Baker McKenzie Wong & Leow.

Healthcare
Singapore




# Marketing in Healthcare: Managing Compliance Risks

In Singapore, marketing activities, such as seminars, sponsorship, hospitality/entertainment, gifts and donations/grants by pharmaceutical and healthcare companies are regulated by statutes and industry codes, namely:

- The Prevention of Corruption Act;
- The Penal Code;
- The Singapore Association of Pharmaceutical Industries' Code of Marketing Practices;
- The Singapore Manufacturing Federation Medical Technology Industry Group's Code of Ethical Conduct for Interactions with Healthcare Professionals; and
- The Singapore Medical Counsel's Ethical Code and Ethical Guidelines.

Although the industry codes do not have the force of law, compliance with these industry codes may help to dispute the element of corruption in any transaction.

## Applicable Legislation

The PCA prohibits persons from "corruptly" giving and receiving "gratification" in exchange for the doing or preventing the doing of anything in relation to any actual/proposed transaction.

### Awards

Ranked Band 1 for Life Sciences
Chambers Global rankings 2014 - 2020

Ranked Band 1 for Intellectual Property
Chambers Global 2009 - 2020

Medical and Healthcare Law Firm of the Year
Asian Legal Business Southeast Asia Law Awards 2019

Tier 1 Intellectual Property Firm in Asia
ALB IP Rankings 2018 - 2019

Asia Pacific IP Firm of the Year
Managing IP Asia Pacific Awards 2018 - 2019

Ranked Band 1 for Intellectual Property Firm in Singapore
Chambers Asia Pacific 2010 - 2020

Ranked Tier 1 for Intellectual Property Firm in Singapore
Legal 500 Asia Pacific 2010 - 2019

The term "gratification" is broadly defined and includes non-pecuniary benefits. A gratification is considered to be given/received "corruptly" if the transaction is objectively corrupt and if the accused had corrupt intent. In determining this, the court usually considers the circumstances of the transaction, such as:

- Whether any rules or regulations were breached and the purpose of such rules;
- Whether any justice was perverted;
- Whether the transaction took place in secrecy;
- Whether there was a pre-existing relationship between the parties;
- The timing of the gift (for example, is there a prospective or ongoing tender at the time the gift was made); and
- The degree of personal relationship between the giver and receiver (for example, are the parties already acquainted with each other).

Further, if the giver/recipient is a public servant (i.e. Government employee or employee of a "public body"), there is a rebuttable presumption that any gratification (including business courtesies, amongst others) is given or received corruptly.

In Singapore, both private and restructured hospitals/clinics are governed by the Private Hospitals and Medical Clinics Act, and the law had previously considered both categories to be non-governmental in nature. However, the courts have since found that restructured hospitals are considered "public bodies", as they serve a public function. Accordingly, companies which have dealings with doctors or restructured healthcare institutions viz. private healthcare institutions, should be cognizant of this presumption under the PCA.

Apart from the PCA, there is also the Penal Code, which targets corruption involving "public servants". While anti-corruption offences tend to be pursued under the PCA rather than the Penal Code in Singapore, this may be due to a high degree of overlap between the offences provided for under the PCA and the Penal Code. Further, the prescribed punishments meted out under the PCA are harsher than those under the Penal Code, which would be of greater deterrence to errant marketers.

## Applicable Legislation

### SAPI Code and SMF Code

The SAPI Code and the SMF Code are industry codes which set out guidelines in relation to interactions with healthcare professionals, and the promotion of pharmaceutical products and medical devices, respectively.

The codes address issues such as the sponsorship of meetings, hospitality/entertainment provided at sponsored meetings, permissible

gifts and promotion items, donations and grants, and the giving of samples, amongst others.

Although the SAPI Code and the SMF Code do not have the force of law, SAPI and the SMF may impose sanctions on member companies who are in breach of the respective codes. Compliance with the codes will also help to show that the business courtesy in question was not offered or given "corruptly" under the PCA.

**SMC Code**

The SMC Code is a set of ethical standards which doctors must adhere to when discharging their professional duties. All doctors must comply with the SMC Code, regardless of whether they are employed by private or public healthcare institutions.

Under the Medical Registration Act, the SMC is empowered to sanction errant doctors for professional misconduct. Any breach of the SMC Code may attract sanctions from the SMC, which will convene a disciplinary inquiry into the alleged misconduct to sanction the errant doctor.

The SMC Code prohibits certain conduct which may suggest an element of corruption, as set out in the following provisions:

- Doctors must ensure that their participation in sponsored events or publications amongst others, is not seen as an endorsement of such products;
- Doctors shall not ask for gifts or other inducements which may affect or be seen to affect their judgment in making decisions about their patients' treatment; and
- Doctors have a duty not to let financial considerations affect the prescription of drugs, appliances or treatments.

Although companies are not regulated by the SMC Code, compliance with the SMC Code may help to show a lack of "corrupt intent" on the company's part, for the purposes of the PCA. It may also mitigate the risk of the SMC sanctioning doctors whom the company had interacted with, and accordingly may reduce the company's exposure to negative publicity.

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