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**Strengthening Integrity Through Public-Private
Partnership: Preventing Facilitation Payment and
Managing Gift Rule**

Submitted by: Malaysia



**Workshop on Strengthening Integrity through
Public-Private Partnership: Preventing
Facilitation Payment and Managing Gift Rules**
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Strengthening Integrity Through Public-Private Partnership: Preventing Facilitation Payment and Managing Gift Rule

1. Introduction

- 1.1. The giving and receiving of gifts is not in itself an offence.
- 1.2. It can become a corrupt act when a 'gift' is given or offered in return for some favour or action.
- 1.3. Even then it may not be a corrupt act unless the 'gift' is clearly disproportionate, i.e. cash, expensive items such as jewelry or watches.
- 1.4. The organisation's policy towards gifting should be included in the Code of Ethics.

2. Malaysian Act / Statutes

2.1. Section 3 Malaysian Anti-Corruption Commission Act 2009 (MACCA 2009)

- i. "Gift" and "facilitation payment" fall within the interpretation of "gratification" under MACCA 2009;
- ii. The MACCA 2009 used to prosecute any person who solicits, accepts or receives or gives any gratification or bribe. Depending on the fact of the case, section 16, 17, 18, 20, 21, 22 and 23 of MACCA 2009 can be used. On conviction, the accused person shall be liable for imprisonment for a term not exceeding twenty years and a fine not less than five (5) times the value of the gratification or MYR10,000.00 (USD 3,300), whichever is the higher.
- iii. It becomes a legal duty to all public officials under section 25 of MACCA 2009 to report any attempt on bribery to the authority. Any person who fails to comply shall, on conviction be liable to a fine not exceeding MYR10,000.00 or to imprisonment for a term not exceeding ten years or both.
- iv. Section 165 of **Malaysian Penal Code (Act 574)** provides that, public servant obtaining any valuable things, without consideration from person concerned in any proceeding or business transacted by such public servant, shall be punished with imprisonment for a term which may extend to two (2) years or with fine or with both.

2.2. On top of that, several other sections under the Malaysian Penal Code (Act 574) also prescribe the offences by or relating to public servants such as:-

- i. Section 161: Public servant taking a gratification, other than legal remuneration, in respect of an official act;
- ii. Section 162: Taking a gratification in order, by corrupt or illegal means, to influence a public servant;
- iii. Section 163: Taking a gratification, for the exercise of personal influence with a public servant.

3. Code of Conduct / Ethics

3.1. Service Circular Letter No. 3/1998

- i. Regulation 5 states that, "Public Officers shall not receive or give presents if it has connection with his official duty and/or the nature, amount or value of the present does not commensurate with the intention why the present is given".

3.2. Service Circular Letter No. 5/2008

- i. By virtue of this circular letter, Regulation 18 of Service Circular Letter No. 3/1998 was slightly amended.

- ii. Para 3 of the circular letter states that, gift above MYR10,000.00 must get the approval from Secretary General / Head of Department of the respective Ministry / Department.

3.3. Public Officers (Conduct and Discipline)(Amendment) Regulations 2002

Sub-regulation 4(2) of the Code addresses issue on conflict of interest which states that :-

“An Officer shall not –

- (i) subordinate his public duty to his private interests;
- (ii) conduct himself in such a manner as is likely to bring his private interests into conflict with his public duty;

Sub-regulation 8(1) states, “.....an officer shall not receive or give nor shall he allow his spouse or any other person to receive or give on his behalf any present, whether in a tangible form or otherwise, from or any other person, association, body, or group of persons if the receipt of giving such present is in any way connected, either directly or indirectly, with his official duties”. Disciplinary action can be taken under Regulation 38.

3.4. “Letter of Undertaking”

In addition, every public official is required to sign a “Letter of Undertaking” for renewing his solemn oath of subordinating his public duty to his private interests.

Malaysian Anti- Corruption Commission

Malaysia