

NO GIFT POLICY IN PUBLIC SECTOR

The Malaysian Anti-Corruption Commission No Gift Policy was encapsulated in a circular that was sent out on 14 November 2014, whereby the SURAT ARAHAN TIMBALAN KETUA PESURUHJAYA (PENGURUSAN DAN PROFESIONALISME) BIL. 1/14; LARANGAN PEMBERIAN DAN PENERIMAAN HADIAH [DIRECTIVE FROM THE DEPUTY COMMISSIONER (MANAGEMENT & PROFESSIONALISM) NO.1/14; NO GIFT POLICY], instructed that a decision has been made at a Divisional Directors Meeting that in October 2014, that:

"Senior officers from the Malaysian Anti-Corruption Commission (MACC) who regularly receive invitation to officiate seminars, workshops, exhibition, and etc, are often presented with a token of appreciation by the organisers."

According to the ruling, the receiving of gifts, as outlined by the Service Circular Number 3, Year 1998, paragraph 5, public officers are forbidden from receiving or giving of gifts if it is related to his official public duty, and/or, the form, amount or worth of the gift does not commensurate with the intent of the gift.

The directive forbidding public official from receiving and giving of gifts, are stated in sub-regulation 8(1) (a) and (b), Public Official Regulations (Conduct and Discipline) 1993, as follows:

8.(1) Subject to the provision of this ruling, any officers cannot accept or give or to allow their spouses or any other persons accept or give on his behalf, directly or indirectly, any gifts (tangible or otherwise) from or to any associations, bodies, persons, or group of persons, if :

- (a) the accepting or giving of the gift are related to, in any form whatsoever, with his public duty;
- (b) form, amount or value of the gift does not commensurate with the intent of the gift.

Gift Enquiry

What is the definition of a gift?

According to the Service Circular No. 3 of 1998 (SC 3/1998), a gift comprises of cash money, free fares, shares, lottery tickets, travelling facilities, entertainment expenses, services, club membership, any form of commission, hampers, jewellery, decorative items and any item of high value that is given to a public official. (Refer to Para 4 - SC 3/1998)

Is the giving of a hamper of small value perceived as a bribe?

Accepting or giving of gifts of any amount or value amounts to a corruption offence in the situation that an individual receives or gives such gifts from a supplier that the individual has an official dealing. (Refer Para 12 - SC 3/1998)

Note: Individuals include civil servants, private sector employees as well as the general public.

Can a civil servant receive gifts during festive seasons?

Public officials are prohibited from accepting any gift in any form such as hampers, Mandarin oranges, Ang Pow packets and other forms of gifts from any person that is associated with the official duties of the officer. (Refer to Para 5 - SC 3/1998).

Can a civil servant receive gifts from any party in an unofficial capacity?

Civil servants are allowed to receive gifts provided the value of the item is $\frac{1}{4}$ of the emoluments or less than RM500. In the case that the item is valued more than the allowable value, the officer is required to report the item to the Head of Department for approval by filling the Appendix A Form SC 3/98. However, there are exceptions for gifts exceeding RM500 under certain circumstances such as gifts received from friends due to retirement, transfer, engagement and marriage. (Refer to Para 7 - SC 3/1998). Should there be any doubt on the receipt of such gifts, the official can report it to the Head of Department for further action and clarification. (Refer to Para 8 - SC 3/1998).

What should be done if gifts such as hampers or flower bouquets from an unknown giver are placed on official's table or that are sent to the premises?

For such instances, officers are advised to report the item/s to the Head of Department for further action/decision in order to avoid allegations on the officer by other parties. (Refer to Para 6 - SC 3/1998)

Are civil servants permitted to receive Ang Pow's or money packets at official functions?

According to the Regulations for Civil Servants (Conduct and Discipline) 1993 Regulation No.8 (1), public officials are not permitted to receive or give any gifts including through other parties associated in his/her official duties. However, in any unavoidable situations to decline or in any doubt, the officer is advised to immediately submit a written report of the gift to the Head of Department for approval. (Refer to Para 9 - SC 3/1998)

What if the value of the gift received is less than RM100.00?

Gifts received of a value less than RM100.00 should be reported (without permission) by completing the Appendix B form. (Refer to Para 10 - 11 - SC 3/1998)

A private company has been awarded a tender to supply office equipments to Government departments. Can the department be allowed to receive donations in the form of gifts for the department's Family Day celebration?

Heads of Departments have to comply with the terms and conditions in granting permission as stated in Appendix C of the SC 3/1998. The receiving officer must submit a written report to the Head of Department for approval for the receipt of such gifts or donations. Top management's approval must be obtained in the case that the Head of Department is aware of such gifts/donations (Refer to Para 6 - SC3/1998). If the value is less than RM10,000, permission from the Chief Secretary or the Controlling Officer is required. However, gifts valued more than RM10,000 must obtain the approval of the Treasury and subjected to Appendix D of the SC 3/1998. (Refer to Para 18 - SC 3/1998)

Can a public officer accept a Breaking of Fast invitation from a hotel?

Such invitations are permitted provided they are not related to any official dealings or duties of the officer. However, invitations from parties having official dealings with the officer or the department must be referred to the Head of Department for approval in order to avoid allegations. In this case, such invitations are considered as an entertainment and not a gift. (Refer to Para 14 - SC 3/1998)

Are Department Sports and Welfare Clubs allowed to appeal or receive any form of donation or money from parties with no official dealings?

Department Sports and Welfare Clubs are not allowed to directly appeal nor accept any contribution from either individuals or from private sector organisations. Such appeals will have to be sourced through the National Sports and Welfare Council (MAKSAK), whereby the council will provide allocations and distribute the donations accordingly to the respective party (Refer to Para 21 - SC 3/1998).

Can souvenirs or gifts be given to civil servants who deliver public talks?

Yes, it is allowable but not recommended. Items such as plaques (inexpensive), pennants, department handicraft items or print materials can be given to such officers. (Refer to Para 20 - SC 3/1998).

A government official has received cash amounting to RM500 during the Festive Season from individuals who regularly deal with the department and difficult to refuse. The officer reports this to the Head of Department. What is the Head of Department's next course of action?

The Head of Department has to comply with the provisions of SC 3/1998. In such cases, the interest of the department should be considered in a holistic manner. Since the value of the gift is not commensurable as well as associated with official dealings/duties, the Head of the Department may instruct the officer to return the gift.

Can an officer of a Statutory Body be allowed to accept gifts in the form of hampers from individuals associated in an official capacity?

Members of Statutory Bodies are also subjected to the SC 3/1998. Gifts are not permitted to be accepted in an official capacity and receipt of such gifts must be reported to the respective Head of Department.

Are public officials allowed to receive free airlines tickets from any person under an official capacity?

No. This leads to a corruption offence deemed as a gratification in return for a service rendered. (Refer to the Paragraph 12 - PP 3/1998)

Are Government departments allowed to present souvenirs or gifts to politicians?

Yes. The souvenirs or presents should be in the form of a plaque that is inexpensive, pennant, department handicraft items or printed materials (Refer to the Para 20 - PP 3/1998).

Can a Government department receive donations from the allocation of a Member of Parliament (MP) for a Smart Partnership programme?

Yes but with the approval from the top management and provided it equally meets the objectives of the department and the MP. (Refer to Para 18 - PP 3/1998).

Can Government Linked Companies (GLC's) donate hampers to Government departments during festive seasons in order to forge close ties with its clients?

GLC's may have their own policies on giving or receiving of gifts. However, the exchange of gifts in the pretext of acquiring a government tender amounts to a corruption offence.

Are GLC's allowed to present hampers to private sector counterparts in order to strengthen the business relationship?

It depends on the companies policy. However, if the intention is to bribe, then it is considered as an offence under the Malaysian Anti-Corruption Commission (MACC) Act 2009.

Can GLC's receive gifts from individuals or from private companies?

It depends on the policy of the GLC but if the intention is to bribe, then it is considered as an offence under the Malaysian Anti-Corruption Commission (MACC) Act 2009.

Can GLC's donate or sponsor Government departments to promote their products and services?

It depends on the policy of the GLC but if the intention is to bribe, then it is considered as an offence under the Malaysian Anti-Corruption Commission (MACC) Act 2009.