

GIFTS, HOSPITALITY AND EXPENSES

**ANTI-BRIBERY GUIDANCE
CHAPTER 8**

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Acknowledgements:

We would like to thank DLA Piper, FTI Consulting and the members of the Expert Advisory Committee for advising on the development of the guidance: Andrew Daniels, Anny Tubbs, Fiona Thompson, Harriet Campbell, Julian Glass, Joshua Domb, Sam Millar, Simon Airey, Warwick English and Will White. Special thanks to Jean-Pierre Mean and Moira Andrews.

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Publisher: Transparency International UK
Design: 89up, Jonathan Le Marquand, Dominic Kavakeb
Launched: October 2017

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Transparency International UK's Global Anti-Bribery Guidance

Best practice for companies operating internationally

This is a guidance section from Transparency International UK's Global Anti-Bribery Guidance. The full guidance is available at www.antibriberyguidance.org.

About the Guidance

This flagship guidance presents anti-bribery and corruption best practice for companies, drawing upon expertise from over 120 leading compliance and legal practitioners and Transparency International's extensive global experience.

This free-to-use online portal expands and updates all of TI-UK's Business Integrity guidance over the last decade. This includes our original Adequate Procedures Guidance to the UK Bribery Act; a leading resource for compliance and legal professionals, which has been downloaded over 45,000 times from TI-UK's website. The guidance has been kindly supported by FTI Consulting and DLA Piper.

For each area of practice, we provide a summary, best practice tips, full guidance, and links to further resources. This is a dynamic resource and we will continue to update it with new content and features. If you have anything you would like further guidance on, or other suggestions, please do contact us at businessintegrity@transparency.org.uk

Many companies are facing increased bribery risks as they continue to expand internationally and become increasingly reliant on diffuse supply chains and complex third-party networks. There are also additional risks around stakeholder expectations, a global strengthening of anti-bribery legislation – requiring better internal mechanisms to ensure compliance – and enhanced enforcement.

Companies will always design their own bribery programme according to their particular circumstances but those following this guidance can take reasonable assurance that they are well positioned to counter risks of bribery, comply with anti-bribery legislation in jurisdictions across the world and to act ethically and positively in the markets in which they operate.

Transparency International UK's Business Integrity Programme

The goal of our Business Integrity Programme is to raise anti-corruption standards in the private sector. We aim to ensure that individuals and organisations do not participate in, enable or endorse corruption. Our approach is to engage positively with the private sector, governments and leading anti-corruption initiatives to identify and advocate best practice.

For more information, please visit <http://www.transparency.org.uk/our-work/business-integrity/business-integrity-forum/>

QUICK READ

Gifts and hospitality and travel expenses (together called 'promotional expenses' in this section) are a high risk area for bribery and have figured in a large number of FCPA cases. They present a challenge for companies to manage as most laws do not define boundaries while in many societies there are deep rooted customs relating to gifts and hospitality.

Best practice permits promotional expenses where they are transparent, proportionate, reasonable and *bona fide*. If companies follow this approach such expenditures are unlikely to be considered an offence by authorities or criticised by stakeholders. However, companies must ensure they have implemented adequate policies and procedures and tested their design against stakeholder expectations and applicable laws.

Key elements

- **Set limits:** The company should place an upper limit for the values of gifts, entertainment or expenses that can be received or given, such values being nominal and appropriate to general business practice. The financial limits are proportionate in value to the markets in which the gift or hospitality is being offered or taken. A matrix of values for gifts, hospitality and expenses will help in tailoring the programme to cultures, varying economic differences, and country and/or sector corruption risk.
- **Public officials:** Close attention should be given to promotional expenses given to public officials. This includes requiring prior approval for expenditures that present concerns or uncertainties, expenditures involving public officials and employees of state-owned enterprises.
- **Training:** Employees should receive communications and training which include training on gifts, hospitality and expenses and ideally role playing exercises. Tailored training is given to functions most at risk such marketing, purchasing and corporate affairs.

BEST PRACTICE

Set a clear policy

- The company policy includes clear definitions of gifts, hospitality and expenses.
- The company has a clear written policy that such promotional expenses should be reasonable, proportionate and *bona fide*. It prohibits any giving or receipt of gifts, hospitality or other expenses that could influence, or be perceived to be capable of influencing, a business decision.
- The policy requires should cover public officials, governmental departments, public bodies and the private sector.

Create procedures

- Procedures should be designed and implemented on the basis of a risk assessment of whether promotional expenses are being used as a subterfuge or preparation for bribery.
- Guidelines should state when hospitality is appropriate to be given or received and provide financial limits. It is obligatory that a host be present, otherwise it will count as a gift.
- The company should place an upper limit for the values of gifts, entertainment or expenses that can be received or given, such values being nominal and appropriate to general business practice. The financial limits are proportionate in value to the markets in which the gift or hospitality is being offered or taken. A matrix of values for gifts, hospitality and expenses will help in tailoring the programme to cultures, varying economic differences, and country and/or sector corruption risk.
- There is clear guidance regarding the cumulative impact of promotional expenses especially since they might breach the overall limits.
- Checks and due diligence are applied as necessary to ensure that there are no circumstances that could raise concerns when planning to make promotional expenses. This includes checking local laws and regulations as well as policies of the recipient's organisation or government department
- A procedure should be designed to deal with cases where gifts cannot be declined or have been received and cannot be returned. Ways can include auctioning the gifts in aid of charity or displaying them in offices. Another option, requiring sensitivity, is to return a gift with a note explaining the policy not to accept gifts.
- The guidance provides advice on how gift giving and hospitality should be handled with particular respect to local customs and culture. The guidance can be flexible in recognising and accommodating local customs and cultural differences for gifts and hospitality but should set out clearly policy, processes and reporting guidance.

- Close attention is given to promotional expenses given to public officials. This includes requiring prior approval for expenditures that present concerns or uncertainties, expenditures involving public officials and employees of state-owned enterprises.

Communicate and train

- The company should communicate its policy, procedures and guidance for gifts, hospitality and expenses to employees, business partners and suppliers to prevent misunderstanding or differences in perceptions of what is permissible within the policy.
- Employees receive communications and training which include training on gifts, hospitality and expenses and ideally role playing exercises. Tailored training is given to functions most at risk such as marketing, purchasing and corporate affairs.

Put in place controls

- Gifts and entertainment given to public officials should be restricted and any to be made, should require pre-authorization and review. If there is a current bid or business discussion involving the public official or his/her department, promotional expenses should not be used at all.
- All promotional expenses given and received over a nominal value should be documented by employees including recipient, giver, value, nature of the transaction and business reason for the activity. Receipts for gifts must be retained on file to prevent them being given to officials with the gift which can then be returned to the retailer for cash. Any violations of policy must be reported to management and documented.
- Employees who receive gifts or hospitality should inform management in writing when the value is above the permitted level.
- There should be accurate recording of promotional expenses given using designated accounting codes.
- Use of gift cards or cash gifts should be prohibited. Petty cash should be tightly controlled, expenses restricted and claims scrutinised. This prevents cash being diverted by marketing, intermediaries or other employees to fund bribes in the form of promotional expenses.
- Reviews are carried out regularly of registers to check that they are being maintained, up-to-date and record the required information.
- Line management are responsible for monitoring expense claims thoroughly and questioning claims which appear problematic.
- Close scrutiny is given by internal audit to promotional expenses including looking for evidence of hiding or miscoding expenditures. Examination will be made of the transactions of third parties acting on behalf of the company. Spot checks can help in this respect. The audit process should be fully documented in case of an investigation.
- Management regularly reviews promotional expenses given and received, and makes reports to the board periodically.

Give special consideration to local customs

- Understanding is developed and appropriate respect applied for the subtleties of local customs related to gifts and hospitality.
- Tailored approaches are designed and implemented to ensure gifts and hospitality conform to local customs but meet the anti-bribery policy – gifts can be modest yet convey respect.
- Due diligence is carried out on intermediaries to check their record on gift giving, hospitality and integrity approach.
- Local communications and training are given in local languages to emphasise the company's commitment to its anti-bribery policy.
- The legal, regulatory and anti-corruption environment should be monitored as this is likely to be fast-changing and the company needs to make sure it does not breach any new laws or government strategies. Arrange spot-check visits.

GUIDANCE

8.1 Introduction

Gifts, hospitality and expenses are vulnerable to being used for bribery. They can be used as bribes on their own but they also pave the way for bribery by entrapping a person. They can also be used build or maintain relationships during a bribery scheme.

Gifts and hospitality and travel expenses (together called 'promotional expenses' in this section) are a high risk area for bribery and have figured in a large number of FCPA cases. They are troubling for companies to manage as most laws do not define boundaries while in many societies there are deep rooted customs relating to gifts and hospitality.

Best practice permits promotional expenses where they are transparent, proportionate, reasonable and *bona fide*. If companies follow this approach such expenditures are unlikely to be criticised by stakeholders or considered an offence by authorities. However, companies must ensure they have implemented adequate policies and procedures and tested their design against stakeholder expectations and applicable laws.

8.2 Understanding promotional expenses

To manage the risks from promotional expenses, companies must first have a clear definition of what they constitute. Suggested definitions are given below.

Gifts: These are money, vouchers, goods or services, which, if given appropriately, are a mark of friendship or appreciation. They should be given without expectation of consideration or value in return. They may be given in appreciation of a favour done or a favour to be carried out in the future though care should be taken that this does not stray into being made with intent to achieve improper influence. Gifts should have no business roles other than marking and enhancing relations or promoting the giver's company by incorporating a logo or message on a promotional item.

Hospitality or entertaining: This is given or received to initiate, cement or develop relationships. It includes meals, receptions, tickets to entertainment, social or sports events. Hospitality requires the host to be present; if not, the expenditure is a gift. Often an argument for hospitality is made that it provides a relaxed, neutral, environment in which business relationships and activities can be started, fostered, information imparted and respect and trust shown. Hospitality can also be associated with fund-raising events held for charitable causes with the company assisting the causes by purchasing tickets or introducing potential supporters.

Expenses: These are the provision or reimbursement by the company of travel, lodging and other expenses incurred by a prospective client, customer or business partner. Expenses can be a legitimate contribution to achieving a business outcome. For example, a company pays the travel and associated costs for representatives of a potential customer to visit a facility or attend an exhibition, event, conference or training.

‘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.’

UK Ministry of Justice guidance to the UK Bribery Act guidance

The challenge of knowing where to set the line

The challenge for companies in designing anti-bribery controls for promotional expenses is to know where to draw the line given the widely varying circumstances in which the transactions can take place. Is a different level of expense suitable when dealing with a director or when operating in a country where gifts are an important aspect of business relationships? Misuse of promotional expenses and violation of a no-bribes policy may not always be a deliberate act but can occur through negligence, inexperience or ignorance. Training should aim to mitigate these risks.

Use these tests to decide if gifts, hospitality or expenses are appropriate:

- **Bona fide:** Made for the right reason: if a gift or hospitality, it should be given clearly as an act of appreciation, if travel expenses then for a *bona fide* business purpose.
- **No obligation:** The activity will not create any obligation or expectation on the recipient.
- **No undue influence:** The expenditure will not be seen as intended for, or capable of, achieving undue influence in relation to a business transaction or public policy engagement.
- **Made openly:** It will not be performed in secret and be undocumented – if it is, then the purpose becomes questionable.
- **Legality:** It is compliant with relevant laws.
- **Accords with stakeholder perception:** The activity would not be viewed unfavourably by stakeholders were it made known to them.
- **Proportionate:** The value and nature of the expenditure is not disproportionate to the occasion.
- **Conforms to the recipient’s rules:** The gift, hospitality or reimbursement of expenses will meet the rules or code of conduct of the recipient’s organisation.
- **Infrequent:** The giving or receiving of gifts and hospitality is not overly frequent between the giver and the recipient.

- **Documented:** The expense will be fully documented including purpose, approvals given and value.
- **Reviewed:** The records of promotional expenses and the effectiveness of the policy and procedures are reviewed by management with a regular report to the board or a board committee.

8.3 Public officials and anti-bribery laws

Promotional expenses for public officials present particular risks under bribery laws. For example, section 6 of the UK Bribery Act provides that it is an offence to offer, promise or give any financial or other advantage directly or through a third party to a public official with the intent of influencing them or retaining or obtaining an advantage in the conduct of business. The UK Ministry of Justice Guidance does however advise that it may be in some circumstances that hospitality or promotional expenditure in the form of travel and accommodation costs does not amount to ‘a financial or other advantage’ to the relevant official because it is a cost that would otherwise be borne by the relevant foreign Government rather than the official themselves.

The FCPA prohibits the corrupt ‘offer, payment, promise to pay, or authorisation of the payment of any money, or offer, gift, promise to give, or authorisation of the giving of anything of value to’ a foreign official.

The authorities are unlikely to be interested in nominal value, reasonable gifts, hospitality and expense but guidance from the authorities on what is appropriate under bribery law is broad and does not give the certainty which companies seek. To provide further detail to companies, the SFO gave updated guidance on hospitality as part of its [Full Code Test](#).

Some guidance is also given in the [FCPA Resource Handbook](#):

‘Some hallmarks of appropriate gift-giving are when the gift is given openly and transparently, properly recorded in the giver’s books and records, provided only to reflect esteem or gratitude, and permitted under local law.’

8.4 Examples of bribery risks from promotional expenses

There are significant bribery risks attached to promotional expenses. Here are some examples:

- An employee or agent tries to build favour by giving improper entertaining and gifts to prospective clients to win contracts or to influence public officials. See [Buckingham Palace case study](#).
- Entertainment, gifts and travel are used by a bidder to manoeuvre a company’s employees into a position of obligation either for a specific immediate purpose such as winning a contract, to gain insider information or to pave the way for larger bribery or other corruption.

- Promotional expenses are given to public officials and contravene laws such as the UK Bribery Act or the FCPA. Click [here](#) for a case involving hospitality of foreign public officials at the 2008 Summer Olympics.
- Lavish travel and entertaining with little business content being used to bribe executives or public officials. A specific example is sponsorship of medical experts attending conferences with little business content and substantial travel and hospitality benefits.

Very often, promotional expenses involve grey areas where it can be difficult to judge the appropriate level of hospitality or expenses. An employee may have to make a snap judgement and is then drawn unwittingly into an inappropriate situation which may be judged as a breach of the company's no-bribes policy. In some societies, the business culture involves gift giving and entertaining and employees may be uncertain how to manoeuvre through the nuances of customs while balancing a desire not to cause offence and yet stay within the company's no-bribes policy.

Bribery cases incorporating abuse of gifts and hospitality are not limited to large companies.

SMEs also need to understand the risks from promotional expenses and ensure they have policies and procedures in place. Click here for [FLIR Systems case study](#).

8.5 Local customs

The local customs for gifts and hospitality in some societies, do not sit easily with the provisions of policies and anti-bribery laws.

In China, for example, the custom of gifts and favours called 'guanxi' is used to build relationships. Such customs create and strengthen networks which can take on added importance in countries where the rule of law is weak. While gifts and entertainment support relationship building, they can degrade into bribery with ever larger gifts.

China itself has been engaging in a crackdown on corruption, including tightening the regulations governing state officials' ability to accept gifts. A correlated slump in sales of luxury goods has been attributed to the changes.

Similarly in South Korea, there is a culture of gift giving and the government introduced a law in 2016 to restrict 'jeopdae,' which is the term for entertaining business colleagues, government officials and journalists.

South Korea: law restricting gifts to public officials

The Anti-Corruption and Bribery Prohibition Act, commonly known as the Kim Young-ran law, took effect on 28 September 2016. The Act has a strict liability offence prohibiting the provision of a benefit to a public official where the benefit is:

- valued in excess of 1 million won (about U.S. \$900); or,
- when aggregated with other benefits from the same source, is in excess of 3 million won (about U.S. \$2700) over a one year period.

There is corporate criminal liability for a payment or benefit provided to a public official by employees unless the corporation exercised due care and supervision to prevent such misconduct. The law sets limits for congratulatory or condolence cash gifts to public officials at KRW 100,000 won (about U.S. \$90), gifts at KRW 50,000 (\$45) and meals at KRW 30,000 (\$27).

Companies must understand local customs and consider how their procedures should be applied in this context. However, companies are not applying policies in isolation – local competitors may not be observing the same standards and will be gaining competitive advantage. Managing the challenge of observing anti-bribery policies laws and yet maintaining competitiveness is not an easy task. The continuing prosecutions of companies for abusing gifts and hospitality shows the risk that local employees may transgress policies in order to win contracts and this may lead to wider bribery and other corruption.

CHAPTER APPENDIX

8.6.1 Case study: Buckingham Palace - Facilities management bribery

A former deputy property manager at the Royal Household who accepted more than £100,000 in bribes to award contracts for work at royal residences was sentenced to five years imprisonment in 2016. He was responsible for maintaining Buckingham Palace, the Queen's main London home, and other historic buildings. He accepted payments or gifts from the directors of companies who were then given large contracts for maintenance of the buildings. In sentencing the former manager, the judge told him that he was a 'hard-working, apparently loyal team player, admired and trusted by ... colleagues' but he was also 'dishonest and greedy. . . But nobody could have guessed that a trusted insider such as yourself could think of going to the lengths that you did to corrupt the system for personal gain. Your betrayal of your colleagues' trust and your lack of remorse at what you did are both remarkable.'

8.6.2 Case study: Company fined for failing to maintain internal controls related to Olympics hospitality

In May 2015, the SEC charged BHP Billiton with violating the FCPA when it sponsored the attendance of foreign government officials at the 2008 Summer Olympics. BHP Billiton agreed to pay a \$25 million penalty to settle the SEC's charges.

The SEC found that BHP Billiton failed to devise and maintain sufficient internal controls over its global hospitality program connected to the company's sponsorship of the 2008 Summer Olympic Games in Beijing. BHP Billiton invited 176 government officials and employees of state-owned enterprises to attend the Games at the company's expense, and ultimately paid for 60 such guests as well as some spouses and others who attended along with them. Sponsored guests were primarily from countries in Africa and Asia, and they enjoyed three- and four-day hospitality packages that included event tickets, luxury hotel accommodation, and sightseeing excursions valued at U.S. \$12,000 to \$16,000 per package.

According to the SEC's order, BHP Billiton required business managers to complete a hospitality application form for any individuals they sought to invite to the Olympics, including government officials. However, the company did not clearly communicate to employees that no one outside the business unit submitting the application would review and approve each invitation. BHP Billiton failed to provide employees with any specific training on how to complete forms or evaluate bribery risks of the invitations. Due to these and other failures, BHP Billiton had extended Olympic invitations to government officials connected to pending contract negotiations or regulatory dealings such as the company's efforts to obtain access rights.

“A ‘check the box’ compliance approach of forms over substance is not enough to comply with the FCPA,” said Antonia Chion, Associate Director of the SEC’s Division of Enforcement. “Although BHP Billiton put some internal controls in place around its Olympic hospitality program, the company failed to provide adequate training to its employees and did not implement procedures to ensure meaningful preparation, review, and approval of the invitations.”

Comment: BHP Billiton had designed a control but it was not carried out adequately. The underlying issue was that the business managers did not recognise what should have been an evident issue. They should have been trained to be sensitive to such a bribery issue. The failure was compounded by that the business unit’s form was a rote exercise and not reviewed outside the function.

8.6.3 Case study: FLIR Systems: Falsification of records to promotional expenses given as bribes

Two former employees of FLIR Systems, a U.S. defence contractor, agreed in 2014 to pay the SEC fines of U.S. \$50,000 and \$20,000, respectively, to settle FCPA charges arising out of the alleged provision of gifts of watches, travel, and entertainment to Saudi officials including a ‘world tour’. The two employees later falsified records in an attempt to hide their misconduct and directed FLIR’s local third-party agent to provide false information to the company to back up their story that the original submission was merely a mistake. The employees also falsely claimed that FLIR’s payment for the world tour had been a billing mistake by FLIR’s travel agent, and again used false documentation and FLIR’s third-party agent to bolster their cover-up efforts.

Comment: This shows the need for reviews and audits to carefully scrutinise documentation and records related to promotional expenses.

