

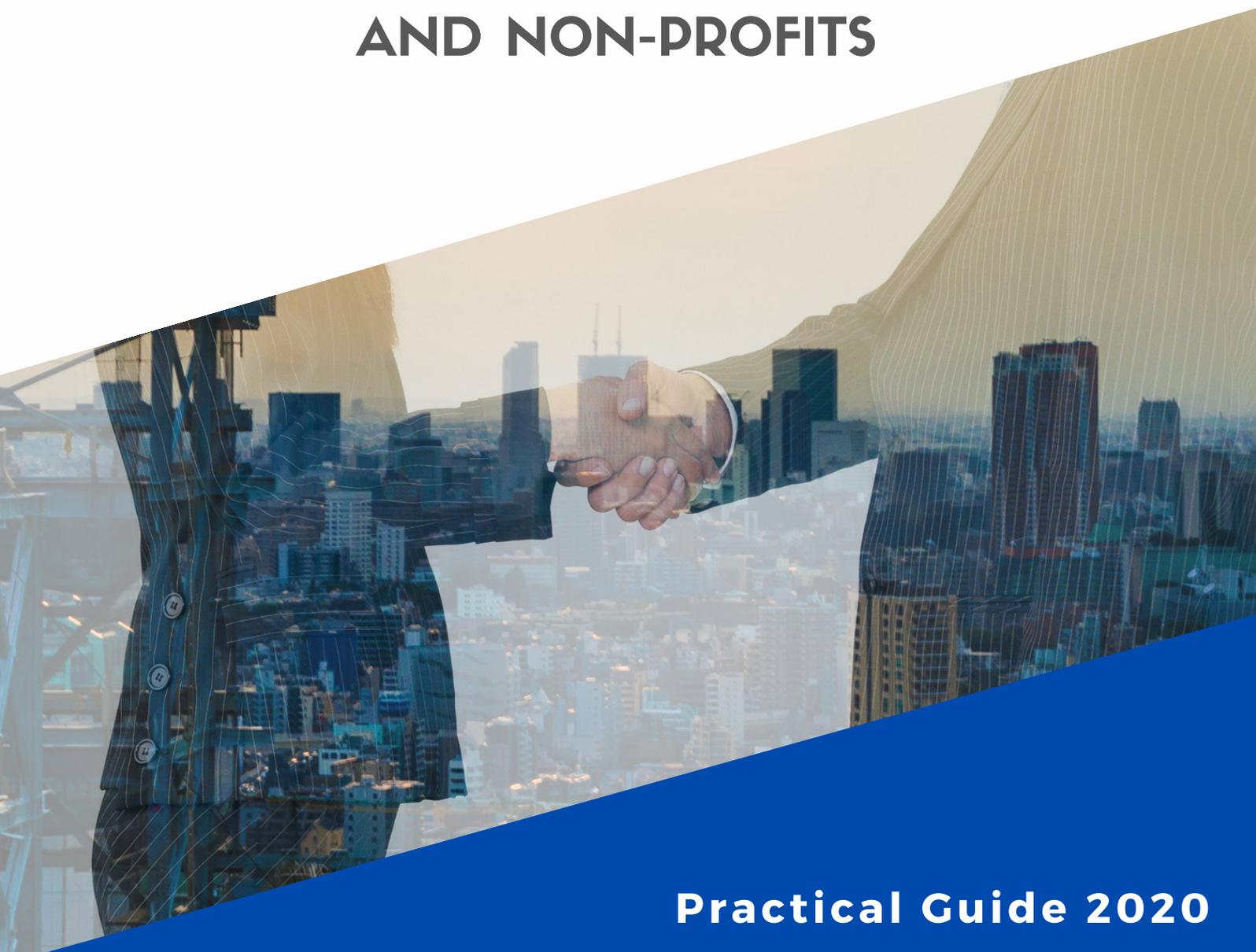


**RÉPUBLIQUE  
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Agence Française Anticorruption

# GIFTS AND HOSPITALITY POLICY IN PRIVATE AND PUBLIC SECTOR CORPORATIONS AND NON-PROFITS



**Practical Guide 2020**

**-Private Sector Support Department-**

## Introduction

By making a gift of a good or service, with no expectation of anything in return, an organisation may show its attachment to certain values and traditions. Gifts and hospitality may also be part of its promotional strategy. Such gifts and hospitality are part of the normal way of doing business.

This generosity, in itself, is neither illegal nor immoral, but, under certain circumstances, it may give rise to suspicions about hidden advantages received in return that could expose the organisation to the risk of criminal charges. When given or received with a view to creating an obligation and leading the recipient to betray the interests under their responsibility, such gifts may constitute bribery or influence peddling<sup>1</sup>.

A corporate policy setting the official rules for offering and receiving gifts and hospitality (“gifts and hospitality policy”) constitutes a key tool for managing such risks.

There is no legal requirement to adopt such a set of rules, yet it may be in the interest of every private and public sector corporation and non-profit to define and implement a policy that is appropriate to the size and resources of the organisation and the risks incurred.

This guide, which has been submitted to prior public consultation, is not legally binding in any way. It suggests guidelines to help organisations design and effectively implement a gifts and hospitality policy.

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<sup>1</sup> For the sake of simplicity, this guide generally uses the term bribery, but it also deals with influence peddling.

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# I. Gifts and Hospitality Policy as a Tool for Managing Bribery Risks

## I.1. Giving and Receiving Gifts and Hospitality as an Ordinary Part of Doing Business

Gifts and hospitality may take a variety of forms, such as a restaurant meal, a ticket to a trade fair, a sporting event, a cultural event, etc. They may be given or received by the organisation itself or one of its employees.

**Gifts and hospitality are an ordinary part of doing business and do not, in themselves, constitute bribery.**

### **Example: the practice of invitations to sporting events and cultural events**

This form of hospitality covers a range of services provided on the occasion of a sporting or cultural event. These services are part of the business model in the sports and culture sectors. They may include a ticket to attend an event, travel, meals, VIP access (such as backstage passes or meeting the performers or players), etc.

Some businesses offer such invitations to their employees, customers and prospects as part of their public relations policy.

When the hospitality is purchased under the terms of a sponsorship contract, the business may, in return, be able to associate its own image with that of the event (French Open Tennis Tournament, Formula 1 Grand Prix races, football and rugby matches, concerts, etc.).

## I.2. Bribery Risks Related to Gifts and Hospitality

Offering or accepting gifts or hospitality may, under certain circumstances, constitute bribery. **This is the case when the ultimate purpose is to influence a person to do or not do something in violation of their legal, contractual or professional obligations.**

More specifically, it would be **active bribery** to offer a gift or hospitality to:

- a public official so that they do or not do something that is part of their function, mission or mandate, or facilitated by their function, mission or mandate (“active bribery of a domestic or foreign public official”);
- a private-sector employee so that they do or not do something that is part of their job or function in violation of their legal, contractual or professional obligations (“active private-sector bribery”<sup>2</sup>).

**Accepting or soliciting** gifts and hospitality for oneself or for someone else by a public official or a private-sector employee for the same purpose constitutes **passive bribery**.

In addition, **active influence peddling** is constituted by offering such gifts and hospitality to a public official for themselves or for others in order to make them abuse their actual or purported influence to obtain awards, jobs, contracts or any other favour from an authority or public institution. A public official **accepting or soliciting** such gifts and hospitality for the same purpose is committing **passive influence peddling**.

The majority of gifts and hospitality are not bribery, since they are given and accepted out of courtesy or for promotional purposes (maintaining business relationships or seeking to expand a customer base). Yet, the fact that such practices may, under certain circumstances, be used to pay a bribe, constitutes a risk and it is up to the organisation to identify this risk and manage it when necessary.

### **I.3. Gifts and Hospitality Policy that is Consistent with Corruption Risk Mapping**

During the risk-mapping exercise<sup>3</sup>, the organisation identifies and assesses the bribery risk incurred in giving, soliciting or accepting gifts and hospitality, particularly with regard to its risk-prone businesses, locations, processes and functions.

The gifts and hospitality policy should be defined to be consistent with the risk map, making it a tool that the organisation can use to manage identified corruption risks.

The policy may be revised as necessary in line with reassessment of the risks.

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<sup>2</sup> Article 445-1 of the Criminal Code.

<sup>3</sup> See [the French Anticorruption Agency's Guidelines](#), "Risk mapping", p. 15.

## **II. Drafting Gifts and Hospitality Policies**

### **II.1. Identifying the Persons Covered by the Gifts and Hospitality Policy**

The gifts and hospitality policy should apply to everyone who works in the organisation, i.e.:

- corporate officers;
- employees and, as appropriate, public officials;
- occasional collaborators (temporary employees, interns, volunteers, etc.).

Managers and executives show their commitment to preventing bribery within the organisation by drawing up this policy and applying it to themselves.

The rules under the gifts and hospitality policy may vary, however, depending on the processes or functions performed. For example, stricter rules may apply to the purchasing staff.

The organisation may also include elements of its gifts and hospitality policy in a document about the rules applying to its suppliers and request compliance with them.

It may also require compliance with its gifts and hospitality policy in its contracts with certain third parties, such as intermediaries.

### **II.2. Setting the Rules for Offering and Accepting Gifts and Hospitality**

If the organisation has not chosen to ban gifts and hospitality outright, it should set rules to manage the bribery risk identified and assessed during the risk-mapping exercise.

The rules for gifts may be different from the rules for hospitality. The rules for each of the two categories may depend on the type of gifts or hospitality. For example, there may be special rules set for hospitality involving sporting and cultural events.

Furthermore, if an organisation has a foreign subsidiary or does business in other countries, it may set specific rules for the employees working there in order to adapt to the local context and practices.

In any event, the policy must be sufficiently specific and include relevant examples to be understood by everyone concerned.

A gifts and hospitality policy generally includes substantive and procedural elements or a combination of the two.

### **II.2.1. Substantive Elements**

A criminal court judge looks at a body of evidence to see if offering or accepting a gift or hospitality may constitute a case of bribery. The judge considers the purpose of the gift or hospitality, its value and its frequency. This evidence consists of substantive elements that organisations may consider when defining their gifts and hospitality policies.

#### **❖ Purpose of the gift or hospitality**

As stated above, so as not to be qualified as a bribe, a gift or hospitality cannot be given to make the recipient do or not do something in the performance of their functions. And the solicitation or acceptance of the gift by the recipient must not be seen as compensation for their action or inaction.

The organisation's policy may mention such a ban explicitly.

The policy may set out the circumstances that employees may consider when determining the purpose of a gift or hospitality.

There is nevertheless little risk when gifts and hospitality are provided for professional reasons related to the recipient's business and are compliant with the organisation's policies, such as its public relations policy, so that it is clear why they were offered or accepted.

On the other hand, high-risk situations include gifts and hospitality for a close relation of the person with whom a business relationship has been formed or is envisaged, or gifts and hospitality given before a decision is made about awarding or renewing a contract, particularly in the case of a call for tenders.

#### **❖ Value of the gift or hospitality**

The organisation may or may not set a threshold above which the gift or hospitality is to be refused, with the understanding that the value of a gift or hospitality is not enough on its own to constitute a case of bribery.

The threshold may be expressed as a set amount or a range. This option has the advantage of being easy for employees and third parties to understand. However, it is not always easy for the recipient to assess the exact value of a gift or hospitality.

If the organisation does not choose to set a specific value threshold, it can define the value of gifts qualitatively (symbolic, reasonable, modest, low, etc.).

Given the vagueness of such a threshold, it is important to back it up with relevant examples so that everyone subject to the rule can understand it.

### ❖ **Frequency of gifts and hospitality**

The same person may give or receive gifts or hospitality to and from the same third party several times over a given period. Given the risks of such a situation, an organisation may set rules restricting the frequency of gifts and hospitality. For example, the rule could set a cap on the number of gifts and offers of hospitality that a person may receive from the same third party over a given period. The rule may also require the recipient to obtain authorisation from their manager before accepting a second gift or offer of hospitality.

### **II.2.2. Procedural Elements**

Organisations may choose to ban gifts and hospitality or to regulate these practices.

If it does not ban accepting any gifts or hospitality outright, the organisation's policy should stipulate who may make the decision to accept or reject them and the procedure to be followed. Two main procedures may be considered.

First, the organisation may leave it up to each individual's discretion to accept or refuse a gift or an offer of hospitality. If the organisation deems it helpful, it may require recipients to report certain gifts and offers of hospitality to their manager or another designated person (e.g. compliance officer). This requirement may apply when the value of gifts and offers of hospitality exceeds a threshold amount.

Alternatively, the organisation may stipulate that gifts or hospitality of a certain value may only be accepted with the authorisation of the recipient's manager or any other designated person.

The volume of reports and authorisation requests may require the organisation to acquire a computer system to process them. Absent such a system, the organisation may provide standard forms.

Regardless of the procedures followed, the decision-maker must consider the substantive elements cited above when accepting or refusing the gift or hospitality offered. The gifts and hospitality policy may facilitate decision-making by listing questions that should be answered by the person concerned.

### **Ask yourself**

Anyone offered a gift or hospitality should ask themselves the following questions:

- What is the approximate value of the item? Is it proportionate? Would I be embarrassed if my colleagues find out that I received it? Has the same person or organisation offered other gifts or hospitality in recent months? Is the gift or hospitality of such a value or frequency that it could affect the performance of my function or harm the organisation's reputation?
- What is the context? Has the gift or hospitality been offered out of courtesy, for business purposes or to obtain an advantage? When was the offer made?
- Would I make the same decision if I did not accept the gift or hospitality?

If they have any doubts, the persons concerned may be encouraged to ask their manager or another designated person, such as the compliance officer, to determine whether the gift or hospitality should be given or accepted.

### **Examples of Best Practices**

#### **Pooling certain gifts received**

The organisation's policy may state that certain gifts may be passed on to charities or shared with fellow employees.

#### **Setting up a register of gifts and hospitality**

An organisation may set up a register to record information about gifts and hospitality received, if it deems it appropriate to do so. The organisation may set a threshold value above which gifts and hospitality need to be recorded.

Furthermore, the reporting requirements may apply only to employees in charge of certain processes or businesses deemed to be risky according to the organisation's risk map.

The information in the register must be sufficient for auditing purposes (internal audits, external audits, etc.), for example:

- name, position and organisation of the recipient;
- name, position and organisation of the giver;
- nature and value or estimated amount of the gift or hospitality;
- date accepted.

When the register contains personal data, particular care must be taken to comply with data protection legislation.

## II.3. Aligning Gifts and Hospitality Policy

### II.3.1. Aligning the Policy and the Code of Conduct

An organisation's code of conduct relies on risk mapping to define and illustrate the different types of conduct to be prohibited because they are likely to constitute bribery or influence peddling.<sup>4</sup>

The code of conduct and the gifts and hospitality policy, as conceived in this guide, have the same purpose, which is to prevent bribery. In practice, this means that the two documents are linked. On the one hand, the code of conduct may include or repeat parts of the gifts and hospitality policy. On the other hand, the code of conduct may explicitly refer to the gifts and hospitality policy (or vice versa), or even include it in an appendix.

Articles 3(3) and 17 of Act 2016-1691 of 9 December 2016 do not require the organisations concerned to adopt a gifts and hospitality policy. The absence of a gifts and hospitality policy for a business subject to Article 17 of the Act does not, in itself, constitute failure to comply with the requirements of the Act.

### II.3.2. Aligning the Policy with Other Procedures

The gifts and hospitality policy must be aligned with the organisation's other procedures. For example, it may refer to the policy on expense accounts, if the latter defines the payment and reimbursement procedures for gifts and hospitality.

In addition, the organisation must ensure that its procedures relating to patronage<sup>5</sup> and sponsorship<sup>6</sup> are aligned with its gifts and hospitality policy.

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<sup>4</sup> Definition in Article 17 (II, 1) of Act 2016-1691 of 9 December 2016.

<sup>5</sup> Patronage can be defined as "material or financial support provided with no direct or indirect advantage in return from the recipient for a non-profit or corporation to undertake activities in the general interest" (Tax Instruction BOI-BIC-RICI-20-30-10-20-20190807).

<sup>6</sup> Sponsorship can be defined as material or financial support provided to an organisation by a business enterprise that derives a direct benefit from such support. Sponsorship deals are designed to promote the image of the sponsor for business purposes. They differ from patronage deals by the nature and amount of the advantages received in return. The sponsor's payment is compensation for the services rendered by the recipient organisation.

## **III. Implementing Gifts and Hospitality Policies**

### **III.1. Disseminating the Gifts and Hospitality Policy**

Organisations are encouraged to use all means to communicate their policies to everyone concerned. This includes posting the policies to intranet sites, distributing them by email, posting them in common areas, etc.

If the policy of a French parent company applies to its foreign subsidiaries, the policy should be translated into a language understood by the employees and include, where appropriate, specific rules that apply abroad.

Organisations may also post their policies to their websites if they want third parties to know about them.

In addition, if an organisation holds promotional events for certain categories of third parties, such as supplier conventions, it may take these opportunities to present the main elements of its gifts and hospitality policy (authorised and banned gifts, etc.)

### **III.2. Training People with the Greatest Exposure to Bribery Risk**

It could be helpful to provide training on the gifts and hospitality policy to the people with the greatest exposure to corruption risks, such as employees with delegated powers or signing authority and buyers.

The training may cover the gifts and hospitality policy at the same time as other components of the anti-corruption arrangements in order to make the anti-corruption training for these people more coherent and relevant.

This training is best presented in face-to-face sessions. It should include case studies and role-playing based on corruption risk-mapping scenarios, along with lessons learned by colleagues, in order to promote the right reflexes.

For employees working abroad, if the gifts and hospitality policy is contrary to certain local practices, the training may recommend special action to avoid offending the other party.

Furthermore, people who do not undergo training may be made aware of the gifts and hospitality policy by means of short videos or tools such as e-learning.

### III.3. Monitoring Compliance with Gifts and Hospitality Policies

Organisations should establish monitoring systems that may include several levels to ensure the effectiveness of their gifts and hospitality policies:

- **Management oversight**

If the policy provides for it, a manager, or any other designated person, such as the compliance officer, monitors the requests for authorisation to accept gifts and hospitality and expense accounts.

- **Accounting audit**

The accounting department records gifts and hospitality provided and ensures that they can be easily identified in the accounts. It refuses to make payments or reimbursements that do not comply with the payment procedure defined in alignment with the gifts and hospitality policy. It implements the accounting audits defined by the organisation.

- **Internal control and audit**

If the organisation has an internal control and audit department, the latter may monitor compliance with the gifts and hospitality policy, along with the relevance and effectiveness of the policy.

For example, the department may ensure that:

- gifts given and received with a value exceeding a given threshold have been approved beforehand, if the procedure so requires ;
- there is compliance with the rules on the frequency of gifts and hospitality.

If the organisation has a gifts and hospitality register, it may facilitate internal control. The compliance officer may participate in this work. For example, the register may be used to analyse potential recurrences of gifts and hospitality from a same third party, thus enabling the organisation to take any appropriate measures.



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