

## Glossary

### **Arbitration**

In an arbitration proceeding the disputing parties present their cases to a third party for a binding decision. Although less formal, the setting and procedures are similar to those used in the resolution of a civil case in a court. Arbitration differs from the settlement of disputes in a court room in two ways, however: First, the parties typically play a role in the selection of the third party who determines the outcome. Second, the parties must specify in advance the nature of disputes that will be resolved by arbitration. Typically, the parties also specify the nature of the arbitration system that will be used. In short, unlike what might occur in a court room, under arbitration the parties have considerable control over the design of the system that will be used to resolve their disputes<sup>1</sup>.

(arbitration clause) “The process by which the parties to a dispute submit their differences to the judgment of an impartial person or group appointed by mutual consent or statutory provision.”<sup>2</sup>

### **Blacklist (or debarment)**

“A list of persons or organizations that have incurred disapproval or suspicion or are to be boycotted or otherwise penalized”<sup>2</sup>

“A list of persons or corporations with whom no dealings are to be had by those circulated with the list. Of particular importance in the context of traders and unpaid debts. (Thorne vs. Motor Trade Association [1937] A.C. 797.”<sup>3</sup>

(debarment) “The act of precluding someone from having or doing something; exclusion or hindrance. \_\_debar vb.”<sup>4</sup>

### **Concession**

An act by which a government grants some rights, like the use or exploitation of a state-owned or managed asset, to a person or company, for a certain period of time and under the terms specified in the concession contract. The government power to perform these acts is normally granted by the state constitution.

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<sup>1</sup> The New Palgrave Dictionary of Economics and the Law“. Mcmillan reference Limited. 1998 Peter Newman, Editor.

<sup>2</sup> The American Heritage Dictionary of the English Language, Fourth Edition, 2000 by Houghton Mifflin Company.

<sup>3</sup> Osborn’s Concise Law Dictionary. Ninth Edition. Sheila Bone, editor. Sweet & Maxwell.

<sup>4</sup> Black’s Law Dictionary. 7th Edition. Bryan A. Garner Editor in Chief. West Group, St. Paul Minn 1999.

## **Contract**

“1. An agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law. <a binding contract> 2. The writing that sets forth such and agreement” 4

## **Corruption**

Is the abuse of entrusted power for private gain.

## **e-Procurement**

Procurement process that uses Internet as the main mechanism to facilitate or conclude transactions.

## **Export Credit Agencies (ECAs)**

State owned or sometimes public-private financial corporations with a special mandate to promote export and investment of their national companies abroad.

## **Integrity Pact**

Is a tool developed during the 1990s by Transparency International (TI) to help governments, businesses and civil society which are prepared to fight corruption to do so in the field of public contracting. It consists of a process that includes an agreement between a government or government department and all bidders for a public sector contract. It contains rights and obligations to the effect that neither side will pay, offer, demand or accept bribes, or collude with competitors to obtain the contract, or while carrying it out. Also, that bidders will disclose all commissions and similar expenses paid by them to anybody in connection with the contract; and that sanctions will apply when violations occur. These sanctions range from loss or denial of contract, forfeiture of the bid or performance bond and liability for damages, to blacklisting for future contracts on the side of the bidders, and criminal or disciplinary action against employees of the government.

## **Monitoring**

The act of observing or checking. In public contracting this refers to the objective follow up and observation, ideally by a third independent party, of a contracting process or a contract execution.

## Ombudsman.

“Originally the popular name (derived from Scandinavia) of the Parliamentary Commissioner appointed under the Parliamentary Commissioner Act 1967 to investigate complaints of administrative action. Ombudsmen have also been appointed in other public and private areas. e.d. in the health service “(...)<sup>3</sup>

“1. An official appointed to receive, investigate and report on private citizens’ complaints about the government. 2. A similar appointee in a nongovernmental organization (such as a company or university).\_ often shortened to *ombuds*”.<sup>4</sup>

“An ombudsman serves as an alternative to the adversary system for resolving disputes, especially between citizens and government agencies...An ombudsman is ... (1) an independent and non partisan officer of the legislature who supervises the administration; (2) one who deals with specific complains from the public against administrative injustice and maladministration; and (3) one who has the power to investigate, criticize and publicize, but not to reverse administration action”  
4Am.Jur.2d.Alternative Dispute Resolution §23(1995).”<sup>4</sup>

## privatize, privatized, privatizing,

“To change (an industry or business, for example) from governmental or public ownership or control to private enterprise”.(...)<sup>2</sup>

## Privatization

“The sale of publicly owned assets, especially industrial capital, to private investors. Many countries in the 1980’s undertook this kind of reduction of the public sector to achieve a variety of aims: to improve industry by freeing it from bureaucratic state control, to augment public revenue, to widen share ownership, and to increase competition to benefit consumers. One example is the sale of several UK nationalized industries to the public, notably gas, steel, oil, water, electricity, telecommunications, the state airline, and airports. Examples in other countries include France’s sale of St Gobian, Paribas and Suez, Japan’s sale of its railways and Hungary’s sale of state firms to companies and individual. Privatization has also taken the form of the sale of state and local authority housing.”<sup>5</sup>

## Procurement

1. The act of getting or obtaining something.-Also termed *procuratio*”<sup>4</sup>

## Procurement Contract

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<sup>5</sup> Rutherford, Donald. (1992) *Dictionary of Economics*. London [u.a.] : Routledge. VIII, 366 p.

A contract in which a government receives goods or services. A procurement contract, including the bidding process, is subject to government regulation.<sup>4</sup>

## **Public Contracting or Procurement**

The expression “*public procurement*” is often used to refer to public contracting. At TI we prefer to use *public contracting* as it is a much broader term that includes not only instances where a government buys goods and services (public procurement strictly speaking) but also where it sells goods and services, privatizes, provides licenses or allows the exploitation of public goods throughout concessions. Therefore, we use the term “contracting” as our scope of work falls more into this category than on the narrower one to which the term “procurement” refers.

## **Public Expenditure**

“The expenditure of central, regional and local governmental organizations on intermediate and final goods and services. This is undertaken to achieve a variety of goals including the redistribution of benefits in kind, the provision of public goods, the correction of disequilibria in markets and the regulation of industry”.<sup>5</sup>

## **Sanction**

“The penalty for non-compliance specified in a law or decree. (..)A penalty, specified or in the form of moral pressure, that acts to ensure compliance or conformity. (...)A coercive measure adopted usually by several nations acting together against a nation violating international law”.<sup>2</sup>

## **Sub-Contracting**

When a principal under the capacity given to him by a contract, contracts a person or a company to execute totally or partially the purpose of that contract.

## **Tender Process**

The process by which persons or companies provide formal offers for a contract. It can be open, when with the appropriate time a public invitation is made to any one who would like to submit offers; or not-open, this is, a restricted invitation with different degrees of restriction, like an invitation for people or companies with special characteristics to present offers.