

**Baker
McKenzie.**

Gifts and Entertainment





Contents

Intro	1
China	2
Hong Kong	6
Indonesia	8
Japan	11
Malaysia	13
Philippines	16
Singapore	18
Thailand	21
Global	23
Conclusion	24
Contacts	25

Introduction

During the Lunar New Year, we have celebrations of meals, entertainment, travel and gifts, so we should take a moment to consider what that means in the context of business relationships. This festive season is a time of generosity and gratitude for ongoing relationships and business support, but companies and their employees do need to also be aware of relevant laws and regulations which may create risks for both the giver and recipient if such exchanges are inappropriate or excessive. For companies managing businesses across a number of jurisdictions, it can be difficult to navigate, given the patchwork of laws, regulations, rules and internal policies that may apply. However, gifts and entertainment remain a focus for global and local enforcement authorities and failures in this area have led to civil penalties and even criminal liability for bribery and corruption.

In this booklet, we share the key points and laws around gifts and entertainment across a lucky number 8 jurisdictions. We provide our insights and some practical tips to ensure compliance, foster positive business relationships and navigate the upcoming Year of the Snake with confidence and success.

About Baker McKenzie's Investigations, Compliance and Ethics Group

Baker McKenzie's Investigations, Compliance & Ethics Group has over 500 lawyers from across 74 offices in 45 countries. We support clients with practical compliance risk management advice in a variety of areas: anti-bribery and corruption, anti-money laundering, trade compliance advisory, sanctions and boycotts, customs, anti-trust, data privacy, cybersecurity, fraud, financial crime, tax, regulatory conformance and enforcement. We are also engaged by multinational clients to conduct internal and external cross-border investigations across all risk areas. Our experience brings an understanding of national and global regulatory processes, legal powers, and enforcement tactics used by various authorities across sectors. Please do reach out if you would like to discuss further.

* You may wish to revisit our first in this Lunar series with our 2024 Asia Pacific:

[5 Lunar New Year's resolutions for investigations](#)

1. What are the key laws around gifts and entertainment?

The key laws which govern bribery are the PRC Criminal Law (**Criminal Law**) and Anti-Unfair Competition Law (**AUCL**). The AUCL is an administrative law (rather than criminal).

2. Do the laws cover both public and private sector bribery?

Yes. Bribery of public officials is regulated under the Criminal Law. "Public official" is defined quite broadly under the Criminal Law, and includes personnel performing public service in state organs, as well as a number of other personnel engaged in public service (e.g., employees of state-owned corporations performing public duties).

Bribery of private sector is regulated under both the Criminal Law and the AUCL:

- Under Article 164 of the Criminal Code, "private bribery" means giving money or property to any employee of a company, enterprise or other entity for the purpose of seeking improper interests and benefits.
- Under Article 7 of the AUCL, "private bribery" means using cash, property or other means to seek transaction opportunities or competitive advantages by bribing any of the following entities or individuals: (i) employees of a counterparty; (ii) entities or individuals entrusted by a counterparty to handle relevant affairs; or (iii) entities or individuals that use authority or influence to exert influence on a transaction.

3. Do the laws cover bribery of foreign officials?

Yes, bribery of foreign public officials is regulated under the Criminal Law. Article 164 of the Criminal Law makes the "corruption of foreign public officials" an offence. This applies to the giving of money or property to foreign government functionary or officials of international public organisations for the purpose of seeking improper commercial interests.

There is a threshold amount for the prosecution of persons who offer bribes to foreign public officials, as follows: RMB 30,000 for individual bribe-givers; and RMB 200,000 for corporate bribe-givers.



4. What are the key restrictions?



GIFTS

Both the Criminal Law and AUCL restrict the provision of gifts in certain circumstances, where such gifts would be considered bribery. Each law has a different definition of bribery, and the connotation of bribery varies between the criminal law and administrative law perspectives.

Note that the AUCL does not provide a minimum monetary threshold for a company or individual to be subject to an administrative penalty for commercial bribery.

PUBLIC SECTOR

There is a threshold amount for the prosecution of public bribery, as follows: RMB 30,000 (or RMB 10,000 with any aggravating factors) for individual bribe-givers; RMB 200,000 (or RMB 100,000 with any aggravating factors) for corporate bribe-givers; and RMB 30,000 (or RMB 10,000 with any aggravating factors) for bribe-recipients.

The PRC central government has also issued an internal regulation issued in 1995 applicable to public officials of central party and government organs, which sets out certain limitations on the provision of gifts, as follows:

- (a) Public officials shall hand over the gift to the government if the value of the gift exceeds RMB 200 per person per occasion.
- (b) If the cumulative value of all the gifts received by the public officials exceed RMB 600 per person per year, the public official shall hand over such gifts to the government.

In other words, if a person or company provides to a public official of central party and government organs a gift or gifts the total value of which exceed the limitations set out as above, the gift(s) may be considered "in violation of state regulations" according to the 1995 internal regulation.

From our experience, due to inflation, RMB 200 is no longer considered a sizable gift in the PRC. As a result, the 1995 internal regulation mentioned above has only been loosely followed.

PRIVATE SECTOR

There is a threshold amount for the prosecution of private bribery, as follows: RMB 60,000 for individual bribe-givers; RMB 200,000 for corporate bribe-givers; and RMB 60,000 for bribe-recipients.



HOSPITALITY / TRAVEL

Whether a hospitality expense could be considered as bribery will need to be determined on a case-by-case basis, taking into account all the facts and circumstances surrounding the case.



ENTERTAINMENT

Whether an entertainment expense could be considered as bribery will need to be determined on a case-by-case basis, taking into account all the facts and circumstances surrounding the case.



DONATIONS / SPONSORSHIP

Donations or sponsorships may be considered a bribe in certain circumstances. However, there are also separate rules that have been implemented to address potential misuse of donations / sponsorship – for example, in the healthcare sector, a donation could be considered as private bribery if it is provided in an inappropriate way for purchasing or selling goods. The Administrative Measures on Accepting Donations for Public Welfare by Healthcare Entities (for Trial Implementation) promulgated in 2015 provide specific guidance on donations to healthcare and family planning entities for non-profit public welfare purposes such as training, academic or research.

There is no concept of political donations or political contribution under PRC law.

5. Can companies commit an offence under these laws?

Yes. Under the Criminal Law, bribery committed by an employee of a company could be deemed as either an individual crime or a “unit crime” (i.e., by the company), depending on various factors.

Under the AUCL, the acts of bribery committed by a company’s employees shall be deemed as the acts of the company, unless the company has evidence to prove that such acts of its employees were not made in search of transaction opportunities or competitive advantages for the company.

6. Is there a strict liability offence for companies? If so, is there a defence?

Yes. Under the AUCL, acts of bribery committed by a company’s employees are deemed to be acts of the company, unless the company can prove that such acts were not made in exchange for transaction opportunities or competitive advantages for the company. The company may be subject to monetary fines or have its property confiscated or business license revoked for its employees’ bribery acts.

To mitigate the risks caused by its employees’ actions, companies may implement effective internal controls, including internal policies, training, and approvals to prevent bribery offenses. Keeping good records of such measures can serve as a potential defense.

7. Does the regime have extraterritorial effect?

Yes. If a PRC citizen commits a crime under the Criminal Law outside the PRC, the Criminal Law is applicable to this crime unless the maximum penalty for the crime is less than 3 years of imprisonment. However, a public official may be prosecuted for an offence committed abroad regardless of the maximum penalty. Also, the Criminal Law is applicable if a non-PRC citizen bribes anyone outside the territory of the PRC in seeking inappropriate benefits, which harms the interest of the state, unless the maximum penalty for the crime is less than 3 years of imprisonment or the act is not a crime in the country where the offence is committed.

The AUCL may also have extraterritorial effect when, for example, both the bribe giver and bribe receiver are incorporated in China, while the offence of commercial bribery takes place overseas. In practice, however, regulatory investigations into overseas transactions are not common.



8. What are the types of penalties?

There are a range of penalties available for breaches of the Criminal Law or AUCL, including imprisonment, fines, confiscation of property, revocation of licenses, etc.

What is an interesting feature of your regime?

China takes a harsh position against commercial bribery and imposes “dual penalties” on company crimes. Both the Criminal Law and the AUCL prohibit “commercial bribery,” which refers to bribery of private recipients for transaction opportunities, competitive advantages, or improper benefits. Commercial bribery acts give rise to both administrative and criminal liabilities, subjecting the company to various penalties ranging from monetary fines to revocation of business licenses.

In company crimes, in addition to the criminal fines on the company, the primarily responsible person in charge and the directly responsible persons will also be sentenced to imprisonment and fines. This “dual penalty” system imposes enhanced pressure on management personnel to ensure compliance in the business operations of the company.

Hong Kong

AUTHORS

Mini vandePol | Christine Cuthbert |
Gerald Lam | Andrea Kan | Yuki Yung

1. What are the key laws around gifts and entertainment?

The main laws relating to gifts and entertainment are the Prevention of Bribery Ordinance (**POBO**) and the Crimes Ordinance (**CO**).

2. Do the laws cover both public and private sector bribery?

Both private and public bribery offences are dealt with under the POBO:

- Public sector bribery covers the bribery of Hong Kong public servants in and outside Hong Kong. A public servant is defined as any prescribed officer or employee of a public body (e.g., employees of the government).
- Private sector bribery covers the solicitation, offer or acceptance of a bribe in Hong Kong.

The CO also includes the offence of conspiracy, which would include conspiracy to pay bribes. At common law, there is an offence of conspiracy to defraud, which is used regularly to prosecute corruption.

Bribes can also lead to issues such as false books and records and money laundering issues. For example, it is a criminal offence for a person to deceive his/her principal using false, erroneous, or materially defective documents even if no bribe was actually offered, solicited or accepted (Section 9(3), POBO).

3. Do the laws cover bribery of foreign officials?

Not directly. The POBO does not expressly prohibit the bribery of foreign officials, but acts of bribery by foreign officials may still fall under its scope.

4. What are the key restrictions?



GIFTS

Both private and public bribery offences are dealt with under the POBO. The offences involve offering or receiving an "advantage", which includes all manners of tangible and intangible benefits such as gifts, loans, reward, employment, contracts, services or favour, discharge of obligations, etc.

PUBLIC SECTOR

There are a number of offences in the public context preventing a public servant from receiving an advantage. For the private sector, two of the more relevant offences under the POBO are:

- **Section 4:** It is an offence to offer an advantage to a public servant (or for that public servant to accept an advantage) as an inducement to or reward for or otherwise on account of that public servant performing / not performing any act in her capacity as public servant, without lawful authority or reasonable excuse.
- **Section 8:** It is an offence to offer an advantage to a public servant while having dealings of any kind with their public body, without lawful authority or reasonable excuse.

PRIVATE SECTOR

The main offence in the private context involves corrupt transactions with agents (Section 9(1) and (2), POBO). This provision applies in situations where there is a principal-agency relationship (e.g., between an employer and an employee) and prohibits the agent from soliciting or accepting an advantage without lawful authority or reasonable excuse as an inducement to, reward for or otherwise on account for the agent doing (or not doing) an act in relation to his or her principal's affairs. This provision also applies vice versa – that is, where a third party offers the unauthorised advantage to the agent. There are notable exceptions to these offences, such as the following:

- There is a carve out for "entertainment" – that is, food and drinks consumed on the occasion when it is provided (Section 2). See paragraph (c) below.
- No offence will be committed where there has been "lawful authority or reasonable excuse" for the advantage to be given or received. A typical example is where the agent's principal gives informed consent for the agent to solicit or accept the advantage (Sections 9(4) and (5)).

Hong Kong

AUTHORS

Mini vandePol | Christine Cuthbert |
Gerald Lam | Andrea Kan | Yuki Yung



ENTERTAINMENT

"Entertainment" is specifically excluded from the POBO's definition of an advantage and refers to the provision of food or drink, for consumption on the occasion when it is provided, and of any other entertainment connected with, or provided at the same time as, such provisions. However, many individuals, including civil servants, may be subject to internal guidelines that prescribe against lavish or unreasonably generous or frequent entertainment.



DONATIONS / SPONSORSHIP

Donations or sponsorships may be considered an "advantage" in certain circumstances, so it is important to take steps to ensure compliance with the POBO.

Election donations within the meaning of the Elections (Corrupt and Illegal Conduct) Ordinance (**ECICO**) are excluded from the definition of an "advantage" under the POBO. However, any such donations must comply with the ECICO.



HOSPITALITY / TRAVEL

In many circumstances, hospitality and travel will fall within the definition of "advantage" set out above. However, depending on the type of hospitality, it could fall within the "entertainment" exception below (e.g., lunch or dinner).

5. Can companies commit an offence under these laws?

Yes, but enforcement authorities usually target individual offenders rather than corporates.

6. Is there a strict liability offence for companies? If so, is there a defence?

No, there is no strict liability.

7. Does the regime have extraterritorial effect?

Yes. The public sector offence under Section 4 of the POBO has extraterritorial effect such that offers of bribes to Hong Kong public servants made outside Hong Kong's territory will constitute an offence. The private sector bribery offences under Section 9 of the POBO governs acts of bribery which occur in Hong Kong only.

8. What are the types of penalties?

The key offences under the POBO mentioned above (Sections 4, 8 and 9) can attract a HKD500,000 fine and seven years' imprisonment.

What is an interesting feature of your regime?

There is no de minimis exception under the POBO. However, the Chief Executive has granted general permission to civil servants in relation to specific types of advantages. Broadly, these relate to gifts given in a personal capacity.

1. What are the key laws around gifts and entertainment?

- Law No. 11 of 1980 on the Criminal Act of Bribery "**Anti-Bribery Law**"
- Law No. 31 of 1999 on the Eradication of Crimes of Corruption, as amended "**Anti-Corruption Law**"

2. Do the laws cover both public and private sector bribery?

Indonesia does not have a legislation that expressly criminalizes bribery in private sector. The Anti-Corruption Law criminalizes bribery given to and received by a government official (in addition to other corruption offences involving a government official).

Meanwhile, the Anti-Bribery Law prohibits bribery given to and received by anyone whose authority and obligations relate to public interest, which could be interpreted to apply to bribery given to officers of private entities to the extent that the business involved touches on matters of public interest. While the subject of the Anti-Bribery Law is not limited to government officials, given the qualification of "public interest", the law cannot capture all private sector bribery.

3. Do the laws cover bribery of foreign officials?

No.

4. What are the key restrictions in relation to:



GIFTS

- The Anti-Corruption Law defines any kinds of gifts in the broadest sense as gratification. An important rule for the giver of gifts is provided in Article 13 of the Anti-Corruption Law, which criminalizes anyone who gives a gift to a government official in consideration of the power or authority attached to the recipient's office or position, or which the giver assumes is attached to the office or position of the recipient. This provision does not specifically reference the intention of the giver to cause a misuse of office and/or achieve prohibited purpose.
- Notwithstanding the provision of Article 13 of the Anti-Corruption Law, the intention is not to criminalize altruistic gift-giving that does not result in an inappropriate use of office or position, or power or authority.
- In this regard, the Corruption Eradication Commission (*Komisi Pemberantasan Korupsi/ KPK*) issued KPK Regulation No. 2 of 2019 providing guidance on identifying gratification. KPK essentially distinguishes gratification into two categories, i.e., gratification that must be reported to the KPK/prohibited gratification and gratifications that are exempted from reporting obligation/permissible gratifications. KPK further distinguishes permissible gratification into two categories, i.e., gratification received within the recipient's official capacity/function and gratification received outside an official capacity/function, each with its own qualifications.
- State institutions also have their own internal regulations or guidelines on gratification, which are often similar to the KPK's regulation.



HOSPITALITY / TRAVEL

- Pursuant to KPK Regulation No. 2 of 2019, hospitality/travel in the context of compensation for transportation and accommodation can be considered as permissible if they are provided in the context of an official capacity or function, e.g., the cost of transportation to an event where:
 - (a) the recipient is assigned by their employer/institution to attend,
 - (b) there is no double-funding (meaning, the employer/institution does not cover the same cost),
 - (c) there is no conflict of interest in providing the gratification, and
 - (d) the employer/institution does not prohibit the recipient from receiving such gratification.
- Additional or more specific qualifications may also need to be checked with the assigning employer/institution, given that state institutions have their own internal regulations or guidelines.



DONATIONS / SPONSORSHIP

The Anti-Bribery Law and the Anti-Corruption Law do not govern donations or sponsorship, neither does KPK Regulation No. 2 of 2019. Rules on donations/sponsorship may be provided in specific laws or regulations governing the specific entities or organizations. For example, Law No. 2 of 2008 on Political Parties, as amended, stipulates that a political party can receive donations, subject to the following rules:

- Donations from members of the party must be made in accordance with the party's articles of association and by-laws.
- The value of donations from individuals who are not members of the party are limited to a maximum amount of IDR 1 billion (approximately USD 61,000 in today's rate) per person within one year.
- The value of donations from corporations are limited to a maximum amount of IDR 7.5 billion per corporation within one year (approximately USD 458,000).
- Additionally, donations must be made transparently, must be accountable and must not affect the impartiality of the political party.



ENTERTAINMENT

Entertainment is not expressly referenced in KPK Regulation No. 2 of 2019. This may need to be checked against the internal regulations or guidelines applicable in the recipient's employer/institution or industry association's code of ethics. For example, the International Pharmaceuticals Manufacturer Group (IPMG), a non-profit, non-governmental organization representing international pharmaceutical companies operating in Indonesia, sets out the standards for, among other things, member companies' interactions with healthcare providers, which include guidelines on providing entertainment.

In the absence of specific regulations, providing entertainment to government officials must be assessed against the provisions of the Anti-Corruption Law and the Anti-Bribery Law.

5. Can companies commit an offence under these laws?

Under the Anti-Corruption Law, yes. The Anti-Bribery Law does not acknowledge corporate criminal liability.

6. Is there a strict liability offence for companies? If so, is there a defence?

There is no express formulation of a strict liability offence in the Anti-Corruption Law.

7. Does the regime have extraterritorial effect?

Yes. Particularly with respect to the Anti-Corruption Law, it applies extraterritorially to anyone outside Indonesia who provides aid, opportunity, means or information to commit corruption.

8. What are the types of penalties?

The principal penalty is monetary fine. Under the Anti-Corruption Law, additional penalties may also be imposed, including:

- Confiscation of assets used in or obtained from the offence
- Compensation
- Full or partial closure of the corporation for up to one year
- Full or partial revocation of rights or abolition of certain benefits that may have been or could be granted by the government to the convict

What is an interesting feature of your regime?

There is no de minimis threshold. Therefore, no safe harbor for routine non-discretionary governmental action under Indonesian law.

1. What are the key laws around gifts and entertainment?

The key legislation relating to gifts and entertainment are the Criminal Codes (“**CC**”), Unfair Competition Prevention Act (“**UCPA**”) and Company Act (“**CA**”). The CC prohibits the bribery of (and soliciting of bribes by) Japanese public officials, while the UCPA criminalizes the bribery of foreign officials.

Although private sector bribery is not an offence under the CC, the CA prohibits bribery relating to directors or statutory auditors.

2. Do the laws cover both public and private sector bribery?

Both the CC and UCPA cover public sector bribery while the CA covers private sector bribery.¹

3. Do the laws cover bribery of foreign officials?

Only the UCPA covers bribery of foreign officials.

4. What are the key restrictions in relation to Gifts, Hospitality / Travel, Entertainment and Donations / Sponsorship:

No specific threshold is provided under the legislations, and as such gifts, hospitality and travel, entertainment (such as Njikai—second party/after party) or donations & sponsorships of any kind could be subject to penalties under CC, UCPA and CA.

Under National Public Service Act and Ethic Code, public officers are subject to the two categories of prohibitions from receiving gifts, hospitality/travel and entertainment, one from Interested Person while another from Non-Interested Person. Interested Person means person who holds business license, receives subsidy, is subject to public inspection, sanction, guidance, etc, is a party to contact with the government, etc. From Interested Person, no money, gift, loan, free charge good or real estate, free charge service (such as free transportation), private equity, wining and dining, game (like mah-jong), golf or travel should be received.

From Non-Interested Person: 1) entertainment and/or gift which goes beyond the socially acceptable limit, such as repetitious one or significantly expensive one, should not be received and ii) the cost of wining or dining should not be on any other person who does not attend it. However, there are exceptions: 1) gift of promotional or anniversary goods to be broadly distributed, 2) stationary products at the time of visit to interested person, 3) car transportation necessary to visit to the interested person, 4) simple wining and dining such as snack or lunch box at the meeting within the official duty, 5) wining and dining at the buffet style party where more than 20 people attend may be received.

¹ A director of a company who receives a property benefit based on an unlawful request in connection with his or her duty may be criminally punished (Bribery by Director) under CA. Additionally, under the CC, any person who is in charge of the affairs of a company, for the purpose of promoting his or her own interest or the interest of a third party, or inflicting damage on the company, and commits an act in breach of legal duty and causes financial loss to the company is punished (“Breach of Trust”). Accordingly, an officer or employee of a private company who receives a bribe could also be punished under CC.

5. Can companies commit an offence under these laws?

Yes, companies could be held liable for an offence under the UCPA.

6. Is there a strict liability offence for companies? If so, is there a defence?

No, companies may be liable under negligence liability. Companies may rely on an adequate procedures defence, namely that the company had exercised reasonable precautions necessary to prevent bribery by its employees. The exercise of such precautions may be supported by the company's implementation of an effective anti-corruption and bribery compliance program.

7. Does the regime have extraterritorial effect?

Only the UCPA has extraterritorial effect.

8. What are the types of penalties?

Violations of an offence under the CC may be subject to **imprisonment of not more than 5 years or fine of not more than JPY 500,000**. In addition, illegal pecuniary gain may be confiscated.

UCPA offences may impose **imprisonment of not more than 10 years or fine of not more than JPY 30,000,000 for natural person while fine of no more than JPY 1,000,000,000 for company**. In addition, illegal pecuniary gain may be confiscated.

Finally, a breach of an offence under the CA may be subject to **imprisonment of not more than 10 years or fine of not more than 10,000,000**. In addition, **illegal pecuniary gain may be confiscated**.

What is an interesting feature of your regime?

For private sector bribery, only the directors of companies (and not the companies themselves) are subject to penalties under the CA. However, companies could be subject to the UCPA where an employee, agents or representative bribes a foreign official in connection with the operations of the company.

1. What are the key laws around gifts and entertainment?

There are strictly speaking no laws that govern gifts and entertainment in Malaysia. Nevertheless, the Malaysian Anti-Corruption Commission Act 2009 ("**MACCA**") and Penal Code criminalize the corrupt provision or receipt of "gratification". "Gratification" is defined broadly and may include gifts and entertainment, where provided with a corrupt intent e.g. as an inducement or reward for doing or forbearing to do any official act.

The Human Resource Services Circular – Management of Acceptance or Giving of Gifts, Entertainment and Sponsorship in the Public Service ("**Circular**") read together with the Public Officers (Conduct and Discipline) Regulations 1993 prescribe rules relating to gifts, entertainment and sponsorship for public officers to comply. On the other hand and in the private sector, gift and entertainment policies vary by organization.

2. Do the laws cover both public and private sector bribery?

Yes. The MACCA criminalizes both public and private sector bribery.¹

3. Do the laws cover bribery of foreign officials?

Yes. The MACCA criminalizes bribery of a foreign public official.²

4. What are the key restrictions?



GIFTS

The Circular prescribes that public officers are prohibited from accepting any gifts, in any form, where it is associated with their official duties, save for limited circumstances where it would be difficult to refuse the gift e.g. token of appreciation by a foreign delegate.

In an unofficial capacity, public officers are allowed to receive gifts provided that the value of the item is less than RM 500 (unless in limited circumstances where the gift received is due to retirement, transfer, engagement or marriage). Items such as inexpensive plaques, pennants, department handicraft items or print materials are generally recommended.

In the private sector, the giving and receiving of gifts are generally prohibited where given to influence business decisions or for other illegitimate purposes. Gifts are also typically restricted by: (1) the value of the gift, (2) the timing in which the gift is given, and (3) the frequency which a gift is made to or from the same person.

¹ MACCA, sections 16, 17, 17A, 18, 20, 21, 22.

² MACCA, section 22.



HOSPITALITY / TRAVEL

The Circular defines "gift" to include hospitality and travel (please see "Gifts" above). In the private sector, any hospitality / travel provided must be reasonable and for legitimate business purposes. The hospitality / travel including venue, mode of travel, accommodation, refreshments and meals should be appropriate and not luxurious.



ENTERTAINMENT

Under the Circular, public officers are allowed to entertain and be entertained, provided that it does not interfere with their official duties. Public officers must be cognizant to: (1) the Department's sensitivity and public sensitivities as a whole, (2) the frequency in which the officer receives entertainment, and (3) ensure that the entertainment does not in any way interfere with the officer's authority and responsibilities.

In the private sector, any entertainment provided should equally be reasonable and for legitimate business purpose.



DONATIONS / SPONSORSHIP

The Circular prescribes that public officers are allowed to receive donations / sponsorship from the private sector (including from politicians), provided that such donations / sponsorship are for official reasons and approved by the Head of Department.

In the private sector, any donations/sponsorship provided should be reasonable and not conditional upon any reward or benefit.

5. Can companies commit an offence under these laws?

Yes.

6. Is there a strict liability offence for companies? If so, is there a defence?

Yes. There is a strict liability offence for commercial organizations pursuant to Section 17A of the MACCA, in the event any "gratification" is given with the intent to obtain or retain business or an advantage in the conduct of business for the commercial organization.

The only defence available is for the commercial organization to prove that it had in place adequate procedures to prevent persons associated with the commercial organization from undertaking the corrupt conduct.³

³ MACCA, section 17A(4).



7. Does the regime have extraterritorial effect?

Yes. The MACCA has extraterritorial effect. A Malaysian citizen, permanent resident as well as commercial organization (including any company or partnership which carries on a business in Malaysia) who commits an offence outside of Malaysia may be subject to prosecution under the MACCA.⁴

8. What are the types of penalties?

For the general offence of receiving or providing "gratification", the MACCA prescribes an imprisonment term for up to 20 years and a fine of not less than 5 times the value of the gratification, or RM 10,000, whichever is higher.

For corporations convicted under the strict liability offence, the MACCA prescribes an imprisonment term for up to 20 years and a fine up to 10 times the value of the gratification, or RM 1 million, whichever is higher.

What is an interesting feature of your regime?

Malaysia is a multi-cultural country with a diversity of festivals celebrated throughout the year. As there is a general gift-giving culture during each festive season, gifts continue to remain in the grey area and have to be assessed on a case to case basis.

⁴ MACCA, section 66, 17A(8)

1. What are the key laws around gifts and entertainment?

Philippine anti-bribery and anti-corruption laws mainly consist of the following: (1) the Revised Penal Code ("**RPC**"); (2) Republic Act No. 3019 (Anti-Graft and Corrupt Practices Act) ("**RA 3019**"); (3) Presidential Decree No. 46 (Making it Punishable for Public Officials and Employees to Receive, and for Private Persons to Give, Gifts on Any Occasion, Including Christmas) ("**PD 46**"); (4) Republic Act No. 6713 (Code of Conduct and Ethical Standards for Public Officials and Employees) ("**RA 6713**"); (5) Republic Act No. 7080 (An Act Penalizing and Defining the Crime of Plunder) ("**RA 7080**"), and (6) Republic Act No. 11032 (Ease of Doing Business and Efficient Government Service Delivery Act of 2018) ("**RA 11032**"). These laws, in many instances, overlap with each other.

2. Do the laws cover both public and private sector bribery?

No, only public sector bribery is covered. There are no laws covering private sector bribery in the Philippines.

3. Do the laws cover bribery of foreign officials?

No, only Philippine officials are covered by these laws.

4. What are the key restrictions in relation to Gifts, Hospitality / Travel, Entertainment and Donations / Sponsorship:



Philippine bribery laws do not provide quantitative limitations on gifts or hospitality. RA 3019 and RA 6713 provide exceptions for unsolicited gifts of "small or insignificant value" under certain circumstances. However, such exceptions are not recognized under other laws and may not be invoked as a defence in a prosecution under such cases.

Note that Batas Pambansa Blg. 881 (the Omnibus Election Code of the Philippines) provides a list of prohibited contributions for purposes of partisan political activity, whether directly or indirectly.

5. Can companies commit an offence under these laws?

No, the penal laws do not apply to companies. The criminal penalties are imposed against the individuals who performed the prohibited acts.

However, under the Revised Corporation Code ("**RCC**"), companies may be dissolved by the Securities and Exchange Commission if a court determines as part of its final judgment that the company: (i) was created for the purpose of committing, concealing or aiding the commission of graft and corrupt practices; (ii) committed or aided in the commission of graft and corrupt practices, and its shareholders knew of the same; and (iii) repeatedly and knowingly tolerated the commission of graft and corrupt practices or other fraudulent or illegal acts by its directors, trustees, officers or employees.

As discussed in item (8), administrative liabilities may be imposed for violations of the RCC.

6. Is there a strict liability offence for companies? If so, is there a defence?

No, there is no strict liability offence for companies.

7. Does the regime have extraterritorial effect?

No.

8. What are the types of penalties?

Private individuals are subject to the same penalties that would be imposed on public officers for corruption or bribery activities, except for the penalties specific to public officers (e.g., disqualification or suspension from their roles). These penalties may include imprisonment and fines, depending on the particular offence.

Companies may also face administrative fines ranging from PhP 100,000 (approximately USD 1,800) to PhP 5,000,000 (approximately USD 88,000) imposed against the corporation for the violations enumerated in item (5) above.

What is an interesting feature of your regime?

Although Philippine law does not provide quantitative limitations on amounts that can be given as gifts, there was one case where the Supreme Court ruled that a cash gift of PhP 1,500.00 in favor of 12 court employees (around PhP 125.00 or approximately USD 3 per person) to purchase lechon (roasted pig) for their Christmas party was nominal.

1. What are the key laws around gifts and entertainment?

Unlike other jurisdictions in the Asia Pacific region which may have legislation prescribing amount(s) one can spend on gifts and entertainment without contravening local laws, Singapore does not have legislation setting such amounts.

Singapore's key anti-bribery and anti-corruption legislation, the Prevention of Corruption Act 1960 ("**PCA**"), criminalises the giving, promising, offering as well as soliciting, accepting and/or agreement to accept "gratification". "Gratification" is defined very widely in the PCA, and could include monetary or non-monetary gifts and entertainment that is given as an inducement to or reward for or otherwise on account of, any person doing or forbearing to do anything.

The Penal Code 1871 ("**PC**") also contains a number of offences relating specifically to a public servant (sections 161 to 165), criminalising the acts of public servants who take gratification for doing or forbearing to do any official act, including obtaining any valuable thing without consideration.

2. Do the laws cover both public and private sector bribery?

The PCA covers both public and private sector bribery. The PC covers only public sector bribery.

3. Do the laws cover bribery of foreign officials?

While the PCA and the PC do not have offences that specifically criminalise bribery of foreign officials, the provisions of the PCA, interpreted broadly, would cover the bribery of foreign officials.

First, the bribery of any individual in Singapore would be punishable under the PCA. Hence, bribery of a foreign official, if such act was performed in Singapore, would be punishable under the PCA.

Second, the PCA's extraterritorial effect means that bribery of foreign officials may, assuming the conditions necessary for it to be triggered are in place (see response to Question 7 below), be punishable under the PCA.



4. What are the key restrictions?



GIFTS

Under the Code of Conduct for Ministers:

- Ministers should not accept gifts (of any kind) from anyone which would or might appear to place the Minister under an obligation that conflicts with his public duty (and ensure the same of his spouse, children and other dependents).
- All gifts from members of the public should be refused and returned to the donor without delay, with an explanation that the recipient appreciates the gift but its acceptance would be a breach of the Code.
- If the return of the gift will cause offence or it is impracticable to return the gift, the Minister should hand over the gift to the Permanent Secretary, but can purchase the gift from the Government if the value of the gift is S\$50 and above.
- If the value of the gift is less than S\$50, the recipient may be allowed to retain the gift without any payment.

Under the Public Service Code of Conduct:

- Civil servants must declare to their Permanent Secretaries any gifts they receive from external stakeholders on account of their official position or work.
- Officers may be allowed to retain gifts that are valued below S\$50 if doing so does not affect the integrity of the Civil Service.
- If officers wish to retain gifts valued above S\$50, they must pay the assessed market value of the gift to the Government.



HOSPITALITY / TRAVEL

Under the Public Service Code of Conduct, with regards to meal invitations, public officers may accept when there are legitimate work-related reasons, or when it is impractical or impolite to reject the meal. However, they should declare and seek approval from their Permanent Secretaries, either before the meal, or if that is not possible, immediately after.



ENTERTAINMENT

N/A



DONATIONS / SPONSORSHIP

N/A

5. Can companies commit an offence under these laws?

Yes, under the PCA.

6. Is there a strict liability offence for companies? If so, is there a defence?

No. A company can commit an offence under common law identification principles if it can be shown that the directors and managers of the company, who represent its "directing mind and will", directed or knew about the act of bribery or corruption and acquiesced to it, and such knowledge and/or acts can be imputed to the company under established common law principles.



7. Does the regime have extraterritorial effect?

Yes. The PCA has extraterritorial effect to the extent that:

1. An offence under the PCA is committed by a Singapore citizen in any place outside Singapore, and such person will be dealt with in respect of that offence as if it had been committed within Singapore;
2. There is abetment in outside Singapore of the commission of an act which if committed in Singapore would be an offence under the PCA, provided that such acts are in relation to the affairs or business or on behalf of a principal residing in Singapore; or
3. There is criminal conspiracy to commit the offence in Singapore, even though all or any of the acts constituting the conspiracy were done outside Singapore

8. What are the types of penalties?

UNDER THE PCA:	UNDER THE PC:
Corporations: A maximum fine of S\$100,000 per violation	Public servants taking a gratification: An imprisonment term (which, depending on the exact offence, may extend to 3 years), or with fine, or both.
Individuals: A maximum fine of S\$100,000 per violation, or a term of imprisonment not exceeding 5 years (7 years in certain cases where the bribe is made to a public body), or both.	
The Court can also order a person (individual or corporation) convicted of a corruption offence to pay a fine equal in value to the amount of the gratification.	

What is an interesting feature of your regime?

As an example of the high standards of conduct expected of public servants in Singapore, section 165 PC makes it a criminal offence for a public servant to accept a “valuable thing” from someone involved with them in an official capacity, and it is not necessary that an offender provided any **quid pro quo** or for the prosecution to prove that the offender had acted with a corrupt intent in obtaining or accepting the valuable thing.

Section 165 PC was relied on by the prosecution for the first time in Singapore’s history (even pre-dating independence in 1965) when former Transport Minister S. Iswaran was charged, and subsequently convicted, for offences including those of section 165 PC.

1. What are the key laws around gifts and entertainment?

The key law around gifts and entertainment is the notification issued under the Act Supplementing the Constitution Relating to the Prevention and Suppression of Corruption, B.E. 2561 (2018) (the "Anti-Corruption Act").

2. Do the laws cover both public and private sector bribery?

Thai laws only cover bribery in the public sector and state enterprises as defined under the relevant laws. The law does not cover bribery in the private sector.

3. Do the laws cover bribery of foreign officials?

Yes. The Anti-Corruption Act also covers the prohibitions on giving of bribes to include officials of foreign states and officials of public international organizations.

4. What are the key restrictions?



GIFTS

There is a threshold for acceptance of gifts. The provision of gifts with dishonest intent and a quid pro quo may be deemed to be offences under Thai law, depending on the specific facts and circumstances.



ENTERTAINMENT

There is a threshold for acceptance of entertainment. The provision of entertainment with dishonest intent and a quid pro quo may be deemed to be offences under Thai law, depending on the specific facts and circumstances.



HOSPITALITY / TRAVEL

There is a threshold for acceptance of hospitality or travel. The provision of hospitality or travel with dishonest intent and a quid pro quo may be deemed to be offences under Thai law, depending on the specific facts and circumstances.



DONATIONS / SPONSORSHIP

Thai laws do not provide specific restrictions in terms of the provision of donations or sponsorship. However, it also depends on the recipient of the donation. For example, donations to Thai political parties are subject to specific nationality and monetary threshold restrictions.

5. Can companies commit an offence under these laws?

Yes. Under Thai laws, companies are recognized as legal entities that can be held liable for offences, including those related to anti-bribery and anti-corruption legislation.

6. Is there a strict liability offence for companies? If so, is there a defence?

Yes. A company will be liable for acts of bribery which are undertaken by its authorized persons/representatives, unless it has put in place appropriate internal control measures to prevent, detect and deter acts of bribery.

7. Does the regime have extraterritorial effect?

Extraterritorial effect will only be applicable where a Thai national or a company registered under Thai law commits offences outside Thailand.

8. What are the types of penalties?

Types of penalties under Thai anti-bribery and corruption laws include imprisonment and fines.

What is an interesting feature of your regime?

We cannot say Thai regime is unique. It adopts the concept of “quid pro quo” and corrupt intent.

A GLOBAL MATTER

We hope you enjoyed reading about the unique traditions and cultural nuances on gifting and entertainment across eight jurisdictions in Asia! When it comes to gifts and entertainment in the context of business relationships, it can be a bit tricky navigating the fine line between what is reasonable and legitimate versus what may constitute bribery in each jurisdiction.

However, with the global nature of business and trade in the region, it may be necessary to consider risks that might arise in other jurisdictions. The giving of gifts, provision of entertainment, travel and hospitality could also bring into play foreign bribery laws.

Two jurisdictions that often need to be factored in are the U.S. and the U.K. Both the US Foreign Corrupt Practices Act (**FCPA**) and UK Bribery Act (**UKBA**) have a wide reach and can cover acts of bribery occurring overseas. We take a quick look at them below:

- **THE FCPA**

The FCPA's bribery provisions prohibit offering, paying, promising to pay, or authorizing the payment of money or anything of value to foreign officials to influence their actions or secure an improper advantage. There is no *de minimis* threshold specified in the FCPA. The FCPA's broad bribery prohibition has extraterritorial reach and applies globally to U.S. persons, as well as non-U.S. persons that commit acts in furtherance of a corrupt payment in the U.S. or through any means or instrumentality of U.S. interstate commerce (e.g., making payments in U.S. dollars or through the U.S. financial system).

The FCPA also contains accounting provisions, requiring certain companies (which can include non-U.S. companies) to keep accurate books and records, and maintain internal accounting controls that prevent and detect FCPA violations. This means that improperly recording unlawful gifts and entertainment offered to foreign government officials – for example as advisory fees or employee benefits – could constitute a violation of the FCPA.

- **THE UKBA**

The UKBA prohibits offering, promising, or giving a financial or other advantage to induce a person to perform a function or activity improperly. Like the FCPA, there is no *de minimis* threshold specified in the UKBA, which can cover the offer etc. of any kind of advantage, including gifts, travel, and entertainment. The UKBA's bribery offences have extraterritorial reach and apply to any criminal conduct committed by persons with a "close connection" to the U.K.

The UKBA also features a strict liability corporate offence of failing to prevent an act of bribery by any person who carries out services for or on behalf of the company, which can apply extraterritorially. The only available defense is to show that the commercial organization implemented adequate procedures to prevent bribery, such as clear policies on gifts and entertainment, regular training, and effective monitoring and reporting mechanisms.

In short – remember to think globally as well as locally!

Conclusion

The Lunar Year of the Snake is upon us and is expected to bring wisdom, grace, and transformation into our lives. We know the importance of strong relationships to business success but we also know that an ethical reputation is one of your most valuable assets. Throughout this booklet, we've highlighted the importance of navigating gifts and entertainment with integrity, especially during culturally significant events like the Lunar New Year. We hope this series on gifts and entertainment across these Lucky 8 jurisdictions in Asia (Singapore, Malaysia, Indonesia, Philippines, Hong Kong, China, Thailand, and Japan) has imparted our wisdom with grace and help you through the new year to transform risk into rewards.



As we conclude, it is essential to remember that a robust and effective compliance program is the cornerstone of every successful business. Our **5 Essential Elements of Corporate Compliance** provides a framework for companies to not only adhere to legal requirements but also foster a strong, ethical culture – please contact us to find out more.

Thank you again for joining us on this journey. We look forward to bringing you more insightful content and supporting your compliance and investigation needs during the Year of the Snake!

* Don't forget that you can revisit our 2024 Asia Pacific [5 Lunar New Year's resolutions for investigations](#)

Authors

CHINA

Vivian Wu

+86 10 6535 3860
vivian.wu@
bakermckenziefenxun.com

Henry Chen

+86 21 6105 8521
henry.chen@
bakermckenziefenxun.com

HONG KONG

Mini vandePol

+852 2846 2562
mini.vandepol@
bakermckenzie.com

Christine Cuthbert

+852 2846 1814
christine.cuthbert@
bakermckenzie.com

Gerald Lam

+852 2846 2138
gerald.lam@bakermckenzie.com

Andrea Kan

+852 2846 1742
andrea.kan@bakermckenzie.com

Yuki Yung

+852 2846 2512
yuki.yung@bakermckenzie.com

INDONESIA

Andi Yusuf Kadir

+62 21 2960 8511
andi.kadir@hhplawfirm.com

Reno Hirdarisvita

+62 2960 8571
reno.hirdarisvita@hhplawfirm.com

JAPAN

Takeshi Yoshida

+81 3 6271 9723
takeshi.yoshida@
bakermckenzie.com

Rie Kuwabara

+81 3 6271 9762
rie.kuwabara@bakermckenzie.com

Wabi Tanaka

+81 3 6271 9744
wabi.tanaka@bakermckenzie.com

MALAYSIA

Eddie Chuah

+603 2298 7939
eddie.chuah@wongpartners.com

Rachel Tey

+603 2298 7913
rachel.tey@wongpartners.com

Jade Cho

+603 2298 7963
jade.cho@wongpartners.com

PHILIPPINES

Miguel Antonio H. Galvez

+63 2 8819 4950
miguel.galvez@
quisumbingtorres.com

Camille Bianca M. Gatmaitan-Santos

+63 2 8819 4914
camillebianca.gatmaitan-santos@
quisumbingtorres.com

Danielle Joanna C. Gaité

+63 2 8819 4927
daniellejoanna.gaité@
quisumbingtorres.com

SINGAPORE

Celeste Ang

+65 6434 2753
celeste.ang@bakermckenzie.com

Pradeep Nair

+65 6434 2590
pradeep.nair@bakermckenzie.com

Spencer Lee

+65 6434 2259
spencer.lee@bakermckenzie.com

THAILAND

Peerapan Tungsuwan

+66 2636 2000 X2033
peerapan.tungsuwan@
bakermckenzie.com

Napatorn Dasananjali Termglinchan

+66 2636 2000 X2045
napatorndasananjali.termglinchan@
bakermckenzie.com

Praween Chantanakomes

+66 2666 2824 X2024
praween.chantanakomes@
bakermckenzie.com

Haruthai Chaisanee

+66 2666 2824 X2013
haruthai.chaisanee@
bakermckenzie.com

Woraphan Khunakornkorbki

+66 2666 2824 X2028
woraphan.khunakornkorbki@
bakermckenzie.com