

Compliance Connect

September 2015

Edited by Grant Thornton India LLP



Dear readers,

Welcome to our first issue of Compliance Connect, a periodic newsletter focused on providing updates and expert opinion in the space.

As we all approach our favorite time of the year, this is a special edition where we take a look at the corporate gifting policies, the do's and don'ts as we guide you to watch out for the thin line beyond compliance.

While it is our endeavor to assist you in fulfilling your vision towards being compliant, we always look forward to better engage with you. Do let us know what you think and in case you want to hear something in particular, feel free to write to us.

Once again, we hope the information is useful and any feedbacks are most welcome!

Happy festive season!

Best,
Vidya Rajarao

Recent Trends

Cyber attacks cost global business over \$300bn a year

[Read More](#)

Hong Kong competition law set to come into force on 14 December

[Read More](#)

Sebi seeks stricter compliance with rating disclosure norms

[Read More](#)

Yates Memo May Change DOJ Cartel Enforcement

[Read more](#)

Watch out what you exchange this Diwali!!



Experts speak..

Evolution of traditional Corporate Gifting

Gone are the days when Diwali gifts revolved around humble laddoo boxes and deity calendars to adorn your desks in the approaching year. The traditional gifts and greeting cards are increasingly being substituted with lavish items, threshold of which surpass each festive season. The degree of thoughtfulness and size of corporate budgets for gifting, both, are observing an upward trend. This is certainly a perfect occasion for trouble makers to gift wrap a bribe at your doorstep or on the doorstep of a public official on behalf of your company on the pretext of sharing a not so humble Diwali gift.

Determining what is appropriate

For an MNC which is governed by the US FCPA and UK Bribery Act in addition to the POCA, the task is far more arduous. It is left upon the compliance officer or legal counsel on how to tell a **gift from a bribe**.

The answer lies in primarily, besides understanding other nuances, realising the **intent of the gift. It is more than conveying warm Diwali wishes when an unreasonably generous gift to an assistant commissioner of tax coincides with a pending tax litigation, not to overlook that your position in the engagement is crucial**. Additionally, if the value of the gift is such that it is difficult to reciprocate, like an exotic holiday package for you and your family, it might be a red flag. Likewise, if the gift surpasses your organisation's code of conduct, it would be a mistake to go ahead and accept the token.

Does the gift carry a nominal value, or is it considerable enough to influence a critical business decision?

Be safe this Diwali

While it is important to not fall a victim to the above cited scenarios and many others that may arise in this context, it is prudent to let your company's policy be your guide.

To this end, organisations must have a **comprehensive code of conduct and ethics policy** which details permissible and restricted practices and is shared with all the employees. The policy must outline company's viewpoint on gifts, what constitutes gift giving and set out good practices for employees to follow. It is also critical for policy to cite who to approach in case of receipt as well as demand in addition to it being consistent with the organisation's ethics programme.

Every organisation must have a code of ethics to serve as a detailed guidance for its employees to evaluate whether a gift is appropriate or not. Employees must understand and comply by the policies. When in doubt, while giving or receiving gifts, ALWAYS route it through the compliance department.

Doing a Compliance Check

While operating as an MNC, organisations need to comply with the local as well as international laws governing the landscape.

Government officials in particular are governed by a strict code of conduct and ethics in the course of the discharge of their duties as public servants as laid out in **The Central Civil Services (Conduct) Rules, 1964**.

As per the amended provisions of the All India Service (Conduct) Rules, 1968, gifts from other contacts may be received without government sanction as long as their value does not exceed Rs 5,000.

With a deep dive into these rules, it is evident that there is a specified value indicated for government servants with respect to their posts. In addition to it, only a practice like a casual meal (which is not considered as a gift) that is permissible or giving/receiving gifts in conformity with the prevailing religious and social practice, from near relatives or from his personal friends, wherein no official dealings are applicable.

As per the **Prevention of Corruption Act (POCA)** gifts and other benefits for obtaining a favour or an action by a public servant is prohibited. Though, hospitality (not frequent or lavish) or gift items of nominal value, not intended to influence a public servant, may be permissible by the Act. However, it is essential to bear in mind that the decision cannot be left to the discretion of the frontline company official and it must be routed through a proper channel like the compliance or legal department.

Besides complying with the local laws, **staying compliant with international anti-bribery laws** assumes paramount significance as international companies while conducting their businesses in India come under the purview of the **FCPA and the UK Bribery Act**.

While prosecutions under the FCPA are rising, the UK Bribery Act creates a strict liability corporate offence for failure to prevent bribery only subject to being able to establish that a company has "adequate procedures"; therefore staying compliant is the only way.

Quick tips & recommendations

Employees	Employers
Comply with the internal policy in the company's code of ethics and conduct	Design a comprehensive gifting policy citing the do's and don'ts for your employees
Exchange perishable gifts of nominal value, do not accept gifts for family, like an exotic holiday coupon	Share your gifting policy weeks before the festive season as a quick reminder for employees
Give gifts with a corporate logo that do not carry a retail value and promote the brand	Establish platforms to report non-compliance
Utilise avenues for reporting non-compliance, to your compliance department or ombudsman	Establish locally determined limits for the value of gifts that may be exchanged to prevent disregarding a country's cultural tradition
When in doubt, report the matter to your compliance department, do not exchange gifts in secrecy	

While the above recommendations may prove helpful in following appropriate protocols, is it not more rational to stick to sharing your favorite sweet instead this Diwali, an idea that is certainly worth contemplating.

Our Forensic Practice

Grant Thornton has a strong national forensics practice led by three partners with diverse experience in fields of disputes, investigations and corporate intelligence. We provide services covering the entire gamut of fraud investigations, forensic accounting, disputes, brand protection etc. Our diverse national team, which consists of forensic accountants, lawyers, enforcement experts, background intelligence experts, forensic technology experts and field experts, combines the best of skillset to deliver an effective solution to your problems. If you have a forensic problem, rest assured our team of national and international experts will find a solution to address it.

Events		
Compliance Conversations, Watch out what you exchange this Diwali, September 29, 2015, Gurgaon	National Conference of Advanced Conference on Economic Crimes for High Court Judges October 8-11, 2015, Bhopal	ISACA Conference, Cyber Security- Prepare or Pay November 27-28, 2015, Chennai

Contact us :

Vidya Rajarao

Email: Vidya.Rajarao@in.gt.com

M: +91 99004 59932

Kunal Gupta

Email: Kunal.Gupta@in.gt.com

M: +91 95600 52733

Anil Roy

Email: Anil.Roy@in.gt.com

M: +91 98101 84474

Please follow us on Twitter: [@GrantThorntonIN](#).

[Click here](#) to fill enquiry form

For more information on the subject, or to get in touch with our subject matter experts, please contact us at **E:** contact@in.gt.com or **M:** +91 9930001230.

About Grant Thornton in India

Grant Thornton in India is a member firm within Grant Thornton International Ltd. The firm is one of the oldest and most prestigious accountancy firms in the country. Today, it has grown to be one of the largest accountancy and advisory firms in India with over 2,000 professional staff in New Delhi, Ahmedabad, Bengaluru, Chandigarh, Chennai, Gurgaon, Hyderabad, Kochi, Kolkata, Mumbai, Noida and Pune, and affiliate arrangements in most of the major towns and cities across the country.

“Grant Thornton in India” means Grant Thornton India LLP, a member firm within Grant Thornton International Ltd, and those legal entities which are its related parties as defined by the Companies Act, 2013 read in conjunction with the applicable Accounting Standards issued by the Institute of Chartered Accountants of India.

Grant Thornton India LLP (formerly Grant Thornton India) is registered with limited liability with identity number AAA-7677 and has its registered office at L-41 Connaught Circus, New Delhi, 110001.

Grant Thornton International Ltd. and the member firms are not a worldwide partnership. Services are delivered by the member firms independently.

www.grantthornton.in

[Click here to view Grant Thornton’s privacy policy](#)

[Opt-out of email messages from Grant Thornton](#)

© 2015 Grant Thornton India LLP. All rights reserved.

[Home](#)

[Services](#)

[Grant Thornton Insights](#)

[Press](#)

[Events](#)

[Contact us](#)

Follow us:

