



**Asia-Pacific
Economic Cooperation**

2013/SOM3/ACT/WKSP/014

Bribes, Gifts and Facilitation Payments Under the OECD Anti-Bribery Convention

Submitted by: OECD



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



BRIBES, GIFTS AND FACILITATION PAYMENTS UNDER THE OECD ANTI-BRIBERY CONVENTION

William Loo
Senior Legal Analyst
OECD



Overview

- Definitions:
 - Bribes
 - Gifts
 - Facilitation Payments
- Policy Approaches



OECD Anti-Bribery Convention

- Criminal law convention
- Active bribery of foreign public officials in international business
- In force since 1999
- 40 Parties

3



Bribe: Convention Article 1

Undue
Advantage



Act or Omission
of Official
to Obtain/Retain
Business

4



Gifts

- Undefined in Convention
- If “gift” meets Article 1 (undue) → bribe
- Irrelevant considerations (Commentary 7):
 - Value of advantage
 - Local customs
 - Tolerance by authorities
 - Necessity

5



Gift Defence?

- Commentary 8 - Not offence if:
 - Advantage permitted or required
 - Written law or regulation of the foreign public official's country
 - Or case law
- Written gift rules for public officials

6



Facilitation Payments

- Allowed not required (Commentary 9)
- Narrow definition:
 - Small payments
 - Routine governmental action
 - Entitlement (breach duty / discretion)

7



Best Practice: Facilitation Payments

2009 Anti-Bribery Recommendation

Countries should:

- Require record keeping
- Discourage use
- Periodically review policies

8



Best Practice: Corporate Prevention

- 2009 Good Practice Guidance on Corporate Compliance
- Specific corporate policies on:
 - Gifts
 - Hospitality
 - Facilitation payments

9



Thank you!

10