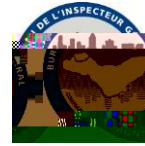


A Global View of Debarment: Understanding Exclusion Systems Around the World

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Over the past decade, countries and international organizations have stepped up their efforts to combat fraud, waste, and abuse in public sector activities. As part of these efforts, governments have increased their use of legal remedies to avoid doing business with suppliers who present a risk to public funds. Many different terms have been used to describe these remedies, such as

Whatever the label, the intent of these mechanisms is generally to remove a wayward



This article highlights some of the data collected in the pilot study and notes key areas for future research efforts. Part I analyzes the legal basis for exclusion systems and the various types of decision-makers. Part II discusses the grounds for which a supplier may be excluded, and Part III looks at the scope of an exclusion among the different jurisdictions. Part IV examines the rights of a supplier to contest the exclusion decision. The findings presented in this report are based solely on the information collected from the survey responses.

Part I: Government-Wide Exclusion Mechanisms

The survey uses the term **government-wide exclusion mechanism** to refer to an exclusion of suppliers from competing for or receiving contracts at the national (or federal) level, across all government agencies. We recognize that using this term may sometimes result in confusion; for instance, two different respondents provided answers for the UK reflecting different understandings of this term. One respondent stated that the UK does not have a government-wide exclusion mechanism because independent contracting officers make contract-by-contract exclusion decisions. The second respondent noted that while exclusion decisions are not made at the national level, there is national legislation governing exclusion. A few other jurisdictions also follow this pattern: their systems do not have a centralized decision-maker but do have centralized regulations governing various decision-making authorities.

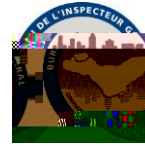
Of the eleven jurisdictions surveyed, ten have some form of government-wide exclusion mechanism (including the UK). Australia was the only jurisdiction surveyed that does not have a government-wide exclusion mechanism. The exclusion mechanisms in nine of the ten jurisdictions are governed by administrative law, although a few respondents noted that criminal and/or civil law convictions could also play a role in their jurisdictions. Only one jurisdiction **Italy** reported having an exclusion mechanism based solely in criminal law.



being tasked with exclusion decisions. The UK system fits into this category, as contracting officers are responsible for making case-by-case exclusion decisions based on national regulations. Responses from five jurisdictions selected a judicial authority as a decision-maker, including where exclusions are automatically imposed following a criminal conviction and/or civil judgment. As noted above, this fits systems such as Italy and Chile where the exclusion decision may be based on a judicial finding that a supplier has committed a particular violation.

Respondents were able to select more than one type of decision-maker. Hence, responses from Brazil, the US, Spain, Chile, and the EC indicated that their systems provide for more than one type of decision-maker. Especially where an independent appellate process exists to challenge the debarment decision, the system is likely to have multiple decision-makers. In a few systems, the type of decision-maker depends on the reason for the debarment. In at least three systems, there are different processes that can result in exclusion. In Brazil, for example, the process for excluding a supplier varies depending on the severity of the offense and the consequences of the misconduct.

Jurisdiction	Gov t-Wide Exclusion?	Foundational Legal Basis	Decision-Maker(s)
Brazil	Yes	Administrative	Centralized Agency-Level Ind. Contracting Officer Judicial Authority
Chile	Yes	Administrative, Criminal	Agency-Level Judicial Authority Other
Germany	Yes	Administrative	Agency-Level
Italy	Yes	Criminal	Judicial Authority
Spain	Yes	Administrative	Agency-Level Ind. Contracting Officer Judicial Authority
Tunisia	Yes	Administrative	Centralized
United Kingdom	Yes*	Administrative	Ind. Contracting Officer
United States	Yes	Administrative	Agency-Level Judicial Authority
European Commission	Yes	Administrative	Centralized Ind. Contracting Officer
World Bank	Yes	Administrative	Centralized
Australia	No	n/a	

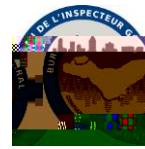


been taken to avoid future wrongdoing would allow a supplier to avoid exclusion under certain circumstances. Only Chile indicated that there are no discretionary grounds for exclusion.

Part III. Scope of an Exclusion

Type and Length of Exclusion

The survey also sought information on the type and duration of the exclusions that may be imposed. In most jurisdictions, the decision-maker must make its reasoning available to the supplier, but in four jurisdictions, the decision-maker also makes its reasoning available to the public. S



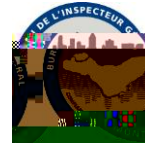
depending on the applicable exclusion ground. Only in the World Bank system is the baseline length of the exclusion the same for all exclusion grounds, although the length can be increased or decreased depending on the presence of mitigating or aggravating factors.

Effect on Current and Future Contracts

Several questions in the survey relate to the extent to which an exclusion affects current and future contracts. In every jurisdiction surveyed, the exclusion decision does not automatically terminate ongoing contracts; however, jurisdictions were split on whether subsequent modifications to those contracts were allowed. In seven jurisdictions, an exclusion decision prevents the supplier from receiving not only prime contracts but also subcontracts.

Application of the Exclusion to Affiliates

The survey also asked whether an exclusion could extend to affiliates, including parent and subsidiary companies, lines of business, and individuals affiliated with the supplier. Six corporate affiliates depending on the circumstances, although no jurisdiction requires that an exclusion automatically extend to affiliated companies. T by the supplier, but this extension can be rebutted. The UK, Brazil, and Chile are the only jurisdictions that Exclusions in the US, Spain, and the World Bank could



when exclusion proceedings are commenced in five jurisdictions and when the exclusion becomes effective in another five jurisdictions. In several jurisdictions, the timing of the notice is at the discretion of the decision-maker. For example, in Brazil, the process differs depending on the agency. In the US, the decision-maker has the discretion to provide notice before the exclusion becomes effective but is not required to do so. Five jurisdictions also provide for some form of provisional exclusion (like a temporary suspension) while an investigation or an exclusion proceeding is ongoing.

In most jurisdictions, the notice is required to contain information about the grounds for exclusion. In the UK, although the notice is not required to contain the grounds for exclusion, the supplier is entitled during which many contracting authorities include information as to the reasons for exclusion.

Contestation Procedures



Jurisdiction	When Must Notice be Given?	Provisional Exclusion?	Contestation Procedures	Appeal Rights
Brazil	Exclusion is imposed	No	Written submission In-person hearing	Administrative Process
Chile	None required	No	Written submission Obtain evidence In-person hearing Call witnesses	Admin. Complaint Judicial Challenge
Germany	Start of investigation	No	Written submission Obtain evidence In-person hearing	Judicial Challenge (after exhaust admin. remedies)

