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HANDBOOK

GIFT RULES

The best and most trustworthy gift of human civilization is the gift of marriage. The utmost symbol of a wedding is the wedding ring. One must not taint one's finger by adorning oneself with anything else. Just as unblemished, the entrance to public service must entail the same untainted purity and professionalism.



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Democratic Socialist Republic of Sri Lanka

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GIFT RULES

“Integrity for Sri Lanka”

Commission to Investigate Allegations of Bribery or Corruption
Democratic Socialist Republic of Sri Lanka

Foreword

The Commission to Investigate Allegations of Bribery or Corruption (CIABOC) in collaboration with the Ministry of Public Administration has formulated these guidelines pursuant to the five - year National Action Plan to Combat Bribery and Corruption (NAP) in Sri Lanka, which was launched on the 18th of March 2019

Having recognized the key role played by preventive mechanism in the fight against corruption, novel concepts and procedures have been introduced to minimize the possibilities of corruption. These guidelines will supplement the existing legal and regulatory framework of the country by enhancing and empowering the public institutions of Sri Lanka. This handbook is a product of lengthy consultations conducted in a span of one year.

As such, ground level insights were gathered to more effectively understand corruption related community experiences and grievances. Numerous deliberations with both national and international experts on various related subjects have broaden the horizons of this endeavor. Inspired by all these sources, the ensuing guidelines have been created so as to suit the situations unique to Sri Lanka.

Formulation of these guidelines are only the beginning of a journey that would ultimately lead Sri Lanka in the path of success and development. With a vision premised on integrity, the path ahead is clear. The collective effort of the nation in realizing this purpose is the key to the meaningful implementation of this handbook.

Message of the Secretary to the President

In their attempt to formulate a National Action Plan for Combatting Bribery and Corruption in Sri Lanka, the Presidential Secretariat provided guidance to the Commission to Investigate Allegations of Bribery or Corruption. Whilst paying gratitude for a service rendered is a good quality, showing gratitude in the form of giving a gift to a public officer can have detrimental consequences. It would make the public officer continuously accept gifts thereby creating the idea that in order for a citizen to receive a public service, he or she must always give a gift. This will result in tainting the reputation of the public sector. As such, dictating the way in which Gift Rules apply to public officers will raise awareness among the public sector to avoid harmful circumstances. Furthermore, it will increase the trust citizens have placed upon the public sector. If the guidelines of this handbook are thoroughly followed by the public officers, Sri Lanka will come one step closer to achieving greatness. I sincerely hope that the relevant authorities will make the necessary policy decisions to implement this handbook.



Udaya R. Seneviratne
Secretary to the President
Presidential Secretariat

Message from the Secretary to the Ministry of Public Administration and Disaster Management

The extensive studies done for the formulation of a National Action Plan for Combatting Bribery and Corruption showed that within and without the public sector, bribery takes place in many forms. As such, giving and accepting a gift as a form of bribery has been a much-discussed topic. Therefore, the introduction of a code of ethics termed as Gift Rules, by the Commission to Investigate Allegations of Bribery or Corruption is commendable.

Derived from the good values of the Sri Lankan heritage, showing gratitude for the service rendered by a public officer is a common occurrence in society. Whilst such gratitude is born out of goodwill, when the rationale for such gratitude is to increase the efficiency or to hasten the services of a public institution, it would amount to a form of bribery. There may be occasions where giving a gift may indirectly turn in to giving a bribe. To differentiate the subtle differences of such giving and to protect public officers from possible offences, this handbook on Gift Rules will become an important guideline that can be followed. Premised on the provisions of the Establishment Code, a public officer dispenses his or her duties for the sake of the citizenry in which case, accepting a gift in his professional capacity will compromise the integrity of a public institution.

The common idea of all public officers is the provisions of services with respect, thus ensuring the independence and

non-partisan basis of public institutions. Furthermore, as a Ministry, we will be able to introduce these guidelines as an addition to the Establishment Code with the approval of the Cabinet of Ministers.



J.J. Rathnasiri

Secretary

Ministry of Public Administration and Disaster Management

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Introduction

A gift can take different forms, money, service or benefit. Gratification is a product of gratitude. It is something given in return for providing a satisfactory service. A public officer accepting a gratification as an inducement to expedite or abstain from carrying out his official duty would be guilty of committing an offence under the Bribery Act. In the Bribery Act, gratification is provided as an ingredient of the offence of bribery. Yet, by virtue of Section 19 (C), acceptance of a gratification alone is an offence. However, these provisions fail to clarify the stance regarding the difference between a gift and a gratification. Because of this lapse, any kind of a gift, irrespective of personal relationship, would amount to a gratification. The wording of the law suggests that the mere acceptance of any gratification would automatically render the officer guilty. As such, a gift exchanged within a personal relationship, born out of natural affection would also constitute an offence under the current system. An isolated judgment has attempted to circumvent this confusion by reading in to the section that, in order for a gift to amount to a gratification, there must be a ‘sinister motive’. However, this alone is inadequate.

Gift is given due to affection, not because of a criminal intention. A gift is given because of personal affection. But it may be a different case if the affection is colored by the official position of the recipient of the gift. In such an occasion, the gift might be tainted. It is essential to clarify this grey area. These Gift Rules set out the instances in which gifts should be allowed, and instances where gifts

should not be allowed. Hereby these guidelines are issued, prohibiting the solicitation, restricting the acceptance and setting procedures on disclosure of gifts.

A gift on the other hand, may be given merely because of the personal relationship one possesses with another, but not based on official relationship. A gift is given without the expectation of something in return. However, when such affection is colored by the person's official capacity, a simple gift should be elevated to the classification of a gratification. Gift Rules provide for the identification of behavior that are acceptable within a personal relationship and unethical or criminal behavior which may bring about the loss of impartiality within a public capacity.

While the Gift Rules set out strict regulations to draw a distinction between a gift and a gratification, it also provides for certain exceptions where some actions are allowed even though it appears at first glance to be a gift. Currently, the sole authorization to accept a gift is contained in the Establishment Code (Chapter XLVII). These guidelines widen the scope of such exceptions, explaining when they are applicable and how it is to be interpreted in different circumstances. In the event of any inconsistency between the Establishment Code and the Gift Rules 2018, the latter shall prevail. The term 'public officer' is given the same interpretation as found in the Bribery Act and in the case of amendment to the terminology in the Act, Gift Rules will be changed accordingly.

Chapter 1

PRELIMINARY

Title

1. This Rule shall be called the Gift Rules.

Commencement

2. The Gift Rule shall come into force with effect from the date announced by Minister in charge of the subject matter of public administration.

Application

3. This Gift Rule shall apply to all public officers as described in the Bribery Act and shall cover all gifts received or given irrespective of the territorial boundary. the Establishment Code and other relevant regulation and circulars must be referred in this egard.

Purpose

4. The purpose of this Gift Rule is to:
 - (a) Prohibit solicitation of a gift;
 - (b) Restrict giving and acceptance of a gift;
 - (c) Specify prohibited sources and exceptions to prohibitions on acceptance of a gift;
 - (d) Prescribe conditions on the use of exceptions to prohibitions on acceptance of a gift;

- (e) Set procedures for public disclosure by recipients of a gift;
- (f) Set procedures for disposal of a gift;
- (g) Offer such other guidance as may be necessary for the effective implementation or administration of this Rule

Chapter 2

GIFT PROHIBITION

5. A public officer or a member or his family shall not solicit or accept a gift, presents, or other benefits directly or indirectly from a prohibited source.
6. An indirect solicitation or acceptance of a gift includes any item solicited or accepted by:
 - (a) A public officer's spouse and/or dependent with the public officer's knowledge and acquiescence because of the giver's relationship to that public officer; or
 - (b) Any other person recommended or specified by or on behalf of a public officer.

Prohibited Sources

7. A prohibited source means any person:
 - (a) Who seeks official action or business from the public officer's institution;
 - (b) Who does business or seeks to do business with the public officer's institution;
 - (c) Who conducts activities regulated by the public officer's institution;
 - (d) Has financial interests that may be substantially affected by the performance or non-performance of the employee's official duties;

- (e) Who is offering a gift solely because of the employees' status, authority, or the duties associated with his or her position as a public officer
- (f) Who are member of those prohibited sources; or
- (g) Any other source which the commission may declare from to time to time.

Disclosure of prohibited sources who are friends or relatives

- 8.
 - a) *Disclosure* : An employee must disclose the name of any relative or friend who meets the above definition of "prohibited source" on his or her Gift Disclosure Form
 - b) *Waiver* : If the employee's supervisor or other designated person responsible for conflict of interest determines the conflict that can be identified under section 7 can be waived, the relative or friend will not be considered a prohibited source under these rules.

Gift Giving Prohibitions

- 9. A prohibited source shall not, directly or indirectly, give a gift to any public officer or public officer's relative.
- 10. An indirect giving of gift includes any item given by a:
 - (a) Spouse and/or dependent of the person defined as a prohibited source with the person's knowledge and acquiescence because of the giver's relationship to that person; or
 - (b) Person other than the prohibited source irrespective of whether or not the prohibited source has promised or agreed to reimburse that person or to give that person something of value in exchange for giving a gift.

Exceptions to Prohibitions

11. A public officer may however accept a gift under the following circumstances:
 - (a) Gift provided by an individual solely on the basis of a personal relationship when the circumstances make it clear that it is that personal relationship rather than the official position of the person concerned which is the motivating factor.
Personal relationship in case of the public officer shall be established by the Gift Disclosure Commice. However, in the case of the head of institution, it shall be established by the Gift Administration Committee (Committee).
 - (b) Gift from an immediate relative when the circumstances make it clear that it is the relationship rather than the position of the public officer concerned which is the motivating factor; or
 - (c) Opportunities and benefits which are also available to other individuals.

Chapter 3

GIFT BETWEEN PUBLIC OFFICERS

12. A public officer shall not directly or indirectly solicit, give to or accept a gift from another public officer.
13. An indirect giving, solicitation or acceptance of gifts includes any item given, solicited or accepted by:
 - (a) A public officer's spouse and/or dependent with the public officer's knowledge and acquiescence because of the giver's relationship to that public officer; or
 - (b) Any other person, because of the recommendation, or other specification by or on behalf of the public officer.

Exceptions

14. A public officer may give to or accept from another public officer, under the following circumstances:
 - (a) A gift of normal value (refer Rule 47 (h)) to another public officer on a special infrequent occasion of personal significance such as marriage, illness, birth of a child, or death; or
 - (b) A gift of nominal value on occasions such as retirement, resignation or transfer; or
 - (c) Personal hospitality subject to it being modest, reasonable and customary to the occasion.

Chapter 4

OTHER GIFT TRANSACTIONS

15. Subject to the provisions of section 31, 32 a public officer, on behalf of his or her institution can accept a gift from a source other than a prohibited source, the public officer is required to declare and deposit the gift received with his or her institution.
16. A public officer shall not request or encourage the giving of a gift or accept a gift from foreign government or foreign source except as permitted by the Gift Rules. However, a public officer may accept a gift given as a souvenir or mark of courtesy from a foreign government or foreign source which shall be considered as state property.
17. A public officer may accept a gift of nominal value from sources other than those specified in Rule 11, 14, 15 and 16 upon the fulfilment of the requirements set in this Rule.
18. In determining the permissibility of a gift, the head of an institution shall consider the following criteria:
 - (a) Whether a public officer of the institution solicited the gift or encouraged its solicitation;
 - (b) Whether the giver has placed any condition on the institution's acceptance of the gift;
 - (c) Whether acceptance of a gift is appropriate and advisable from the perspective of conflict of interest; and

- (d) Whether the gift is appropriate for use by the institution.
- (e) Whether the value of the gift is unnecessarily exorbitant.

Chapter 5

GIFT ADMINISTRATION

Head of Institution

19. In implementing this Rule, the head of an institution shall:
 - (a) Designate a Gift Disclosure Administrator (GDA) of the institution;
 - (b) Determine retention or disposal of the gift;
 - (c) Impose penalties for breach of this Rule;
 - (d) Constitute a ‘Gift Disclosure Committee’;
 - (e) Incorporate provisions for disciplinary actions for breach of this Rule in their respective service rules/ code of conduct;
 - (f) Educate and advocate on this Rule within the institution; and
 - (g) Perform such other activities as may be deemed necessary for effective implementation of this Rule.
20. The head of an institution may ask any public officer to declare his or her gift for the proper implementation of this Gift Rule.

Gift Disclosure Committee

21. There shall be a gift Disclosure committee in the institution. The committee may comprise a minimum of three members, who shall be nominated by the Head of Institution.

22. The committee shall:
 - (a) Meet as an when required to review and take decision on gifts that pertains to the head of the institution;
 - (b) Review the Disclosure of gifts in the institution for the financial year and report to the head of the institution; and
 - (c) Prepare report for auditing purposes.
The report shall include details on total number of gifts received, retained, disposed and observations made.
23. The Committee may ask any public officer to declare his or her gift for proper implementation of this Gift Rule.

Gift Disclosure Administrator

24. The GDA shall:
 - (a) Receive disclosures within the time and in the manner specified in this Rule;
 - (b) Enter particulars of the disclosure provided in the gift disclosure form and in the gift register;
 - (c) Report to the head of the institution;
 - (d) Dispose the deposited gift as directed by the head of the institution;
 - (e) Maintain gift records; and
 - (f) Convene committee meetings.
25. The GDC may ask any public officer to declare his or her gift for the proper implementation of this Gift Rule.

Gift Disclosure

26. A public officer shall disclose any gift received from any source in the prescribed form to the GDC within twenty-four hours after receiving the gift or upon arrival at his or her work place.

Disclosure Contents

27. Such a disclosure shall include the following for each gift reported
 - (a) Name, designation and institution of the recipient public officer;
 - (b) Brief description of the gift;
 - (c) Date of acceptance;
 - (d) Estimated fair market value;
 - (e) Current disposition or location;
 - (f) Identity, if known, of the giver such as name, designation and institution of the individual who presented the gift; and
 - (g) Remarks, if any

Access to Disclosure

28. An institution concerned may, upon the receipt of an application with reasonable justification, provide access to a particular disclosure within five working days from the day of the receipt of such application.
29. Any rejection of an application shall require the institution concerned to provide the grounds for such rejection to the applicant.

Compliance Auditing

30. Gift disclosures in the agencies shall be subjected to compliance auditing by the relevant audit authority.

Gift Disclosure Record

31. Each institution shall maintain records of gifts received for a period of five years.

Chapter 6

GIFT DISPOSAL

Disposal of gift

32. Where a public officer has reported the receipt of a gift to the GDC, the gift shall be dealt with in the following manner:
 - (a) Where the gift is a permissible gift, the gift shall be handed over to the public officer concerned;
 - (b) If it is revealed upon receipt, that the gift is from a prohibited source or impermissible, the GDC shall within 5 working days after receipt of the report, return to it to the giver
 - (c) Where the prohibited gift is from a foreign source, the gift shall be disposed of in accordance with the procedures in force for the disposal of government properties; or
 - (d) Where the gift is from a foreign government, the gift shall be used for official purposes or be disposed of in accordance with the procedures in force for the disposal of government properties.

Chapter 7

MISCELLANEOUS

Rule of Construction

33. In this Gift Rule, unless the context indicates otherwise, the singular shall include the plural.
34. Unless a term used in this Gift Rule is defined in section 37, that term shall bear the same meaning with the Act.

Amendment

35. The Commission may, as deemed necessary from time to time, amend the Gift Rule.

Definitions

36. As used in this Gift Rule:
 - (a) “**Act**” means the Bribery Act of Sri Lanka.
 - (b) “**Gratification**” has the same meaning as in the Act.
 - (c) “**Commission**” means the Commission to Investigate Allegations of Bribery or Corruption established under the Constitution and/or the Act;
 - (d) “**Dependent**” includes a public officer’s children or any other person who is entirely dependent on the income of such public officer.

- (e) **“Fair market value”** means the value established by reference to the retail cost a similar gift of like quality or by looking to what would be paid by the general public.
- (f) **“Foreign government”** means:
 - i. Any unit of foreign government authority, including any foreign national working under such unit, state, local, and municipal government;
 - ii. Any international or multilateral organization whose membership is composed of any unit of foreign government described in the sub paragraph above; or
 - iii. Any agent or representative of any such unit or such organization, while acting as such.
 - iv. non governmental organizations of a foreign country
- (g) **A gift:**
 - i. can be in the form of money, goods, or services;
 - ii includes a gratuity, favor, discount, the provision of entertainment or hospitality, the extension of a loan at less than the market rate, the forgiveness or forbearance of a debt, or any other tangible or intangible item or service having monetary value;
 - iii. can comprise the provision of transportation, local travel, lodging, and meals, whether provided in-kind or by purchase of a ticket and whether paid for in advance or reimbursed after the expense has been incurred;
- (h). **Exclusion from definition:** The following are excluded from the definition of gift provided the total received from any one source does not exceed Rs. 10,000 in a calendar year.

“Nominal value” means an amount not more than ten days’ national minimum wage.

- i. Food or beverages furnished to an individual at an event at which the individual is performing official duties related to his or her position in the public service.
- ii. Food or beverages received at, or the waiver of any registration or attendance fee for, any event at which the individual is a featured speaker, presenter, or lecturer.
- iii. Writings, recordings, documents, records, or other informational items related to the public officer’s duties or employing institution which are provided primarily for educational or instructive purposes.
- iv. An unsolicited award of appreciation or recognition in the form of a plaque, trophy, wall memento, or similar item that is given in recognition of public, civic, charitable, or professional service.
- v. "Gift to a spouse or a Family member:"
gift to a spouse or other family member is considered a gift to the public officer if
 - a. the gift was given with the knowledge and assent of the public officer or
 - b. the public officer has reason to believe the gift was given because of his or her official position.

- (i) **“Personal hospitality”** means a meal or beverages provided at the home of an individual who is not a prohibited source so long as the meal or beverage is for a nonbusiness purpose.
- (j) Relative means an individual who is related to the public officer as father, mother, son, daughter, brother, sister, uncle, aunt, great aunt, great uncle, first cousin, nephew, niece, husband, wife, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, step son, stepdaughter, stepbrother, stepsister, half-brother, half-sister, or who is the grandfather or grandmother of the spouse of the public officer, and shall be deemed to include the fiancé or fiancée of the public officer.
- (k) **“Immediate relative”** in relation to a person, includes:
 - i. Spouse of that person;
 - ii. Father, mother, brother or sister of that person;
 - iii. Father, mother, brother or sister of the spouse of that person; or
 - iv. Any lineal ascendant or descendent of that person.
 - v. Fiancé or fiancée of the public officer
 - vi. father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half- brother, half-sister,
- (l) **“Person”** includes an individual, partnership, corporation, organization, enterprise, institution, or other legal entity whether public or private and successor representative, or agent of one of them;

- (m) **“Public Resources”** include:
 - i. Public property including human resources, authority, information, time, natural resources; or
 - ii. Any money, loan, grant, or donation for the benefit of the people of Sri Lanka or section thereof, whether mobilized through domestic or external sources.
- (n) **“Public officer”** such personnel as deemed to be public officers within the meaning of the Bribery Act.

ANNEXURE I: GIFT DISCLOSURE FORM

Gift Recipient Information

Name of the gift recipient (public officer, spouse and/or dependent)	
Relationship to the public officer (if gift receiver is spouse and/or dependent)	
Designation of the recipient public officer	
Institution of the recipient public officer	
Address	
Phone number	

Gift Information

Description of the gift	
Value of the gift (based on a receipt or the estimated fair market value):	
Date of receipt of the gift	

Gift Giver's Information

Name of the gift giver	
Designation	
Institution	
Address	
Phone number	
Gift Acceptance Circumstances <i>(Please provide circumstances justifying the gift acceptances):</i>	

Retention or Disposal of Gift

1) Gift will be retained/ used by the recipient. Date of Return:	
(2) In accordance with Rule 32 (b) of the gift Rules, the gift has been returned to the giver. <i>(Please attach the receipt or acknowledgment of the deposit)</i> Date of Return:	
(3) In accordance with Rule 32 (c) of the Gift Rules, gift from foreign source is disposed of in accordance with the procedures in force for disposal of government properties.	
Name of organization	
Address	
Date of Deposit <i>(Please attach the receipt or acknowledgment of the deposit)</i>	

Affidavit

I affirm that all the information that I have written in this form is true, correct and complete to the best of my knowledge, information and belief. I understand that I am liable for penalty under the Gift Rules if I have knowingly hidden or falsely disclosed the gift.

.....
(Signature of the Recipient)

.....
(Date)

I have determined that this gift is appropriate for use/retention/return in accordance with the Gift Rules and that this gift was not solicited by the recipient.

.....
.....
(Name and Signature of the Head of Institution)

.....
(Date)

In the case of the Head of Institution

.....
(Name and Signature of the Committee Chair)

.....
(Date)

Please note that this handbook was published pursuant to the launch of the National Action Plan to Combat Bribery and Corruption in Sri Lanka, held on the 18th of March, 2019.

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HANDBOOK GIFT RULES

Humans, by nature enjoy the pleasure of receiving gifts. Most gifts are given out of gratitude and good will of heart. Gratitude might even translate to gold or silver. However, if a public officer receives such a gift, his or her reputation within the professional capacity will be tainted. There are instances where strict prohibitions are made against acceptance of gifts from those who arrive in seek of a service from a public institution. Nevertheless, there are occasions where acceptance of a gift is allowed. Therefore, formulating a comprehensive and simple rule for the management and regulation of such gifts is of vital importance. This handbook attempts to raise awareness among public officials with regards to such gift rules.

Adoption of these rules within the private sector will add value to the government's strides towards integrity.

1 INTEGRITY HANDBOOK

3 CONFLICT OF INTEREST

4 LEGISLATIVE AMENDMENTS

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இலஞ்சம் அல்லது ஊழல் பற்றிய சார்த்துதல்களை புலனாய்வு செய்வதற்கான ஆணைக்குழு

COMMISSION TO INVESTIGATE ALLEGATIONS OF BRIBERY OR CORRUPTION

CIABOC