



Conduct Guidelines for Relations with the Public Sector: Gifts, Presents and Hospitality.

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Foreword



We are witnessing significant changes in Brazilian legislation on combating corruption, at the same time in which there has never before been as much talk of ethics and compliance as now. With the Lei Anticorrupção (Anti-Corruption Act) or Lei da Empresa Limpa (Clean Companies Act) (Law number 12.846/13) we have seen an important advance in so far as Brazil has begun to comply with international anti-corruption treaties to which it was already a signatory, such as the OAS, OECD and the UN's Global Compact.

In this climate of transformation, the IBDEE believes that the private sector forms a relevant part of the struggle against corruption and should, therefore, be advised on appropriate relations with the government, in the sense of a greater ethical commitment by corporate and political officials, in order for us to recover economic growth and build a more transparent and ethical market.

The IBDEE positions itself as society's ally in the study of the Law with a view to promoting corporate ethics, basing its activities on scientific precision, impartiality, creativity, and respect for constitutional order. We actively participate in national and international events, in proposing legislative texts and regulations, as well as producing academic material to contribute to the enhancement of institutions and an engagement in the fight against corruption, alongside strategic partners.

An eloquent sign of IBDEE's commitment is the institute's adherence to the Global Compact, an initiative undertaken by the UN (United Nations), whose goal is to mobilize the international business community to adopt and disseminate a series of measures geared towards the preservation of fundamental and internationally accepted values, among which are those related to the incorporation of ethics into social relations.

We would like to invite you to read this primer with the hope of contributing to the development of relations between the public and the private sectors.

Enjoy the read.

Rodrigo de Pinho Bertocelli
Presidente do IBDEE



01 Introduction

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From the moment they are founded, companies tend to create links with third parties, such as suppliers, clients, competitors and even public officials. For the most part, these interactions are fundamental for carrying out business, since they help to consolidate the company's corporate image, promote products and services and enable, among other benefits, the achievement of the company's business purpose.

Let's look at the birth of a company: first, you need to form the company, registering it with the relevant bodies. Likewise you need to procure securing permits of different types. And once incorporated, a company cannot isolate itself from a coexistence with the authorities, whether due to control and inspection or various other reasons.

To begin with, there is nothing illegal or anti-ethical in these relations. However, caution is needed in the face of the tenuous line that separates what is legitimate and necessary from that which violates legal norms and codes of conduct.

Once these limits are exceeded, the consequences are generally harmful for the company's continuity, tarnishing not only its corporate image, but also the careers of its many employees.

Nowadays, there is greater access to information than in the past. Scandals involving previously solid corporations and business groups are no longer contained within geographical borders, rapidly spreading to other countries and resulting in severe setbacks for these companies and their employees.

Nevertheless, it is not uncommon to find company representatives who are unaware of the risks inherent to each type of contact with the outside world, whether competitors or public officials.

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“We deal with sales to the public market, and so we don’t concern ourselves with the risk of bribing public officials.”

There are still those who believe that the only way to break the law is to offer a bribe (money) to a public official in exchange for some benefit. This simplistic view makes the risk of breaking the law even greater.

There are numerous ways to try to gain an advantage by circumventing regulations and disregarding ethics. It is not a matter of the amount involved, since it is not only the contracts for millions that justify corruption. Smaller scale situations may represent risks as high as those involving big business.

Among the acts that could contravene legal regulations and the Code of Ethics of public or private entities, it is worth pointing out the offer of hospitality, gifts, presents and enrollment in events to national or foreign public officials, since behind this apparent generosity, there could be hidden interests.

This primer intends to convey basic guidelines regarding conduct that, under certain circumstances, could violate legal regulations and, consequently, the company’s Code of Conduct, unless the proper precautions are taken.

According to many, the eradication of corruption from the business environment is impossible and the main argument is “human nature”, that is, corrupting and being corrupted are seen as practices that are irredeemably inherent to the human being.

The IBDEE prefers to believe that while corruption is part of society, it is not an individual characteristic but rather a distortion that emerges and thrives in complicit, weakened environments. Will there always be corruption? Perhaps, and preferably on an increasingly smaller scale, but it will always be down to individual choice. At IBDEE, it is our duty to combat it.

With this objective also in mind, in 2015, the United Nations (UN) launched an ambitious agenda for the coming years, containing 17 goals called “Sustainable Development Goals”.

It is worth getting to know each of these targets and supporting this and other initiatives that seek to recapture values that appear to have been forgotten in current society or promote new values that must be incorporated so that we can achieve a genuine state of coexistence based on mutual respect.

A highlight is goal 16, entitled “Peace, justice and effective institutions”, more specifically item 16.5: Substantially reduce corruption and bribery in all their forms.

The same can be seen in the UN’s Global Compact, to which the IBDEE is a signatory, where the 10th principle advocates combating corruption in all its forms, including extortion and bribery.

As such, there is a clear willingness on the part of most people worldwide to stamp out corruption. The IBDEE aims to contribute to achieving this target through this primer.



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Gifts, presents and hospitality:

How do you know what is allowed?

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How do you know what is allowed?

Some questions help us to answer this quandary above.

Can a company pay for the travel expenses, accommodation, food and transportation of a public official?

In general, these expenses characterize a violation when associated with an undue interest, for example, when the official in question has the power to interfere in a process that is of interest to the company, such as obtaining a license or a decision in an administrative appeal.

Inform yourself if the public entity's Code of Ethics allows for any type of gift, present or costing of hospitality for national or international authorities.

In the event that the answer is "yes", check if there are value limits stipulated for each of these items.

Follow the Code of Ethics and consult with those responsible for the company's compliance or legal area. Never decide to send a gift, present or provide hospitality to an authority figure without the knowledge of his/her superiors or areas in charge.

Who is the recipient of the gift, present or hospitality? What does this person do and what is the link between him/her and my company?

Most of the time, it is easy to identify a public authority. On the other hand, other not so clear-cut situations demand a little more caution.

For example, in the United States, doctors are considered an authority, which leads pharmaceutical companies to adopt special care due to local anti-corruption legislation.

And even if the pharmaceutical company is active in Brazil, but subject to United States regulations (FCPA), Brazilian doctors are then considered authorities for legal purposes.

Therefore, before sending a gift, present or offering hospitality, you need to be certain that the person in question is not considered an authority, even if under international laws.

Does the authority in question have the power to benefit the company, in an implicit or explicit manner, as a result of the position that he/she holds or activity carried out?

Will this influence the decision of third parties albeit indirectly?

If the answer is yes, and even when the beneficiary does not go directly to the authority, but a relative, there is a legal violation.

“(...) the offering of gifts, presents and hospitality should not be tied to the intention to secure undue gains for the company, reward anyone for the business won or characterize the exchange of favors or benefits, either implicitly or explicitly”. Integrity Program – Guidelines for Private Companies. Office of the Federal Controller General – CGU. Brazil, September 2015.

For example, a representative of the Judicial Branch involved in a process that is of interest to the company or who could intercede with his/her peers in favor of the company. A politician or official from the executive branch who could somehow facilitate or bring the company gains that it would otherwise not manage or would have great difficulty in achieving.

Can a company bear the expenses for congresses, seminars, courses or similar events for a public official?

Another form of offering advantages to the public manager and which, depending on the regulation the official falls under, could be interpreted as a deviation from ethical conduct relates to the offer of congresses, seminars, courses or events of a similar nature.

On this point, it was noted that a large part of the regulations on ethics do not expressly address the offer of participation in events; however, to be on the safe side, and mindful of possible omission in the rules, you should adopt a conservative approach in qualifying as “gift” any type of advantage not expressly mentioned in the regulations, including the offer of seminars and the like.

Article 14 §1 of the Code of Ethics of ANVISA (National Sanitary Surveillance Agency) expressly provides that *“Participation in seminars, congresses and similar events is permitted as long as ANVISA’s institutional representation interests are respected and said participation is previously authorized by the Supervising Director”*.

ANVISA’s rules sought to incorporate a practice that is recurrent in the sector in the sense of promoting dissemination, through seminars and congresses, of pharmaceutical compounds and formulas to officials from the body responsible for the approval of the product. It is, in fact, legitimate and rational conduct that aims to provide the public official with relevant information to assist in the decision-making process, considering that this sector is constantly developing new technologies.

As such, we again recommend a careful consultation of the Code of Ethics for the relevant public official in order to assess the possibility of offering some type of event and, if permitted, find out about the limits and conditions that apply.

My Code of Ethics allows for gifts and presents to be given as well as expenditure on hospitality for authorities, as long as the law is respected. In the end, what law is this?

There is a large volume of legal regulation dealing with this question, which justifies a prior consultation with those responsible for the company's compliance or legal area. To illustrate this, let's look at a quick but complex case.

Employees of the Executive Branch, in the federal sphere, follow their own code of conduct, while other bodies from the same executive branch also have their own codes covering the receipt of gifts, among other questions.

When we look at the other branches, Legislative and Judiciary, we see that they each have their own codes.

Most of the states in the federation also adopt a set of rules of this nature, although they resemble the federal model. And we refer only to the executive bodies in the states, without forgetting that local legislative and judiciary bodies also possess these codes

Finally, in relation to the municipalities, there is an apparent difficulty in arriving at a precise result.



■ *What to do?*

Analyzing the majority of the codes, particularly those of the Executive Branch bodies, whether federal, or in the states, it is easy to note the similarities, which enables us to identify some reasonably acceptable parameters.

Below are some examples:

State	Scope	Regulation	Recording of Article	Maximum Amount
RS	Direct and indirect public administration of Rio Grande do Sul State	Decree n° 45.746, de 14/07/2008	Article 6 – The code of ethics for senior management public officials includes: III – refraining from the receipt of presents and other advantages from people who have or could have an interest in a government decision under his/her charge or influence, unless when coming from other public authorities or officials as a sign of courtesy, advertising or promotion, or which are deemed to be of nominal value.	Not set
SC	Treasury Workers from Santa Catarina State	SEF Regulation number 006/2012	Article 24. It is forbidden for the treasury worker to: XII – claim, request, insinuate, suggest or receive any type of financial aid, gratuity, prize, commission, donation or advantage of any other kind for him/herself or a third party;	Not set
PR	Civil servants from the Executive Branch of Paraná State.	Law n° 6174 of 16/11/1970	Article 285 – It is forbidden for the employee to: X – accept bribes, commissions, presents and advantages of any kind, because of their position or function;	Not set
SP	State Government	Decree n° 60.428, of 08/05/2014	Article 9 – Public officials may not receive presents, except in authorized cases. Sole Paragraph – Presents or gifts of no commercial value do not apply; neither do presents or gifts of nominal value distributed by way of courtesy, promotion, or on the occasion of special events or commemorative dates.	Not set. The law stipulates that the amount should not be high but does not set the limit.
MG	Civil servants from Minas Gerais State	Decree n° 43.885 of 04/10/2004	Article 6 – It is forbidden for the Public Servant: VIII – to accept presents, benefits or advantages from third parties, except for gifts of no commercial value or those being distributed by way of courtesy, advertising or normal promotion, or on the occasion of special events or commemorative dates, and which do not exceed the amount of one minimum wage;	1 (one) minimum wage
CE	Public civil officials in the area of State Government	Decree n° 31.198, of 30/04/2013	Article 7 – It is a conflict of interest and constitutes a breach of the code of ethics for a public official to invest in goods whose value or quotation could be affected by a government decision or policy for which the public authority possesses privileged information, due to their position or function. Article 8 – It is a conflict of interest and constitutes a breach of the code of ethics for a public official to accept the payment of expenses by private parties that may lead to an undue influence on government decisions.	Not set
AL	Civil Servants from Alagoas State.	Law n° 6.754 of 01/08/06	Article 5 - It is forbidden for the Public Servant to: VII - claim, request, insinuate, suggest or receive any type of financial aid, gratuity, prize, commission, donation or advantage of any other kind for him/herself, his/her relatives or any third party in the execution of his/her duties or to influence another public servant for the same purpose;	Not set
AM	Civil Servants and Military Personnel from Amazonas State.	Law n° 2869/2003 of 22/12/2003	XV - It is forbidden for the Public Servant to: g) claim, request, insinuate, suggest or receive any type of financial help, gratuity, prize, commission, donation or advantage of any other kind for him/herself, his/her relatives or any third party in the execution of his/her duties or to influence another public servant for the same purpose;	Not set
ES	Civil Servants from Espírito Santo State.	Decree n° 1595-R, of 06/12/2005	Article 11. No civil servant must directly or indirectly claim, suggest or accept presents: I – from a forbidden source; II – as a result of his/her position, job or function performed. § 1 Present is taken to mean any goods or service given for free, as well as financial aid, loans, gratuities, prizes, commission, promise of employment or favor. §2 Prizes received at official events are exempted from this regulation. §3 Presents which cannot be returned for economic or diplomatic reasons should be incorporated into the assets of the government body. §4 Employees may accept presents with individual values under R\$100.00 (one hundred Reals) up to a limit of R\$ 200.00 (two hundred Reals) in each calendar year.	R\$ 100.00 (one hundred Reals – individual amount) up to the limit of R\$ 200.00 (two hundred Reals)

Gifts are generally regarded as being of small or negligible monetary value. This can be quite a vague notion and, therefore, common sense needs to be applied. After all, what is negligible for one person may not be for someone else.

Try to find out the local regulations that apply to the individual cases.

For example, public servants in Minas Gerais are prohibited from accepting presents, benefits or advantages from third parties, except for gifts without any commercial value or which, being distributed by way of courtesy, advertising, normal promotion or on the occasion of special events or commemorative dates, do not exceed the amount of one minimum wage (article 6, of Decree number 43.885 of 04/10/2004).

Meanwhile, in Espírito Santo, the acceptable amount for a present varies from R\$ 100.00 to R\$ 200.00.

Most state legislation prevents the civil servant from receiving gifts, presents or any other advantage, with the caveat of quite subjective criteria, which requires extreme caution.

Acting without first consulting the Code of Ethics, compliance department, legal counsel and applicable legal norms could expose you and your company to unnecessary risks and vulnerability.

On the other hand, it is also important to reiterate that giving gifts to clients, suppliers, consultants and even public officials can be an acceptable form of disseminating your company's work, its trademark and also to spread its values. The challenge is doing all this without violating internal regulations,

Flatly prohibiting any gifts, presents or costing of hospitality for authorities is the path chosen by many companies, but the appropriate drafting of a Code of Ethics, the adoption of an effective compliance program that also involves the training and education of employees are some of the measures that enable people to coexist in an ethical and legitimate business environment.



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Recommendations

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1 - Consult the legal or compliance areas, or an external law firm, whenever the company intends to offer some kind of gift or advantage to a public official.

2 - When your company is interested in inviting a public official to participate in congresses, seminars, courses, or events of a similar nature, you need to verify if the authority in question is responsible, whether individually or as a member of a collegiate body, for a decision that is of interest to the company. If this is the case it is not recommended to proceed with the offer of this benefit.

3 - In the case where the offer of this benefit detailed above is deemed appropriate, it is recommended that the offer be made in writing, including the justification for inviting the public official and the relevance of the event's purpose with respect to the authority's remit.

4 - At any rate, the offer of the benefit should come with a "gift card" from the company indicating that the gift is intended in good faith with no ulterior motive and that nothing in the entity's code of ethics regulations prohibits the gesture.

5 - Finally, in so far as possible, gifts should not have any commercial value (such as: appointment books, pens, cups, table decorations, etc.) and, whenever possible, that they bear the company logo, thereby demonstrating their purpose as mere advertising.

Developed by



IBDEE - INSTITUTO BRASILEIRO DE DIREITO E ÉTICA EMPRESARIAL

Avenida Paulista, 1294, Conj. 12-A, Sala 3
São Paulo, Estado de São Paulo, CEP 01310-915.
(55 11) 2679-4234

WWW.IBDEE.ORG.BR