



**Asia-Pacific  
Economic Cooperation**

---

**2013/SOM3/ACT/WKSP/005**  
3<sup>rd</sup> Session

## **Gratuities and Facilitation Payments: Challenges and Best Practices**

Submitted by: Malaysia



**Workshop on Strengthening Integrity Through  
Public-Private Partnership: Preventing  
Facilitation Payment and Managing Gift Rules  
Medan, Indonesia  
24 June 2013**

Presentation by Shuhairoz Shukeri, Malaysian Anti-Corruption Commission:  
**Gratuities And Facilitation Payments : Challenges And Best Practices**

## 1. Introduction

Gratuities and facilitation payments is considered as gift. Gratuity (also known as **Tip**) is a sum of money given to certain service sector workers in return for some service or favor performed or anticipated in particular. Tipping and the amount are a matter of social custom. The practice and as well as social norms vary between countries. In some locations, tipping is discouraged and considered as insulting, whereas in some other locations it is expected from customers.

Black's Law Dictionary defines 'Facilitation Payment' as a payment to an official to get approval for business activities. It can be unofficial fees but it is not a bribe. But when the Bribery Act 2010 came into force on 1 July 2011, a facilitation payment becomes a type of bribe and should be seen as such. A common example is where a government official is given money or goods to perform (or speed up the performance of) an existing duty. Facilitation payments were legal before the Bribery Act came into force and they are illegal under the Bribery Act, regardless of their size or frequency.

- 1.1 The giving and receiving of gifts is not in itself an offence.
- 1.2 It will be considered as bribery or corrupt act when the 'gift' is given or offered with an intention to get a favor in return.
- 1.3 It may not amount to corruption unless the 'gift' is clearly be regards as disproportionate, given in term of cash or expensive items such as watches or gadgets i.e. smart phones
- 1.4 The Policy towards gifting should be provided in the Organization's Code of Ethics.

## 2. Malaysian Law

### 2.1 Malaysian Anti Corruption Commission Act 2009 (MACCA 2009) (Act 694)

- 2.1.1 Section 3 of the Act defines 'Gratification' as to include 'Gift' and 'Facilitation Payment';
- 2.1.2 Section 16, 17, 18, 20, 21, 22 and 23 of MACC Act 2009 provide for various offenses and penalties for any person who solicits, accepts or receives or gives any gratification or bribe. By virtue of those provisions and depending on the fact of each cases, the accused person, upon conviction, shall be liable for imprisonment for a term not exceeding twenty years and to a fine of not less than five (5) times the value of the gratification or MYR10,000.00 (USD 3,300), whichever is higher.
- 2.1.3 Section 25 of the Act spell out that it becomes a legal duty on all public officials to report corrupt practices or any attempt of a kind to the authority. Failing to comply would amount to an offense whereby upon conviction be liable to a fine not exceeding MYR10,000.00 or to imprisonment for a term not exceeding ten years or to both.

### 2.2 Malaysian Penal Code (Act 574)

- 2.2.1 Section 165 expresses 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 not more than two (2) years or with fine or to both.
- 2.2.2 There are several other offences prescribed by the Code relating to public servants as follows:

Section 161 Public Servant taking a gratification, other than legal remuneration, in respect of an official act;

Section 162 Taking a gratification in order, by corrupt or illegal means, to influence a public servant;

Section 163 Taking a gratification, for the exercise of personal influence with a public servant

### **3. Code of Conduct/Code of Ethics**

#### **3.1 Service Circular Letter No.3/1998**

Regulation 5 : "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**

Paragraph 3 of the Circular expressly state that, a gift of an equivalent sum of MYR 10,000.00 must get an approval from Secretary General / Head of Department of the respective Ministry / Department.

#### **3.3 Public Officers (Conduct and Discipline)(Amendment) Regulations 2002**

3.1 Sub-regulation 4(2) of the Regulation deals with the issue on conflict of interest that reads:

"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;

3.2 Sub-regulation 8(1) of the Regulation provides that "...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 upon found guilty of the offense is provided under Regulation 38.

### **4. Challenges**

Malaysian populations are build of many races namely Malays, Chinese, Indians, natives of origin or Orang Asli and many more. Gifting is actually a culture inherited from the origin country of a certain races. For example, the Chinese, they will give gifts to a person whom they believed to have brought good luck to their family or business. If the profit is high, they do not mind giving expensive gifts. They also gives 'ang pow' a small token in terms of monetary during their festive celebration of Chinese New Year or boxes of oranges as a symbol of appreciation for their prosperity.

In Malay culture, there are also gift giving or called 'Buah Tangan' and it is acceptable provided that it is not excessive. There are also circumstances whereby a person will take the person who have assisted them in business or in any transaction and take them home for lunch or dinner as a token of appreciation or in a layman's word as a thank you for helping. These culture actually does not have a corrupt intention but it has been misused to cater the needs of certain people's business.

### **5. Initiatives under the National Key Results Areas Anti Corruption**

The emphasis is on corruption prevention and stopping it at the root before it even had the chance to grow. By preventing corrupt practices and other unethical behavior, ipso facto, raising the standards of integrity. Malaysian Government is putting a strong effort in the combat against corruption through National Key Results Areas (NKRA) as one of the focus in the Government Transformation Program (GTP) starting since 2009 and now progressing into the second phase. One of the initiatives introduced is the Corporate Integrity Pledge (CIP).

## **5.1. Corporate Integrity Pledge (CIP)**

The Corporate Integrity Pledge is a document that allows a company to make a voluntary commitment to uphold the Anti-Corruption Principles for Corporations in Malaysia. By signing the pledge, a company is making a unilateral declaration that it will not commit corrupt act, will work towards creating a free corruption business environment and will uphold the anti-corruption principles in its business and interactions with business partners and the Government.

### **5.1.1 The Core Principles of CIP**

- To promote principles of transparency, integrity and corporate governance
- To include anti-Corruption elements to strengthen its internal procedures
- To adhere to the anti-corruption laws
- To eradicate all forms of corruption
- To support anti-corruption initiatives by the Malaysian Anti-Corruption Commission (MACC) and the government

### **5.1.2 CIP Booklet**

5.1.2.1. Chapter 16 of the booklet deals with gifting – notes of principles and guidance. As a general principle the giving and receiving of gifts should be limited to modest, inexpensive items. Transparency and openness about gifting is an essential safeguard.

5.1.2.2. To maintain a gift not amounting to a bribe, the gifting should not be selective or only given to a certain officers or clientele.

## **6. Best Practices**

- 6.1. Up to today there are 179 companies that had signed the Corporate Integrity Pledge (CIP) and are uploaded in the Corporate Integrity System Malaysia (CiSM) Portal that is accessible by the public.
- 6.2. The companies that had signed the CIP had to adhere to certain policies in order to uphold good governance. Among them are 'No Gift Giving policy' and 'Whistle blowing policy'.
- 6.3. One of the best practices is by PETRONAS, one of the biggest Government Link Company whereby they put up a bunting at the entrance lobby of their office declaring on "NO GIFT POLICY".

## **7. Conclusion**

Be it 'Facilitation payment', 'Gratuties' or 'Gift', it should be guided by a policy and be conducted in a manner that is transparent and open to scrutiny. In Malaysia, we encouraged a Zero Gifting Policy to avoid potential problems. The boundary of gift acceptance is to ask a question to ourselves, "if I am not sitting at my position now, will that other person give me such gifts?" If the answer is most likely to the negative, then you may make a stand not to accept such gift.

With that I thank you.

Prepared by,  
Shuhairoz Binti Mohamed Shukeri  
NKRA Anti Corruption Monitoring and Coordination Division  
Malaysian Anti Corruption Commission

Dated: 6<sup>th</sup> June 2013