

Guideline on Dealing with Gifts and Entertainment

Guidelines on dealing with Gifts and Entertainment

Gifts and entertainment are a necessary part of doing business in society, to build relationships, networks and market companies' products and services. At the same time, companies have a positive obligation to prevent bribery and corruption within their organisations and in terms of their relationships with their business partners. Companies should therefore give guidance to their employees not only about their obligations under applicable bribery laws*, but to ensure that gifts and entertainment are exchanged with business partners in a manner which is, and is perceived to be, consistent with the company's legal obligations and business values. The purpose of this guideline is to provide a framework which companies may consider when formulating a policy for employees to deal with gifts and entertainment. As this is merely a guideline, companies should consider the context of their business, the industry in which they operate as well as legal requirements. Some overarching principles to consider are:

a) a commitment by the company to combat and prevent bribery within the organisation and in relationships with business partners;

b) a clearly communicated document in plain English delineating the requirements employees must adhere to when dealing with gifts and entertainment involving business partners so that there can be no ambiguity or uncertainty as to what is expected of employees;

Ensure that all employed are trained to understand the substance of the policy – the policy should be a living document where the principles are applied when faced with a dilemma.

c) communicating the requirements not just to employees but also to business partners;

d) formulating monetary limits when dealing with gifts and entertainment; (note that gifts and entertainment should be modest in value)

e) ensuring guidance is given not only with the giving but also the receiving of gifts and entertainment;

f) training employees as to the requirements - not just documenting it and leaving it on a database where it passively resides (see above);

g) creating a register or database where employees can declare gifts and entertainment, at least where such gifts and entertainment exceed a predefined limit thereby ensuring transparency and accountability;

h) making clear that gifts and entertainment must be done for the right and lawful reason, and not to influence the recipients of the gifts and entertainment in their decision-making processes. The recipient of the gift should be able to remain impartial and objective of mind. The timing of the gift giving may be critical e.g. just before a tender is awarded may be inappropriate. Recipients should at all times be seen to be objective - even a perception of corruption may be harmful.

The following issues must be considered and documented when formulating a company's gifts and entertainment policy or guidelines:

1. Make clear that gifts and entertainment are done for the right reason (to network and appreciate the relationships with business partners) but not to influence the recipient in a decision he or she has to make in favour of the company or an individual.
2. Define key concepts such as bribery, gifts and entertainment.
3. Define the circumstances under which giving and receiving gifts and entertainment is NOT appropriate e.g. during contract negotiations giving or receiving gifts may be perceived as trying to influence the recipient.
4. Give examples of appropriate gifts and entertainment, as a guideline.
5. Consider appropriate monetary thresholds for gifts and entertainment: should monetary limits be put in place? If so what limits should be used? When would be appropriate to exceed the limits, if at all?
6. Consider the frequency or number of times an employee can give or receive gifts and entertainment to or from the same person or company per annum.
7. Consider the appropriateness of weekends away or overnight stay involving business partners. If deemed permissible determine the criteria when such is appropriate.

8. Determine the conditions under which an employee must report gifts and entertainment to his or her supervisor, HR or other appropriate internal reporting structures.
9. Establish the mechanism how employees must do such reporting. The mechanism should gather all pertinent information in a clear and consistent manner regarding the gifts and entertainment and must be readily available for inspection and audit by the company.
10. Detail if the giving and receiving of gifts and entertainment is treated differently (if at all) and if so what the conditions or criteria are.
11. Ensure regular and consistent ethics training is given to employees so that they are aware of the requirements of the company when dealing with gifts and entertainment.

* also bear in mind that the SA anti-corruption legislation is very wide in it's ambit and also invokes extra-territorial jurisdiction where corruption is committed outside the borders of SA.