from Senior Procurement Officials.

- Both the General Comptroller of the Republic ("CGR") and individual contracting authorities can make exclusion decisions.

#### 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:

---

### General Provisions:

*Type of Procedures:* Administrative.

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

Jurisprudence provides that the time period should be reasonable based on the individual circumstances of each case.

*Provisional Exclusions:* None.

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

- The decision-maker can make an exclusion decision without a prior referral.
- Non-governmental parties cannot submit complaints and/or evidence to the decision-maker.

**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 a brief summary of the basis for the exclusion is 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.
- Suppliers also have other generally applicable due process rights.

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

*Nature and Forum of Review:* Administrative.

*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 (on average).

**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 supplier's administrative judgement for the following:

- Corruption;
- Fraud;
- Repeated poor performance within three years of initial warning;
- Illegally obtaining confidential information that provides competitive advantages;
- Using subcontractors different from those disclosed to execute the contract.

**Discretionary Exclusion:** Yes.

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

- Collusion and/or infringing competition.

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

- Collusion and/or infringing competition;
- Poor performance, non-performance, and/or failure to perform on public contracts.

The discretionary exclusion is a case-by-case analysis using a reasonableness and proportionality test. If exclusion is considered disproportionate, the supplier may not be sanctioned.

**Exclusion based on Bankruptcy and Cross-Debarment:** Automatic & Discretionary.

### 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 based **only** on the following grounds prohibit the supplier from contracting with any federal agency or subnational government (*i.e.*, the entire Public Administration):
  - Corruption;
  - Fraud;
  - Illegally Obtaining Confidential Information;
  - Certain offenses committed during execution of public infrastructure projects; and
  - Suppliers excluded a second time by the same procuring entity.
- Except for exclusions based on the grounds in the previous bullet, first-time exclusions are generally limited to the procuring entity that imposed the exclusion and do **not** extend across the entire federal agency or subnational governments.
- No known countries or international organizations that automatically recognize and apply exclusions from Costa Rica.

#### *Effect on Ongoing Contracts:*

- Ongoing contracts are **not** automatically cancelled.
- Subsequent modifications to ongoing contracts **are permitted** when the supplier is the only one suitable in the market for the provision of the goods or services needed.

#### *Effect on Subcontracting:*

- Nothing in the legal framework prohibits an excluded supplier from acting as a subcontractor.

#### *Effect on Excluded Individuals:*

- No explicit provision in the legal framework; however, it is likely that excluded individuals **may** be employed by a corporate supplier in a role that is not directly related to the supplier's ongoing contracts.
- Exclusion **does not** automatically extend to companies controlled by the excluded individual, although it could extend if the individual appears to be using these companies to evade the exclusion.

#### *Tailoring Exclusion:*

- Yes. Exclusion **may** be limited to certain divisions, operating units, or business lines within the company, if the decision-maker so decides.

#### **Effect on Affiliates:**

##### *Corporate Affiliates:*

- Exclusion **may** apply to companies that the supplier controls. Decisions on affiliates are evaluated on a case-by-case basis. Affiliates used to evade the exclusion are likely to be covered by 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:*

- Depending on the severity of the supplier's action, the exclusion duration ranges from two to ten years.

##### *Duration Depends on Applicable Exclusion Ground? No.*

- *Exception:* If the grounds for the exclusion is related to public infrastructure projects, the minimum duration is three years.

##### *Discretion to Deviate?*

- No. The decision-maker does not have discretion to deviate outside of the two- to ten-year range specified in the legal framework.

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

- Yes. A contract may still be awarded to an excluded supplier when the supplier is the only one who can provide the goods or services needed; the award must be authorized by the Comptroller's office.

### **Other Sanctions:**

- Contractual termination; fines; execution of guarantees; warnings.

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

---

**Official List of Excluded Suppliers?** Yes. It is publicly available.

- <https://www.sicop.go.cr/index.jsp> (click on "Consultat Ciudadanos" in upper right corner followed by "Sanciones" on left-hand side).
- The public list provides a brief reference to the basis for each listed exclusion (under the heading "Causa de sanción").

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

### **Reporting on Exclusions:**

*Number of Exclusions:* Figures are known through public reports issued by national government: 7 exclusions imposed in 2019, and 16 exclusion were in force as of 2019.

*Regular Reporting:* Yes, and the reports are publicly available.

*Other Transparency Mechanisms:* Consult the Integrated System on Public Purchases (SICOP).

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

---

**Entity-Wide (e.g., Single-Agency) Exclusion?** Yes.

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

### **Subnational Exclusions:**

- Exclusion mechanisms exist at the Municipal/Local levels (national regulations apply to municipalities).
- Exclusion decisions of one subnational body do not extend to other subnational bodies.

# 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.

### 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:

---

**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.
  - *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:

---

**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.



# Exclusion System Summary Estonia

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

---

### Government-Wide Exclusion Framework? Yes.

- Exclusion decisions are made on a contract-by-contract basis as governed by national legislation or centralized regulations. Exclusions apply only to the procurement at issue.

#### Governing Policy:

- Secs. 95-97 of [the Public Procurement Act of 2017](#) (the "PPA") ([Unofficial English version](#)), which transpose Art. 57 of Directive 2014/24/EU of the European Parliament.

#### Primary Legal Foundation:

- Administrative/Regulatory Law.

**Decision-Maker:** Individual Contracting Officers; Not Functionally Independent from Senior Procurement Officials.

- Individual contracting authorities make exclusion decisions within each procurement procedure (contract-by-contract exclusion).

**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:

---

### General Provisions:

**Type of Procedures:** Administrative.

- The initial exclusion decision is made as part of the procurement process, which is an administrative process.
- Any subsequent proceedings are governed by administrative law.

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

**Provisional Exclusions:** None.

**Initial Procurement Decision:** Grounds for exclusion are reviewed by the contracting authority as part of the procurement decision on a contract-by-contract basis.

- Decision-maker can make an exclusion decision without a prior referral.
- Non-governmental parties can submit complaints and/or evidence to the decision-maker.
  - Interested parties (economic operators interested in participating in a tender) can also seek review of a contracting authority's exclusion decision (or decision not to exclude) before the Public Procurement Review Committee. (See PPA Sec. 185)

*Note on Self-Cleaning:* When submitting a bid for a tender, a supplier can include evidence showing that it has taken measures to restore its reliability. The contracting authority will evaluate this evidence when reviewing potential grounds for exclusion. (See PPA Sec. 97)

- *Note:* An amendment to the PPA has been proposed concerning the process and availability of self-cleaning.

**Notice Requirements & Opportunity to be Heard:** Yes & No.

*Notice:*

- Suppliers receive notice when the decision-maker decides that grounds exist. (See PPA Sec. 47)
- Notice must contain the grounds for exclusion. (See PPA Sec. 96(5))
- Decision-maker must make reasoning available to the supplier (not to the public), although the decisions of contracting authorities may become public knowledge.

*Opportunity to be Heard:*

- Not before the exclusion becomes effective, although bidders are generally required to include in their bids evidence regarding the absence of exclusion grounds. (See PPA Secs. 96, 104) The supplier can also challenge the decision before the Public Procurement Review Committee.

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

*Nature and Forum of Review:* Other.

- The Public Procurement Review Committee is an independent review body (PPA § 187 lg 2) which serves as a mandatory extrajudicial dispute adjudication body.

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

- 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;
- Request suspension of the procurement process pending the appeal's resolution.

*Duration of Appeal Process:* Less than one month (within 30 days after receipt of the request).

**Legal Representation:**

- A supplier **may** be represented by counsel.

**Subsequent Modification of Exclusion Decision:** Yes (“Self-Cleaning”).

- Except through an appeal to the Public Procurement Review Committee, a supplier is **not** entitled to seek a modification of any decision to exclude it from a procurement process after it goes into effect.
- A supplier **may**, however, include evidence of “self-cleaning” with any subsequent bids submitted to a contracting authority.

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

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**Automatic Exclusion:** Yes.

Based on a supplier’s conviction by final judgement, or a conviction by final judgement of a member of the supplier’s administrative, management, supervisory board, or other legal or contractual representative, for the following:

- Corruption;
- Fraud;
- Money laundering;
- Labor-related offenses & human trafficking;
- Terrorist offenses or offenses linked to terrorism;
- Violating the duty of integrity;
- Participating in a criminal group;
- Enabling an illegal alien to work in Estonia.

Based on an administrative finding that the supplier engaged in the following:

- Tax-related offenses;
- Subject to an international sanction.

**Discretionary Exclusion:** Yes.

Based on an administrative decision that the supplier engaged in the following:

- Fraud;
- Collusion and/or infringing competition;
- Tax-related offenses;
- Social harms (breach of environmental, social, or labor law);
- Grave professional misconduct;
- Poor performance, non-performance, and/or failure to perform on public contracts;
- Conflicts of interest.

**Exclusion based on Bankruptcy and Cross-Debarment:** Discretionary & Automatic.

*Bankruptcy:* A ground for discretionary exclusion per Sec. 95(4) of the PPA.

*Cross-Debarment:* International sanctions “within the meaning of the International Sanctions Act” are a basis for automatic exclusion. (See PPA Sec. 95(1))

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

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### Types of Excluded Suppliers:

- Individuals, Corporations, and Associations that are not legal persons.

### Scope of Exclusion:

#### *Extension to Other Agencies and Organizations:*

- Exclusions do **not** prohibit the supplier from contracting with other federal agencies (exclusion decisions are contract-by-contract). However, the same facts could constitute an exclusion ground in every subsequent tender process.
- No known countries or international organizations that automatically recognize and apply exclusions from Estonia.

#### *Effect on Ongoing Contracts:*

- A supplier's ongoing contracts are **not** automatically cancelled.
- Subsequent modifications to ongoing contracts are subject to the restrictions set forth in Sec. 123 of the PPA and are **not** affected by a supplier's exclusion.

#### *Effect on Subcontracting:*

- Excluded suppliers **can** technically serve as subcontractors, but contracting authorities may have chosen in contract documents to evaluate, or may sometimes be required by the law to evaluate, whether any potential exclusion grounds apply to a bidder's proposed subcontractors. If any grounds exist, the contracting authority can ask or sometimes must ask to replace the subcontractor.

#### *Effect on Excluded Individuals:*

- Excluded individuals **may** be employed by a corporate supplier in any capacity.
- However, individual's conviction for certain offenses **may** be imputed to companies in which the individual served as a (i) member of the supplier's administrative, management, or supervisory board, or (ii) other legal or contractual representative. (See PPA Sec. 95)

#### *Tailoring Exclusion:*

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

### Effect on Affiliates:

- Exclusion does **not** extend to affiliated companies (controlling, controlled, under common control) or affiliated individuals.

### Duration of Exclusions:

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

- Exclusions must be based only on grounds that occurred in the previous three or five years.

*Duration Depends on Applicable Exclusion Ground?* Yes.

- Five years maximum for automatic grounds (from the date of final conviction).
- Three years maximum for discretionary grounds (from the ground's occurrence).

*Discretion to Deviate?*

- No, the decision-maker does not have discretion to consider any grounds that fall outside the above time limitations as a basis for exclusion.

**Exceptions/Waivers to Exclusions:**

- Yes, a contract may still be awarded to a supplier notwithstanding the existence of an automatic exclusion ground if necessary for the general interest, and the contract would not be awarded if the supplier were excluded. might still be awarded to an excluded supplier during the period of exclusion.

**Other Sanctions:**

- The contracting authority may terminate any public contract after finding that an automatic exclusion ground against the contractor existed at the time of the contract's award, which should have resulted in the contractor's exclusion from the procurement. (See PPA Secs. 123-124)

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

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**Official List of Excluded Suppliers?** No.

**Reporting on Exclusions:**

*Number of Exclusions:* Figures unknown.

*Regular Reporting:* No.

*Other Transparency Mechanisms:* Decisions of contracting authorities are publicly available upon request absent a reason to withhold.

## **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?** Yes. See above.

**Subnational Exclusions:** No.



# Exclusion System Summary Germany

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

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

- Exclusion decisions are made on a contract-by-contract basis as governed by national legislation or centralized regulations. Exclusions apply only to the procurement at issue.

### *Governing Policy:*

- Part 4, Arts. 123-126 of the [Act against Restraints of Competition](#) (the "Act"), which transposes Art. 57 of Directive 2014/24/EU of the European Parliament.

### *Primary Legal Foundation:*

- Administrative/Regulatory Law.

**Decision-Maker:** Individual Contracting Officers; Not Functionally Independent from Senior Procurement Officials.

- Individual contracting authorities make exclusion decisions within each procurement procedure (contract-by-contract exclusion).

### *Qualification:*

- None stated in the legal framework (although public officials in general must be thoroughly qualified).

### *Independence:*

- Not functionally independent from senior procurement officials.

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

---

### **General Provisions:**

*Type of Procedures:* Administrative.

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

*Provisional Exclusions:* None.

**Initial Procurement Decision:** Grounds for exclusion are reviewed by the contracting authority as part of the procurement decision on a contract-by-contract basis.

- Decision-maker can make an exclusion decision without a prior referral.
- Non-governmental parties can submit complaints and/or evidence to the decision-maker.
  - Contracting authorities may take third-party complaints into account, but there is no formal system for third parties to submit complaints.
  - Suppliers also have a formal mechanism to challenge a contracting authority's decision to not exclude a competitor from a procurement process.

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

*Notice:*

- Suppliers receive notice when:
  - An investigation into the underlying grounds is commenced.
  - The decision-maker decides that grounds exist.
- Notice must contain the grounds for exclusion.
- Decision-maker must make reasoning available to the supplier (not to the public).

*Opportunity to be Heard:*

- To challenge its exclusion, a supplier must first submit a written complaint to the contracting authority within ten calendar days. If not resolved, the supplier may then file an application with the relevant public procurement tribunal 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.
- The opportunity to be heard derives from the right to a fair trial guaranteed by the German constitution.

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

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

- Judicial process is used after the exhaustion of the administrative process.
  - As noted above, suppliers can seek review before an administrative body known as the public procurement tribunal, which exists at both the federal and regional levels.
- Decisions of the public procurement tribunal can be appealed to the Higher Regional Court.

*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 six months.

### **Legal Representation:**

- A supplier **may** be represented by counsel. If challenge is successful, the contracting authority may be required to pay the supplier's legal fees.
- A supplier **must** be represented by counsel in any appeal to the Higher Regional Court.

### **Subsequent Modification of Exclusion Decision:** Yes ("Self-Cleaning").

- Except through a written complaint to the contracting authority and any subsequent appeal, a supplier is **not** entitled to seek a modification of any decision to exclude it from a procurement process after it goes into effect.
- A supplier **may**, however, include evidence of "self-cleaning" with any subsequent bids submitted to a contracting authority.

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

---

### **Automatic Exclusion:** Yes.

Based on a supplier's conviction by final judgement for the following:

- Corruption;
- Fraud (directed against the budget of the European Union);
- Money laundering;
- Social harms (human trafficking);
- Terrorist offenses or offenses linked to terrorism.

Based on a judicial or administrative decision that the supplier engaged in:

- Tax-related offenses (including failure to pay taxes or social security).

### **Discretionary Exclusion:** Yes.

Based on a finding by the decision-maker that the supplier engaged in the following:

- Fraud (directed against the contracting authority);
- Collusion and/or infringing competition;
- Coercion or intimidation;
- Obstruction of an investigation;
- Theft or embezzlement;
- Labor-related offenses;
- Social harms (environmental offenses);
- Commercial regulatory violations;
- Poor performance, non-performance, and/or failure to perform on public contracts;
- Grave professional misconduct;
- Conflict of interest;
- Unduly influencing contracting authority;
- Undue advantage by obtaining confidential information.

Decision-maker may not exclude the supplier when there are:

- Remedial measures (“self-cleaning”);
- Settlement agreement.

**Exclusion based on Bankruptcy and Cross-Debarment:** Discretionary & Discretionary.

*Bankruptcy:* Bankruptcy and insolvency are express discretionary grounds.

*Cross-Debarment:* No automatic cross-debarment. However, an exclusion by another organization can be considered in any discretionary exclusion decision.

## 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 do **not** prohibit the supplier from contracting with other federal agencies (exclusion decisions are contract-by-contract). However, the same facts could constitute an exclusion ground in every subsequent tender process.
- Exclusions do **not** automatically extend to subnational governments.
- No known countries or international organizations that automatically recognize and apply exclusions from Germany.

*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 suppliers **can** technically serve as subcontractors, but contracting authorities may have chosen in contract documents to evaluate, or may sometimes be required by the law to evaluate, whether any potential exclusion grounds apply to a bidder’s proposed subcontractors. If any grounds exist, the contracting authority can ask or sometimes must ask to replace the 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 **may** extend to companies controlled by the excluded individual.
- *Note:* While convictions of individuals may be imputed to companies in which the individual held a management or supervisory position at the time of the offense, there is some dispute as to whether convictions for previous activity are imputable to the individual’s present employer.

#### *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 does **not** extend to affiliated companies (controlling, controlled, under common control) or affiliated individuals.

##### *Extension to Affiliated Individuals:*

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

#### **Duration of Exclusions:**

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

- Exclusions must be based only on grounds that occurred in the previous three or five years.

##### *Duration Depends on Applicable Exclusion Ground? Yes.*

- Five years maximum for automatic grounds (from the date of final conviction).
- Three years maximum for discretionary grounds (from the ground's occurrence).

##### *Discretion to Deviate?*

- No, the decision-maker does not have discretion to consider any grounds that fall outside the above time limitations as a basis for exclusion.

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

- Yes. A contract may still be awarded to an excluded supplier if it is imperative for compelling reasons of the public interest (this exception has rarely – if ever – been invoked).

#### **Other Sanctions:**

- The contracting authority may terminate any public contract after finding that an automatic exclusion ground against the supplier existed at the time of the contract's award, which should have resulted in the supplier's exclusion from the procurement.

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

---

#### **Official List of Excluded Suppliers?** Not Yet (In Process).

- The federal government has adopted legislation that introduces a nationwide Register of Competition (the "Register") due to be implemented in the near future. As of the writing of this summary, the Register has not been implemented.
- The Register will not be publicly available.
- The Register will be restricted to certain exclusion grounds only and will not apply to decisions taken by authorities or courts outside Germany.

**Procurement Checks?** Yes. Procuring entities will be required to check the Register, once implemented.

**Reporting on Exclusions:**

*Number of Exclusions:* Figures unknown.

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

*Other Transparency Mechanisms:* None.

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

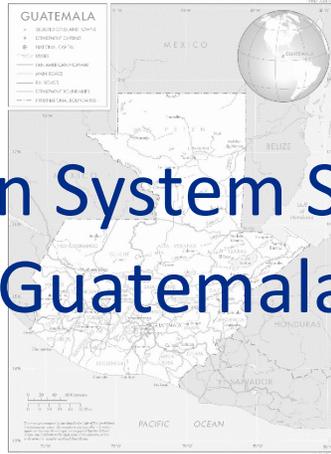
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**Entity-Wide (e.g., Single-Agency) Exclusion?** Yes. Each agency is free to establish its own standards on exclusion, which may include a provision for agency-wide exclusion.

**Contract-By-Contract (e.g., Single-Tender) Exclusion?** Yes. See above.

**Subnational Exclusions:**

- Exclusion mechanisms exist at the Provincial/State and Municipal/Local levels (same exclusion rules apply to the federal government and subnational bodies).
- Exclusion decisions of one subnational body are not automatically recognized, but they can be considered by other subnational bodies as part of their own decisions.



# Exclusion System Summary Guatemala

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

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

- Exclusion decisions can be made both as part of a procurement process and outside the procurement process as governed by national legislation or centralized regulations. Exclusions have government-wide effect.

#### *Governing Policy:*

- Art. 80 of the [Public Procurement Law](#), Decree No. 57-92, as amended by Decree No. 46-2016.

#### *Primary Legal Foundation:*

- Criminal Law; Civil/Tort Law; Administrative/Regulatory Law.

#### *Related Law and Regulation:*

- [Regulation of the Public Procurement Law](#), Government Agreement No. 172-2017.

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

- Central Office of Registered State Providers.
- Judicial authority could issue a ruling that results in an exclusion by the Central Office of Registered State Providers.
- Contracting authorities are also required to register a supplier's disqualification whenever they determine that a supplier is disqualified based on applicable legislation.

#### *Qualification:*

- At least ten years' experience as an active professional; no criminal record; full enjoyment of civil rights.

#### *Independence:*

- Agency decision-makers are not functionally independent from senior procurement officials.

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

---

### General Provisions:

*Type of Procedures:* Criminal and Administrative.

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

*Provisional Exclusions:* Yes, for example:

- Pending payment of tax or social security obligations (full payment will terminate the exclusion); or
- Successful bidder's failure to sign the contract (suspension for one year, recidivism results in permanent exclusion).

### Commencement of Proceedings:

*Ability to Initiate an Exclusion Proceeding:*

- Decision-maker can make an exclusion decision 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:*

- Suppliers receive notice when the exclusion, including any provisional exclusions or suspensions, becomes effective.
- Notice must contain the grounds for exclusion.
- Decision-maker must make reasoning available to the supplier (not to the public).

*Opportunity to be Heard:*

- Suppliers are entitled to present a defense to the decision-maker and may make a written submission to the decision-maker.

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

*Duration of Appeal Process:* Six months to one year (administrative process could take up to one year, but a subsequent judicial process could take years).

### Legal Representation:

- A supplier **may** be represented by counsel.

**Subsequent Modification of Exclusion Decision:** Yes, but only for exclusions based on pending tax or social security payments; full payment will terminate the exclusion.

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

---

**Automatic Exclusion:** Yes.

Based on a criminal conviction or civil judgement that the supplier engaged in the following:

- Corruption;
- Fraud;
- Collusion and/or infringing competition;
- Coercion or Intimidation;
- Obstruction of an investigation;
- Theft or embezzlement;
- Money laundering;
- Tax-related offenses;
- Labor-related offenses;
- Social harms;
- Terrorist offenses or offenses linked to terrorism;
- Commercial regulatory violations;
- Poor performance, non-performance, and/or failure to perform on public contracts.

Based on an administrative (*i.e.*, non-judicial) finding that the supplier engaged in the following:

- Collusion and/or infringing competition;
- Tax-related offenses;
- Labor-related offenses;
- Poor performance, non-performance, and/or failure to perform on public contracts.

**Discretionary Exclusion:** No. However, the decision-maker may decide not to exclude a supplier upon determining that a sanction other than exclusion would be more appropriate.

**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 procurements.
- No known countries or international organizations that automatically recognize and apply exclusions from Guatemala.

*Effect on Ongoing Contracts:*

- Ongoing contracts are automatically cancelled.

*Effect on Subcontracting:*

- Excluded supplier **cannot** serve as a subcontractor.

*Effect on Excluded Individuals:*

- Excluded individuals **must not** be employed by a corporate supplier in any capacity.
- Exclusion **may** 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 controlled companies and **may** apply to controlling companies and companies that are under common control.
- Affiliated companies are **not** required to have 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, its executive officers, and its managers and **may** extend to its employees.
- Affiliated individuals are **not** required to have 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.

*Discretion to Deviate?*

- No. The decision-maker does not have discretion to deviate from the durations specified in the legal framework.

**Exceptions/Waivers to Exclusions:**

- There is no legal mechanism whereby a contract might still be awarded to an excluded supplier during the period of exclusion.

**Other Sanctions:**

- Economic fines and suspension.

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

---

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

- <http://www.guatecompras.gt/inhabilitaciones/consultaProveeInhabRes.aspx>.
- The public list provides information on the grounds for each listed exclusion.

### **Procurement Checks:**

- No. Procuring entities are not required to check a list of excluded suppliers before awarding a contract. However, suppliers must be registered with the Central Office of Registered State Providers in order to compete for procurement contracts.

### **Reporting on Exclusions:**

*Number of Exclusions:* Figures unknown but could be discernible. The debarment list is from 2011 to the present.

*Regular Reporting:* The exclusion list is updated regularly.

*Other Transparency Mechanisms:* Information on exclusions could be obtained by a written request through the Public Information Law.

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

---

**Entity-Wide (e.g., Single-Agency) Exclusion?** No.

**Contract-By-Contract (e.g., Single-Tender) Exclusion?** No. While a contracting authority may exclude a supplier during the course of a procurement process, the exclusion has government-wide effect.

**Subnational Exclusions:** No.

# Exclusion System Summary Honduras



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

### Government-Wide Exclusion Framework? Yes.

- Exclusion decisions are made on a contract-by-contract basis as governed by national legislation or centralized regulations. Most exclusions apply only to the procurement at issue. Other exclusions result in the suspension of a supplier's contractor registration, which is required for most procurements.

#### Governing Policy:

- Arts. 15, 16, 132-141 of the Government Procurement Law (Ley de Contratación del Estado (revisada diciembre 2016), available at <http://www.oncae.gob.hn/biblioteca-virtual> under Normas de Contratación).

#### Primary Legal Foundation:

- Administrative/Regulatory Law.

#### Related Law and Regulation:

- Arts. 28, 55 of the Government Procurement Regulations (Reglamento Ley de Contratación del Estado, available at <http://www.oncae.gob.hn/biblioteca-virtual> under Normas de Contratación).

**Decision-Maker:** Individual Contracting Officers; Not Functionally Independent from Senior Procurement Officials.

- Individual contracting authorities make exclusion decisions within each procurement procedure (contract-by-contract exclusion).

#### Qualification:

- The legal framework does not require the decision-maker to have certain educational or professional qualifications.

#### Independence:

- Not functionally independent from senior procurement officials.

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

---

### General Provisions:

*Type of Procedures:* Administrative.

- The initial exclusion decision is made as part of the procurement process, which is an administrative process.
- Any subsequent proceedings are governed by administrative law.

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

*Provisional Exclusions:* None.

**Initial Procurement Decision:** Grounds for exclusion are reviewed by the contracting authority as part of the procurement decision on a contract-by-contract basis.

- Decision-maker can make an exclusion decision 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:*

- Suppliers receive notice of proceedings when:
  - The decision-maker decides that grounds exist; and
  - The exclusion, including any provisional exclusions or suspensions, becomes effective.
- Notice must contain the grounds for exclusion.
- Decision-maker must make reasoning available to the supplier (not to the public).

*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.

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

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

- Suppliers can request reconsideration before the relevant administrative body and, if denied, appeal to a higher administrative organ.
- After the administrative appeal, suppliers can file suit in the Court of Administrative Litigation.

*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:* Six months to one year.

### 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 conviction, civil judgement, or administrative (*i.e.*, non-judicial) finding that the supplier engaged in the following:

- Corruption;
- Fraud;
- Collusion and/or infringing competition;
- Coercion or intimidation;
- Obstruction of an investigation;
- Theft or embezzlement;
- Money laundering;
- Tax-related offenses;
- Terrorist offenses or offenses linked to terrorism;
- Commercial regulatory violations;
- Poor performance, non-performance, and/or failure to perform on public contracts.

Other Exclusion Grounds:

- Suppliers connected to public officers (and their relatives) cannot participate in public procurements.
- Suppliers that have participated as advisors or consultants for any part of the bidding process are excluded from that bidding process.

**Discretionary Exclusion:** No. However, a supplier can avoid exclusion by taking sufficient remedial measures to address the basis for exclusion.

**Exclusion based on Bankruptcy and Cross-Debarment:** Automatic & Discretionary.

*Cross-Debarment:* Exclusions by other jurisdictions are evaluated by a procurement's evaluating committee, which decides whether to also exclude the supplier.

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

---

**Types of Excluded Suppliers:**

- Individuals and Corporations.

**Scope of Exclusion:**

*Extension to Other Agencies and Organizations:*

- Most exclusions do **not** prohibit the supplier from contracting with other federal agencies (exclusion decisions are contract-by-contract). Other exclusions result in the suspension of a supplier's contractor registration, which is required for most procurements across the national government.
- Exclusions do **not** extend to subnational governments.
- No known countries or international organizations that automatically recognize and apply exclusions from Honduras.

#### *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:*

- An excluded supplier **cannot** serve as a subcontractor.

#### *Effect on Excluded Individuals:*

- Excluded individuals **must not** be employed by a corporate supplier in any capacity.
- 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 **may** apply to affiliated companies (controlling, controlled, under common control).
- 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, executive officers, managers, and employees.
- Affiliated individuals **must** be given an opportunity to contest the action.

### **Duration of Exclusions:**

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

- Suspensions of a supplier's registration can last from one to five years. The duration of other exclusions is not specified in the legal framework, except for exclusions based on contract termination.

#### *Duration Depends on Applicable Exclusion Ground? Yes.*

- Exclusions based on a supplier's default termination of any contract are for two years. If the supplier defaults again, the exclusion is indefinite. (See art. 15(5) of the Government Procurement Law)

*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 no legal mechanism whereby a contract might still be awarded to an excluded supplier during the period of exclusion.

### **Other Sanctions:**

- The contracting authority may terminate any public contract after finding that an automatic exclusion ground against the contractor existed at the time of the contract's award, which should have resulted in the contractor's exclusion from the procurement. (See art. 32 of the Regulations).

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

---

**Official List of Excluded Suppliers?** No.

- The Registry of Suppliers and Contractors does not disclose suspended suppliers or other exclusions.

**Reporting on Exclusions:**

*Number of Exclusions:* Figures unknown.

*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.

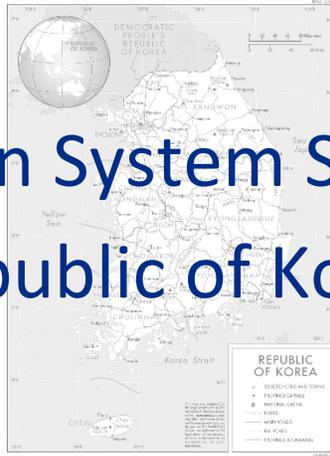
**Contract-By-Contract (e.g., Single-Tender) Exclusion?** Yes. See above.

**Subnational Exclusions:**

- Exclusion mechanisms do not exist at the Provincial/State or Municipal/Local levels.

# Exclusion System Summary

## Republic of Korea



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

---

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

- Exclusion decisions are governed by national legislation and centralized regulations. These decisions are generally made by a contracting agency during a procurement process and extend to all other central government agencies.

#### *Governing Policy:*

- Art. 27 of the [Act on Contracts to Which the State is a Party](#).
- Art. 31 of the [Act on Contract to Which a Local Government is a Party](#).

#### *Primary Legal Foundation:*

- Administrative/Regulatory Law.

#### *Related Law and Regulation:*

- Art. 76 of the [Enforcement Decree on Contracts to which the State is a Party](#).

**Decision-Maker:** Both Centralized and at Agency Level; Functionally Independent from Senior Procurement Officials.

- Contract review boards at individual government agencies; also the Public Procurement Service of Korea ("PPS"), Korea's centralized procurement agency.
  - PPS conducts about 30% of national procurement in Korea.
  - Remaining 70% of national procurement is conducted by individual agencies.

#### *Qualification:*

- None stated in the legal framework.

#### *Independence:*

- Contract review boards are composed of independent experts and are independent from senior procurement officials.

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

---

### General Provisions:

*Type of Procedures:* Administrative.

*Decision Deadline:* Exclusion cannot be imposed more than 5 years after the occurrence of the exclusion ground.

*Provisional Exclusions:* None.

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

- Referrals:
  - Contract review boards at individual agencies must receive a prior referral before initiating exclusion proceedings.
  - The PPS does not require a prior referral to initiate exclusion proceedings.
- 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.
- Notice must contain the grounds for exclusion.
- Decision-maker must make reasoning available to the supplier (not to the public).

*Opportunity to be Heard:*

- Suppliers are entitled to present a defense to the decision-maker and may:
  - Make a written submission to the decision-maker.
  - Request an in-person hearing with the decision-maker.

### Appellate Review of Exclusion Decisions: Yes.

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

*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 six months.

### Legal Representation:

- A supplier **may** be represented by counsel.

### Subsequent Modification of Exclusion Decision: Yes (through judicial decision only).

- After an exclusion goes into effect, a supplier can seek to suspend its exclusion in court.

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

---

**Automatic Exclusion:** Yes.

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

- Corruption;
- Fraud;
- Collusion and/or infringing competition;
- Coercion or intimidation;
- Tax-related offenses;
- Labor-related offenses;
- Social harms;
- Commercial regulatory violations;
- Poor performance, non-performance, and/or failure to perform on public contracts;
- Other illegal acts (*e.g.*, obstruction of an investigation, theft, money laundering, terrorist offenses).

*Exception:* According to Art. 76(2) of the Enforcement Decree, a supplier may avoid exclusion if it "has not neglected to pay reasonable attention to and exercise reasonable supervision over [its] agent, manager, or other employees to prevent them from" committing the underlying offense.

**Discretionary Exclusion:** No (except Cross-Debarment).

**Exclusion based on Bankruptcy and Cross-Debarment:** Automatic & Discretionary.

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

---

**Types of Excluded Suppliers:**

- Limited to Corporate Suppliers and their Representatives.

**Scope of Exclusion:**

*Extension to Other Agencies and Organizations:*

- Exclusions prohibit the supplier from contracting with any government agency.
- Exclusions extend to subnational governments.
- No known countries or international organizations that automatically recognize and apply exclusions from Korea.

*Effect on Ongoing Contracts:* Ongoing contracts are **not** automatically cancelled.

*Effect on Excluded Individuals:* N/A.

*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 extends to the corporation's representative but **not** to any other affiliated entity.

*Extension to Affiliated Individuals:*

- Exclusion of a corporate supplier does **not** extend to affiliated individuals.

**Duration of Exclusions:**

*Duration Specified in Legal Framework:* One month to two years (typical length is six months).

*Duration Depends on Applicable Exclusion Ground?*

- The decision-maker has discretion to impose an exclusion period of no less than one month and no greater than two years after considering the factors set forth in Art. 76(3) of the Enforcement Decree.

**Exceptions/Waivers to Exclusions:**

- Yes. Art. 27(3) of the Act on Contracts to Which the State is a Party provides that a contracting agency may still award a contract to an excluded supplier in exceptional circumstances or if no other appropriate supplier exists.

**Other Sanctions:**

- Yes. In situations described in Art. 27-2 of the Act on Contracts to Which the State is a Party, a contracting agency may impose a penalty surcharge instead of an exclusion.

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

---

**Official List of Excluded Suppliers?** Yes, but it is not publicly available.

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

**Reporting on Exclusions:**

*Number of Exclusions:* Figures unknown.

*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?** Yes.

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

**Subnational Exclusions:**

- Exclusion mechanisms exist at the Provincial/State and Municipal/Local levels.
- Exclusion decisions of one subnational body generally extend to other subnational bodies and central government agencies (a decision by the Supreme Court of Korea held that central government agencies should exercise their own independent judgment in adhering to subnational exclusion decisions).



# Exclusion System Summary Netherlands

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

---

### Government-Wide Exclusion Framework? Yes.

- Exclusion decisions are made on a contract-by-contract basis as governed by national legislation or centralized regulations. Exclusions apply only to the procurement at issue.

#### *Governing Policy:*

- Arts. 2.86-2.89 (Div. 2.3.5) of the [Public Procurement Act of 2012](#), as amended, which transposes Art. 57 of Directive 2014/24/EU of the European Parliament.

#### *Primary Legal Foundation:*

- Civil/Tort Law.

**Decision-Maker:** Individual Contracting Officers; Not Functionally Independent from Senior Procurement Officials.

- Individual contracting authorities make exclusion decisions within each procurement procedure (contract-by-contract exclusion).

#### *Qualification:*

- None stated in the legal framework.

#### *Independence:*

- Not functionally independent from senior procurement officials. The procurement process, including any exclusion decision, is conducted by the relevant Purchase Executive Centers.

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

---

### General Provisions:

*Type of Procedures:* Administrative and Civil.

- The initial exclusion decision is made as part of the procurement process, which is an administrative process.
- Any subsequent proceedings are governed by private contract law, which governs public procurement in the Netherlands.

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

*Provisional Exclusions:* None.

**Initial Procurement Decision:** Grounds for exclusion are reviewed by the contracting authority as part of the procurement decision on a contract-by-contract basis.

- Decision-maker can make an exclusion decision 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:*

- Suppliers receive notice when the decision-maker decides that grounds exist.
- Decision-maker must provide the grounds and reasoning for exclusion upon request.
- Decision-maker is not required to make reasoning available to the public. Contracting authorities are, however, required to provide a procurement report (including any suppliers excluded from the procurement) to the European Commission upon request. (Arts. 2.103(1), 2.132(d), 2.133 of the Public Procurement Act)

*Opportunity to be Heard:*

- Suppliers are entitled to an opportunity to prove that they have taken sufficient measures to demonstrate their reliability and may make a written submission to the decision-maker.

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

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

- Complaints related to a procurement process are submitted to the Civil Courts.
- As an alternative to the judicial system, suppliers can submit complaints to the Committee of Public Procurement Experts, a forum that acts as a mediator and issues non-binding advice on claims resolutions.

*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.
- Request to call witnesses to testify on the supplier's behalf.

*Duration of Appeal Process:* Depends on the circumstances of each case, but the Committee of Public Procurement Experts generally takes less than one year, while the Civil Courts can take up to two years.

**Legal Representation:**

- A supplier **may** be represented by counsel.

**Subsequent Modification of Exclusion Decision:** Yes ("Self-Cleaning").

- Except through an appeal to a judicial authority, a supplier is not entitled to seek a modification of any decision to exclude it from a procurement process after it goes into effect.
- A supplier **may**, however, include evidence of sufficient measures to demonstrate its reliability (*i.e.*, "self-cleaning") with any subsequent bids submitted to a contracting authority.

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

---

**Automatic Exclusion:** Yes.

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

- Corruption;
- Fraud;
- Money laundering;
- Tax-related offenses (based on a court judgement);
- Labor-related offenses;
- Terrorist offenses or offenses linked to terrorism;
- Other:
  - Member of criminal organization;
  - Not paying social security contributions (proven by judicial decision).

**Discretionary Exclusion:** Yes.

Based on a finding by the decision-maker that the supplier engaged in the following:

- Collusion and/or infringing competition;
- Obstruction of an investigation;
- Tax-related offenses (based on findings other than a court judgement);
- Poor performance, non-performance, and/or failure to perform on public contracts;
- Other:
  - Not paying social security contribution (without a judicial decision);
  - Environmental violations;
  - Serious fault in procedural activities that undermine the supplier's integrity;
  - Conflict of interest;
  - Influencing the procurement authority;
  - Prior involvement in preparation of the procurement procedure harming competition;
  - False statements to procurement authority;
  - Any act that shows that the supplier made a serious fault in the execution of the project which questions the integrity of the suppliers.

Decision-maker may not exclude the supplier when there are:

- Remedial measures – supplier has presented evidence of sufficient measures to demonstrate its reliability;
- Government interest;
- Other:
  - If exclusion is not proportional due to the nature of the procurement; and
  - Mandatory reasons of public interest.

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

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

---

### Types of Excluded Suppliers:

- Limited to Corporate Suppliers.

### Scope of Exclusion:

#### *Extension to Other Agencies and Organizations:*

- Exclusions do **not** prohibit the supplier from contracting with any other agency (exclusion decisions are contract-by-contract). However, the same facts could constitute an exclusion ground in every subsequent tender process.
- Exclusions do **not** automatically extend to subnational governments.
- No known countries or international organizations that automatically recognize and apply exclusions from the Netherlands.

#### *Effect on Ongoing Contracts:*

- Ongoing contracts are **not** automatically cancelled.
- Subsequent modifications to ongoing contracts are subject to the restrictions set forth in Arts. 2.163a-g of the Public Procurement Act and are **not** affected by a supplier's exclusion.

#### *Effect on Subcontracting:*

- Excluded suppliers **can** technically serve as subcontractors, but contracting authorities may have chosen in contract documents to evaluate, or may sometimes be required by the law to evaluate, whether any potential exclusion grounds apply to a bidder's proposed subcontractors. If any grounds exist, the contracting authority can ask or sometimes must ask to replace the subcontractor.

### Effect on Affiliates:

- Exclusions do **not** extend to the supplier's affiliated companies.

### Duration of Exclusions:

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

- Exclusions must be based only on grounds that occurred in the previous three or five years.

#### *Duration Depends on Applicable Exclusion Ground?* Yes, per Arts. 2.86 and 2.87 of the Public Procurement Act.

- Five years maximum for automatic grounds (from the date of final conviction).
- Three years maximum for discretionary grounds (from the ground's occurrence).

#### *Discretion to Deviate?*

- No. The decision-maker does not have discretion to consider any grounds that fall outside the above time limitations as a basis for exclusion.

### Exceptions/Waivers to Exclusions:

- Yes. A contract may still be awarded to a supplier notwithstanding the existence of an exclusion ground if in the government's or the public's interest.

### Other Sanctions: Not addressed.

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

---

**Official List of Excluded Suppliers?** No.

**Procurement Checks:** No. Procuring entities are not required to check a list of excluded suppliers before awarding a contract.

**Reporting on Exclusions:**

*Number of Exclusions:* Figures unknown.

*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?** Yes. See above.

**Subnational Exclusions:**

- Exclusions exist at the Provincial/State and Municipal/Local levels, which are also subject to the Public Procurement Act.
- Exclusion decisions of one subnational body do not extend to other subnational bodies.



# Exclusion System Summary Nicaragua

## 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:

- Art. 18 and Ch. IX, Sec. II of [Law N° 737](#) "Public Sector Administrative Procurement Law" of 2010.
- Ch. VIII, Sec. II of [Law N° 801](#) "Municipal Administrative Procurement Law" of 2012.
- Title XIX of [Law N° 641](#) (Criminal Code of 2007).

#### Primary Legal Foundation:

- Administrative/Regulatory Law.

#### Related Law and Regulation:

- Bylaws of [Law N° 737](#).

### Decision-Maker: Centralized; Functionally Independent from Senior Procurement Officials.

- The General Directorate of Government Procurement ("DGCE") makes exclusion decisions.

#### Qualification:

- None stated in the legal framework.

#### Independence:

- Yes. Functionally independent from senior procurement officials.

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

---

### General Provisions:

*Type of Procedures:* Administrative.

*Decision Deadline:* Decision-maker **must** make a determination within ten business days.

*Provisional Exclusions:* None.

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

- Decision-maker cannot initiate an exclusion proceeding without a prior referral from the procuring entity or the Office of the Comptroller General.
- Non-governmental parties cannot submit complaints and/or evidence to the decision-maker. Third parties can, however, file criminal complaints that could result in sanction.

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

*Notice of Proceedings:*

- Suppliers receive notice of proceedings when:
  - The decision-maker becomes aware of potential grounds for exclusion.
  - The decision-maker decides that grounds exist.
- Notice of proceedings must contain the grounds for exclusion.
- Decision-maker must make reasoning available to the supplier and the public.

*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.

- The supplier may appeal its exclusion to the Ministry of Finance within three business days.

*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:* The legal framework requires the appeal to be decided within ten business days.

**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 its exclusion after it goes into effect.

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

---

**Automatic Exclusion:** Yes.

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

- Corruption;
- Fraud;
- Collusion and/or infringing competition;
- Coercion or intimidation;
- Obstruction of an investigation;
- Theft or embezzlement;
- Money laundering;
- Tax-related offenses;
- Social harms;
- Terrorist offenses or offenses linked to terrorism.

Based on an administrative (*i.e.*, non-judicial) finding that the supplier engaged in the following:

- Poor performance, non-performance, and/or failure to perform on public contracts;
- Corruption;
- Fraud;
- Illegally obtaining confidential information;
- Failing to comply with the required contractual guarantees;
- Participating in a contracting procedure despite being subject to a prohibition.

*Note:* Decision-maker may decide to resolve potential claims through a settlement with the supplier before any finding of culpability. However, if it is held that applicable grounds exist, the supplier must be excluded. Hence, settlements are available only in cases where civil or criminal liability is not presumed.

**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 do **not** extend to subnational governments (municipal governments have a separate vendor registration process).
- No known countries or international organizations that automatically recognize and apply exclusions from Nicaragua.

#### *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 any capacity (the legal framework does not expressly address this circumstance).
- Exclusion **may** 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 does **not** automatically apply to affiliated companies (the legal framework does not expressly address this circumstance).

#### *Extension to Affiliated Individuals:*

- Exclusion of a corporate supplier **may** extend to individuals that own or control the supplier, executive officers, 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 three years.

#### *Duration Depends on Applicable Exclusion Ground? Yes.*

- One year for: (i) breach or failure to complete a contract; (ii) presenting false information in the bidding process; and (iii) breach of applicable warranty conditions. (Art. 106 of Law 737)
- Three years for: (i) second sanction; (ii) illegally obtaining confidential information; (iii) offering benefits to public officials; and (iv) providing lesser quality products or services. (Art. 105 of Law 737)

#### *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; damages; and criminal or civil sanctions.

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

---

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

- The General Directorate of State Procurement maintains a [Central Registry of Suppliers](#).
- Public list does **not** provide 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:**

- Exclusion mechanisms exist at the Municipal/Local levels. Law 801 mirrors Law 737 and prescribes similar exclusion procedures to subnational bodies.
- Exclusion decisions of one subnational body are recognized by other subnational bodies.



# Exclusion System Summary

## Poland

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

---

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

- Exclusion decisions are made on a contract-by-contract basis as governed by national legislation or centralized regulations. Exclusions apply only to the procurement at issue.

#### *Governing Policy:*

- Art. 108, 109, and 110 of the [Act of September 11, 2019](#) – Public Procurement Law (effective January 1, 2021), as amended, which transposes Art. 57 of Directive 2014/24/EU of the European Parliament.

#### *Primary Legal Foundation:*

- Other.

**Decision-Maker:** Individual Contracting Officers; Not Functionally Independent from Senior Procurement Officials.

- Individual contracting authorities make exclusion decisions within each procurement procedure (contract-by-contract exclusion).

#### *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:

---

#### **General Provisions:**

*Type of Procedures:* Other.

- The initial exclusion decision is made as part of the procurement process.
- Any subsequent proceedings are governed by civil litigation.

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

*Provisional Exclusions:* None.

**Initial Procurement Decision:** Grounds for exclusion are reviewed by the contracting authority as part of the procurement decision on a contract-by-contract basis.

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

**Notice Requirements & Opportunity to be Heard:** Yes & No.

*Notice:*

- Suppliers receive notice when the exclusion becomes effective.
- Notice must contain the grounds for exclusion.
- Decision-maker must make reasoning available to all interested suppliers, and the reasoning is usually made public. (See Arts. 253(1)(2), 558, and 559(2) of the Act of 2019)

*Opportunity to be Heard:*

- Not before the exclusion becomes effective, although bidders are generally entitled to an opportunity to submit evidence in their bids demonstrating that they have taken sufficient measures to demonstrate their reliability. (See Art. 110 of the Act of 2019)
- The supplier can also challenge the decision before the National Appeal Chamber. (See Art. 515 of the Act of 2019)

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

*Nature and Forum of Review:* Judicial.

- Appeals are filed with the National Appeal Chamber. (See Arts. 473-492 of the Act of 2019)
- Decisions of the National Appeal Chamber can be further challenged in the District Court in Warsaw. (See Arts. 579-590 of the Act of 2019)

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

- 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:* National Appeal Chamber resolves appeals within fourteen days, on average.

**Legal Representation:**

- A supplier **may** be represented by counsel.

**Subsequent Modification of Exclusion Decision:** Yes ("Self-Cleaning").

- Except through an appeal to the National Appeal Chamber, a supplier is **not** entitled to seek a modification of any decision to exclude it from a procurement process after it goes into effect.
- A supplier **may**, however, include evidence of sufficient measures to demonstrate its reliability (*i.e.*, "self-cleaning") with any subsequent bids submitted to a contracting authority. (See Art. 110(2) of the Act of 2019)

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

---

**Automatic Exclusion:** Yes.

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

- Corruption;
- Fraud;
- Collusion and/or infringing competition;
- Obstruction of an investigation;
- Money laundering;
- Tax-related offenses (arrear on taxes, fees, or social security or health insurance contributions);
- Human trafficking; and
- Terrorist offenses or offenses linked to terrorism.

Based on an administrative (*i.e.*, non-judicial) decision or finding against the supplier for the following:

- Collusion and/or infringing competition;
- Tax-related offenses (arrear on taxes, fees, or social security or health insurance contributions).

**Discretionary Exclusion:** Yes.

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

- Labor-related offenses; and
- Social harms (environmental).

Based on an administrative (*i.e.*, non-judicial) decision or finding against the supplier for the following:

- Tax-related offenses;
- Labor-related offenses;
- Social harms (environmental); and
- Poor performance, non-performance, and/or failure to perform on public contracts.
- Other:
  - Misleading the contracting authority, through willful misconduct or gross negligence, that the supplier satisfies the selection criteria or is not subject to any exclusion grounds, or otherwise submitting misleading information to the contracting authority;
  - Grave professional misconduct, which the contracting authority can demonstrate through appropriate evidence;
  - Prior involvement in preparing the contract award procedure, unless the conflict can be eliminated through other means; and
  - Unduly influencing or attempting to influence the contracting authority's decision-making process.

*Note on discretionary exclusion grounds:*

- In Poland, the contracting authority must decide which discretionary exclusion grounds in Art. 109(1) of the Act of 2019 to consider before publishing the tender announcement, and those grounds must be listed in the announcement. Once published, the contracting authority is mandated to consider those grounds during bid evaluation. (See Art. 109(2) of the Act of 2019)

*Proportionality:*

- Decision-maker may not exclude a supplier based on Arts. 109(1) items 1-5 or 7 if exclusion would be manifestly disproportionate, such as the amount of outstanding taxes or social security contributions is small or the supplier's financial situation is sufficient to perform the contract notwithstanding bankruptcy or liquidation. (See Art. 109(3) of the Act of 2019)

**Self-Cleaning:**

- A supplier may avoid exclusion by demonstrating "self-cleaning" in almost every case (exceptions include if there is a judicial decision finding the supplier is in arrears in payment of taxes or social security payments that have not been repaid; or if an exclusion is imposed by a court of law). The contracting authority has discretion to decide if the supplier has regained its reliability based on the factors set forth in Art. 110(2) of the Act of 2019.

**Exclusion based on Bankruptcy and Cross-Debarment:** Discretionary & Automatic.

- Suppliers that have been debarred in another jurisdiction are likely to be automatically excluded from procurements in Poland. (See Art. 108(1)(4) of the Act of 2019)

## 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 do **not** prohibit the supplier from contracting with other federal agencies (exclusion decisions are contract-by-contract). However, the same facts could constitute an exclusion ground in every subsequent tender process.
- Exclusions automatically extend to subnational governments.
- No known countries or international organizations that automatically recognize and apply exclusions from Poland.

*Effect on Ongoing Contracts:*

- Ongoing contracts are **not** automatically cancelled.
- Subsequent modifications to ongoing contracts are subject to the restrictions set forth in Arts. 455-456 of the Act of 2019 and are **not** affected by a supplier's exclusion.

#### *Effect on Subcontracting:*

- Excluded suppliers **can** technically serve as subcontractors, but contracting authorities may have chosen in contract documents to evaluate, or may sometimes be required by the law to evaluate, whether any potential exclusion grounds apply to a bidder's proposed subcontractors. If any grounds exist, the contracting authority can ask or sometimes must ask to replace the subcontractor. (See Art. 462(5) of the Act of 2019)

#### *Effect on Excluded Individuals:*

- Excluded individuals **may** be employed by a corporate supplier in any capacity. However, a supplier can be excluded if a member of its managing or supervisory body, partner, or proxy was convicted by final judgment for certain offenses. (See Art. 108(1)(2) and Art. 109(1)(3) of the Act of 2019)
- Exclusion does **not** 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 does **not** apply to affiliated companies.

##### *Extension to Affiliated Individuals:*

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

#### **Duration of Exclusions:**

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

- Exclusions must be based only on grounds that occurred in the previous three or five years.

##### *Duration Depends on Applicable Exclusion Ground? Yes.*

- Five years maximum for automatic grounds (from the date of final conviction).
- Three years maximum for discretionary grounds (from the ground's occurrence).

##### *Discretion to Deviate?*

- No. The decision-maker does not have discretion to consider any grounds that fall outside the above time limitations as a basis for exclusion.

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

- Yes. A contract may still be awarded to an excluded supplier that has "self-cleaned" – *i.e.*, presented evidence that it has undertaken measures that are sufficient to demonstrate reliability.

#### **Other Sanctions:**

- None.

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

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**Official List of Excluded Suppliers?** No.

**Procurement Checks:**

- No. Procuring entities are not required to check a list of excluded suppliers before awarding a contract.

**Reporting on Exclusions:**

*Number of Exclusions:* Figures unknown.

*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?** Yes. See above.

**Subnational Exclusions:**

- The exclusion framework set forth in the Act of 2019 applies to all contracting authorities in Poland, even at the local level.

# Exclusion System Summary

## State of Rajasthan, India



*Note: This summary covers the exclusion framework in the State of Rajasthan in northern India. It does not address exclusion practices at the federal level (i.e., the “union” or “central” government).*

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

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

- Exclusion decisions in the State of Rajasthan can be made both as part of a procurement process and outside the procurement process as governed by regional legislation and rules. Certain exclusions apply only to the procuring entity that imposed the exclusion, while others extend across the State government.

#### *Governing Policy:*

- Secs. 7, 11, 25, and 46 of 2012 [Rajasthan Transparency in Public Procurement \(“RTPP”\) Act](#).
- Rule 62 of the [2013 RTPP Rules](#).

#### *Primary Legal Foundation:* Administrative/Regulatory Law.

#### *Related Law and Regulation:*

- Goods: Standardized Code for Suppliers and Rule 72 App. 3 Part II of Rajasthan General Finance & Accounts Rules (“GF&AR”).
- Works: Appendix XVI Part II/ Rule 334 Part I of Rajasthan Public Works Finance & Accounts Rules (“PWF&AR”).

#### **Decision-Maker:** Centralized, Agency Level, Judicial Authority, and Individual Contracting Officers; Not Functionally Independent from Senior Procurement Officials.

- State-wide debarments are assessed and imposed by the State Finance Department. (See RTPP Act, Sec. 46)
- Agency-wide debarment authority is delegated to individual procuring entities (See RTPP Act, Sec. 25); individual administrative departments also have debarment authority pursuant to prior administrative practices.

*Qualification:* None stated in the legal framework. As a matter of practice, debarment decisions are often made by middle- or senior-ranked officials with sufficient procurement experience.

*Independence:* Not functionally independent from senior procurement officials.

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

---

### General Provisions:

*Type of Procedures:* Administrative.

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

*Provisional Exclusions:* Yes (only under prior administrative instructions).

- The RTPP Act does not provide for temporary suspensions. But administrative departments sometimes rely on the GF&AR and PWF&AR to authorize a temporary suspension in individual cases.

### Commencement of Proceedings:

*Ability to Initiate an Exclusion Proceeding:*

- Decision-maker cannot initiate an exclusion proceeding without a prior referral.
- Non-governmental parties cannot submit complaints and/or evidence to the decision-maker.

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

*Notice of Proceedings:*

- Suppliers receive notice of proceedings when the decision-maker decides that grounds exist.
- Notice of proceedings must contain the grounds for exclusion.
- Decision-maker must make reasoning available to the supplier and the public (reasoning can be very brief, such as simply indicating debarment ground).

*Opportunity to be Heard:*

- Per Sec. 46(5) of the RTPP Act, 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.

**Appellate Review of Exclusion Decisions:** Yes (only under prior administrative instructions).

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

- The RTPP Act does not provide for appeals. But the GF&AR and PWF&AR allow for appeals and are sometimes used to recognize a debarred supplier's right to appeal.
- General contract clauses relating to supplier complaints also authorize appeals filed by debarred suppliers.

*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.

*Duration of Appeal Process:* Unknown (reliable data is not available).

### Legal Representation:

- A supplier **may** be represented by counsel.

**Subsequent Modification of Exclusion Decision:** Yes (only under prior administrative instructions).

- Prior administrative instructions technically allow for a modification or early termination of an exclusion after it goes into effect. But in practice, subsequent modifications are rarely, if ever, issued.

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

---

**Automatic Exclusion:** Yes.

Based on a criminal conviction, civil judgement, or administrative (*i.e.*, non-judicial) finding that the supplier engaged in the following:

- Corruption;
- Fraud.

**Discretionary Exclusion:** Yes.

Based on a criminal conviction, civil judgement, or administrative (*i.e.*, non-judicial) finding that the supplier engaged in the following:

- Collusion and/or infringing competition;
- Coercion or intimidation;
- Obstruction of an investigation;
- Theft or embezzlement;
- Money laundering;
- Tax-related offenses;
- Labor-related offenses;
- Commercial regulatory violations;
- Poor performance, non-performance, and/or failure to perform on public contracts;
- Conflict of interest.

**Exclusion based on Bankruptcy and Cross-Debarment:** Automatic & Discretionary.

*Bankruptcy:* Suppliers facing bankruptcy, liquidation, or insolvency are generally prevented from bidding on contracts due to the financial health requirements contained in standard bidding documents.

*Cross-Debarment:* No explicit provision in the RTPP Act allowing for cross-debarment, but Sec. 7 of the Act could be read to allow procuring entities to consider debarments by other jurisdictions.

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

---

### Types of Excluded Suppliers:

- Individuals and Corporations.

### Scope of Exclusion:

#### *Extension to Other Agencies and Organizations:*

- An exclusion by one procuring entity does **not** automatically prohibit suppliers from contracting with other procuring entities in Rajasthan.
  - *Exception:* Debarments imposed by the State Government pursuant to Sec. 46(1) of the RTPP Act (relating to certain criminal convictions) apply across the State Government.
  - In practice, standard bidding documents often recognize debarments by other procuring entities within Rajasthan.
- No known countries or international organizations that automatically recognize and apply exclusions from Rajasthan.

#### *Effect on Ongoing Contracts:*

- Ongoing contracts are **not** automatically cancelled; each procuring entity has discretion to decide whether to terminate ongoing contracts.
- Subsequent modifications to ongoing contracts **are permitted**.

#### *Effect on Subcontracting:*

- Excluded supplier **can** serve as a subcontractor.

#### *Effect on Excluded Individuals:*

- Excluded individuals **must not** be employed by a corporate supplier as a “Director” or an “Officer,” although these terms are not defined in the RTPP Act. (See Sec. 7(1)(d))
- Exclusion **may** 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 **may** apply to affiliated companies (controlled, under common control).
- Affiliated companies are **not** required to have an opportunity to contest the action.

#### *Extension to Affiliated Individuals:*

- Exclusion of a corporate supplier **may** extend to individuals that own or control the supplier, executive officers, managers, and employees.
- Affiliated individuals are **not** required to have an opportunity to contest the action.

*Note on Affiliates:* While not explicitly addressed in the RTPP Act, extending an exclusion to affiliates is possible given the broad discretion accorded to procuring officials and is often addressed in standard bidding documents.

### **Duration of Exclusions:**

*Duration Specified in Legal Framework:* Generally not to exceed three years.

*Duration Depends on Applicable Exclusion Ground?* Yes.

*Discretion to Deviate?*

- No. The decision-maker may not impose a debarment greater than the maximum time limits prescribed under the RTPP Act.

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

- No. There is no legal mechanism whereby a contract might still be awarded to an excluded supplier during the period of exclusion.

### **Other Sanctions:**

- Contract termination; forfeiture of performance guarantees; deregistration from supplier lists; damages; recovery of payments with interest.

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

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### **Official List of Excluded Suppliers?**

- The RTPP Act requires publishing exclusion decisions on a publicly accessible website, but implementation is not properly monitored, and there is not a publicly available list of all suppliers debarred by various procuring entities.

### **Procurement Checks:**

- Procuring entities are required to exclude debarred suppliers. But in practice, this requirement is hampered by the fact that a consolidated list is not yet available.

### **Reporting on Exclusions:**

*Number of Exclusions:* Figures unknown.

*Regular Reporting:* Yes, but these reports are not publicly available. The Finance Department of the Government of Rajasthan is responsible for reporting.

*Other Transparency Mechanisms:* None.

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

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**Entity-Wide (e.g., Single-Agency) Exclusion?** Yes. The RTPP Act allows for entity-wide exclusions but does not provide for any standardized procedures. Certain procedures were set forth in prior administrative instructions, but many of these requirements conflict with the RTPP Act.

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

**Subnational Exclusions:** N/A.

# Exclusion System Summary

## Serbia



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

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

- Exclusion decisions are made on a contract-by-contract basis as governed by national legislation or centralized regulations. Exclusions apply only to the procurement at issue.

#### *Governing Policy:*

- The [Law on Public Procurement \(Off. Gazette of RS No. 91/2019\)](#), most of which became effective on July 1, 2020.
- Arts. 111-113 set forth exclusion grounds and self-cleaning opportunities and are consistent with Art. 57 of Directive 2014/24/EU of the European Parliament.
- Art. 128, para. 2 provides for a register of suppliers.

#### *Primary Legal Foundation:*

- Administrative/Regulatory Law.

#### *Related Law and Regulation:*

- Arts. 75-79 of the previous [Law on Public Procurement](#) (Off. Gazette of RS Nos. 124/2012, 14/2015 and 68/2015), which has been superseded by Law No. 91/2019.
- Arts. 27-29 of the [Law on the Liability of Legal Entities for Criminal Offences \(Off. Gazette of RS no. 98/2008\)](#) provide that a supplier may be prohibited from participating in public procurement for up to ten years following a criminal conviction.

**Decision-Maker:** Public Procurement Commission within each Agency; Not Functionally Independent from Senior Procurement Officials.

- Each procurement is conducted by a Public Procurement Commission appointed by the procuring entity. One of the Commission's many duties is to review bidder qualifications and make exclusion decisions. (Art. 92 of the Law on Public Procurement)

#### *Qualification:*

- At least one Commission member must be a public procurement officer or have a law degree. Other members of the Commission must have public procurement experience. (Art. 92 of the Law on Public Procurement)

*Independence:* Not functionally independent from senior procurement officials.

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

---

### General Provisions:

*Type of Procedures:* Criminal and Administrative.

*Decision Deadline:* No stated deadline for decision-maker to make a final determination, but it must be before the contract's award.

*Provisional Exclusions:* No. However, a supplier may effectively be excluded if the procuring entity asks, and receives permission, to override the stay imposed on the procurement process while the supplier's challenge of its exclusion is ongoing. (Art. 216 of the Law on Public Procurement)

**Initial Procurement Decision:** Grounds for exclusion are reviewed by the procuring entities, through their Public Procurement Commissions, as part of the procurement decision on a contract-by-contract basis.

- Decision-maker can make an exclusion decision without a prior referral.
- Interested non-governmental parties (e.g., economic entities, candidates, and bidders) can challenge actions of the procuring entity by submitting a request for "protection of rights." (Art. 214 of the Law on Public Procurement)

**Notice Requirements & Opportunity to be Heard:** Yes & No.

*Notice:*

- Suppliers receive notice when the exclusion becomes effective.
- Notice must contain the grounds for exclusion.
  - The Public Procurement Commission documents the procurement in a report, including the reasons for the exclusion or rejection of any offerors. (Arts. 145-146 of the Law on Public Procurement)
- Decision-maker must make reasoning available to the supplier and the public; award decisions must be published on the Public Procurement Portal. (Art. 146 of the Law on Public Procurement)

*Opportunity to be Heard:*

- Not before the exclusion becomes effective, although bidders are generally required to include in their bids evidence regarding the absence of exclusion grounds. (Art. 118 of the Law on Public Procurement)
- Suppliers may also attend the review of offers and provide explanations.

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

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

- Supplier initiates the appeal process by submitting a request for "protection of rights" to the procuring entity's Public Procurement Commission. Following a decision, the supplier may appeal for a second review by the centralized Republic Public Procurement Commission. (Arts. 204, 214-227 of the Law on Public Procurement)
- Decisions of the Republic Commission are final and unappealable. Suppliers may initiate an "administrative dispute" before the administrative court, but this will not delay the execution of the Republic Commission's decision. (Art. 228 of the Law on Public Procurement)

*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:* Less than one month.

#### **Legal Representation:**

- A supplier **may** be represented by counsel.

**Subsequent Modification of Exclusion Decision:** Yes ("Self-Cleaning").

- Except through the appeal process described above, a supplier is **not** entitled to seek a modification of any decision to exclude it from a procurement process after it goes into effect.
- A supplier **may**, however, include evidence of sufficient measures to demonstrate its reliability (*i.e.*, "self-cleaning") with any subsequent bids submitted to a procuring entity. (Art. 113 of the Law on Public Procurement).

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

---

**Automatic Exclusion:** Yes.

Based on a supplier's criminal conviction for the following (Art. 111 of the Law on Public Procurement and various provisions of the Criminal Code):

- Corruption;
- Fraud;
- Coercion or intimidation;
- Obstruction of an investigation;
- Theft or embezzlement;
- Money laundering;
- Tax-related offenses;
- Labor-related offenses;
- Social harms;
- Terrorist offenses or offenses linked to terrorism;
- Other:
  - Other criminal offenses (*e.g.*, conspiracy, organized crime);
  - Suppliers may also be prohibited by a court of law from participating in public procurement proceedings or performing a profession, activity, or duty. (Art. 85 of the Criminal Code and Arts. 23, 28 of the Law on Liability of Legal Entities for Criminal Offenses)

Based on an administrative (*i.e.*, non-judicial) finding that the supplier engaged in:

- Corruption;
- Fraud;
- Coercion or intimidation;
- Obstruction of an investigation;
- Theft or embezzlement;
- Money laundering;
- Tax-related offenses;
- Labor-related offenses;
- Social harms;
- Other:
  - Not registered with the competent authority;
  - Conflict of interest;
  - Attempting to improperly influencing the procuring entity.

**Discretionary Exclusion:** Yes.

Based on an administrative (*i.e.*, non-judicial) decision or finding against the supplier for the following (Art. 112 of the Law on Public Procurement):

- Fraud: submitting false evidence related to exclusion grounds or failed to provide agreed-upon evidence of compliance (Art. 118 of the Law on Public Procurement);
- Collusion and/or infringing competition;
- Poor performance, non-performance, and/or failure to perform on public contracts;
- Other:
  - Serious professional misconduct (through final judgment or decision of another competent authority);
  - Prior involvement in preparing the procurement procedure, unless the conflict can be eliminated through other means;
  - Refused to sign a contract after being selected for award.

*Note on discretionary exclusion grounds:*

- In Serbia, the procuring entity must decide which discretionary exclusion grounds in Art. 112 to consider before publishing the procurement documentation. Once published, the contracting authority is mandated to consider those grounds during bid evaluation. (See Art. 112 of the Law on Public Procurement)

**Self-Cleaning:**

- A supplier may avoid exclusion by demonstrating “self-cleaning” in almost every case – exceptions include if there is a finding that the supplier has not paid its taxes or social insurance payments; or if an exclusion is imposed by a court of law. (See Art. 113 of the Law on Public Procurement)

**Exclusion based on Bankruptcy and Cross-Debarment:** Discretionary & No.

## 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 do **not** prohibit the supplier from contracting with other federal agencies (exclusion decisions are contract-by-contract). However, the same facts could constitute an exclusion ground in every subsequent tender process.
- All government agencies apply the Law on Public Procurement, including national, provincial, and municipal agencies.
- No known countries or international organizations that automatically recognize and apply exclusions from Serbia.

#### *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 **must not** be employed by a corporate supplier as a senior manager or corporate director, insofar as the individual is a legal representative of the supplier. (Art. 111(1) of the Law on Public Procurement)
- Exclusion **may** extend to affiliates and 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** apply to affiliated companies (controlling, controlled, under common control).
- Affiliated companies **must** be given an opportunity to contest the action.

#### *Extension to Affiliated Individuals:*

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

### Duration of Exclusions:

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

- Between one and five years, up to ten years if imposed by court of law.

*Duration Depends on Applicable Exclusion Ground?* Yes.

- Five years maximum for automatic grounds (from the date of final conviction).
- Three years maximum for discretionary grounds (from the ground's occurrence).
- Ten years maximum for exclusions imposed by a court of law.

*Discretion to Deviate?*

- No. The decision-maker does not have discretion to consider any grounds that fall outside the above time limitations as a basis for exclusion.

**Exceptions/Waivers to Exclusions:** Yes.

- A contract may still be awarded to an excluded supplier if:
  - Necessary to respond to disasters, accidents, or other emergency situations;
  - There are "predominant reasons related to the public interest;" or
  - The supplier has "self-cleaned" – *i.e.*, presented evidence that it has taken measures to prove its reliability. (See Arts. 111 and 113 of the Law on Public Procurement)

**Other Sanctions:**

- None.

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

---

**Official List of Excluded Suppliers?** No.

- However, Serbia does have a public register of qualified suppliers. To be registered, a supplier must, among other things, demonstrate that it is not subject the exclusion grounds listed in paras. 1 and 2 of Art. 111 of the Law on Public Procurement – relating to convictions for certain crimes and payment of taxes and social insurance. (Art. 128 of the Law on Public Procurement) The register can be found [here](#).

**Reporting on Exclusions:**

*Number of Exclusions:* Figures unknown.

*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?** Yes. See above.

**Subnational Exclusions:**

- All government agencies apply the Law on Public Procurement, including national, provincial, and municipal agencies.



# Exclusion System Summary South Africa

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

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### Government-Wide Exclusion Framework? Yes.

- Exclusion decisions are made pursuant to two parallel mechanisms (one under criminal law and one under administrative/regulatory law) as governed by national legislation or centralized regulations. Certain exclusions have government-wide effect while others apply only to the procurement at issue.

*Primary Legal Foundation:* Criminal Law; Administrative/Regulatory Law.

- Sec. 217 of the Constitution of the Republic of South Africa.

*Governing Policy:*

- Criminal Law:
  - Sec. 28 of the Prevention and Combat of Corrupt Activities Act, 2004 ([Act No. 12 of 2004](#)) (“PCCA”).
  - Sec. 13P of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003, as amended by [Act No. 46 of 2013](#)) (“B-BBEEA”).
- Administrative Law:
  - Sec. 16A9 of the Treasury Regulations 2005 ([Gazette No. 27388 dated 15 March 2005](#)), as amended (“TR”).
  - Para. 14 of the Preferential Procurement Regulations 2017 ([Gazette No. 40553 dated 20 January 2017](#)) (“PPR”).

*Related Laws and Regulations:*

- Sec. 217 of the Constitution of the Republic of South Africa.
- Administrative Law:
  - Preferential Procurement Policy Framework Act, 2000 ([Act No. 5 of 2000](#)).
  - Public Finance Management Act, 1999 ([Act No. 1 of 1999](#)).
  - Municipal Finance Management Act, 2003 ([Act No. 56 of 2003](#)).
  - Promotion of Administrative Justice Act, 2000 ([Act No. 3 of 2000](#)) (“PAJA”).

*Upcoming Laws:*

- Ch. 3 of the [Draft Public Procurement Bill](#) (issued for public comment on 19 February 2020).

### **Decision-Maker:**

Criminal Law: **Independent Judicial Authority** (under the PCCA and B-BBEEA).

Administrative Law: **National Treasury** (under the PPR) and **Individual Accounting Officers** (under the TR).

- *Qualification:* None stated in the legal framework, but typically a senior employee with a financial or legal background at post-graduate level.
- *Independence:* Not functionally independent from senior procurement officials.

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

---

### **General Provisions:**

*Type of Procedures:* Criminal/Administrative.

*Decision Deadline:*

- Criminal Law: Subject to court deadlines and procedures.
- Administrative Law: Governed by PAJA.

*Provisional Exclusions:* None yet; provisional exclusions permitted in Draft Public Procurement Bill.

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

- Criminal Law:
  - Subject to standard judicial process (investigation, filing of charges, etc.).
  - Exclusion is a secondary penalty that may be imposed by the court following a supplier's conviction for certain corruption-related offences. (PCCA, art. 28)
- Administrative Law:
  - Grounds for exclusion based on sec. 16A9 of the TR are reviewed by the individual accounting officer as part of the procurement decision on a contract-by-contract basis. Violations are also referred to the National Treasury for further action, which may include government-wide exclusion. (TR, sec. 16A9.3)
  - For exclusions based on sec. 14 of the PPR, the National Treasury must first receive a referral from the relevant contracting authority.
- Non-governmental parties can submit complaints and/or evidence to the decision-maker.

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

- Criminal Law: Subject to standard judicial process (service of process, filings, trial, etc.).
  - If the court orders that a convicted supplier be excluded, the National Treasury must determine the exclusion's length and notify the supplier, relevant purchasing agencies, and all Government departments. (PCCA, sec. 28(5))
- Administrative Law: Administrative actions, including exclusions, are subject to PAJA's procedural requirements. (PAJA, sec. 3)
  - Adequate notice of the nature and purpose of proposed action;
  - A reasonable opportunity to make representations;
  - A clear statement of the action;
  - Adequate notice of any right of review or internal appeal;
  - Adequate notice of the right to request written reasoning, per sec. 5 of PAJA.

**Appellate Review of Exclusion Decisions:** Yes in both Criminal/Administrative Law.

*Nature and Forum of Review:*

- Criminal Law: A supplier can appeal its criminal conviction and any exclusion order. (PCCA, art. 28(3)(b))
- Administrative Law: PAJA provides for judicial review of administrative actions, including exclusions, after exhausting any administrative remedies. (PAJA, secs. 6-8)

*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:* Appellate review of both convictions and administrative actions are court processes that vary on a case-to-case basis.

### **Legal Representation:**

- A supplier **may** be represented by counsel in both the criminal and administrative law systems.

**Subsequent Modification of Exclusion Decision:** Depends on the exclusion's underlying basis:

- Criminal Law:
  - The PCCA provides that the National Treasury "may at any time vary or rescind any restriction imposed" under this Act. (PCCA, sec. 28(4))
  - The B-BBEEA provides for an automatic 10-year debarment with no possibility to deviate. (B-BBEEA, sec. 13P)
- Administrative Law:
  - Exclusions by individual accounting officers based on sec. 16A9 of the TR are made on a contract-by-contract basis.
  - The National Treasury does not have discretion to modify exclusions based on sec. 14 of the PPR or following a referral based on sec. 16A9 of the TR.

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

---

**Automatic Exclusion:** Yes.

Criminal Law:

- Fraud and other offenses under the black economic empowerment legislation. (B-BBEEA, sec. 13P)

Administrative Law:

- Per sec. 16A9.1 of the TR, individual accounting officers must reject a bid if the supplier engaged in:
  - Corruption;
  - Fraud;
  - Tax-related violations;
  - Collusion and/or infringing competition (*e.g.*, price fixing, bid rigging, market division).

- Per sec. 14 of the PPR, a contracting authority must reject a bid if the supplier engaged in:
  - Fraud: Submitting false information regarding its black economic empowerment status or other matters covered by the PPR.
  - Fraud: Failing to declare any subcontracting arrangements.

**Discretionary Exclusion:** Yes.

Criminal Law:

- Corruption: Following a conviction for corrupt acts relating to procurements or contracts, the court may, but is not required to, exclude the supplier as part of its sentence. (PCCA, sec. 28(1))

Administrative Law:

- Per sec. 16A9.2 of the TR, individual accounting officers **may** reject a bid if the supplier has engaged in:
  - Fraud;
  - Poor performance, non-performance, and/or failure to perform on public contracts;
  - Abusing the agency's supply chain management system; or
  - Any other improper conduct.
- Per sec. 14 of the PPR, the National Treasury **may** decide to impose an additional (government-wide) exclusion on a supplier that engaged in:
  - Fraud: Submitting false information regarding its black economic empowerment status or other matters covered by the PPR.
  - Fraud: Failing to declare any subcontracting arrangements.
- Decision-maker may not exclude the supplier when there are:
  - Remedial measures;
  - Settlement/agreement;
  - Government interest;
  - Other sanction.

**Exclusion based on Bankruptcy and Cross-Debarment:** Automatic & Discretionary.

- Bankruptcy: The Companies Act (2008) and the Insolvency Act (1936) limit the permissible business activities of a companies that have been liquidated or insolvent individuals whose estates have been "sequestered."

## 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 imposed by **the courts** and **the National Treasury** prohibit the supplier from contracting with any federal agency. (See PCCA, sec. 28; B-BBEEA, sec. 13P; PPR, sec. 14(3)) These exclusions automatically extend to subnational governments.

- Exclusions imposed by **individual accounting officers** are contract-by-contract and apply only to the procurement at issue. But violations may be referred to the National Treasury for further action, including government-wide exclusion. (See TR, sec. 16A9; PPR, sec. 14(1))
- No known countries or international organizations that automatically recognize and apply exclusions from South Africa.

*Effect on Ongoing Contracts:*

- Ongoing contracts are **not** typically cancelled (except to undo an improperly awarded contract), but termination or imposition of other restrictions are allowed. (PCCA, sec. 28(3)(a); TR, sec. 16A9.1(f); PPR, sec. 14(1)(b)(i))
- Subsequent modifications to ongoing contracts **may be permitted**. (PCCA, sec. 28(3)(a))

*Effect on Subcontracting:*

- An excluded supplier **cannot** be a beneficiary of the public purse and thus **cannot** serve as a subcontractor. However, enforcement and monitoring may be limited.

*Effect on Excluded Individuals:*

- Excluded individuals **must** not be employed by a corporate supplier as a senior manager or corporate director. (TR, sec. 16A9.1(c)) Excluded individuals, however, **may** be employed in a role that is not directly related to the supplier's ongoing contracts.
- Exclusion **may** extend to companies controlled by the excluded individual. (PCCA, sec. 28(3)(c)(i))

*Tailoring Exclusion:*

- No. Exclusions cannot be limited to certain divisions, operating units, or business lines within the company. However, exclusions based on the B-BBEEA may be limited to the corporate supplier's members, directors, or shareholders who committed the offense. (B-BBEEA, sec. 13P(2))

**Effect on Affiliates** (under the PCCA only):

*Corporate Affiliates:*

- Exclusion **may** apply to affiliated companies (controlling, controlled, under common control). (PCCA, sec. 28(1)(c))
- The National Treasury **must** notify affiliated companies that they have been added to the Register of Tender Defaulters. PCCA, sec. 28(5))

*Extension to Affiliated Individuals:*

- Exclusion of a corporate supplier **may** extend to executive officers and individuals that own or control the supplier. (PCCA, sec. 28(1)(b)(ii))
- The National Treasury **must** notify affiliated individuals that they have been added to the Register of Tender Defaulters. (PCCA, sec. 28(5))

### **Duration of Exclusions:**

*Duration Specified in Legal Framework:*

- Criminal Law:
  - PCCA: Between five and ten years.
  - B-BBEEA: Ten years.
- Administrative Law:
  - PPR: Up to ten years.
  - TR: Contract-by-contract.

*Duration Depends on Applicable Exclusion Ground? Yes.*

*Discretion to Deviate?*

- No. The decision-makers do not have discretion to deviate from the limits specified in the legal framework.

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

- Criminal Law: No. There is not a legal mechanism whereby a contract might still be awarded to an excluded supplier during the period of exclusion.
- Administrative Law: Generally no, although an exclusion decision could be set-aside by a court. Also, exclusions imposed by individual accounting officers under sec. 16A9 are contract-by-contract and do not prohibit suppliers from competing for future contracts.

### **Other Sanctions:**

- Contract termination, monetary fines, and damages.

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

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**Official List of Excluded Suppliers?** Yes. They are publicly available, and they provide information on the grounds for each listed exclusion.

- [Register for Tender Defaulters](#): Exclusions based on the PCCA.
- [Database of Restricted Suppliers](#): Exclusions imposed by the National Treasury in all other instances.

### **Procurement Checks:**

- Yes. Procuring entities must check both lists of excluded suppliers before awarding a contract. (TR, sec. 16A9(c), See PPR, sec. 14(1)(b)(iii))

### **Reporting on Exclusions:**

*Number of Exclusions:* Figures discernable from exclusion lists. As of December 2020:

- Register for Tender Defaulters: zero excluded suppliers.
- Database of Restricted Suppliers: 138 excluded suppliers.

*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?** Yes.

### **Subnational Exclusions:**

- Exclusion mechanisms exist at the Provincial/State and Municipal/Local Levels, and within State-owned Enterprises.
- Exclusion decisions of one subnational body are recognized by all other Provincial/State and Municipal/Local Levels.



# Exclusion System Summary Sweden

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

### Government-Wide Exclusion Framework? Yes.

- Exclusion decisions are made on a contract-by-contract basis as governed by national legislation or centralized regulations and apply only to the procurement at issue. Swedish courts may also prohibit an individual from engaging in general business activities (a “trading prohibition”) because of criminal or other misconduct.

#### Governing Policy – Contract-by-Contract Exclusion:

- [Ch. 13 of Lagen](#) (2016:1145) om offentlig upphandling (the Act [2016:1145] on Public Procurement). The provisions in Ch. 13 transpose Art. 57 of Directive 2014/24/EU of the European Parliament.

#### Governing Policy – Trading Prohibitions:

- [Lag \(2014:836\) om näringsförbud](#) (Act [2014:836] on Trading Prohibitions).
- [Förordning \(2014:936\) om näringsförbud](#) (Ordinance [2014:936] on Trading Prohibitions).

#### Primary Legal Foundation:

- Criminal and Administrative/Regulatory Law.

#### Related Law and Regulation:

- [Förvaltningslagen \(2017:900\)](#) (Administrative Law [2017:900]).
- [Kommunallagen \(2017:725\)](#) (Municipal Act [2017:725]).

**Decision-Maker:** Judicial Authority and Individual Contracting Officers; Not Functionally Independent from Senior Procurement Officials.

- Judicial courts may impose a trading prohibition on an individual found to have engaged in criminal or other activities listed in the Act on Trading Prohibitions (government-wide exclusion).
- Individual contracting authorities evaluate exclusion grounds listed in the Act on Public Procurement as part of each procurement procedure (contract-by-contract exclusion).

#### Qualification:

- None stated in the legal framework.

*Independence:*

- Contract-by-contract exclusions are not functionally independent from senior procurement officials. Nevertheless, all contracting authorities must respect fundamental principles in public procurement, such as equal treatment and transparency.

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

---

### General Provisions:

*Type of Procedures:* Criminal and Administrative.

- A Swedish criminal court can impose a trading prohibition on a natural person, meaning that the excluded individual is not allowed to manage, control, or own a company.
- Decisions to exclude a supplier from a procurement (e.g., supplier is connected to a person subject to a trading prohibition) are made as during the procurement process.

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

*Provisional Exclusions:* Yes, only for trading prohibitions. A court may impose a temporary restriction on the defendant at an earlier stage if the proceedings are likely to result in a trading prohibition. (Secs. 21-22 of Act on Trading Prohibitions)

**Initial Procurement Decision (Contract-by-Contract Exclusion):** Grounds for exclusion are reviewed by the contracting authority as part of the procurement decision on a contract-by-contract basis. (Ch. 13 of the Act on Public Procurement)

- Contracting authorities can make an exclusion decision without a prior referral.
- Non-governmental parties can submit complaints and/or evidence to the decision-maker.

**Commencement of Proceedings (Trading Prohibitions):** Referral Required.

- The court cannot initiate an exclusion proceeding without a prior referral. Proceedings must be initiated by a prosecutor or the Swedish Competition Authority.
- Non-governmental parties cannot submit complaints and/or evidence to the decision-maker.

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

*Contract-by-Contract Exclusions:*

- Suppliers receive notice when:
  - The contracting authority decides that grounds exist.
  - The exclusion becomes effective.
- Notice must contain exclusion grounds and give the supplier an opportunity to comment.
- The contracting authority must make reasoning available to the supplier (not to the public).

*Trading Prohibitions – Notice of Proceedings:*

- Suppliers receive notice of proceedings when an investigation is commenced.
- Notice of proceedings must contain the grounds for exclusion.
- The court must make reasoning available to the supplier and the public.

#### *Trading Prohibitions – Opportunity to be Heard:*

- Suppliers are entitled to present a defense to the court and may:
  - Obtain the evidentiary record.
  - Make a written submission.
  - Request an in-person hearing.
  - 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:* Judicial.

- Contract-by-contract exclusions are reviewed by the relevant administrative court.
- Trading prohibitions are reviewed by the relevant Court of Appeal.

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

- Obtain the evidentiary record.
- Make a written submission to the appellate body (proceedings in the administrative courts and Courts of Appeal are usually written).

*Duration of Appeal Process:* Typically between one to six months.

#### **Legal Representation:**

- A supplier **may** be represented by counsel. In trading prohibition proceedings, the court may appoint a public defender (offentlig försvarare), but only when there are "special reasons" to do so. (Sec. 19 of Act on Trading Prohibitions)

#### **Subsequent Modification of Exclusion Decision:** Yes.

Contract-by-Contract Exclusions:

- Except through an appeal, a supplier is **not** entitled to seek a modification of any decision to exclude it from a procurement process after it goes into effect.
- A supplier **may**, however, include evidence of sufficient measures to demonstrate its reliability (*i.e.*, "self-cleaning") with any subsequent bids submitted to a contracting authority. (Sec. 5 of Ch. 13 of Act on Public Procurement)

Trading Prohibitions:

- An individual subject to a trading prohibition can request the court to reconsider the decision. (Secs. 31-32 of Act on Trading Prohibitions)

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

---

**Automatic Exclusion:** Yes (Contract-by-Contract Exclusion Only).

Based on a supplier's criminal conviction for the following (Sec. 1 of Ch. 13 of Act on Public Procurement):

- Corruption;
- Fraud;
- Money laundering;
- Terrorist offenses or offenses linked to terrorism;
- Social harms (human trafficking);
- Organized crime offenses.

Based on a supplier's civil judgment for the following (Sec. 2 of Ch. 13 of Act on Public Procurement):

- Tax-related offenses (failure to pay taxes or social security contributions).

**Discretionary Exclusion:** Yes.

*Contract-by-Contract Exclusion:*

Based on an administrative (*i.e.* non-judicial) decision or finding against the supplier for the following (Secs. 2-3 of Ch. 13 of Act on Public Procurement):

- Tax-related offenses (failure to pay taxes or social security contributions);
- Labor-related offenses;
- Social harms (human trafficking, environmental offenses);
- Collusion and/or infringing competition;
- Poor performance, non-performance, and/or failure to perform on public contracts;
- Other:
  - Gross professional misconduct;
  - Conflict of interest;
  - Misleading the contracting authority that the supplier satisfies the selection criteria or is not subject to any exclusion grounds;
  - Unduly influencing or attempting to influence the contracting authority's decision-making process.

*Trading Prohibitions:*

Based on a supplier's criminal or civil judgement for the following (Secs. 4-7 of Act on Trading Prohibitions):

- Criminal conviction;
- Grossly improper actions related to bankruptcy;
- Gross failure to pay taxes;
- Collusion and/or competition-related offenses.

#### *Considerations for Trading Prohibitions:*

- Typically, a court will impose a trading prohibition on an individual who has been sentenced for serious economic crime. In deciding whether to impose a trading prohibition on an individual, the court considers factors such as the pervasiveness of the misconduct, whether the misconduct was aimed at achieving considerable economic gain, and whether the misconduct caused, or would have caused, serious harm. (Secs. 8-9 of Act on Trading Prohibitions)

#### **Self-Cleaning:** *Contract-by-Contract Exclusion*

- A supplier may avoid exclusion by demonstrating "self-cleaning" in almost every case (*e.g.*, compensating for damages caused, actively cooperating with authorities, implementing remedial measures to prevent future misconduct). (Sec. 5 of Ch. 13 of Act on Public Procurement)

#### **Exclusion based on Bankruptcy and Cross-Debarment:** Discretionary & Discretionary.

- Bankruptcy is a discretionary ground for both contract-by-contract exclusions and trading prohibitions. (Sec. 2(2) of Ch. 13 of Act on Public Procurement; Sec. 5 of Act on Trading Prohibitions)
- An exclusion by another jurisdiction could indicate a need to evaluate the supplier, but there must still be an independent basis to exclude the supplier under Swedish law.

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

---

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

- Contract-by-Contract Exclusions: Individuals and Corporations.
- Trading Prohibitions: Limited to Individuals.

#### **Scope of Exclusion:**

##### *Extension to Other Agencies and Organizations:*

- Contract-by-contract exclusions do **not** prohibit the supplier from contracting with other government agencies. However, the same facts could constitute an exclusion ground in every subsequent tender process.
- Trading prohibitions prohibit an affected individual from conducting any business activities, including contracting with any government agency.
- Contract-by-contract exclusions do **not** extend to subnational governments.
- No known countries or international organizations that automatically recognize and apply exclusions from Sweden.

##### *Effect on Ongoing Contracts:*

- Contract-by-contract exclusions do **not** affect ongoing contracts.
- A trading prohibition requires the individual to cease his or her economic activities, including any ongoing contracts.

*Effect on Subcontracting:* Excluded suppliers **cannot** serve as subcontractors.

*Effect on Excluded Individuals:*

- Individuals subject to a trading prohibition **cannot** be a board member, work as an executive officer, or own more than 50 percent of a company. (Sec. 11 of Act on Trading Prohibitions)
- Contracting authorities shall exclude a supplier from a procurement process if (i) a member of its administrative, management, or control body; or (ii) a person authorized to represent, decide on, or control the supplier was convicted of an offense listed in Section 1 of Ch. 13 of the Act on Public Procurement.

**Effect on Affiliates:** Not addressed.

**Duration of Exclusions:**

*Duration Specified in Legal Framework:*

- Trading prohibitions can last from three to ten years. (Sec. 10 of Act on Trading Prohibitions)

*Duration Depends on Applicable Exclusion Ground? Yes.*

- The seriousness of the infringement and the protection of general interests are factors affecting the length of the trading prohibition.

*Discretion to Deviate?*

- No. The court does not have discretion to deviate outside the three-year minimum or ten-year maximum specified in the Act on Trading Prohibitions.

**Exceptions/Waivers to Exclusions:**

- Contract-by-Contract Exclusions: Yes. A contracting authority may refrain from excluding a supplier from a procurement process if justified by compelling reasons of public interest. (Sec. 6 of Ch. 13 of Act on Public Procurement)
- Trading Prohibitions: Yes. An individual subject to a trading prohibition may be granted an exemption if justified by the specific circumstances and the exemption would not be contrary to the prohibition's purpose. (Secs. 35-36 of Act on Trading Prohibitions)

**Other Sanctions:**

- None.

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

---

**Official List of Excluded Suppliers? Yes.**

- There is a register of trading prohibitions maintained by the [Swedish Companies Registration Office](#). While the register is not publicly accessible, the Registration Office handles inquiries regarding individuals and will issue a certificate stating whether the queried individual is under a trading prohibition. The certificate also provides information on the underlying court decision.

**Procurement Checks:**

- No. Procuring entities are not required to check a list of excluded suppliers before awarding a contract.

**Reporting on Exclusions:**

*Number of Exclusions:* Figures unknown.

*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?** Yes. See above.

**Subnational Exclusions:** None.

# Exclusion System Summary

## United Nations High Commissioner for Refugees



*Note: The United Nations High Commissioner for Refugees (“UNHCR”) is a United Nations agency dedicated to safeguarding the rights and well-being of people who have been forced to flee from their homes. UNHCR is governed by the UN General Assembly and the Economic and Social Council.*

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

---

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

- Exclusion decisions are made independent of the procurement process and according to centralized regulations. Exclusions generally extend to all UN agencies (exclusions based on poor performance, however, extend to UNHCR procurement activities only).

#### *Governing Policy:*

- [UN Supplier Code of Conduct](#). Any breach to this code may lead to the supplier’s exclusion from doing business with UNHCR.

#### *Primary Legal Foundation:*

- Administrative/Regulatory Law.

#### *Related Law and Regulation:*

- [UN Procurement Practitioner’s Handbook](#) (2020).
- UNHCR follows the Model Policy Framework (“MPF”) for Agencies of the UN System adopted by the High Level Committee on Management Procurement Network to ensure consistent treatment of vendors and reciprocity across UN agencies.

#### **Decision-Maker:** Centralized; Not Functionally Independent from Senior Procurement Officials.

- Exclusion decisions are made by the Vendor Ethics Committee (“VEC”), a five-member committee chaired by the Head of Supply Management Service.
- Performance-related issues and exclusions are decided by a separate Vendor Review Committee (“VRC”).

#### *Qualification:*

- The VEC is comprised of senior-level officials.

#### *Independence:*

- Not functionally independent from senior procurement officials.

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

---

### **General Provisions:**

*Type of Procedures:* Administrative.

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

*Provisional Exclusions:* Yes. A precautionary suspension may be imposed upon request of the party who submitted the case or on the VEC's own initiative.

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

- The VEC cannot initiate an exclusion proceeding without a prior referral.
- Non-governmental parties can submit complaints and/or evidence to the UNHCR Office of Inspector General for assessment, investigation, and possible referral to the VEC.

**Notice Requirements & Opportunity to be Heard:** Yes & No.

*Notice of Proceedings:*

- Suppliers receive notice of proceedings when the exclusion, including any provisional exclusions or suspensions, becomes effective.
- Notice must contain the grounds for exclusion.
- Decision-maker must make reasoning available to the supplier (not to the public).

*Opportunity to be Heard:*

- No. Suppliers are not entitled to present a defense to the VEC before its decision. Suppliers may, however, submit a request to the VEC for reconsideration (see below).

**Appellate Review of Exclusion Decisions:** No.

**Legal Representation:**

- A supplier **may** be represented by counsel.

**Subsequent Modification of Exclusion Decision:** Yes.

- A supplier is entitled, through a request for reconsideration, to seek a modification or early termination of an exclusion after it goes into effect.
- Suppliers are informed of this option when notified of the VEC's exclusion decision, and a reconsideration request can be submitted to the VEC at any time.

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

---

**Automatic Exclusion:** None.

**Discretionary Exclusion:** Yes.

Based on the VEC's finding that the supplier breached the UN Supplier Code of Conduct or engaged in one of the following Proscribed Practices:

- Corruption;
- Fraud;
- Collusion and/or infringing competition;
- Coercion or intimidation;
- Obstruction of an investigation;
- Unethical practices.

*A separate committee, the VRC, may suspend a supplier from UNHCR contracts for engaging in:*

- Poor performance, non-performance, and/or failure to perform on public contracts.

*The VEC may not exclude the supplier when there are:*

- Remedial measures;
- Settlement/agreement;
- Government interest.

**Exclusion based on Bankruptcy and Cross-Debarment:** Discretionary & Automatic.

- UNHCR automatically follows exclusions imposed by other UN agencies and international organizations belonging to the UN system (e.g., the World Bank Group).
- Exclusions imposed by any UN agency, including UNHCR, are added to an Ineligibility List maintained on the UN Global Marketplace website ([UNGM.org](http://UNGM.org)).

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

---

**Types of Excluded Suppliers:**

- Limited to corporate suppliers.

**Scope of Exclusion:**

*Extension to Other Agencies and Organizations:*

- Exclusions imposed by the VEC are added to the UNGM Ineligibility List and prohibit the supplier from contracting with any UN Agency.
- Suspensions imposed by the VRC for performance-related issues are **not** added to the UNGM Ineligibility List and apply only to UNHCR contracts.

*Effect on Ongoing Contracts:*

- Ongoing contracts are automatically cancelled. However, a contract manager can apply to the VEC for a derogation to allow completion of an ongoing contract.
- Subsequent modifications to ongoing contracts are **not permitted** unless a derogation is granted.

#### *Effect on Subcontracting:*

- An excluded supplier **cannot** serve as a subcontractor.

#### *Tailoring Exclusion:*

- Yes. Exclusion **may** be limited to certain divisions, operating units, or business lines within the company, if the VEC so decides.

#### **Effect on Affiliates:**

##### *Corporate Affiliates:*

- The VEC **may** extend an exclusion to a supplier's affiliated companies (controlling, controlled, under common control).
- Affiliated companies **must** be given an opportunity to contest the action.
- Exclusion of a corporate supplier **may** extend to other entities having the same link to a particular individual(s) (e.g., the same owner(s) who established another company to circumvent the exclusion). The VEC would have to review a separate case against the affiliated supplier.

#### **Duration of Exclusions:**

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

- Exclusions imposed by the VRC for performance-related issues are between one month and three years (not added to the UNGM Ineligibility List).
- All other exclusions are between three and five years (added to the UNGM Ineligibility List).

##### *Duration Depends on Applicable Exclusion Ground?*

- No, although the VEC has discretion to impose a sanction based on the severity of the misconduct.

##### *Discretion to Deviate?*

- No. The decision-maker does not have discretion to deviate outside the minimum and maximum durations 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:**

- In cases of poor performance only, early termination or suspension of one or more contracts is available.

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

---

**Official List of Excluded Suppliers?** Yes, but it is not publicly available.

- Ineligibility List maintained at [UNGM.org](https://ungm.org).
- Ineligibility List provides limited information on the grounds for each exclusion.

**Procurement Checks:** Yes.

- UNHCR procurement officials must check the UNGM Ineligibility List before awarding a contract.

**Reporting on Exclusions:**

*Number of Exclusions:* Figures unknown generally. In 2019, the VEC did not exclude any suppliers from doing business with UNHCR.

*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. Exclusions imposed by the VRC for performance-related issues apply only to UNHRC, not other UN agencies.

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

**Subnational Exclusions:** N/A.



# Exclusion System Summary United States

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

### Government-Wide Exclusion Framework? Yes.

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

#### Governing Policy:

- Procurement Suspensions & Debarments: [Subpart 9.4 of the Federal Acquisition Regulation \("FAR"\)](#) (Title 48 of the Code of Federal Regulations ("C.F.R.")).
- Nonprocurement Common Rule ("NCR"): [2 C.F.R. Part 180](#).
- Agency FAR Supplements and implementing regulations.

#### Primary Legal Foundation:

- Administrative/Regulatory Law.
  - Exclusions related to procurement contracts are governed by FAR Subpart 9.4.
  - Exclusions related to nonprocurement programs and activities (e.g., grants, cooperative agreements) are governed by 2 C.F.R. Part 180.

#### Related Law and Regulation:

- [Executive Order 12549 \(Feb. 18, 1986\)](#).
- Various statutory provisions (e.g., [42 U.S.C. § 7606](#) (Clean Air Act); [33 U.S.C. § 1368](#) (Clean Water Act)).
- Various agency-specific regulations (e.g., [2 C.F.R. Part 1532](#) (Environmental Protection Agency); [29 C.F.R. § 5.12](#) (Davis-Bacon and Related Acts)).

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

- Each federal agency has a Suspending and Debarment Official ("SDO") with authority to make government-wide exclusion decisions.

#### Qualification:

- Not explicitly defined in the legal framework and varies from agency to agency, but SDOs generally have expertise in public procurement and high ethical character.

*Independence:*

- Varies from agency to agency. Certain agencies mandate independence from the procurement function (e.g., Department of Defense, Department of State, U.S. Agency for International Development), while others do not.

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

---

### General Provisions:

*Type of Procedures:* Administrative.

*Decision Deadline:*

- Absent an extension for good cause, the SDO must make a final determination within 30 days (if governed by the FAR) or 45 days (if governed by the NCR) after closing the official record. (See FAR 9.406-3(d); 2 C.F.R. § 180.870)
- "Record closure" follows after all parties receive an opportunity to submit evidence for/against the action and the SDO notifies the parties that the record has closed.

*Provisional Exclusions:* Yes.

- Suspensions may be imposed pending completion of an investigation or legal proceedings if necessary to protect the government's interest. (FAR 9.407-1; 2 C.F.R. § 180.700)
- Also, under the FAR, a supplier is excluded immediately upon issuance of a Notice of Proposed Debarment. (FAR 9.405(a)) Under the NCR, an exclusion is not effective until the SDO either suspends the supplier pending completion of proceedings or issues a final decision to debar. (2 C.F.R. § 180.810)

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

- The SDO can initiate an exclusion proceeding without a prior referral. However, it is extremely rare in certain agencies for the SDO to act without first receiving a formal referral (e.g., the Environmental Protection Agency). These referrals should provide the information necessary to establish cause and satisfy the required evidentiary burden.
- Non-governmental parties can submit complaints and/or evidence to the SDO, although these complaints are typically reviewed first by a separate division/investigative office.

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

*Notice of Proceedings:*

- Suppliers receive notice of proceedings when:
  - The SDO determines that grounds exist; and/or
  - The exclusion, including any provisional exclusions or suspensions, becomes effective.
- Notice of proceedings must contain the grounds for exclusion and should generally contain enough information about the alleged misconduct to allow the respondent to meaningfully respond.
- The SDO must make reasoning available to the supplier (not the public).
  - The public nature of the SDO's written determinations varies from agency to agency; most agencies do not make their SDO's determinations public.

#### *Opportunity to be Heard:*

- Suppliers are entitled to present a defense to the SDO and may:
  - Obtain the administrative record.
  - Make a written submission contesting the exclusion to the SDO.
  - Request an in-person hearing with the SDO.
  - Call witnesses to an in-person hearing to testify on the supplier's behalf (subject to the SDO's discretion; also, in-person hearings have been suspended by regulation during the COVID-19 pandemic).
- Suppliers are also entitled to a formal fact-finding hearing when the exclusion is not based on a conviction or civil judgment and there is a genuine dispute over material facts. (FAR 9.406-3(b)(2); 2 C.F.R. § 180.830)

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

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

- All agencies allow excluded suppliers to request reconsideration. A few agencies (*e.g.*, the Environmental Protection Agency) have procedures for administrative appeals above the SDO.
- All exclusion decisions are subject to judicial review. Excluded parties are not required to pursue agency reconsideration before filing an action in federal court.

*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:* Typically, one to six months. However, cases in federal courts may take longer, especially if appealed.

#### **Legal Representation:**

- A supplier **may** be represented by counsel.

#### **Subsequent Modification of Exclusion Decision:** Yes.

- Both the FAR and the NCR give the SDO discretion to revisit a decision based on error or new evidence. (FAR 9.406-4(c); 2 C.F.R. §§ 180.875-180.880)

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

---

**Automatic Exclusion:** Yes.

- Violations of certain laws (e.g., the Clean Air Act and Clean Water Act, among others) will automatically trigger an exclusion, without any action by the SDO.
- Other violations may lead to an automatic referral to the SDO.

**Discretionary Exclusion:** Yes.

Any of the following grounds can be proven by a supplier's criminal or civil judgement (i.e., "conviction-based debarment") or an administrative finding (i.e., "fact-based debarment") by the SDO:

- Corruption;
- Fraud;
- Collusion and/or infringing competition;
- Coercion or intimidation;
- Obstruction of an investigation;
- Theft or embezzlement;
- Money laundering;
- Tax-related offenses;
- Labor-related offenses;
- Social harms;
- Terrorist offenses or offenses linked to terrorism;
- Commercial regulatory violations;
- Poor performance, non-performance, and/or failure to perform on public contracts.

*Conviction-based Catch-all:*

- "Commission of any . . . offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility" of the supplier. (FAR 9.406-2(a)(5); 2 C.F.R. § 180.800(a)(4))

*Fact-based Catch-all:*

- "[A]ny . . . cause of so serious or compelling a nature that it affects the present responsibility" of the supplier. (FAR 9.406-2(c); 2 C.F.R. § 180.800(d))

The SDO may decide not to exclude when:

- Supplier has demonstrated its present responsibility by taking sufficient corrective actions and/or remedial measures;
- Supplier enters into an agreement to resolve the exclusion action; or
- Exclusion is otherwise not in the government's interest.

**Exclusion based on Bankruptcy and Cross-Debarment:** Discretionary & Discretionary.

- Neither ground is enumerated in the regulatory framework, but the factual basis for a supplier's bankruptcy or debarment by another jurisdiction may provide cause for an exclusion action under one of the "catch-all" grounds.

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

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### Types of Excluded Suppliers:

#### *Contract-by-Contract Exclusions:*

- Individuals and Corporations.

### Scope of Exclusion:

#### *Extension to Other Agencies and Organizations:*

- Exclusions prohibit the excluded party from being awarded a contract or nonprocurement transaction by any federal agency.
- Exclusions **may** extend to subnational (state or local) governments, but only if mandated by the subnational government's own laws.
- There are no known countries or international organizations that automatically recognize and apply exclusions from the United States.

#### *Effect on Ongoing Contracts:*

- Ongoing contracts are **not** automatically cancelled.
- Subsequent (non-material) modifications to ongoing contracts **are permitted**, so long as the modification does not add new work, exercise options, or otherwise extend a current contract's duration. (FAR 9.405-1; 2 C.F.R. § 180.415)

#### *Effect on Subcontracting:*

- Under the FAR, an excluded supplier **cannot** serve as a subcontractor for any subcontract subject to government consent (See FAR Subpart 44.2) or any subcontract in excess of US\$35,000 absent a compelling reason to do so. These prohibitions do not apply to subcontracts for commercially available off-the-shelf items. (FAR 9.405-2)
- Under the NCR, an excluded supplier **cannot** participate at any tier of a nonprocurement transaction. (2 C.F.R. § 180.420).

#### *Effect on Excluded Individuals:*

- Excluded individuals are generally **not permitted** to receive federal contracts, subcontracts, grants, and many other sources of federal financing and may be prohibited from being employed by a government contractor as a senior manager or corporate director. An organization that derives significant revenues from federal contracting and that places one or more excluded individuals into positions of authority may have its present responsibility called into question.
  - The FAR prohibits excluded persons from serving as an "agent" or "representative." The NCR prohibits excluded persons from being a "participant" or a "principal" in a nonprocurement transaction. (FAR 9.405(a); 2 C.F.R. § 180.130)
  - Excluded individuals generally may serve in "back office" functions not related to a supplier's federal contracting business.
- An exclusion **may** extend to companies controlled by the excluded individual.

### *Tailoring Exclusion:*

- Yes. Exclusions **may** be limited to certain divisions, operating units, or business lines within the company, if the decision-maker so decides.

### **Effect on Affiliates:**

#### *Corporate Affiliates:*

- Exclusions **may** apply to any affiliated company (controlling, controlled, under common control) named in the notice of proceedings. (FAR 9.406-3; 2 C.F.R. § 180.625)
- Affiliated companies **must** be given an opportunity to contest the action. Entities excluded solely by their affiliation with the supplier may contest only the existence of affiliation.

#### *Imputation of Misconduct to Other Parties:*

- Misconduct of any officer, director, shareholder, partner, employee, or other individual associated with the corporate supplier **may** be imputed to the contractor or organization when the conduct occurred in connection with the individual's performance of duties or on behalf of the supplier or with the supplier's knowledge, approval, or acquiescence. (FAR 9.406-5(a); 2 C.F.R. § 180.630(a))
- Misconduct of a corporate supplier **may** be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the supplier who participated in, knew of, or had reason to know of the contractor's conduct. (FAR 9.406-5(b); 2 C.F.R. § 180.630(b))
- Conduct of one entity may be imputed to another. (FAR 9.406-5(c); 2 C.F.R. § 180.630(c))
- Parties to whom another's misconduct imputed **must** be given an opportunity to contest the action.

### **Duration of Exclusions:**

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

- Both the FAR and the NCR provide that debarments should generally not exceed three years but allow for longer periods of debarment, depending on the circumstances. (FAR 9.406-4(a); 2 C.F.R. § 180.865(a))

#### *Duration Depends on Applicable Exclusion Ground?*

- Yes, for a few specific grounds. In most cases, the SDO may consider the grounds and underlying circumstances to determine the appropriate exclusion length.

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

- Yes. A contract may be awarded to an excluded supplier if a senior government official (*i.e.*, agency head or designee), in the official's discretion, determines in writing that there is a "compelling reason" to do so. (FAR 9.405(a); 2 C.F.R. § 180.135(a))

### **Non-Exclusion Remedies:**

- There is a wide range of criminal, civil, and administrative remedies available in the United States. These remedies may be pursued at the same time as exclusion in parallel proceedings. Examples of non-exclusionary administrative remedies include: (i) notice to show cause; (ii) administrative agreements; (iii) and contractual remedies, such as termination and liquidated damages.

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

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

- [System for Award Management \("SAM"\)](#).
- Public list provides only broad information on the basis for each listed exclusion.

**Procurement Checks:**

- Yes. Procuring entities must check SAM before awarding a contract.

**Reporting on Exclusions:**

*Number of Exclusions & Regular Reporting:* Figures are known through public reports issued by the [Interagency Suspension and Debarment Committee](#).

*Other Transparency Mechanisms:* The public can access official records, including downloadable datasets from SAM, to analyze exclusion actions.

## VI. Limited Scope Exclusion Systems:

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**Entity-Wide (e.g., Single-Agency) Exclusion?**

- Generally no, although an entity-specific exclusion may be incorporated as a term or condition in an administrative agreement.

**Contract-By-Contract (e.g., Single-Tender) Exclusion?**

- Yes. Pursuant to FAR Subpart 9.1, the relevant contracting officer must make a responsibility determination before awarding a procurement contract; a contracting officer may find an offeror is nonresponsible and thus not eligible to be awarded a specific contract.

**Subnational Exclusions:**

- Exclusion mechanisms exist at the Provincial/State and Municipal/Local levels.
- Exclusion decisions of one subnational body do not automatically extend to other subnational bodies (subject to state/local law).

# Exclusion System Summary

## World Bank Group

### Corporate Procurement



*Note: The World Bank Group (“WBG”) consists of the International Bank for Reconstruction and Development (“IBRD”), the International Development Association (“IDA”), the International Finance Corporation (“IFC”), the International Centre for Settlement of Investment Disputes (“ICSID”), and the Multilateral Investment Guarantee Agency (“MIGA”). The WBG Corporate Procurement Framework governs how the WBG contracts with private vendors to provide goods and services directly to the WBG institutions.*

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

---

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

- Exclusion decisions are made independent of the procurement process and according to centralized regulations. Exclusions prohibit the supplier from contracting with any WBG institution as a vendor.

### *Governing Policy:*

- The WBG [Vendor Eligibility Policy](#).
  - This Policy applies to corporate vendor contracts entered into between a private vendor and the WBG pursuant to the WBG’s Corporate Procurement Framework.
  - This Policy is distinct from the [WBG’s Sanctions System](#), which applies to the WBG’s operational lending and development activities.

### *Primary Legal Foundation:*

- Administrative/Regulatory Law.

### **Decision-Maker:** Centralized; Not Functionally Independent from Senior Procurement Officials.

- The Director, Strategy, Performance, and Administration (“SPADR”) decides whether to exclude corporate vendors.

### *Qualification:*

- None explicitly stated in the Vendor Eligibility Policy.

### *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.

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

*Provisional Exclusions:* Yes. The SPADR may suspend a vendor if there is a reasonable likelihood that further investigation will lead to a finding of non-responsibility. In practice, suspensions are imposed prior to every non-responsibility determination.

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

- The SPADR cannot initiate an exclusion proceeding without first receiving some evidence or information calling into question a vendor's responsibility.
- Non-governmental parties can submit complaints and/or evidence, although these complaints are usually submitted to the Chief Procurement Officer and not to the SPADR directly.

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

*Notice of Proceedings:*

- Suppliers receive notice when the SPADR decides that grounds exist.
- Notice of proceedings must contain the grounds for exclusion.
- Decision-maker must make reasoning available to the supplier (not the public).

*Opportunity to be Heard:*

- Suppliers are entitled to present a defense to the SPADR and may make a written submission.

**Appellate Review of Exclusion Decisions:** No.

- Determinations of the SPADR are "final and without appeal." (Vendor Eligibility Policy, para. 5.1) Excluded vendors can, however, request reconsideration or modification of their exclusion.

**Legal Representation:**

- A supplier **may** be represented by counsel.

**Subsequent Modification of Exclusion Decision:** Yes.

A supplier is entitled to an opportunity to seek a modification or early termination of exclusion after it goes into effect.

- A supplier **may** submit a written request for reduction or elimination of its exclusion period to the SPADR only after fifty percent (50%) of its exclusion has passed.
- The SPADR **may**, upon the supplier's written request, reduce or eliminate the period or extent of ineligibility for reasons such as:
  - Newly discovered material information;
  - Reversal of the conviction upon which the non-responsibility determination was based;
  - Bona fide change in ownership or management;
  - Measures taken by the supplier to become responsible; or
  - Other reasons the SPADR deems appropriate.

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

---

**Automatic Exclusion:** No.

**Discretionary Exclusion:** Yes.

Any of the following grounds can be proven by a supplier's criminal conviction in a court of competent jurisdiction or an administrative finding by the SPADR:

- Corruption;
- Fraud;
- Collusion and/or infringing competition;
- Coercion or intimidation;
- Obstruction of an investigation;
- Theft or embezzlement;
- Money laundering;
- Tax-related offenses;
- Labor-related offenses;
- Social harms;
- Terrorist offenses or offenses linked to terrorism;
- Commercial regulatory violations;
- Poor performance, non-performance, and/or failure to perform on public contracts.

*Administrative Catch-all:*

- "[A]ny other action that in the sole discretion of the World Bank Group is so serious or compelling in nature that it (i) affects the present responsibility of the vendor, including but not limited to attempting to influence a World Bank Group institution procurement decision, or (ii) could result in harm to the World Bank Group's reputation or image." (Vendor Eligibility Policy, para. 3.1(k))
- The SPADR may decide not to exclude the supplier when there are:
  - Remedial measures;
  - Settlement/ agreement;
  - Organizational interest;
  - Other sanction (finding of conditional responsibility).

#### **Exclusion based on Bankruptcy and Cross-Debarment:**

*Bankruptcy:* Bankruptcy is a **discretionary** exclusion ground under the Vendor Eligibility Policy.

*Cross-Debarment:*

Depends on the cross-debarment's source:

- The Vendor Eligibility Policy **automatically** cross-debars vendors that have been debarred or suspended by the WBG's Sanctions System in connection with operational activities. (Vendor Eligibility Policy, para. 3.1(h))
- The Vendor Eligibility Policy **automatically** cross-debars vendors identified on any Anti-Money Laundering/Combating the Financing of Terrorists sanctions lists, including the United Nations 1267 sanctions list, the United States Executive Order 13224 sanctions list, and the United Kingdom terrorist sanctions list. (Vendor Eligibility Policy, para. 3.1(i))

- The SPADR has **discretion** to determine whether to exclude a vendor that has been excluded by any WBG member government or other international organization. (Vendor Eligibility Policy, para. 3.2)

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

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### Types of Excluded Suppliers:

- Limited to corporate suppliers and individuals serving as sole proprietors or independent contractors.

### Scope of Exclusion:

#### *Extension to Other Agencies and Organizations:*

- Exclusions prohibit the supplier from contracting directly with any WBG institution as a vendor.
- Vendor exclusions do **not**, however, automatically extend to the WBG's operational lending and development activities.
- No known countries or international organizations that automatically recognize and apply the WBG's vendor exclusions.

#### *Effect on Ongoing Contracts:*

- Ongoing contracts are **not** automatically cancelled.
- Subsequent modifications to ongoing contracts **are permitted** on a case-by-case basis.

#### *Effect on Subcontracting:*

- An excluded supplier **cannot** serve as a subcontractor.

#### *Effect on Excluded Individuals:*

- Individuals **can** be excluded as direct respondents **only** if they are vendors acting as sole proprietors or independent contractors.

#### *Tailoring Exclusion:*

- Yes. Exclusion **may** be limited to certain divisions, operating units, or business lines within the company, if the decision-maker so decides.

### Effect on Affiliates:

#### *Corporate Affiliates:*

- Exclusions apply to all affiliates of the supplier (controlling, controlled, under common control), unless the decision provides otherwise. (Vendor Eligibility Policy, para. 5.4)
- A vendor and any specifically named affiliates will be advised in writing when they are suspended.

#### *Extension to Affiliated Individuals:*

- Exclusion of a corporate vendor **may** extend to other entities owned or controlled by the vendor's owners, executive officers, or managers. Thus, a vendor's exclusion may extend to any new companies established by the same owner(s).
- Affiliated individuals are **not** given a formal opportunity to contest the action. But if they reach out, WBG Corporate Procurement will likely provide the individuals with an explanation.

#### **Duration of Exclusions:**

*Duration Specified in Legal Framework:* None stated in the Vendor Eligibility Policy.

*Duration Depends on Applicable Exclusion Ground?* No.

- The default debarment period is three years, which varies depending on mitigating or aggravating factors.

#### **Exceptions/Waivers to Exclusions:** No.

- There is not a legal mechanism within the Vendor Eligibility Policy whereby a contract might still be awarded to an excluded vendor during its period of exclusion.

#### **Other Sanctions:**

- Terminations for convenience and/or default. All corporate vendors must also satisfy certain registration requirements to be eligible to receive vendor contracts.

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

---

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

- List of [Non-Responsible Vendors](#).
- Public list provides information on the grounds for each listed exclusion.

**Procurement Checks:** Yes.

- The WBG's vendor management team will screen new suppliers for exclusions, and any existing suppliers subject to an exclusion will be blocked in the system.

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

*Number of Exclusions:* On average, four exclusions per year.

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

*Other Transparency Mechanisms:* None.

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

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Not applicable.

# Exclusion System Summary

## World Bank Group

## Sanctions System



*Note: The World Bank Group ("WBG") consists of the International Bank for Reconstruction and Development ("IBRD"), the International Development Association ("IDA"), the International Finance Corporation ("IFC"), the International Centre for Settlement of Investment Disputes ("ICSID"), and the Multilateral Investment Guarantee Agency ("MIGA"). The WBG Sanctions System applies to the WBG's operational lending and development activities.*

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

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

- Exclusion decisions are made independent of the procurement process and according to centralized regulations. Exclusions prohibit the supplier from being awarded or otherwise benefiting from contracts and projects financed by the World Bank Group ("WBG").

#### *Applicability:*

- The [WBG Sanctions System](#) applies to private firms and individuals involved in the WBG's operational lending and development activities.
- The WBG Sanctions System is distinct from the WBG's [Vendor Eligibility Policy](#), which applies to corporate vendor contracts entered into between a private vendor and the WBG, pursuant to the WBG's Corporate Procurement Framework.

#### *Governing Policy:*

- [WBG Policy: Sanctions for Fraud and Corruption](#) ("WBG Sanctions Policy").
- [WBG Policy: Statute of the Sanctions Board](#).

#### *Related Regulations:*

- IBRD and IDA (together, the "World Bank," "WB," or the "Bank"):
  - [Bank Directive: Sanctions for Fraud and Corruption in Bank Financed Projects](#).
  - [Bank Procedure: Sanctions Proceedings and Settlements in Bank Financed Projects](#).
- IFC, MIGA, and Private Sector Sanctions Documents:
  - [IFC Sanctions Procedures](#).
  - [MIGA Sanctions Procedures](#).
  - [World Bank Private Sector Procedures](#) (WB guarantee and carbon finance projects).
- [WBG Sanctioning Guidelines](#).
- [Summary of Integrity Compliance Guidelines](#).

*Primary Legal Foundation:* Administrative/Regulatory Law.

**Decision-Maker:** Centralized; Functionally Independent.

The WBG Sanctions System is a two-tier adjudicative system.

- First Tier:
  - The Chief Suspension and Debarment Officer (the “SDO”) decides sanctions cases based on IBRD and IDA public sector operational lending activities (which make up the vast majority of sanctions cases).
  - Institution-specific Evaluation and Suspension Officers (“EOs”) review sanctions cases related to the activities of IFC, MIGA, and the World Bank’s private sector activities.
- Second Tier:
  - The WBG Sanctions Board decides sanctions cases appealed by respondents from the first tier.

*Qualification:*

- The SDO and the EOs are WBG staff members who are typically admitted to practice law in the jurisdiction of at least one WBG member government.
- Members of the WBG Sanctions Board must be external to the WBG. Three members are appointed by the World Bank and must be familiar with procurement matters, law, dispute resolution mechanisms, or operations of development institutions. Two members are appointed for each of IFC and MIGA and must be familiar with private sector cross-border lending and equity investments (for IFC projects) or non-commercial guarantee operations (for MIGA projects).

*Independence:*

- All decision-makers within the Sanctions System must consider each case impartially and solely on its merits. They must further exercise their independent judgment in carrying out their respective roles and responsibilities in accordance with the relevant policies, directives, and procedures. (WBG Sanctions Policy, para. B2)

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

---

### **General Provisions:**

*Type of Procedures:* Administrative.

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

*Provisional Exclusions:* Yes.

- Respondents are automatically suspended until sanctions proceedings are completed if the recommended sanction is a debarment greater than six months.
- Respondents can also be suspended pending the completion of an ongoing investigation in certain circumstances.

**Commencement of Proceedings:** Referral Required.

- Neither the SDO nor the EOs can initiate an exclusion proceeding without a prior referral from the WBG's Integrity Vice Presidency ("INT"), which investigates allegations that a firm or individual engaged in a sanctionable practice.
- Parties that are not subject to the sanctions proceedings cannot submit complaints and/or evidence to the decision-maker. Third parties can, however, submit [online](#) complaints to INT.

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

*Notice of Proceedings:*

- Suppliers receive a Notice of Sanctions Proceedings when the first-tier decision-maker determines that grounds for sanction exist. In practice, INT will generally send a Show Cause Letter to the alleged respondent before submitting the case to the first-tier decision-maker.
- Notice of Sanctions Proceedings must contain the grounds for exclusion and supporting evidence.
- The decision-makers must make their reasoning available to the supplier and the public. The first-tier decision-makers publish [notices](#) for all cases not appealed to the Sanctions Board. The Sanctions Board publishes its [decisions](#).

*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-makers.
  - Request an in-person hearing (before the WBG Sanctions Board only).

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

*Nature and Forum of Review:* Administrative

- Respondents may appeal to the WBG Sanctions Board, which will review the case *de novo* and without deference to the first tier's decision.

*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.

*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:** No.

**Discretionary Exclusion:** Yes.

The decision-maker must make an administrative finding that the respondent more likely than not engaged in one of these five "sanctionable practices":

- Corruption;
- Fraud;
- Collusion and/or Infringing Competition;
- Coercion or Intimidation;
- Obstruction of an investigation.

Decision-maker may decide that a sanction other than exclusion is more appropriate.

The supplier can also negotiate a Settlement Agreement with INT.

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

- According to the Agreement on Mutual Enforcement of Debarment Decisions (the "Cross-Debarment Agreement"), the WBG will recognize public debarments imposed by the African Development Bank Group, the Asian Development Bank, the European Bank for Reconstruction and Development, and the Inter-American Development Bank Group that are (i) greater than one year in length; and (ii) imposed on the respondent for engaging in one of the four harmonized sanctionable practice definitions – corruption, fraud, coercion, or collusion.

### 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 WBG institution and any organization whose activities are financed by the WBG.
- Exclusions imposed by the WBG are recognized by the four MDBs pursuant to the Cross-Debarment Agreement.

*Effect on Ongoing Contracts:*

- Ongoing contracts are **not** automatically cancelled.
- Subsequent (non-material) modifications to ongoing contracts **are permitted**.

*Effect on Subcontracting:*

- An excluded supplier **cannot** serve as a subcontractor.

#### *Effect on Excluded Individuals:*

- Excluded individuals **may** be employed by a corporate supplier as long as the individual does not directly or indirectly control the corporate entity.
- Exclusion **must** extend to companies controlled by the excluded individual.

#### *Tailoring Exclusion:*

- Yes. Exclusion **may** be limited to certain divisions, operating units, or business lines within the company, if the decision-maker so decides.

#### **Effect on Affiliates:**

##### *Corporate Affiliates:*

- Exclusion **may** apply to affiliates of the supplier (controlling, controlled, under common control). Exclusions are presumed to extend to all controlled affiliates and may extend to controlling affiliates and affiliates under common control if the decision-maker finds the affiliate culpable or responsible for the misconduct.
- Controlling affiliates and affiliates under common control **must** be given an opportunity to contest the action.

##### *Extension to Affiliated Individuals:*

- Exclusion of a corporate supplier **may** extend to individuals that own or control the supplier if the decision-maker finds the individual culpable or responsible for the misconduct.

#### **Duration of Exclusions:**

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

- The baseline sanction is three-year debarment with conditional release. However, depending on the total number of substantiated counts and the applicable aggravating and mitigating factors in each case, the duration of the debarment decision can vary.

##### *Duration Depends on Applicable Exclusion Ground? No.*

##### *Discretion to Deviate:*

- Yes. The decision-maker has discretion to deviate from the baseline sanction after considering applicable aggravating and mitigating factors pursuant to the WBG Sanctioning Guidelines.

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

- No. There is not a legal mechanism within the WBG sanctions framework whereby a contract might still be awarded to an excluded vendor during its period of exclusion.

#### **Other Sanctions:**

- Conditional Non-Debarment, Public Letter of Reprimand, and Restitution.

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

---

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

- [World Bank Listing of Ineligible Firms and Individuals](#).
- Public list provides limited information on the grounds for each listed exclusion (*i.e.*, the type of sanctionable practice for which an entity or individual was sanctioned).

**Procurement Checks:** Yes.

- Procuring entities must check a list of excluded suppliers before awarding a contract.

**Reporting on Exclusions:**

*Number of Exclusions:* Since 1999, more than 1,000 firms and individuals have been publicly sanctioned by the WBG.

*Regular Reporting:* The WBG Sanctions System publishes an [annual report](#).

*Other Transparency Mechanisms:* Press releases and public notices of sanction decisions.

## VI. Limited Scope Exclusion Systems:

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Not applicable.

# Exclusion System Summary

## World Trade Organization's Agreement on Government Procurement 2012



*Note: Unlike most jurisdictions surveyed, the Agreement on Government Procurement 2012 ("GPA 2012") is a binding international treaty ratified by 21 Parties comprising 48 members of the World Trade Organization ("WTO") (as of January 1, 2021). The text of the GPA 2012 is a flexible legal framework providing for minimum requirements that Parties' national procurement systems must meet. The GPA 2012 applies to procurement for governmental purposes of goods, services, and construction services by central, sub-central and other entities, above threshold values as specified in the Parties' schedules to the Agreement.*

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

---

#### Government-Wide Exclusion Framework?

- The GPA 2012 provisions on exclusion are permissive and do not mandate that Parties adopt any particular exclusion system (e.g., contract-by-contract exclusions v. an independent exclusion system).

Relevant GPA 2012 Provision: [Art. VIII:4](#)

Primary Legal Foundation:

- The GPA 2012 and its provisions can be categorized as Public International Law, but Parties are free to decide how they implement the GPA 2012 in the context of their domestic legal systems.

#### Decision-Maker:

- The GPA 2012 does not contain any provisions regarding who/which authorities must decide on exclusion. Parties to the GPA 2012 are free to assign decision-making authority to whatever entity or entities they deem appropriate within their legal framework provided that in so doing they act consistently with the GPA 2012.

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

---

### General Provisions:

*Type of Procedures:* Not addressed by the GPA 2012.

*Decision Deadline:* No specific deadlines required by the GPA 2012.

*Provisional Exclusions:* Not addressed by the GPA 2012.

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

- Specific exclusion procedures are not discussed in the GPA 2012, which provides only that a Party, including its procuring entities, may exclude a supplier if “there is supporting evidence” that grounds for exclusion exist. (GPA 2012, Art. VIII:4)

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

*Notice of Procuring Entity Decisions:*

- Suppliers must be given notice of procuring entity decisions, including when an exclusion, provisional exclusions, or suspension becomes effective.
  - Parties to the GPA 2012 must require their procuring entities to “promptly inform” a supplier of any decision to reject the supplier’s request for participation in a procurement or determination that the supplier is unqualified. (GPA Art. IX:15)
  - On request of the supplier, the procuring entity must “promptly provide the supplier with a written explanation of the reasons for its decision.” (GPA Art. IX:15)

*Opportunity to be Heard:*

- The GPA 2012 requires Parties to establish domestic review procedures that would allow interested suppliers to challenge a breach of the GPA 2012 directly or a failure to comply with a GPA Party's measures implementing the GPA 2012. Pursuant to Art. XVIII:6 of the GPA 2012, Parties must ensure that these procedures provide certain due process rights to all participants in the procurement, including:
  - The procuring entity shall respond in writing and disclose the evidentiary record to the review body;
  - All participants shall have the right to be heard before the review body comes to a decision;
  - All participants shall have access to all proceedings; and
  - All participants shall have the right to request that proceedings take place in public and that witnesses be presented.

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

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

- If procurement challenges are initially reviewed by the procuring entity or another body that is not independent of the procuring entity, the GPA 2012 requires Parties to ensure that the supplier can appeal the initial decision to “at least one” impartial administrative or judicial authority that is independent of the relevant procuring entity. (GPA 2012, Art. XVIII:4 and Art. XVIII:5)

#### *Means Available to the Supplier:*

Judicial review in conformity with the domestic law of the reviewing country or independent administrative review under which suppliers may:

- Obtain the evidentiary record.
- Make a written submission to the independent review body.
- Request a public in-person hearing with the independent review body.
- Call witnesses to an in-person hearing to testify on the supplier's behalf.

*Duration of Appeal Process:* The GPA 2012 provides only that domestic review procedures **must** be "timely, effective, transparent and non-discriminatory." (GPA 2012, Art. XVIII:1)

#### **Legal Representation:**

- A supplier **may** be represented by counsel. Art. XVIII:6 of the GPA 2012 explicitly ensures the right to be represented.

#### **Subsequent Modification of Exclusion Decision:**

- Not addressed by the GPA 2012.

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

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#### **Exclusion Grounds:** Yes.

Art. VIII:4 of the GPA 2012 provides a non-exhaustive list of exclusion grounds on which a Party and its procuring entities may exclude a supplier, subject to there being supporting evidence:

- Bankruptcy;
- False declarations;
- Significant or persistent deficiencies in performance of any substantive requirement or obligation under a prior contract or contracts;
- Final judgments in respect of serious crimes or other serious offences;
- Professional misconduct or acts/omissions adversely reflecting on supplier's commercial integrity; or
- Failure to pay taxes.

The GPA 2012 does not address how its Parties and their procuring entities must establish the above exclusion grounds. GPA 2012 Parties are free to structure their national frameworks to provide for either **automatic** or **discretionary** exclusion.

**Exclusion based on Cross-Debarment:** Not addressed by the GPA 2012.

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

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

- Not addressed by the GPA 2012. The "suppliers" are defined as persons or a group of persons (GPA 2012, Art. I(t)). Parties thus seem to be free to exclude individuals or corporations, or both.

### **Scope of Exclusion:**

*Extension to Other Agencies and Organizations:*

- The GPA 2012 does **not** require that exclusions extend to all covered procuring entities within a Party's jurisdiction, but neither does it prohibit such an extension.
- Art. IX:2 does, however, encourage the minimization of differences in qualification procedures and registration systems across a Party's procuring entities.

*Effect on Ongoing Contracts:* Not addressed by the GPA 2012.

*Effect on Subcontracting:* Not addressed by the GPA 2012.

*Effect on Excluded Individuals:* Not addressed by the GPA 2012.

*Tailoring Exclusion:* Not addressed by the GPA 2012.

### **Effect on Affiliates:**

- Not addressed by the GPA 2012.

### **Duration of Exclusions:**

- Not addressed by the GPA 2012.

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

- Not explicitly addressed, although the GPA 2012 does provide for general public interest and emergency exceptions. (*See, e.g.,* Art. III)

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

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### **Official List of Excluded Suppliers?**

- Not addressed by the GPA 2012.

### **Procurement Checks:**

- Not addressed by the GPA 2012.

### **Reporting on Exclusions:**

- Not addressed by the GPA 2012.

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

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### **Entity-Wide (e.g., Single-Agency) Exclusion?**

- Not addressed by the GPA 2012.

### **Contract-By-Contract (e.g., Single-Tender) Exclusion?**

- Not addressed by the GPA 2012.

### **Subnational Exclusions:**

- Subnational exclusions by covered procuring entities are consistent with, but not required by, the GPA 2012.