

Beware of the Laws when Presenting Gifts at Festivals



With Christmas and Lunar New Year approaching, many companies would distribute gifts, red packets, etc. to their clients and business partners as a token of gratitude. It is customary etiquette to exchange gifts; however, we must be alert to bribes under the guise of gifts so as to avoid contravening the law inadvertently. Please take a look at the following case:

Case

Steve operated a small company engaged in printing and manufacturing promotion premiums. In order to reduce operating costs, he relocated part of the operations to the Mainland and bought a batch of second-hand printing machines for the factory there.

Steve then applied for a hire-purchase facility from a bank in Hong Kong to help increase the company's cash flow. To secure a larger loan, he falsely declared to the bank that the printing machines were all brand new. Michael, senior credit officer of the bank, was assigned to conduct a site visit to inspect the new machines. As Lunar New Year was drawing near, Steve took the opportunity to present Michael with "festive food" like expensive spirits and dried seafood, as well as a red packet containing several thousand dollars for Michael's new-born baby. Steve insisted it was just "a sign of good luck" and "custom and trade practice", hoping that the loan would be approved soon.



Analysis and Advice

According to the *Prevention of Bribery Ordinance* (PBO), as long as the offeror believes that the advantage given is a reward for favours done for him in business dealings, an offence is committed even if the recipient of the bribe has not eventually offered any assistance. It was not possible to claim in defence that the purpose of the bribe had not been achieved even though Michael had not helped Steve secure a loan.

The spirits, red packets, etc given by Steve are considered as advantages. The offeror cannot justify the act of offering bribes under the pretext of an established "custom in the trade" or "industry practice". The PBO stipulates that such defence on the part of either the offeror or the recipient will not be accepted.

Frequently Asked Questions

1. How can individuals avoid breaking the law if they wish to offer gifts to the employees of their trade partners at festivals?

According to the PBO in Hong Kong, offers of gifts, red packets or tips (regardless of their value) to others are considered as “offers of advantages”. If such offer is related to the acceptor’s business dealings, the acceptor must seek prior approval of his employer or principal for the acceptance to be legitimate. This principle also applies during festivals. If it cannot be confirmed whether the acceptor has been given prior permission to accept a gift, the gift should instead be directly sent to the person in charge of the company for appropriate action. Offeror could also seek clarification from acceptor’s company on its acceptance of advantages policy.



2. How should I deal with it if a client asks me to donate gift(s) or sponsor his company’s Christmas party or spring reception?



To protect the interest of the gift offeror, one may ask the other party to issue a formal letter of request under company name and the sponsorship should be directly sent to the client’s company rather than a particular staff member. Written acknowledgement of receipt should also be obtained.

3. Does treating trade partners or their employees to a banquet during business negotiations constitute an offer of advantages? How can a company avoid erosion of its interests due to frequent business entertainment being accepted by its employees?

- Offers of entertainment to trade partners are common. But businesspeople should not rely on providing entertainment to their trade partners or their employees to secure business. In the long run, they should aim at strengthening their competitiveness by improving product or service quality.



- It is inevitable that employees, as representatives of their company, will be offered business entertainment. However, if employees accept unreasonably frequent or lavish entertainment, it may affect their impartiality in performing their duties, thus damaging the company’s interests. A company should therefore issue clear guidelines to its employees on acceptance and offers of business entertainment and constantly remind them to stick to the rules.

4. Is it legal for a company to distribute red packets to Mainland government officials and journalists attending its spring reception?

The Mainland discipline inspection authorities stipulate that any red packets or gifts received by a State functionary during official dealings must be submitted to the State; otherwise the State functionary concerned will commit a corruption offence. On the Mainland, journalists are also State functionaries and therefore bound by such laws. Any Hong Kong business person offers money or property to a State functionary with an aim to secure illegitimate benefits, he/she will commit an offence of offering bribes, even if it is presented as a token of gratitude. The State functionary concerned might also commit an offence of accepting bribes.



Note: Descriptions and explanations of the relevant laws above are necessarily general. In case of doubt, readers should refer to the original text of the laws or seek legal advice as and when necessary.



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