When is a gift really a bribe?

Gift giving by business managers, and gift receiving by public officials, is not always condemned, nor is it considered unethical in many countries. Yet, there is a fine line dividing a gift from a bribe in business transactions – how can you make sure you fall on the correct side?

When is a mooncake not a mooncake? The round or square small pastries, filled and given as festive gifts, have long been a feature of Chinese life. And while traditional fillings such as lotus seed paste and duck egg yolk are being supplanted by more modern flavors such as seafood or coconut milk, the mooncake continues to be an important part of China’s gift-giving culture.

However, in answering the question initially posed, a mooncake is not a mooncake when it is a bribe.

Unfortunately, this traditional token of celebration has, in recent years, been used extensively within business as a means to develop relations with clients and contacts. Mooncakes have been stuffed with expensive fillings such as shark fin, or have been gifted in boxes alongside premium items such as whisky or watches as a way of “buying” goodwill.

For this reason, the practice of giving mooncakes by government officials has been stopped as part of a general anti-corruption campaign by the Chinese Government. This move should remind executives that, when doing business, whether at home or abroad, directly or through agents and distributors, caution must be heeded.

“You must look at things with a very bright light,” says Barry Vitou, who leads Pinsent Masons’ global corporate crime team. “It’s ‘customary’ to have mooncakes in a box, inside which is gadgetry, vouchers ... cash. Customary, in this case, is a euphemism for paying a bribe.”

Whether at home or abroad, checks, controls and balances must be reviewed. Crucially, Vitou points out, you cannot abdicate responsibility for the actions of outsourced or overseas sales staff. Neither can brokers and distributors be forgotten in the supply chain, as their behaviors could tarnish your reputation or worse – leave you open to litigation or even a conviction.

“You might see due diligence from your end, but [agents] win jobs for you, so you’re at risk if you go into business with these people without knowing exactly what they are up to.” The other fundamental to consider is gauging where the line is drawn between a benign gift and what could be construed as a bribe. On this, Vitou is quite matter of fact — use your common sense.

For example, providing gifts and expensive hospitality during the period in which contract negotiations are ongoing is unwise. Consider the value of the gift or hospitality — is it significant enough to change behavior?

“Think about the value of the gift,” he says. “Tipping a waiter is generally expected, and welcome. Tipping them the same amount as you’ve paid for the food might be considered overgenerous, but not behavior changing … but what if that amount is worth a month of their salary? Such a figure could change behavior, and be construed as having an ulterior motive.”

“Another indicator of suspicious behavior is the length of time it takes to receive a response from your sales chain during due diligence. A lack of response or obfuscation should be taken seriously.” People will spend a huge amount of time questioning their corporate hospitality but, in reality, the focus should be on the deal-makers.

All of these questions need careful attention. Ignorance is no defense, so maintaining vigilance cannot be ignored.