

CONFIDENTIAL

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GUIDELINE ON DEALING WITH GIFTS AND ENTERTAINMENT

**Formulated by the BUSA Anti-corruption Working Group, May 2010
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Gifts and entertainment are seen as 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 organizations. Companies should therefore give guidance to their employees not only about their obligations under applicable anti-corruption 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 organisational values.

The purpose of this article is to provide guidelines 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 their business environment, the industry in which they operate as well as the legal requirements of all the counties they operate in.

In the formulation of a gift and entertainment policy, some overarching principles to consider are:

- a) Is there a "visible" commitment by the company to combat and prevent bribery within the organisation and in relationships with business partners?
- b) a clearly communicated document/policy 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;
- c) Has the company ensured that all employees are trained to understand the substance of the policy? The policy should be a living document where the principles are applied when faced with an ethical dilemma.

- d) Has the requirements of the policy been communicated not just to employees but also to business partners?
- e) Have monetary limits when dealing with gifts and entertainment been formulated? Note that gifts and entertainment should be modest in value.
- f) Has guidance been given not only in regards to the giving but also in regards to the receiving of gifts and entertainment?
- g) Has a register or database where employees can declare gifts and entertainment been created? , at the minimum 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 and impartial - 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 it 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 (the giver).
2. Define key concepts such as corruption, fraud, 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 or if you serve are on a tender committee.
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 it 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. A total limit may be prescribed for the 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.
12. Consider industry specific legislation, standards and guidelines particularly if it has mandatory requirements.
13. Remember in terms of SA anti-bribery legislation facilitation payments are not expressly dealt with which means it is treated as bribery. Hence facilitation payments (i.e. grease or expediting payments) are not permissible in SA law. A facilitation payment is a small unofficial payments made to secure or expedite the performance of a routine or necessary action to which the payer of the facilitation payment has legal or other entitlement.

* Bear in mind that the SA anti-corruption legislation is very wide in its ambit and invokes extra-territorial jurisdiction where corruption is committed outside the borders of South Africa. Even if facilitation payments are allowed elsewhere, it is prohibited by the South African law.

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