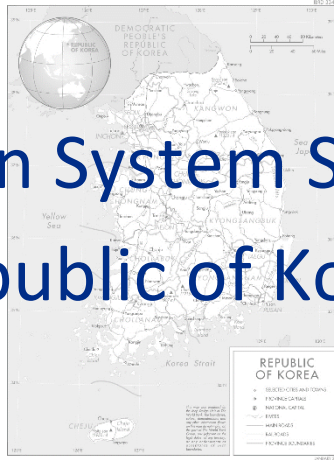


# Exclusion System Summary

## Republic of Korea



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

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#### **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:

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### 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:

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**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:

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**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:**

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**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:**

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**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).