



# **Training on Corporate Liability & Gifts, Hospitality and Donations (GHD) Procedure**

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## **THE NEW LAW**

### **SECTION 17A OF THE MALAYSIAN ANTI-CORRUPTION COMMISSION ACT 2009**

# SECTION 17A OF MALAYSIAN ANTI-CORRUPTION COMMISSION ACT 2009

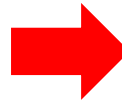


The new Section 17A provides that a commercial organisation can be considered guilty if any of its employees and/or associates commit corruption for the benefit of the organization regardless the upper management or its representatives know or do not know about the corruption acts committed by its employees or associates.

The directors, officers and management are deemed to have committed the same offence



**DIRECTORS & OFFICERS**



**EMPLOYEE**

**BRIBE  
RECIPIENT**



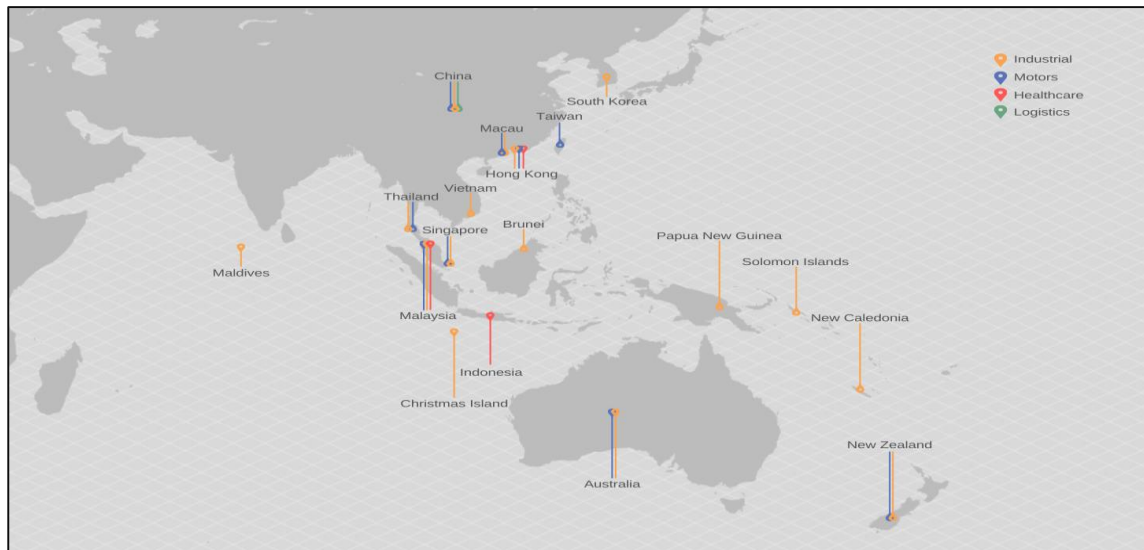
## New s17A(8) MACC Act 2009

### Extraterritorial jurisdiction

Section 17A(8) clarifies that commercial organization means:-

- a) Company or partnership incorporated under Malaysian law or a company or partnership that carries on business or a part of business in Malaysia.
- b) Company or partnership incorporated under Malaysian law that carry businesses elsewhere or overseas

Similar to the UK Bribery Act 2010, the corporate liability provision will have extra-territorial effect as it covers locally incorporated companies and partnership as well as companies and partnerships incorporated overseas with business presence in Malaysia.



*\*Illustration indicates our businesses across Asia Pacific*

## WHAT IS THE DEFENCE AVAILABLE?



Full defence if organisation can show it had in place **ADEQUATE PROCEDURES** designed to prevent bribery

## Adequate Procedures

- The Malaysian Anti-Corruption Commission ("**MACC**") has issued a **TRUST** Guidelines to ensure adequate measures are undertaken which is proportionate to the bribery risks of the organization faces, and proportionate to the nature, scale and complexity of the company commercial activities.



**Top Level Commitment**



**Risk Assessment**



**Undertake Control Measures**



**Systematic Review, Monitoring, Enforcement**



**Training and Communication**

- Based on the TRUST Guidelines that was issued GCI carried an extensive exercise to ensure compliance and identified 11 key topical areas that requires focus and improvement which has been addressed in our Anti-Bribery Management System Manual.



## Adequate Procedures

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- The following key activities are initiated and completed as per the requirements of Corporate Liability which includes the following:
  - Implementation of Anti-Bribery and Anti-Corruption Policy;
  - Conducting of Bribery Risk Assessment;
  - Implementation of Gifts, Entertainment and Travel via the Gifts, Hospitality and Donations (GHD) Procedure;
  - Systematic review, monitoring and enforcement by GCI;
  - Continuous training and communication;

## GHD Procedures

Therefore, the purpose of this procedure is to set out the standards and requirements which must be observed when providing or receiving gifts, entertainment, hospitality or donations to or from any person or entity outside the Group.

The GHD Procedures sets out guidelines to provide better clarity in respect of:-

1. Clearly defined categories of Gifts and Hospitality;
2. Refined principles of Gifts and Hospitality;
3. Detailed guideline on what is allowed / not allowed for each category of Gifts and Hospitality; and
4. GHO prescribed Limits of Authority of Gifts and Hospitality, and permitted under local laws of certain countries.



# **GIFTS, HOSPITALITY AND DONATIONS PROCEDURE**

# Definition of Gifts and Hospitality

1. Gifts refers to valuable property or service of any value (even if nominal), for which the recipient does not pay the fair value.
2. Hospitality is the collective term referring to any form of accommodation, drink, meal, entertainment, cultural or sporting event, theatre event, recreation and travel or transportation.

## Gifts

- Courtesy Gift
- Corporate Gift
- Festive Gift
- Congratulatory Gift and Compassionate Gift

## Hospitality

- Entertainment
- Travel

# Definition of Gifts and Hospitality

## 4 Types of Gifts

### Courtesy Gift

- Customary gifts to strengthen business relationships. Example includes gift baskets, boxes of chocolates, wine, collectibles, flowers.

### Corporate Gifts

- Gifts which bear the company name and logo are nominal value. Example includes diaries, table calendars, pens, notepads, plaques.

### Festive Gifts

- Traditional treats or gift customary to the occasion. Example includes festive hampers, oranges, dates.

### Congratulatory Gifts & Compassionate Gifts

- Congratulatory gifts: Include gifts to mark the opening of business, graduation, weddings.
- Compassionate gifts: Tokens of bereavement in the event of death or gift following an illness or accident.

# Definition of Gifts and Hospitality



## Entertainment & Travel

### Entertainment

- Refers to an activity or meal intended to maintain the Group's business relationship where a Group employee is in attendance including conference or event passes or tickets /passes to concert or sporting events.

### Travel

- Refers to domestic or international trips provided to/receive from any third party where the travel serves a legitimate business purposes above and beyond developing relationship. Example includes: airfare, hotel accommodation, ground transportation during the trip.

# Gifts and Hospitality Guiding Principles

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In general, offering and accepting Gifts and Hospitality is permissible provided the guiding principles is observed.

## **Principle 1: Recipients**

The recipient's organisation permits the giving or receiving of such Gifts / Hospitality.

## **Principle 2: No Cash & Personal Services**

Gifts / Hospitality in the form of cash or cash equivalents, or personal services are not allowed. However, should local custom or circumstances dictate that cash is the only appropriate form of gift, approval is strictly required from the Division Managing Director.

## **Principle 3: Ability to influence**

The Gift / Hospitality will not create an actual or perceived conflict of interest. Gifts / Hospitality that appear to or are intended to establish an obligation on the recipient, or influence the impartiality of the recipient are prohibited.

# Gifts and Hospitality Guiding Principles

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## **Principle 4: Value**

The Gift / Hospitality is not lavish and is proportionate under the circumstances (accounting for, among other factors, the value of the Gift / Hospitality, frequency with which Gift / Hospitality has been given to or received from said party/organisation in the past).

## **Principle 5: Nature of Gifts/ Hospitality**

The Gift / Hospitality is appropriate, inoffensive (i.e.: not indecent, sexually oriented or culturally insensitive).

## **Principle 6: Government Officials**

Gifts and Hospitality given to Government Officials expose the Group to higher risks under anti-bribery and anti-corruption laws. Depending on jurisdiction, there may be additional laws, rules, and regulations that govern the Group's business dealings with Government Officials. Employees are expected to be mindful and comply with all rules that apply to interactions with Government Officials, including rules regarding the offering of gifts and hospitality.

Where possible, Directors, Employees and Counterparties (when acting on behalf of Group Companies) should avoid offering Gifts and Hospitality to Government Officials. If a Gift is necessary, a Corporate Gift is encouraged.

# Guideline of Gifts and Hospitality

| Type of Gifts / Hospitality / Donation | Description                         | OFFERING GHD                 |                         | RECEIVING GHD  |  |
|--|-------------------------------------|------------------------------|-------------------------|--|--|
|  |                                     | To all other recipients      | To Government Officials | From all other third parties to Sime Darby Employees     | From Government Officials to Sime Darby Employees        |
| <b>Courtesy Gifts</b>                  | Is it allowed?                      | ✓                            | ✓*                      | ✓  | ✓#   |
|  | Is a limit of authority prescribed? | Refer to Limits of Authority |                         | X<br>Subject to Gifts and Hospitality Guiding Principles | X<br>Subject to Gifts and Hospitality Guiding Principles |
|  | Must GHD Register be filled up?     | ✓                            | ✓                       | ✓  | ✓#   |
| <b>Corporate Gifts</b>                 | Is it allowed?                      | ✓                            | ✓*                      | ✓  | ✓#   |
|  | Is a limit of authority prescribed? | X                            | X                       | X  | X  |
|  | Must GHD Register be filled up?     | X                            | X                       | X  | X  |
| <b>Festive Gifts</b>                   | Is it allowed?                      | ✓**                          | ✓*                      | ✓  | ✓#   |
|  | Is a limit of authority prescribed? | Refer to Limits of Authority |                         | X<br>Subject to Gifts and Hospitality Guiding Principles | X<br>Subject to Gifts and Hospitality Guiding Principles |
|  | Must GHD Register be filled up?     | ✓                            | ✓*                      | ✓  | ✓#   |



# Guideline of Gifts and Hospitality

| Type of Gifts / Hospitality / Donation | Description                         | OFFERING GHD                 |                         | RECEIVING GHD  |  |
|--|-------------------------------------|------------------------------|-------------------------|--|--|
|  |                                     | To all other recipients      | To Government Officials | From all other third parties to Sime Darby Employees     | From Government Officials to Sime Darby Employees        |
| <b>Congratulatory Gifts</b>            | Is it allowed?                      | ✓**                          | ✓*                      | ✓  | ✓#   |
|  | Is a limit of authority prescribed? | Refer to Limits of Authority |                         | X***   | X<br>Subject to Gifts and Hospitality Guiding Principles |
|  | Must GHD Register be filled up?     | ✓                            | ✓                       | ✓***   | ✓#   |
| <b>Compassionate Gifts</b>             | Is it allowed?                      | ✓**                          | ✓*                      | ✓  | ✓#   |
|  | Is a limit of authority prescribed? | X***                         | X***                    | X***   | X  |
|  | Must GHD Register be filled up?     | ✓                            | ✓                       | ✓***   | ✓#   |
| <b>Entertainment</b>                   | Is it allowed?                      | ✓                            | ✓*                      | ✓  | ✓#   |
|  | Is a limit of authority prescribed? | Refer to Limits of Authority |                         | X<br>Subject to Gifts and Hospitality Guiding Principles | X<br>Subject to Gifts and Hospitality Guiding Principles |
|  | Must GHD Register be filled up?     | X                            | ✓*                      | X  | ✓#   |

# Guideline of Gifts and Hospitality

| Type of Gifts / Hospitality / Donation | Description                         | OFFERING GHD                     |                         | RECEIVING GHD  |   |
|--|-------------------------------------|----------------------------------|-------------------------|--|---|
|  |                                     | To all other recipients          | To Government Officials | From all other third parties to Sime Darby Employees     | From Government Officials to Sime Darby Employees |
| <b>Travel</b>                          | Is it allowed?                      | ✓                                | ✓*                      | ✓  | X   |
|  | Is a limit of authority prescribed? | Refer to Limits of Authority     |                         | X<br>Subject to Gifts and Hospitality Guiding Principles | X   |
|  | Must GHD Register be filled up?     | ✓                                | ✓                       | ✓  | X   |
| <b>Donations &amp; Sponsorship</b>     | Is it allowed?                      | ✓                                | X                       | X  | X   |
|  | Is a limit of authority prescribed? | ✓<br>Refer to GPA E5 (Para 7.2)  | X                       | X  | X   |
|  | Must GHD Register be filled up?     | ✓<br>Refer to GPA B1 (Para 10.4) | X                       | X  | X   |

\* To exercise caution, as Gifts / Hospitality given to Government Officials expose the Group to higher risks. Where possible, a Corporate Gift is preferred. Gifts in the form of cash or cash equivalents are not allowed

\*\* Where cash or equivalent are being offered under circumstances which are customary or where cash is unavoidable (e.g. festive angpows and/or shopping vouchers and/or prepaid cards, and/or bereavement token), special approval must be obtained in writing from the relevant Division MD or the GCEO to seek an exception from Principle 2 of the Gifts and Hospitality Guiding Principles.

\*\*\* No thresholds prescribed (as Congratulatory and Compassionate Gifts are received in an Employee's personal capacity). However, amounts must be declared and records must be kept.

# Gifts/ Hospitality from government officials are unlikely. However, in the event that employees do receive Gifts/ Hospitality from government officials, it is mandatory for Employees to declare by completing the GHD register.

## **LIMITS OF AUTHORITY**

# Limits of Authority of Gifts and Hospitality

The limits below are for Division Managing Directors.

## China

|                       |            |           |
|-----------------------|------------|-----------|
| Entertainment / Gifts | *RMB 3,000 | RM 1,800  |
| Travel                | RMB 40,000 | RM 24,000 |

## Hong Kong

|                       |            |           |
|-----------------------|------------|-----------|
| Entertainment / Gifts | HKD 8,000  | RM 4,400  |
| Travel                | HKD 60,000 | RM 33,000 |

## Macau

|                       |            |           |
|-----------------------|------------|-----------|
| Entertainment / Gifts | MOP 8,000  | RM 4,200  |
| Travel                | MOP 60,000 | RM 31,800 |

## Taiwan

|                       |             |           |
|-----------------------|-------------|-----------|
| Entertainment / Gifts | NTD 30,000  | RM 4,200  |
| Travel                | NTD 227,000 | RM 31,780 |

## Australia

|                       |            |           |
|-----------------------|------------|-----------|
| Entertainment / Gifts | AUD 2,500  | RM 7,500  |
| Travel                | AUD 20,000 | RM 60,000 |

## New Zealand

|                       |            |           |
|-----------------------|------------|-----------|
| Entertainment / Gifts | NZD 2,500  | RM 7,000  |
| Travel                | NZD 20,000 | RM 56,000 |

## \*\*Malaysia

|                       |           |   |
|-----------------------|-----------|---|
| Entertainment / Gifts | RM 2,500  | - |
| Travel                | RM 20,000 | - |

## Singapore

|                       |            |           |
|-----------------------|------------|-----------|
| Entertainment / Gifts | SGD 2,000  | RM 6,000  |
| Travel                | SGD 15,000 | RM 45,000 |

# Limits of Authority of Gifts and Hospitality

| Thailand              |             |           |
|-----------------------|-------------|-----------|
| Entertainment / Gifts | THB 20,000  | RM 2,600  |
| Travel                | THB 150,000 | RM 19,500 |

| Brunei                |           |           |
|-----------------------|-----------|-----------|
| Entertainment / Gifts | BND 500   | RM 1,500  |
| Travel                | BND 7,000 | RM 21,000 |

| **Vietnam             |          |           |
|-----------------------|----------|-----------|
| Entertainment / Gifts | VND 10M  | RM 1,800  |
| Travel                | VND 100M | RM 18,000 |

| **South Korea         |             |           |
|-----------------------|-------------|-----------|
| Entertainment / Gifts | KRW 400,000 | RM 1,400  |
| Travel                | KRW 5M      | RM 17,500 |

| Maldives              |            |           |
|-----------------------|------------|-----------|
| Entertainment / Gifts | MVR 5,500  | RM 1,485  |
| Travel                | MVR 55,000 | RM 14,850 |

| Japan                 |             |           |
|-----------------------|-------------|-----------|
| Entertainment / Gifts | JPY 100,000 | RM 3,900  |
| Travel                | JPY 400,000 | RM 15,600 |

# Limits of Authority of Gifts and Hospitality

## Papua New Guinea

|                       |            |           |
|-----------------------|------------|-----------|
| Entertainment / Gifts | PGK 4,200  | RM 5,166  |
| Travel                | PGK 50,000 | RM 61,500 |

## New Caledonia

|                       |             |           |
|-----------------------|-------------|-----------|
| Entertainment / Gifts | XPF 120,000 | RM 4,800  |
| Travel                | XPF 1.45M   | RM 58,000 |

## Solomon Island

|                       |             |           |
|-----------------------|-------------|-----------|
| Entertainment / Gifts | SBD 9,800   | RM 4,900  |
| Travel                | SBD 115,000 | RM 57,500 |

## Christmas Island

|                       |           |           |
|-----------------------|-----------|-----------|
| Entertainment / Gifts | AUD 500   | RM 1,500  |
| Travel                | AUD 5,000 | RM 15,000 |

\* The LOA is the maximum amount prescribed by law.

\*\* The limits prescribed applies to non-government officials only. For limits that applies to providing gifts and entertainment for government officials please take extra caution and refer to your respective Legal Department for limits prescribed by local laws.

1 All limits of authority are prescribed on per person basis.

2 The GCFO assumes the LOA for DMD.

3 If the LOA is exceeded, then prior approval from its one level above is required.

4 For Division with Deputy DMD, both Deputy DMD and DMD assumes the same LOA prescribed for DMD.

## Case Study



# Case Study

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## ***Employee of Airline v Airline Company***

Facts of the case: The company dismissed the claimant on the allegations that he authorized business class tickets for the travel agent's family and his family to Hong Kong. His family received benefits in the form of tour packages, favors and other benefits from the travel agent.

Note: Travel agent was doing business with the airline at the material time.

Q: “Does acceptance of complementary travelling and hotel expenses from a company's travel agent amount to a breach of the company's gifts, entertainment and travel policy as well as a conflict of interest justifying an employee's dismissal?”

Court's decision: In favor of the airline holding the justification it was justified dismissing the claimant. The court addressed the issue:

The general principle that applies to the offer and acceptance of gifts and entertainment is that no staff and any member of his family should solicit or accept or receive gifts, entertainment, trips, discounts, loans, commissions, or other favors from outside companies or individuals. This is especially important if the outside companies or individuals concerned are soliciting business relationship or information from the Airline. Work related decisions must at all times be made in an objective manner, based upon the best interests of the Company and not be influenced or affected in any way by consideration of personal gain, or of obligation resulting from the acceptance of a gift, commission, entertainment or other benefits. From time to time especially during the festive season, gift may be sent to staff.

## **GHD REGISTER/APP**

# GHD Template

## Accepting GHD

| No. | Date Received | Received By | Received From | Description of GHD | Reason for Accepting | Estimated Value | Approved by? |
|-----|---------------|-------------|---------------|--------------------|----------------------|-----------------|--------------|
|     |               |             |               |                    |                      |                 |              |
|     |               |             |               |                    |                      |                 |              |
|     |               |             |               |                    |                      |                 |              |

## Offering GHD

| No. | Date Received | Received By | Received From | Description of GHD | Reason for Accepting | Estimated Value | Approved by? |
|-----|---------------|-------------|---------------|--------------------|----------------------|-----------------|--------------|
|     |               |             |               |                    |                      |                 |              |
|     |               |             |               |                    |                      |                 |              |
|     |               |             |               |                    |                      |                 |              |

# Thank You



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