

Essential Requirements For Corporate Gifts & Entertainment Policies



During the holiday season, many businesses will present gifts to clients, consultants, service providers and others with whom they do business. While such a practice is customary and often expected, businesses have to be careful that such gift-giving does not trigger anti-corruption violations, such as those found in the Corruption of Foreign Officials Act (“CFPOA”) in Canada or the Bribery Act in the United Kingdom (the “Bribery Act”), which prohibits bribes for improper acts virtually anywhere in the world between third parties that have some connection to the United Kingdom. It is therefore essential businesses ensure that they have a clear gifts and entertainment policy in place as part of a comprehensive and well-enforced anti-corruption compliance program.

This bulletin highlights some essential requirements for such a policy, and while each company should have a policy tailored to their specific needs, the general points listed below can help businesses enjoy the holiday spirit without fear of violating the aforementioned anti-corruption legislation. The basic principle to keep in mind is that any gifts or entertainment should be reasonable, of nominal value and frequency, and, as much as possible, relevant to the legitimate professional affairs of both the business and recipient in question.

What All Corporate Gift and Entertainment Policies Need

The following seven points should be reflected in any corporate gifts and entertainment policy and apply to all gifts given on behalf of the company and its officers, employees or directors:

1. No gift may be given or expense incurred for the purpose of motivating a third party to do or neglect to do anything which might provide or be seen to provide the company with an improper business advantage of any kind;
2. No gift may be given, or expense incurred that is in violation of local law;
3. A gift or expense must be given or incurred on behalf of the company, rather than in the personal capacity of an employee of that company;
4. No gift should ever consist of cash, or any cash equivalent. Cash equivalents might include stocks, bonds or other convertible securities, or even relatively liquid hard assets such as precious metals or gemstones;
5. The value and nature of a gift or expense must be objectively reasonable and appropriate in light of the context in which it is given or incurred. For example, a small token gift such as corporate merchandise or stationary is

likely appropriate during the holiday season or in business travel but extravagant gifts are more likely to attract scrutiny for possible bribes or corruption;

6. All gifts must be given openly. A gift given in secret gives the impression that those involved are actively avoiding public scrutiny, which in turn suggests impropriety. If the gift cannot be given openly, it is likely best not to give it at all; and,
7. Gifts should never be offered to any public or government official (including a spouse, friend or family member of a public official) without the express prior approval of a senior officer, such as the company's Chief Compliance Officer.

Gifts to Public Officials

The special significance of gifts given to public officials deserves more detailed treatment given that the CFPOA specifically targets bribes to foreign officials and thus such gifts can trigger particular scrutiny. As a general rule, gifts to public officials should be avoided. However, since they are not explicitly prohibited, senior management can approve gifts to public officials in the appropriate circumstances if the gift meets a number of important criteria, including but not limited to the following:

1. The gift must be of limited frequency and nominal value such as simple low-cost meals or minor promotional items of little or no cost;
2. The gift must be demonstrably connected to both the legitimate affairs of the business in question, and to the official duties of the public official in question such as token gifts or souvenir to an official while on business travel;
3. The gift must fall within commonly accepted and reasonable standards of courtesy, hospitality and procedure in both Canada and the country the foreign public official represents; and
4. The gift must not potentially compromise or even appear to compromise the integrity of either the business or the public official concerned. For example, if the public official is in charge of tendering a large procurement project any gift given to him or her in connection with or around the time period of a company's bid for the procurement is likely to be seen as inappropriate.

It is important to note that the above list is not exhaustive and varying circumstances will mandate additional considerations.

Without bureaucratizing the holiday season, an organization can also take certain administrative steps to assist in compliance with its gifts policy, such as keeping a register of all gifts given (and their cost), and all gifts received; requiring management sign-off for any gift over a certain value; and coordinating the gift-giving centrally using the organization's marketing personnel.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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