

Anti-corruption Directive No. 1:
Offering a bribe to ensure no breach of official duties

Legal basis

The Legislative Yuan on June 7, 2011 passed an amendment to the Anti-Corruption Act (hereafter “the Act”), making the offering and receiving of monetary gifts or other improper benefits for the purpose of obtaining better public services a crime.

Promulgated June 29 and taking effect on July 1 of that year, the amendment—Paragraph 2 of Article 11—stipulates that those who offer bribes of money or other improper benefits to public servants, either by responding to demands, or by giving the gift when or after service is rendered, are as guilty as the public servants involved, even when there is no breach of official duties.

The amendment stipulates that violators are subject to imprisonment for a period not longer than three years, and/or a fine of no more than NT\$500,000.

Case abstract

A public servant surnamed Lin works at the mortuary services department of a city government. For a number of years, Lin received monetary gifts from funeral services providers and family members of the deceased for overseeing cremations and the placement of ashes in a columbarium, as well

as ensuring that employees of the crematory performed their duties properly. These gifts in aggregate totaled NT\$30 million. Lin was indicted for corruption by prosecutors when these activities were discovered.

Case analysis

- A. There is no question that Lin should be punished in accordance with the law for accepting monetary gifts from funeral service providers and family members of the deceased to provide cremation services.
- B. As to the funeral service providers and family members of the deceased who provided monetary gifts to ensure that public servants tasked with cremation-related services show extra care in the performance of said duties, such cases can be divided into two categories depending on the time said behavior took place:
 - 1. If the act of providing a bribe occurred prior to July 1, 2011, because the amendment had not yet come into force and is not *ex post facto*, it does not constitute an offense.
 - 2. If the act occurred after July 1, 2011, after the amendment had come into force, and if it meets the following conditions, then it is against the law:
 - a. For instances where a monetary gift or other untoward benefit is offered to a civil servant who commits no breach of official duties: Using the aforementioned case as an example, if funeral services providers or family members of the deceased indicate that they wish to provide monetary gifts to ensure that funerary proceedings run smoothly and

that crematory employees take special care in performing their duties, or if the two parties have reached an agreement to or have already given the monetary gift, then this has, objectively, already become a case of bribery without having the civil servants breach their duties.

- b. Cases where a bribe was sought: If the public servant in question were to have misused the power of his/her office to coerce funeral services providers or family members of the deceased into providing a monetary gift, the act of giving the gift would not be considered a crime. As long as members of the public abide by the law, they need not fear violating related regulations.
3. Should members of the public act in violation of the Act, they need only come forward or confess if found out during an investigation, and they will have the opportunity to have their penalty reduced or waived.

A reminder from the Agency Against Corruption

Government agencies are working to provide services and increase administrative efficiency by making their operations more transparent and simple. This has been a pledge made to the people. The Agency Against Corruption would like to remind people not to offer or give monetary gifts or other untoward benefits to public servants lest they break the law. Bribery does not pay.