

BUSINESS BRIEF: GIFT GIVING AND HOSPITALITY

Gifts and hospitality are common in business relationships and are often seen as a token of appreciation or a sign of respect for a counterpart. These gifts are in most cases within appropriate boundaries and can be seen as bona fide business expenses. Unfortunately gifts and hospitality are also used as a tool to hide bribes and to influence both public officials and employees. The increased awareness and attention of corruption has to some extent transformed the traditional form of bribery – cash under the table – to more intricate schemes of hospitality and gifts.

This Business Brief will provide companies with guidance on gift giving and hospitality by outlining international acceptable standards and guidelines for the Cambodian context.

What is a gift and what is a bribe?

The line between a gift and a bribe is not always easy to determine; different cultural and legal environments have different definitions. Each company is responsible for acquiring the necessary information and understanding of what is acceptable in their context. A good starting point is to determine if the gift is given to you personally or the company. Corporate gifts are usually gifts that are given openly with the implicit or explicit approval of the management on both sides. Examples of corporate gifts are corporate diaries, table calendars, pens, and notepads as well as a trophy/medal of appreciation. These gifts are in most cases not considered as bribes. Personal gifts, on the other hand, are items given to or received by an individual/by his/her spouse or by any other third party acting on behalf of the individual. Personal gifts are in most cases given without explicit approval of the management on both sides. A recommended policy/practice is also to only allow corporate gifts, and no gifts of cash, cash equivalents or loans should be allowed. For gift giving, do not give a gift that is likely to create a sense of obligation. This can be used as a rule of thumb and serve as a starting point for a gift giving and hospitality policy.

A cordial reception or disposition towards an individual, which might include entertaining guests in resorts, restaurants, conventions, concerts, sporting events and other special occasions can be acceptable. This is depending on the structure of the agenda; the business segment has to be more significant than the entertainment segment. For example, a one-hour factory visit followed by a two-day stay at a luxury hotel, an expensive lunch/dinner or karaoke and tickets to exclusive sporting events is not acceptable; the purpose of hospitality is not related to business but foremost leisure. In general, hospitality not directly related to the business, where non-business guests are invited (family/friends) and cost of hospitality exceeds US\$30 per head, needs approval from the management. To conclude, if in doubt for any hospitality or gifts, say no or ask the management for approval.

International Standards on Gift Giving and Hospitality

International standards for gift giving and hospitality can be found in the US Foreign Corrupt Practices Act (FCPA), UK Bribery Act, UN Global Compact (UNGC) and United Nations Office on Drugs and Crime (UNODC). UNGC and UNODC have developed an online training course (<http://thefightagainstcorruption.org/>) on gift giving and hospitality outlining good international practices for gift giving and hospitality.

According to the FCPA, items of nominal value, such as cab fares, reasonable meals and entertainment expenses, company promotional items, are unlikely to improperly influence an official. In opposite, the giving of extravagant gifts (such as sports cars, fur coats, and other luxury items) as well as widespread gifts of smaller items is considered as a pattern of bribery¹. Bribes under the FCPA are not limited to bags of cash and transfers to offshore bank accounts. Certain gifts, travel, and entertainment

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<http://www.justice.gov/criminal/fraud/fcpa/cases/rae-systems/12-10-10rea-systems.pdf>

can also create liability². Reasonable and bona fide expenditures are not lavish. The Department of Justice guidance and enforcement suggests that first class airfare, lavish hotel stays, personal vacations, large gifts all will be viewed as unreasonable. Acceptable hospitality is directly related to the promotion, demonstration, or explanation of products or services; or the execution or performance of a contract with a foreign government or agency thereof³.

According to the UK Bribery Act, a gift is not a gift if someone is offering something of financial value which is to the advantage of another person and in doing so is intending that individual to perform a function improperly and impartially. In the event of an investigation, the intent to induce improper conduct would have to be proven to lead to prosecution⁴. Under the UK Bribery Act, the prosecution would need to show that the hospitality was intended to induce conduct that amounts to a breach of an expectation that a person will act in good faith, impartially, or in accordance with a position of trust. This would be judged by what a reasonable person in the UK thought. The UK Bribery Act makes it clear that reasonable and proportionate business expenditure is acceptable. Bona fide entertainment is a legitimate and normal business practice and its importance is acknowledged in the guidance⁵.

In conclusion, hospitality is not prohibited under any international standards as long as it is a reasonable bona fide business expense.

Gift Giving and Hospitality in Cambodia

In the Cambodian Anti-Corruption Law, a gift is a bribe if the property or service is given to or for the benefit of a person and not as a gift in accordance with the custom or tradition. The

² <http://fcpamericas.com/english/anti-corruption-compliance/gifts-and-hospitality-in-fcpa-compliance-four-cases-for-your-back-pocket/#sthash.GjtYI85W.dpuf>

³ https://www.mayerbrown.com/public_docs/Gifts_HospandFacPayments-Houston_Jan2010.pdf

⁴ <https://www.saiglobal.com/compliance/resources/whitepapers/gifts-hospitality-bribes.htm>

⁵ <https://www.justice.gov.uk/downloads/legislation/bribery-act-2010-quick-start-guide.pdf>

Anti-Corruption Unit (ACU) has put a gift limit of 25\$ for ACU officials, and gifts exceeding the value has to be returned. The ACU also require their officials to report business dinners and hospitality in advance⁶. This limit only applies to the ACU and not to other government institutions. Gift giving and hospitality remains a major issue in Cambodia and puts companies at risk of being victims of corruption. Kickbacks and gifts to procurement officers are particularly common in the Cambodian business environment.

The Benefits of Having a Gift Giving and Hospitality Policy

Companies who have a clear policy and limits for gift giving and hospitality are communicating integrity both internally and externally. Having such a policy will limit the possibility for employees to become victims of corruption due to undue influence as gifts and hospitality can be used to create a sense of obligation. This sense of obligation can have a serious negative impact on employees' decision making – not putting the companies' best interest first. Having a policy with our suggested limit of only accepting corporate gifts below value of 30\$ without management approval will also provide the staff with a point reference, saving employees the embarrassment of personally declining a gift. Management awareness of gifts and hospitality offered/received by staff will also increase by having a policy with reporting requirements; this will limit the possibility of undue influence and provide the opportunity to stop corruption before it even happens. A strong gift giving and hospitality policy is a good first step towards building a culture of integrity!

For more information and to get support on drafting a gift giving and hospitality policy for your company contact matsstridsman@ticambodia.org.

⁶ <http://www.phnompenhpost.com/acu-lays-out-rules-receiving-gifts>