

ICC GUIDELINES ON GIFTS AND HOSPITALITY

POLICY DOCUMENT

Prepared by the ICC Commission on Corporate Responsibility
and Anti-corruption

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A. Introduction

1. In the conduct of their normal commercial activities, Enterprises are often asked, requested or even solicited to make gifts or to provide forms of hospitality. Enterprises may also wish, at their own initiative, to give their actual or potential customers or business contacts presents or other advantages in order to improve their image as a commercial organization, to better present their products and services, to enhance relations or to create a favorable business climate and courtesy relations.
2. Such practices are quite common and are considered part of customary commercial policy or as affirmation of habitual courtesy in many regions and countries of the world. While Gifts and Hospitality are not *per se* contrary to present day legal and ethical standards¹, they can in some cases, due to the giver's or recipient's position, their frequency, their value or importance, the context in which they are extended or even only due to the perception by third parties, create a suspicion of impropriety and be considered as a bribe.
3. Bribery is the offering, promising, giving, authorizing or accepting of any undue pecuniary or other advantage to, by or for any person (public officials in particular) in order to obtain or retain a business or other improper advantage².
4. From a review of national legislation, it appears that there is no uniform standard but rather that each jurisdiction has its own rules, regulations and enforcement methods with regard to Gifts and Hospitality.
5. ICC recommends that Enterprises establish strict procedures covering the offer or receipt of Gifts and Hospitality in order to ensure that such arrangements: (a) comply with national law and applicable international instruments; (b) are limited to reasonable and *bona fide* expenditures; (c) do not improperly affect, or might be perceived as improperly affecting, the recipient's independence of judgment towards the giver; (d) are not contrary to the known provisions of the recipient's Code of Conduct; and (e) are neither offered or received too frequently nor at an inappropriate time³.
6. Based on an extensive exchange of good practices among its members, from many countries and from different sectors, and on a thorough benchmarking of their approaches, ICC wishes to

¹See Guidance to the UK Bribery Act 2010, page 12: "*Bona fide* hospitality and promotional, or other business expenditure which seeks to improve the image of a commercial organisation, better to present products and services, or establish cordial relations, is recognised as an established and important part of doing business and it is not the intention of the Act to criminalise such behaviour."; and Resource Guide to the US Foreign Corrupt Practices Act, page 16: "The FCPA does not prohibit gift-giving. Rather, just like its domestic bribery counterparts, the FCPA prohibits the payments of bribes, including those disguised as gifts".

²Based on the ICC Rules on Combating Corruption 2011, article 1, sub a.

³ICC Rules on Combating Corruption 2011, article 5.

issue the present Guidelines, which take into consideration the most recent international, regional and national rules as well as commercial best practice and guidance at the date of these Guidelines.

7. These Guidelines can be applied, *mutatis mutandis*, by all organizations, public or private, for profit or non-profit alike.

B. Definitions of terms used in these Guidelines

“Gift” means any payment, gratuity, gratification, present or advantage, pecuniary or not, offered, promised, given or received, without any direct or indirect material or immaterial compensation.

“Hospitality” means all forms of social amenity, entertainment, travel or lodging, or an invitation to a sporting or cultural event⁴.

“Advantages” means Gifts and Hospitality, as defined above and when collectively referred to.

“Enterprise” means any person or entity engaged in business and other economic activities, whether or not organized for profit, including any entity controlled by a state or territorial subdivision thereof; it includes a parent and its controlled subsidiaries⁵.

“Policy” means enterprise-wide effective principles and rules or procedures relating to Gifts and Hospitality, including its implementation practices.

C. Guidelines

1. Enterprises are recommended to establish a Policy relating to Gifts and Hospitality which provides that Advantages:
 - (a) Comply with applicable law and applicable international instruments;
 - (b) Are limited to expenditures which are reasonable, proportionate and business-related like *bona fide* promotional or similar business expenditures;
 - (c) Are made transparently, do not improperly affect, and would not reasonably be perceived as improperly influencing the recipient’s performance of his or her duties;
 - (d) Are not contrary to the known provisions of the recipient’s Code of Conduct;
 - (e) Are neither offered nor received too frequently nor at an inappropriate time⁶;
 - (f) Are not offered in order to improperly obtain or retain a business or other advantage;

⁴ Which may refer to the offering, promising, giving or receiving thereof.

⁵ ICC Rules on Combating Corruption 2011, Introduction, page 5.

⁶ Reference is made, for instance, to offering or receiving Advantages, which involve the interested parties in a tender phase, pending legal proceedings, concession/authorization processes, or sensitive negotiations.

- (g) Are recorded fairly and accurately in the Enterprise's books and records; and
 - (h) Are appropriate considering the culture and the standard of living in the country or region where the Advantage is given or received.
2. Although good judgment is important when giving or accepting Gifts or Hospitality, a Policy should be adequately specific and could be accompanied by easily understandable examples and/or best practices in order to give proper guidance.
 3. In view of the complexity of Gifts and Hospitality and the risk of any Advantages being considered a bribe, a Policy should be properly implemented and communicated across the Enterprise. This means it should be binding for all directors, officers and employees of the Enterprise and easy to find e.g. on the Enterprise's website and in the offices. All directors, officers and designated⁷ employees should receive regular web based and/or face-to-face training and should be encouraged to seek guidance, whenever they have concerns or questions about Gifts and Hospitality, from management or specially designated officers or departments.
 4. A number of countries are prohibiting Advantages to public officials⁸, while other countries allow such practices only under strict conditions. Accordingly, Enterprises can give Advantages to public officials only to the extent permitted under the applicable (national) laws and regulations.
 5. Enterprises would likely breach anti-corruption laws when giving Advantages to third parties, such as a public official's family members, if such Advantages are intended as an indirect way of corruptly influencing an official^{9, 10}.
 6. A Gift or Hospitality to a person in the private sector should only be permitted if it is compliant with the known provisions of the recipient's Code of Conduct. Enterprises are not obliged to proactively seek information about the recipient's Code of Conduct in every case; instead, Enterprises must take into consideration what they do know about the recipient's Code, and may, in appropriate cases, wish to seek additional information if they do not have such knowledge.
 7. No Gifts or Hospitality should be provided nor received in the form of cash or cash equivalent, such as vouchers, pre-paid cards or free services of the Enterprise.
 8. Gifts of nominal (low) value can both be offered or received in reasonable quantities.

⁷ Who in view of their position and their assignments are exposed to bribery risks.

⁸ For the meaning of public officials, foreign officials and foreign public officials, see Resource Guide to the US Foreign Corrupt Practices Act, page 19, OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, Article 1, paragraph 4, sub a) and UK Bribery Act 2010, Article 6, sub (5) .

⁹ See Resource Guide to the US Foreign Corrupt Practices Act, page 16.

¹⁰ Charitable contributions are outside the scope of these Guidelines. For guidance see *i.a.* Resource Guide to the US Foreign Corrupt Practices Act, page 16.

Examples are promotional gifts such as pens, t-shirts, mugs and agendas containing the logo of an Enterprise¹¹.

9. Hospitality of low value (e.g. drinks or a simple lunch), which are extended as a matter of courtesy, are in principle allowed¹².
10. Enterprises should promote their products, services and technology on the basis of their competitiveness and quality, not on hidden Advantages. Hospitality in the form of paying reasonable travel and lodging expenses¹³ for customers or government officials visiting an Enterprise's facilities for legitimate promotional or other business purposes is in principle allowed^{14, 15}.
11. A Policy could foresee that the giving or receiving of a Gift or Hospitality, the value of which exceeds nominal value, needs to be reported and that, if the value exceeds a certain defined level, it needs to be approved by a manager or a designated officer. Both monetary levels for reporting (at a lower level) and for approval (at a higher level) are recommended to be determined in the Policy¹⁶.
12. Enterprises with an international or global reach and having introduced in their Policy a reporting and approval system, may consider putting in place different monetary values per country or region, taking into account differences in culture and/or standard of living.
13. Enterprises that want to put a reporting and/or approval process in place for Gifts and Hospitality may consider putting a central (automated) register and clearance process in place along with establishing annual cumulative limitations and with limited exceptions for Advantages, approved by management or a designated officer¹⁷.
14. Whenever practically possible, agents, intermediaries or other third parties representing the Enterprise or conducting business on its behalf should be informed of the Enterprise's Policy and be demanded to comply with its provisions or equivalent standards and to properly implement them.

¹¹ However, in case of Gifts to public officials, see C 4 here above.

¹² However, in case of Hospitality to public officials, see C 4 here above.

¹³ Reasonableness can be gauged on the basis of the duration of the travel, frequency, the number of people in the delegation and the role of each invitee, which should be proportional to the scope of the visit.

¹⁴ See footnote 1 above and Resource Guide to the US Foreign Corrupt Practices Act, page 17 for guidance.

¹⁵ However, in case of Hospitality to public officials, see C 4 here above.

¹⁶ In some countries, Enterprises use different values (than the general ones) for top or senior management. This practice is not recommended as such different values are contrary to the principle "tone at the top" and create an increased risk of such a more valuable Gift or Hospitality being considered a bribe.

¹⁷ Resource Guide to the US Foreign Corrupt Practices Act, page 16.

15. In addition to the recommendations under C1, the following elements are recommended for a Policy:

- Objective - avoiding Gifts or Hospitality that could be considered a bribe or corruptive practice;
- Scope - applicable and binding for all directors, officers and employees of the Enterprise and, as far as possible, its business partners;
- Definitions - clear definitions of Gifts and Hospitality;
- General provisions - applying to both Gifts and Hospitality, including a prohibition to solicit or to induce and provisions that Advantages should not be given too frequently and that all Advantages should be recorded fairly and accurately in the Enterprise's books and records;
- Specific provisions on Gifts, which may include a clear reporting and authorization procedure;
- Specific provisions on Hospitality, which may include a clear reporting and authorization procedure;
- A provision on communication and training on Gifts and Hospitality; and
- A provision explaining where guidance could be obtained in case of questions or concerns.

The International Chamber of Commerce (ICC)

ICC is the world business organization, a representative body that speaks with authority on behalf of enterprises from all sectors in every part of the world.

The fundamental mission of ICC is to promote open international trade and investment and help business meet the challenges and opportunities of globalization. Its conviction that trade is a powerful force for peace and prosperity dates from the organization's origins early in the 20th century. The small group of far-sighted business leaders who founded ICC called themselves "the merchants of peace".

ICC has three main activities: rule setting, dispute resolution, and policy advocacy. Because its member companies and associations are themselves engaged in international business, ICC has unrivalled authority in making rules that govern the conduct of business across borders. Although these rules are voluntary, they are observed in countless thousands of transactions every day and have become part of the fabric of international trade.

ICC also provides essential services, foremost among them the ICC International Court of Arbitration, the world's leading arbitral institution. Another service is the World Chambers Federation, ICC's worldwide network of chambers of commerce, fostering interaction and exchange of chamber best practice. ICC also offers specialized training and seminars and is an industry-leading publisher of practical and educational reference tools for international business, banking and arbitration.

Business leaders and experts drawn from the ICC membership establish the business stance on broad issues of trade and investment policy as well as on relevant technical subjects. These include anti-corruption, banking, the digital economy, marketing ethics, environment and energy, competition policy and intellectual property, among others.

ICC works closely with the United Nations, the World Trade Organization and intergovernmental forums including the G20.

ICC was founded in 1919. Today its global network comprises over 6 million companies, chambers of commerce and business associations in more than 130 countries. National committees work with ICC members in their countries to address their concerns and convey to their governments the business views formulated by ICC.

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