

# PRACTICAL ANTI-BRIBERY & ANTI-CORRUPTION POLICIES

*that any organization needs to have*



**AMAYA SENTINEL CONSULTING**

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Sentinel  
Consulting  
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[www.amayasentinelconsulting.com](http://www.amayasentinelconsulting.com) [wtjen.siow@amsc-my.com](mailto:wtjen.siow@amsc-my.com)

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## Table of Contents

**PREAMBLES.....3**

**BUSINESS COURTESIES AND HOSPITALITY .....6**

    Gifts ..... 6

    Meals and Refreshments ..... 6

    Traveling and Lodging ..... 6

    Business Events ..... 6

**SPONSORSHIPS, DONATIONS AND PATRONAGE .....8**

    Sponsorships ..... 8

    Donations ..... 9

    Patronage..... 9

**KEY TAKEAWAYS ..... 10**

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## PREAMBLES

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Today, many more anti-corruption laws are being enacted across the world to hinder corruption and criminalize bribery offences. These laws *hold leaders of organizations accountable* for their companies' corrupt deeds, the punitive consequences include payment of fines, penalties and profit disgorgement or imprisonment or both. Resource guides<sup>1</sup> that provide information of legislations and recommended preventive measures like internal controls, ethics & compliance are issued & getting updated based on past lessons learnt.

*The Malaysian Anti-Corruption Commission Act 2008 provides that it is an offence to corruptly give, agree to give, promise or offer any gratification with the intention to obtain an unfair advantage for business. The Act is explicit about what a gratification could be – it ranges from provision of tangible objects and services to considerations of benefits and actions.*

*The UK Bribery Act 2010 defines bribery as giving and receiving a financial or other advantage in connection with improperly performing a relevant function or activity that should have been performed in good faith.*

*The Foreign Corrupt Practices Act 1977 of the US prohibits the furtherance of any corrupt offer, payment, promise to pay or authorization of the payment of money or anything of value to any person, while knowing that all or a portion of such provision will be offered, given or promised directly or indirectly to influence or induce a foreign official in their official capacity into violating their duty, or to secure any improper advantage in order to assist in obtaining or retaining business for or with, or directing business to, any person. FCPA maintains that as long as the intent to corrupt is present, the corruption needs not be successful.*

*The Sapin II Law (Law No. 2016-1691) of France aims to promote transparency, combat corruption and modernize the economy with mandatory implementation of corruption prevention and detection measures across most organizations based in France. The Law refers to the offences of bribery, influence peddling, extortion by public officials, illegal taking of interest, misappropriation of public funds and favoritism as corruption.*

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<sup>1</sup> Notable guides include the [Guidance to UKBA's anti-bribery procedures](#), [Guidelines on Adequate Procedures under MACCA](#), [French Anti-Corruption Agency Guidelines](#) & [FCPA Resource Guide](#)

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It seems that corrupt government officials are less at risk of being sanctioned for soliciting bribes than commercial organizations that have been compelled to offer bribes. They are known to be in a position to 'own' & reward (patronage) an extensive network of corruptible officers to remove or downplay any evidence of their impropriety, routing bribes through third party channels, thus making any paper trail connecting them to corruption harder to track but not impossible. Regulators can easily identify the bribe offerors for their intent to bribe while those third parties are implicated as the ultimate bribe recipients. **In reality, commercial organizations and intermediary parties have always been made the bogeyman of corruption and bribery.**

Rather than doubt that regulators would ever catch up to their questionable business conducts, commercial organizations should look into setting up preventive measures to encumber such undertakings. The three forces to implementing any forms of preventive measures effectively are through educating, communicating with and training everyone associated to the organization. Consistently. Purposefully. Repetitively in different ways.

- **Educating** – The key lies in providing an understanding of *how & where* corruption can occur within the organization's business activities. Provide clarification to what & why selected anti-corruption initiatives are in place to address those business activity concerns. Employees are taught to duly apply the anti-corruption protocols to the appropriate business activities.
- **Communicating** – A one-off message on anti-bribery compliance, merely to 'check the box' is inert. Regulators will most certainly find such organizations lackadaisical in its efforts to prevent corruption from occurring. The top management and middle management of an organization must be able to steer its compliance strategies with dynamic communication techniques:
  - share and remind that non-compliant conducts can result in disciplinary actions being taken by the management, but consistent compliance merits rewards.
  - have an opened-door policy that encourages dialogs with all employees on relevant matters.
  - include compliance updates into meeting agendas, newsletters, etc.
  - use technology for outreach, training, communications, etc.
  - create reminders for whistleblowing channels throughout the organization

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- **Training** – Approach training of compliance processes and protocols in a systematic manner. With more and regular trainings being organized, the less inclined employees are to circumvent compliance procedures. Developing targeted training content for senior leadership, operational teams and others further ensure that the different audiences can resonate with the vibrancy of relatable experiences and interactions.



Combating corruption is a concerted effort by governments, business communities, commercial & non-commercial organizations and industrial associations, vigorously ensuring that the conduct of business transactions are of high standards of integrity and in compliance with laws.

The discipline of compliance is not conceived to burden or disrupt business. On the contrary, it is an indemnity policy that is in anticipation of insulating business from incurring multifaceted damages – *financial losses, diminished reputation, unplanned legal costs, squandered productivity and loss of talent* – by identifying business activity risks and establishing compliance policies, reinforced with the aforesaid forces to deter actors from contemplating any misconducts that attribute to corporate liabilities.

In this regard, this pack highlights the preventive measures to counter the high corruption risks of quid pro quo considerations more commonly linked to perceived or actual bribery and corruption. Guiding principles on internal controls, ethics and compliance are propositioned as best practices instilled into relevant policies practical for day-to-day decisions.

# PRACTICAL ANTI-BRIBERY & ANTI-CORRUPTION POLICIES

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## BUSINESS COURTESIES AND HOSPITALITY

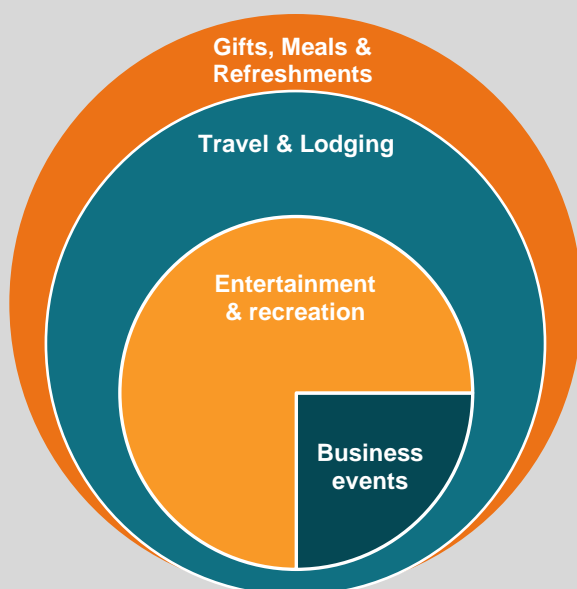
Incurring hospitality, business courtesies and other promotional expenditure to foster goodwill and relations with clients and vendors is a generally acceptable gesture. It is not prohibited under the FCP, UKB and MACC Acts; but the gesture has to reflect as:

- having a bona fide business purpose;
- reasonable in value and frequency;
- proportionate to the costs & risks of doing business;
- openly and transparently presented; and
- properly documented in books & records.

What could possibly violate the Acts is if the facts & surrounding circumstances indicate an intent to corrupt, for example:

- excessive spending on activities having little or no legitimate business purposes; or
- disguising bribes under recognizable avenues of expenditure; or
- lack of transparency in financial reporting.

In the context of compliance to anti-bribery laws (see 1), business courtesies and hospitality include:



- **Gifts** – Representative of something that has a nominal/ no value. Cash & cash equivalents (cash envelopes, gift credits), services, loans, discounts, commissions, lifestyle memberships, favours and anything of value are excluded from this reference.
- **Meals & Refreshments** – Not extravagant, reasonable, consistent with marketplace practices.
- **Travel & Lodging** – Hospitality that is extended by the host for specific circumstances only.
- **Entertainment & Recreation** – Integral to a business event, not for personal indulgence, attendance accompanied by the host.
- **Business Events** – Business-related conferences, meetings, industry tradeshows.



# PRACTICAL ANTI-BRIBERY & ANTI-CORRUPTION POLICIES

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*A combination of them is usually expensed out for different occasions. Note that the tolerance or acceptance of certain business courtesies and hospitality differs from organization to organization, usually in consideration to their bribery risk assessment, ie. interactions with government officials, nature of business, the jurisdictions in which they operate business, etc.*



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## GUIDING PRINCIPLES

**Consider these dimensions of exchanging gifts, meals, entertainment and travel arrangements with external business partners in a written policy, and develop pragmatic internal controls to mitigate risks of violating the laws:**

- ✓ **Defining the permissible and impermissible courtesies, hospitality and occasions**
- ✓ **Setting out pre-determined thresholds with authorization matrices**
- ✓ **Creating boundaries on provision of courtesies and hospitality to government officials and family members or other relations to such recipients**
- ✓ **Prohibiting use of intermediary parties to impart courtesies and hospitality for and on behalf**
- ✓ **Cautioning employees against personally procuring courtesies to circumvent policy or authorizing business partners to reimburse on travel, entertainment, etc. which have no connections to business purposes**
- ✓ **Disclosing any conflict of interests**
- ✓ **Seeking clarification with, clearance from and notifying the company's compliance function of a difficult situation**

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## SPONSORSHIPS, DONATIONS AND PATRONAGE

This section looks at how the legitimacy of financial contributions and in-kind benefits could be fundamentally compromised if the contributions had not served the purposes or noble causes that were first proclaimed. Bribery schemes are often devised under the pretext of put-to-good-use sponsorships and charitable &/ or political donations. For example, during the pandemic, clients, government officials, employees and other business relations had been restricted from participating in large-scale physical conferences funded by corporate sponsorships, and had looked to converting such 'lost opportunities' into requests for larger donations of medical devices or trading tenders for the highest bid or other financial spin-offs.

**Sponsorships** Different industries bribe with sponsorships in varying ways.

Pharmaceutical – Healthcare practitioners offered sponsorships by healthcare companies to participate as attendees or expertise speakers in medical conventions and continuous educational conferences held domestically or internationally. Sponsorships would cover lodging, travel, meals, refreshment, entertainment, per diem, etc. to induce healthcare practitioners into endorsing or prescribing companies' products and/or services.

Sports – Sports entities offer marketing and branding opportunities to organizations that wish to associate their name with the sporting events organized. The lucrative sports sponsorships agreement can be highly sought after by sponsors, leading to the highest bidder offering bigger, better bribes to secure the agreement.



*A sponsorship is a commercial arrangement between the sponsor who agrees to fund an event and the event organizer who seeks to defray some organizing costs of the event. The event organizer publicizes the event, stating its purpose & objectives, details of venue, date & time and the audience outreach. The publicity also frames out the different options of marketing rights to inclining sponsors in promoting brand name, raising awareness or engaging with people at the event. The agreed sponsorship option must be formalized into a contract to ensure that the parties fulfill their obligations to the event.*

*Across various industries, annual events are anticipated, such as conferences, tradeshows, hosting of philanthropic events and so on. Sponsors should be accustomed to budgeting expenditures for the events they will participate in. This streamlines when and how the expenditures will be utilized, any surprise spends will alert the authorization matrices.*



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**Donations** Some companies set up a donation ledger to disguise donations and grants as monies to offset contractual costs, to sway procurement and distribution tender decisions, to pay for influence peddling or for money-laundering purposes.

Charitable contributions – The use of front organizations which may be duly registered in receiving covert donations as slush funds.

Political donations – Politically exposed persons or government officials soliciting personal donations for their influence on lobbied agendas.

**Patronage** Relations are formed for self-preservation purposes while reciprocating with something to provide as leverage to the relationship. Patronage can also be formed on reward and control dynamics - loyalty and exclusivity are incentivized with commissions, brokerage fees & discounts that are incomparable to market rates, unlicensed or interest-free loans, unmerited employment with perks and other kickbacks.

*In response to crises, emergencies or general fund-raising drives, corporate donations can be volunteered in the forms of funds, time or corporate resources & assets. Companies can choose to establish its corporate social responsibility program which systematically organizes the logistics of outreach or partner with duly registered, reputable non-profit organizations to mobilize donations directly to the needy. Written contracts memorialize the purposes of donations and the donor's and recipient's agreement on utilizing all or part of the donations for the purposes.*



## GUIDING PRINCIPLES

**Mitigate the exposure to corporate liability for corruption offences:**

- ✓ **Defining what constitute the company's endeavors of sponsorships and donations; companies may choose to outrightly prohibit political donations because of its risk significance**
- ✓ **Executing due diligence to reveal any red flags on the requests, purposes, recipients & transactions (pre- & post- event), and assessing any conflict of interests that employees may have in connection to the requests**
- ✓ **Developing financial controls based on transparent and accurate reporting**
- ✓ **Executing written agreements with anti-bribery/ corruption clauses incorporated**
- ✓ **Sponsorships and donations should never be promised on conditions that perpetuate undue influence or inducement to further unfair business advantages**
- ✓ **Consulting with the company's compliance function for all of above**

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## KEY TAKEAWAYS

### LEADERSHIP

- Demonstrated commitment
- Exemplary behavior

### COMMUNICATION

- Getting clearance from compliance
- Training for awareness for employees & external business associates
- Reminders



### POLICIES

- Tailoring procedures, processes & protocols in writing
- Documentation
- Limiting provisions to government officials

### ACCOUNTING

- Checking against authorization matrices & budgets
- Accuracy in books & records

Even with all the advisory on and adoption of best practices, risk of corruption can never be totally eliminated, and any given anti-bribery/ corruption policy cannot cover every situation. In consonance with building a compliance culture, employees are expected to use their common sense and best judgment whenever making business decisions and carrying out & auditing internal controls. In a post-pandemic era, just like business strategies, corruption risks will need to be assessed with renewed foresights.

For anything Compliance, find out more with:

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[wtjen.slow@amsc-my.com](mailto:wtjen.slow@amsc-my.com)

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