

## ***Our glossary of the key terms you need to know in the field of anti-bribery and corruption and ethical compliance***

**Abc:** Anti bribery and corruption. A company's anti-bribery efforts including its values, code of conduct, detailed policies and procedures, risk management, internal and external communication, training and guidance, internal controls, oversight, monitoring and assurance.

**Adequate Procedures:** Evidence of adequate procedures against bribery is a legal defence if a commercial organisation is investigated or prosecuted under s7 of the Bribery Act 2010 (Failure of a commercial organisation to prevent bribery). Guidance to the Bribery Act in respect of those procedures an organisation might put in place is set out in the [Guidance to the Bribery Act](#).

**Agent:** A representative who may have the authority to make commitments on behalf of the principal represented. The term 'representative' is being used more frequently since "agent" can imply more than intended and in some countries agents may be required to hold power of attorney.

**Associated Person:** Is defined in s8 of the Bribery Act 2010 as "a person(s) associated with a company who performs services for or on behalf of the company". This can be widely interpreted from employee to director and those who might represent the company such as sales agents, professional advisors and subcontractors.

**Business Principles for Countering Bribery:** A good practice model for corporate anti-bribery policies and programmes developed through a multi-stakeholder process initiated and led by Transparency International. The [Business Principles](#) were first published in 2002 and a revised edition issued in May 2013.

**[Bribery Act 2010](#):** The United Kingdom legislation, in force from July 2011, for the prosecution of bribery.

**[BS 10500-2011](#):** Anti-bribery Management System. A BSI standard for organisations large and small.

**[BS10501-2014](#):** A BSI guide to implementing procurement fraud controls.

**Bribe:** Defined in s1 and s2 of the [Bribery Act 2010](#) as offence(s) of offering, promising, requesting, agreeing to receive or accepting a financial or other advantage to induce or reward a person to improperly perform a relevant function. A function is performed improperly if in breach of relevant expectation. (what a reasonable person in the UK would expect in relation to the performance of the function or activity) In [s5 \(2\)](#), the Act specifically excludes any local custom and practice except where specifically permitted or required in the written law of the country or territory concerned.

**Corruption:** The abuse of entrusted power for private gain. There are several components to a corrupt act, including but not limited to offering, giving, soliciting or receiving a bribe; fraud, theft, extortion and money laundering. These crimes are often committed or communicated over the internet.

**Civil Law:** The system of law that applies in non-common law jurisdictions such as in Europe, the Far East and Latin America. The civil law system is codified – all the country's law is contained in the country's Civil Code and one relies on the Code to interpret the relevant law; the law is interpreted by reading statutes/the Civil Code.

**Common Law:** The term used to describe the system of law in England, Wales, US, Canada, Australia, Ireland, South Africa, India and other territories (typically members of the Commonwealth). This system of law traditionally relies heavily on precedents (previous decisions) and custom and practice, unlike the civil law system.

**Competition Law:** These are rules that generally apply in most jurisdictions, which require parties not to enter into agreements, which restrict or distort competition or to abuse their dominant position. Most countries will have their own competition law but in the case of EU member states there will typically be 2 competition law regimes – a national regime as well as the EU regime. See the OECD [Competition Law Glossary](#).

**Conflict of Interest:** A situation in which a person or organization is involved in multiple interests (financial, emotional, or otherwise), one of which could possibly corrupt the motivation of the individual or organization.

**Consequential Loss:** The term used to describe losses which may not necessarily be considered as arising naturally from a breach of contract but of which the defendant had special knowledge and for which he will be liable unless it is excluded.

**Consideration:** Something of value must be given - the price for which the promise is bought. In English law a contract is not binding unless it is made under seal or is supported by some consideration i.e. a quid pro quo.

**Consumer Contracts:** Contracts entered into by a party who does not make such contracts in the course of business.

**Contract:** A binding agreement between two or more parties. The key constituents of a contract are Offer, Acceptance, Consideration and an Intention to Create Legal Relations. If they are present and provided there are no issues of public immorality or other such considerations then there will be a contract. A contract may be instated by verbal agreement or by electronic communication.

**Criminal Finances Act 2017:** Amends the Proceeds of Crime Act 2002; makes provision in connection with terrorist property; creates corporate offences for cases where a person associated with a body corporate or partnership facilitates the commission by another person of a tax evasion offence; and for connected purposes. Also creates “unexplained wealth orders” requiring those suspected of corruption to explain the sources of their wealth, helping to facilitate the recovery of illicit wealth and stopping criminals using the UK as a safe haven for the proceeds of international corruption.

**Damages:** The term to describe the compensation to be paid to the claimant for the damage, loss or injury he has suffered through the defendant's breach of contract or tort. There are various long established legal tests for deciding which types of loss caused by the breach of contract may be compensated by an award of damages.

**Direct Loss:** The loss that arises naturally from a breach of contract being reasonably foreseeable. The defendant would normally be liable for direct loss.

**Disclosure:** See whistleblowing.

**Distributor:** A person or company appointed to re-sell goods which he buys, takes title after payment and sells on his own account.

**Department of Justice (DoJ):** The world's largest law office and the central agency for enforcement of United States federal laws.

**Economic Crime Command (ECC):** A division of the UK National Crime Agency, which investigates and prosecutes serious economic crime including bribery. The International Corruption Unit is a part of the ECC and investigates overseas corruption.

**Ethical Risk Audit:** An examination in detail of the strengths and weaknesses of an organisation's ethical policies and their implementation; analysing its compliance procedures and business processes in the context of bribery risk.

**Expenses:** The provision or reimbursement by a company of travel and other related expenses incurred by an employee, prospective client, customer or business partner, such reimbursement not being part of a contractual agreement. Typically, these are costs of activities such as sales visits, customer travel to view a manufacturing plant or sign-off an installation etc. The [Quick Start Guidance to the Bribery Act](#) states that “the Government does not intend that genuine hospitality or similar business expenditure be caught by the Act.”

**Extortion:** An act of utilising, either directly or indirectly, a person's power or knowledge to demand unmerited cooperation or compensation as a result of coercive threats.

**Facilitation Payments:** Small bribes (“grease payments”) to facilitate routine services, often from a government official (e.g. a customs officer), which should properly be provided as a part of their duty. Such payments/petty bribes are illegal under the Bribery Act and do not conform to ISO37001.

**Fitness for Purpose:** An implied statutory term that goods will be fit for the purpose expressly or by implication made known to the seller by the buyer. This implied warranty cannot be excluded in consumer contracts and is contained in the [Supply of Goods and Services Act 1982](#) (see Satisfactory Quality definition below).

**Force Majeure:** This is a clause allowing the seller/both parties to cancel the contract or suspend/extend time for performance upon the happening of certain specified events beyond their control. “Force Majeure” is not a term of art in common law jurisdictions so it is vital to define what is meant or to specify the circumstances in which one may be excused. In civil law jurisdictions; force majeure is often defined by the Civil Code.

**Foreign Corrupt Practices Act 1977 (FCPA):** A United States federal law generally prohibiting US companies and citizens and foreign companies listed on a US stock exchange from bribing foreign public officials to obtain or retain business. The FCPA also requires ‘issuers’ (any company including foreign companies) with securities traded on a US exchange to file periodic reports with the Securities and Exchange Commission to keep books and records that accurately reflect business transactions and to maintain effective internal controls. Non-US companies have been prosecuted under this Act.

**Foreign Public Official:** Defined in the [Bribery Act Section 6 \(5\)](#) as an individual who holds a legislative, administrative or judicial position whether appointed or elected of a country or territory outside the United Kingdom. The definition also applies to any public agency (e.g. UN, IMF) or public enterprise (state owned concern) of that country or territory.

**Fraud:** Defined by the [Serious Fraud Office](#) as 'abuse of position, or false representation, or prejudicing someone's rights for personal gain'. Put simply, fraud is an act of deception intended for personal gain or to cause a loss to another party.

**Gift:** Money, goods, services or loans given ostensibly as a mark of friendship or appreciation. A gift is professedly given without expectation of consideration or value in return. A gift may be used to express a common purpose and the hope of future business success and prosperity. It may be given in appreciation of a favour done or a favour to be carried out in the future. A gift has no role in the business process other than that of marking and enhancing relations or promoting the giver’s enterprise by incorporating a logo or message on a promotional item. Organisations should consider implementing policies on the giving and receiving of gifts, including a gift register.

**Hospitality:** Includes entertaining, meals, receptions, tickets to entertainment, social or sports events, participation in sporting events, such activities being given or received to initiate or develop relationships between business people. The distinction between hospitality and gifts can blur, especially where the giver of the hospitality does not attend and act as host. Principle 1 in the [Guidance to the Bribery Act](#) advises the nature of policy and process to address corporate hospitality and entertainment, which should be proportionate, reasonable and recorded.

**Incoterms 2010:** A set of international rules for the interpretation of the most commonly used terms in foreign trade. The uncertainties of different interpretations of such terms in different countries can be avoided or at least reduced to a considerable degree by using these international terms.

**Indemnity:** The legal term to describe a situation where if one party is in breach of contract with the other party, the claimant, has an automatic right to claim damages from such party and does not necessarily have to prove loss/sue before he can recover damages.

**Indirect Loss:** The term given to any loss which does not come within the type of losses which should be compensated by an award of damages; it is considered as too "remote"; i.e., not something which would be considered as arising naturally from the breach or of which the defendant has special knowledge.

**Integrity Due Diligence:** Properly knowing with whom you are doing business. Also an integral part of Know Your Customer procedures. The purpose is to identify the ethical/criminal risks inherent in establishing third party relationships, especially for the appointment of agents, suppliers, joint ventures and, for mergers and acquisitions. Guidance is provided in Principle 4 Due Diligence in the [Guidance to the Bribery Act 2010](#).

**Intellectual Property Rights:** The collective name given to the body of intangible rights which derive from intellectual activities such as research, development and design and which can be used to protect your own market from competitors as well as generate revenue when licensed e.g. patents, trademarks, copyright and know-how etc. Although they are intangible, they can be sold, licensed, mortgaged etc. and can be the most valuable assets of a business.

**Internal controls:** A process, implemented by an organisation's board of directors or equivalent function, management or other personnel, designed to provide reasonable assurance regarding the efficiency of operations, the reliability of financial reporting and compliance with applicable laws and regulations.

**ISO 37001:** An internationally recognised anti-bribery management system based on BS 10500-2011, published by the International Standards Organisation in October 2016.

**Jurisdiction:** Each sovereign territory has its own parliament, courts, rules and regulations, which will apply to that territory or jurisdiction. One or more territories may agree to treaties or conventions in which case there may be significant communality between jurisdictions but one must still refer to the jurisdiction of the relevant territory.

**Kickback:** A payment or in-kind bribe given by one person to another as a reward for an improper action such as in awarding a contract.

**Lobbying:** Any activity carried out to influence a government or institution's policies and decisions in favour of a specific cause or outcome.

**Legal privilege:** In [common law](#) jurisdictions, legal professional privilege protects all communications between a professional legal adviser (a solicitor, barrister or attorney) and his or her clients from being disclosed without the permission of the client. The privilege is that of the client and not that of the lawyer. Its purpose is to protect the correspondence and advice from having to be disclosed in any proceedings. In the USA known as "attorney-client privilege".

**Letter of Credit:** A document given by the purchaser (or its bank) to the supplier, which is a very secure method of payment. Provided the supplier provides relevant documents (as specified in the letter of credit) such as shipping documents he is guaranteed payment. The purchaser is protected as the supplier cannot present the documents until the goods are on their way to the purchaser. (i.e. they have been shipped).

**Liability:** What a person is legally responsible for especially debts or pecuniary obligations.

**Liquidated Damages:** Damages that are agreed prior to the event, giving rise to the claim; (e.g. the parties might agree that if the seller is late delivering he will pay 1% of the contract price for each week of delay). If delivery is later than agreed the Seller can pay the agreed damages in full and final settlement of the Buyer's claim. Liquidated damages should be a genuine attempt by the parties to estimate the loss likely to be suffered by the party not in default but should not be too onerous on the party in default. Agreeing that time is of the essence is an alternative to the parties agreeing liquidated damages.

**Misrepresentation:** An untrue statement, which induces a person to enter into a contract. The person entering into the contract may be entitled to rescind the contract or to get damages.

**Modern Slavery Act 2015:** A United Kingdom Act designed to tackle slavery and enforced labour in the UK and consolidating previous offences related to human trafficking. Sometimes referred to under the letters MSHT (modern slavery and human trafficking).

**Money Laundering:** The process by which criminals disguise the original ownership and control of the proceeds of criminal conduct by making such proceeds appear to have derived from a legitimate source.

**Nepotism:** A form of favouritism based on familiar relationships whereby someone in an official position exploits his or her power and authority to provide a job or favour to a close associate/family member even though the member may not be qualified or deserving.

**PAS 7000:2014:** Guidance drawn up by BSI for supply chain risk management and supplier prequalification

**Penalty:** The term given to damages agreed in advance which are not enforceable as they are too onerous. Contrast with the definition of liquidated damages.

**Performance Bond:** A guarantee usually given by a supplier (or its bank) to the purchaser confirming that if the supplier does not fulfil its obligations then the purchaser can draw down the bond thereby obtaining simple and quick redress.

**Policy, Process & Documentation:** Principle 1 "Proportionate Procedures" the [Guidance to the Bribery Act 2010](#), provides advice on practical and accessible policies and procedures as key measures companies should have in place to prevent bribery. Documentation features in all the six guiding principles and good record keeping is important in the context of the FCPA and the [UK Companies Act](#).

**Political Contribution:** Any contribution, made in cash or in kind, to support a political cause. Contributions in kind can include gifts of property or services, advertising or promotional activities endorsing a political party, the purchase of tickets to fundraising events and contributions to research organisations with close associations with a political party. The release of employees without pay from the employer to undertake political campaigning or to stand for office could also be included in the definition.

**Politically Exposed Person (PEP):** A person who is or has been entrusted with a prominent public function, is a senior political figure, or is closely related to such persons by virtue of a public position and the influence it holds. A PEP may present a higher risk for potential involvement in bribery.

**Power of Attorney:** A document given by a company to an individual to show that the individual is empowered to represent the company in accordance with the terms of the Power.

**Revolving door:** The move of a person from public office to a company with the aim of exploiting his/her experience and contacts in public service for the benefit of the company.

**Risk:** The chance or possibility of loss, injury or damage, which will be at the responsibility of the person who takes that risk.



**Sales Consultant/Adviser:** A person or company who advises the sales activity of a commercial organisation. Their primary role is to provide advice, as tasked, which may include but not be limited to government regulation and persona, the market and commercial and competitive information. They may be helpful in the identification of a sales agent and other intermediaries. It is normal practice for remuneration to be fixed fee based and their responsibilities set out in an agreement.

**Satisfactory Quality:** An implied statutory term that goods and services meet the standard that a reasonable person would regard as satisfactory, taking account of any description of the goods, the price (if relevant) and all other relevant circumstances.

**Securities and Exchange Commission (SEC):** An independent United States agency which holds primary responsibility for enforcing the federal securities laws and regulating the securities industry, the nation's stock and options exchanges, and other electronic securities markets in the United States.

**Serious Fraud Office (SFO):** The SFO is an independent UK Government department, which investigates and prosecutes serious or complex fraud, bribery and corruption. It is part of the UK criminal justice system with jurisdiction in England, Wales and Northern Ireland but not in Scotland, the Isle of Man or the Channel Islands.

**Subject to Contract:** This statement is written on documents when a deal is being negotiated and means that what is set out in the correspondence is subject to the negotiation of a binding contract – i.e., the correspondence is not intended to be legally binding on its own. Depending on the transaction and jurisdiction, one might need to use additional words to reinforce the point.

**Solicitation:** The act of a person asking, ordering or enticing someone else to commit bribery or another crime.

**Special Interest Person (SIP):** A person who has been convicted of a crime or is of particular interest to the authorities and on a watchlist or similar.

**Sponsorship:** A transaction where a company makes a payment, in cash or in kind, to associate its name with a rights holders and receives in consideration for the sponsorship fee, rights and benefits such as the use of the rights holder's name, advertising credits in media, events and publications, use of facilities and opportunities to promote its name, products and services. It is a business transaction and part of promotion and advertising.



**Time of the Essence:** Performance of the contract must be carried out on the exact date specified. Time is of the essence when it is expressly stipulated that the time fixed must be exactly complied with or there is a statement that “time is of the essence”. It does not make sense for the parties to agree that time is of the essence and at the same time agree that the supplier will pay liquidated damages if it is late in delivering.

**Title:** Ownership of property or goods.

**Tort:** A civil wrong done to a person, which will not be remedied by the state. The State will prosecute for criminal wrong such as murder, theft, bribery but if an individual has, for example, been hurt in a car crash, affected by pollution or is defamed, then generally the individual sues in tort. Tort is essentially an umbrella name given to a collection of wrongs e.g. negligence, nuisance, defamation etc.

**Transparency International (TI):** A global NGO that leads on anti-corruption. Issues both the Corruption Perceptions and Bribe Payers Indices.

**Ultimate Beneficial Owner (UBO):** Beneficial owner refers to the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement. The determination of the UBO is usually required under most anti-money laundering and due diligence regimes.

**Unlimited liability:** Liability that is not capped or limited in any way but open-ended.

**Without Prejudice:** A statement put on correspondence with a third party with whom you are in dispute especially in litigation and is usually used in the context of the parties trying to settle the dispute. It has the effect of ensuring that what is contained in the letter is without prejudice to your legal arguments or case and therefore not put before the judge/arbitrators. It is inappropriate to be inserted in correspondence with your own lawyers.

**Whistleblowing/Disclosure:** The sounding of an alarm by an employee, director or external person to express concerns about or to attempt to reveal neglect or abuses within the activities of a company.

## Notes and Disclaimer

Please let us know if there are other terms/errata that might be usefully added to this glossary for the benefit to others by e-mailing [info@interchange-solutions.co.uk](mailto:info@interchange-solutions.co.uk)

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