

Code on Gifts, Rewards and other Benefits in Business



PREFACE

The Swedish Anti-Corruption Institute (*Swedish: Institutet Mot Mutor, IMM*), founded in 1923, has since its inception worked for self-regulation as a means to combat corruption in society. Through its principals, the Institute has great reach in business as well as municipalities and counties.

In this manner, IMM has been a driving force in the struggle against bribery and corruption and in convincing the government about the importance of forceful legislation hereon.

Against this background, it was only natural for IMM to take the initiative for a reform of the Swedish anti-bribery legislation a few years ago, which led to a government sponsored report on the topic (*SOU 2010:38, Mutbrott*), a Government Bill (*2011/12:79, En reformerad mutbrottslagstiftning*) and that the Bill was approved by parliament (*Justitieutskottet 2011/12:JuU23*).

The provisions on bribery in the Penal Code are generally worded and difficult to interpret despite the implemented reform. This Code on Gifts, Rewards and other Benefits in Business (the “Code of Business Conduct” or the “Code”) shall be viewed as a supplement to relevant legislation and the code complements and clarifies relevant criminal provisions. The code covers all businesses liable to maintain bookkeeping, including publicly owned companies, and covers all types of benefits. The code is generally stricter than what would follow from the Penal Code, so anyone complying with the code should be able to count on his actions being permissible. A consequence of the code entering into force is that it renders IMM’s “Ethic Guidelines” obsolete.

For a commentary to the anti-bribery legislation and its application, reference is made to Thorsten Cars, *Mutbrott och korruptiv marknadsföring*, 3rd ed., Nordstedts juridik, Stockholm 2012.

The code, which is administered by IMM, has been adopted by its board of directors as effective as from 1 September 2012 and has been amended on this day.

Stockholm, 20 November 2014

Fredrik Wersäll
Chairman

PURPOSE

The purpose of this code is to guide companies on issues of how gifts, rewards and other benefits in business may be used. Using the code, businesses should be able to determine what constitutes a permitted benefit and what could constitute an improper benefit.

Further, the code serves the purpose of:

- guiding a company from a business ethics perspective.
- protecting a company's interests by ensuring that its employees are not influenced to act against the company's best interests by handing out or receiving improper benefits.
- promoting the interests of the marketplace in having effective and healthy competition on equal terms.
- increasing the general trust in business, because society must be able to trust that the market operates well from a business ethics perspective.

INTRODUCTION

The liberty to influence others and to freely dispose over one's assets is a vital function of society and business. The general principle of contract law providing that people are free to enter into agreements must be upheld. Although the starting point is that everyone is free to grant gifts and benefits, this freedom cannot be without limits. The use of improper benefits affects the market as well as the public's trust in the market.

To counteract such negative effects, it is important that market players uphold high ethical standards. The aim of this code is to establish ethical standards through which the market imposes upon itself higher requirements than those imposed by Swedish anti-bribery legislation. This entails that companies complying with the code should be able to trust that the company thereby does not risk breaching anti-bribery legislation.

The code provides a framework for how companies should view benefits in business. It may be supplemented by industry rules, company rules and similar rules. Such supplementing rules may be stricter than the code, but may not be more lenient than the code.

It may be suitable that relevant industry rules or company rules include practical examples to highlight circumstances that are particular or especially important to the industry or company.

The Swedish Anti-Corruption Institute has set up the Ethics Committee, which is tasked with, amongst other things, releasing public statements to promote proper business ethics within the applicable scope of the code. The code will be updated when decisions by the Ethics Committee so require.

The Code of Business Conduct was produced in conjunction with the drafting of the new legislation. The closer meaning of the criminal provisions are set out in preparatory works (reports and the Government Bill), court decisions (case law) and commentaries.

APPLICABLE CRIMINAL PROVISIONS

On 1 July 2012, new criminal provisions on bribery entered into force (Sections 5a – 5e of Chapter 10 of the Penal Code). The provisions mainly provide as follows:

1. an employee or contractor may not receive, accept a promise of or request an improper benefit for the carrying out of the employment or assignment (*passive bribery*);
2. it is not permitted to provide, promise or offer an improper benefit to an employee or contractor for the carrying out of the employment or assignment (*active bribery*);
3. it is not permitted to receive, accept a promise of or request an improper benefit in order to influence a person who exercises public authority or decides on public procurements, or to provide, promise or offer an improper benefit in order for the recipient to influence the decision maker when exercising public authority or deciding on a public procurement (*trading in influence*);
4. a businessman must act with caution when providing cash or other assets to its representatives, agents, cooperation partners and other representatives to ensure that the funds are not used for bribes (*negligent financing of bribery*).

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Definitions

In this code, the following terms have the following ascribed meanings:

“Agent”	Anyone who, in its business, has agreed with a company to autonomously work for said company.
“Attitude Influencing Benefit”	A benefit that is offered for the purpose of establishing or maintaining good customer relations, but that do not risk influencing the recipient’s decisions or the manner in which he/she carries out work tasks.
“Benefit”	A gift, reward or the like, of material or immaterial nature.
“Benefit Influencing Behavior”	A benefit which risks influencing the recipient’s decisions or the manner in which he/she carries out work tasks, e.g. gifts of high financial or personal value to the recipient.
“Company”	A company as defined in Section 2 of the code and companies registered in third countries or that must otherwise be deemed to be conducting trade. Companies that conduct trade and that are owned or financed by public entities fall within the scope of the definition.
“Contractor”	Anyone who has undertaken to carry out an assignment on behalf of another party and is not employed by the latter party.
“Exercise (of) Public Authority”	Decisions or other measures by public authorities based on law and that are binding on individuals or private associations, e.g. companies and associations. Typical examples is the activity carried out by the government, parliament, county administrative boards, courts, prosecutors, police and municipal boards, such as construction and social municipal boards. Also private companies can by law be entrusted to exercise public authority. An example is technical vehicle inspections.
“Group Company”	A company over which a Swedish parent company has the deciding influence. By deciding influence is meant that the parent company has the right to vote for more than half of the votes in the subsidiary whether alone, through or together with other group companies, or by agreement with other owners of the subsidiary.
“Market”	Umbrella term for companies conducting trade, irrespective of whether they are owned privately or publicly.

“Other Partners”	Those who, without being agents, cooperate with a company as against third parties, for example joint venture partners and individuals who sell the company’s products or services for their own account.
“Public Entities”	State and municipal authorities, boards and agencies et al., irrespective of whether they exercise public authority. Private entities exercising public authority, e.g. technical inspections of cars, do not fall within the scope of the definition of public entities.
“Public Procurement”	Measure under the public procurement acts taken by public authorities and certain other organizations financed by public funds.

A. Applicability

1. Benefits covered by the code

The code covers all kinds of gifts, rewards and other benefits.

Also benefits without financial value may be covered by the code. For example, this could relate to a membership of an exclusive club, a prestigious award or a benefit that, without having financial value, is valuable to the recipient (e.g. sentimental value).

2. Companies covered by the code

The code covers companies that are liable to maintain bookkeeping under the Swedish Bookkeeping Act or the Swedish Act on Foreign Branches etc.

A foreign company does not fall within the scope of the code solely because the company maintains a branch in Sweden, which in its turn falls within the scope of the code.

3. Foreign group companies

The contents of this code shall apply also to foreign group companies, unless particular reasons or impediments apply.

Companies should, to the extent possible, ensure that Swedish group companies abroad comply with this code, or the underlying values hereof. There might be cases where a stricter code has been adopted in the country where the group company operates, and as a result the group company falls within the scope of that code.

4. Industry rules

Companies shall comply with industry rules on benefits, provided that they do not violate the provisions of this code.

This code takes precedence over industry rules and practices. However, nothing prevents industry rules and practices to provide stricter provisions than the code. Many industries have adopted rules that are more detailed and stricter than those of the code. Companies falling under the scope of such rules shall thus apply them.

B. On benefits

I. PROVIDING BENEFITS

The initial determining factor of whether it is permitted to provide a benefit is the societal sector in which the recipient is employed or a contractor. The code divides these into three levels, which will be dealt with in separate sections below.

Section 5 contains the strictest rules, providing that any benefits to recipients in this level are improper (for exercise of public authority and public procurement).

Restrictive, but somewhat less strict, is the provision set out in section 6 (employees/contractors of public authorities that are not exercising public authority or involved in public procurement as well as employees/contractors at publicly owned and financed companies, and in certain private sectors wherein integrity is particularly sensitive).

The rule in section 7 is the least strict (privately owned companies).

Some forms of benefits are always improper under section 8 irrespective of the level in which the recipient operates.

5. Benefits to those who exercise public authority or decide on public procurements

It is forbidden to provide, promise or offer a benefit to a person who exercises public authority or decides on public procurement.

It is of vital importance to a society governed by the rule of law that the exercise of public authority and public procurements take place without improper influencing. Benefits provided to people in those positions are never permitted.

It is not necessary that the benefit is provided to the person deciding on the exercise of public authority or the public procurement for the benefit to be improper. The benefit could also be provided to someone else, e.g. the recipient's relatives. If the benefit is provided to someone who has indirect influence over the decision, by preparing or reporting on the matter, for the purpose of the recipient influencing a decision or measure in the exercise of public authority or public procurement, then the provision of the benefit may be criminal under the provisions on trading in influence.

Exercise of public authority and public procurement can also take place through private entities (e.g. limited liability companies).

Section 6 applies to employees and contractors that do not exercise public authority, e.g. individuals who work in administration and service at bodies who exercise public authority or manage public procurements.

6. Benefits to other categories for which particular restrictiveness should be observed

In addition to those who exercise public authority or decide on public procurements (governed by section 5), there are other categories to which the provision, promise or offer of benefits are not entirely forbidden, but where particular restrictiveness should be observed. Examples of these categories are employees or contractors:

- a) *at public entities, even if the employee or contractor does not participate in the exercise of public authority or in public procurements,*
- b) *within sectors where integrity is particularly sensitive and in which particular interests must be protected, such as in publicly owned or financed companies, privately owned banks, credit and insurance institutes as well as companies involved in certifying or monitoring activities.*

The interests to be protected as set out in section 5 are valid also as regards employees and contractors at public entities, who are not involved in the exercise of public authority or public procurements. The operations of public entities are run in the interest of the general public and shall be protected against corruption. The same applies, albeit with lesser stringency, to publicly owned or financed companies, e.g. private schools, even if they operate on a competitive market.

Further, a position where integrity is important is managers in private banks as well as credit and insurance institutes that manage funds entrusted by the general public. Thus, there are reasons to observe particular caution when providing, promising or offering benefits to individuals in any of the aforementioned categories.

All benefits influencing behavior, i.e. influence or risk influencing the recipient's decisions or the manner in which he/she carries out work tasks, shall be deemed improper.

Attitude influencing benefits that comply with what is deemed as generally accepted forms of interactions between the market and public entities are generally permitted. When dealing with foreign situations particular attention must be paid to what is locally deemed as generally accepted forms of interactions between the market and public entities, e.g. the value of a dinner abroad might be higher than in Sweden without making the dinner improper.

The question of whether a benefit is improper or not must be determined on a case-by-case basis, having regard to the specific circumstances of the individual case.

The circumstances that must be particularly considered when making this decisions are the following:

The value of the benefit

The risk of influencing behavior is increased by the financial or sentimental value of the benefit as well as the frequency of benefits to an employee or contractor. In general, one should be cautious when providing benefits of not inconsiderable value, frequent benefits and benefits of sentimental value.

The position of the recipient

The recipient's type of employment or assignment is important. If the employee or contractor works for a public entity exercising public authority or carrying out public procurements, he/she holds a particular position even if he/she does not him/herself take decisions on those matters (but instead belongs to, e.g., administrative or service staff). Therefore, particular caution should be exercised if benefits are provided to such employees or contractors. The same applies to benefits to employees or contractors at companies owned or financed by the state, counties or municipalities.

The nature of the benefit

The risk that a benefit is to be deemed improper increases the weaker the link is to the work tasks of the recipient. Thus, it is important whether the benefit has a clear connection to and forms a natural and useful part of the work carried out by the recipient or not. This would include, for example, discussing work related matters during a meal or a field trip during which work related agenda items form a substantial part.

The group of recipients and the forms for offering the benefit

A benefit containing access to an event should, in principle, be aimed at an undefined group of people, rather than at specifically chosen individuals. Further, it is important that the benefit is provided overtly. The requirement that the benefit should be provided overtly means that a benefit generally should be directed at the recipient's employer or principal, be approved by it, or comply with its established policies on benefits.

Red flags

Companies shall observe special caution if any of the following is at hand:

- the benefit has a not immaterial value or is granted frequently,
- the benefit has no clear connection to the recipient's work or assignment,
- the benefit does not form a natural and useful part of the recipient's work or assignment,
- the benefit is offered or provided to the recipient (or its close relations) in close connection with decisions that affect the provider,
- the employee or contractor is invited to an event together with company, e.g. a relative or friend,
- the benefit (of an event nature or the like) is directed at specifically chosen individuals,
- the benefit is not granted overtly,
- the benefit deviates from generally accepted forms of interaction between the market and public entities, or
- the benefit is initiated by the recipient.

7. Benefits to employees or contractors in private companies

Companies may provide, promise or offer a benefit to employees or contractors of privately owned companies if:

- a) *it is done overtly,*
- b) *the benefit is moderate, and*
- c) *the benefit is not otherwise of such nature that it could be deemed to influence behavior, i.e. influences or risks influencing the recipient's decision or the manner in which he/she carries out his/her work tasks.*

The provision covers those companies that are not covered by section 6. The general starting point is that a benefit is permitted if it is moderate and is provided overtly. In foreign situations what is locally deemed as accepted forms of interactions on the market must be observed, e.g. the value of a dinner abroad may be higher than in Sweden without it being improper.

Overtness

The requirement of overtness means that a benefit normally should be directed to the other company, be approved by the company or comply with that company's established policies on benefits.

Moderate

The requirement that the benefit shall be moderate means that the benefit must not appear to be influencing the recipient's behavior. Thus, the financial or sentimental value of the benefit shall be put in relation to the importance of the employee's integrity and susceptibility to influence, in which factors such as position, work tasks, age and experience can form part of the overall assessment. Accordingly, what is moderate or not moderate is dependent on the giver as well as the recipient. Further, it is dependent on the company and business sector. Local practices must also be taken into account when determining what is moderate.

If several benefits are offered to the same employee or contractor, these benefits shall be considered together. A benefit that is itself moderate is not considered moderate if it, together with other benefits directed at the same recipient increases the risk of influencing the recipient in his/her carrying out of work tasks or assignments.

Events

In general, it is less likely for an offer to be deemed improper if it is aimed at a wide group of people in the other company than if a corresponding offer is aimed at a limited group. An event that is aimed at a wider group of people, and which is useful in carrying out the recipient's work tasks and is otherwise not extravagant, is thus typically permitted.

Red flags

Companies shall observe particular caution if:

- the benefit has high value or is provided frequently,
- the employee or contractor is offered products or services that can be for private use,
- the benefit is provided concurrently with business negotiations with the recipient's employer or principal,
- the benefit (of an event nature or the like) is directed at specifically chosen individuals,
- the benefit is not known by the recipient's superior,
- the benefit is initiated by the recipient,
- the benefit deviates from generally accepted forms of interactions on the market, or
- the benefit includes also an invitation to accompanying people, e.g. a relative or friend.

8. Improper forms of benefits

Companies may not provide, promise or offer a benefit to employees or contractors of another company or public entity if the benefit relates to, for example:

- a) *monetary gifts, gift cards and the like that could be considered as cash equivalents,*
- b) *monetary loans, providing of security (guarantees), waivers of claims, repayments or interest and the like, on terms that are not market terms,*
- c) *work for the recipient or delivery of goods or services for private use and on terms that are not market terms,*
- d) *benefits conditional on the recipient performing something for the provider and that is not approved by the employer or principal,*
- e) *covert commissions to employees or contractors (i.e. other entities than the company),*
- f) *access to vehicle, boat, holiday home or the like for private use,*
- g) *wholly or partially paid entertainment or holiday trip, or*
- h) *offer that is perceived as generally unethical, e.g. strip club visits.*

The benefits enumerated in this section are benefits that are in and of themselves improper. Thus, there is no need for a specific review of whether the benefit is improper. The list above is not exhaustive. The ethical reasons that form the rationale for the prohibition on the above benefits could apply to other similar benefits. A review must be made on a case-by-case basis.

II. ACCEPTING BENEFITS

9. On accepting benefits

The provision of this code on companies' possibilities to provide benefits applies also to what companies may permit their employees and contractors to accept as benefits. The company should procure that its employees or contractors report benefits that are at risk of deviating from this code.

If the employee or contractor considers a benefit to potentially be improper, he/she shall either directly reject it or – prior to accepting it – refer the decision to the management or its representatives.

In unforeseen or suddenly arisen situations, where a direct rejection of the benefit is not possible as it could damage the relations between the companies, the benefit shall as soon as the circumstances permit be declared to the recipient's employer or principal for its knowledge and its processing.

C. Agents and other cooperation partners

10. Due diligence review of agents and cooperation partners

Companies shall have knowledge of, and when needed, perform a due diligence review and verify the integrity of agents and other cooperation partners before agreements are executed or other forms of cooperation commenced.

Agents and other cooperation partners are referred to in this code as “Partners”.

Working with partners is an efficient and in many cases necessary way of developing, increasing and maintaining a company’s operations. If these partners are not selected carefully or if they act in improper ways, this can cause material damage to a company’s goodwill and entail legal liability for the company and its representatives. Both Swedish and foreign anti-bribery legislation require that companies undertake sufficient due diligence reviews of people and companies that will represent the company. If the reviews are not sufficiently thorough considering the circumstances, criminal liability may arise, e.g. for negligent financing of bribery. In general, companies should acquire good knowledge of all people and organizations with which the company will cooperate.

Red Flags

The need to verify the integrity of a partner is particularly important if:

- the partner is an agent and shall be compensated with, from the perspective of the agent, a non-trivial commission,
- the partner will be granted far-reaching authority to act on behalf of the company,
- the partner will be granted monetary advances,
- the partner demands unusually large compensation in relation to the work to be performed,
- the partner operates in a sector or geographical area permeated by corruption,
- the partner wishes that payments shall be made to third parties, in cash or to a country other than that where the partner operates,
- the partner has been recommended by a decision maker of a public entity,
- the partner grants unusually large or frequent contributions to politicians,
- that which makes the partner qualified is his influence over decision makers of public entities, or
- the selling of the company’s products or services comprises a large portion of the partner’s business.

The thoroughness of the review should be based on a risk assessment in which factors such as the nature and size of the transaction, the level of corruption in the relevant sector and geographical area, the partner’s interactions with public entities and publicly owned companies etc.

If, at such initial review, circumstances come to light that give cause to question the partner the review shall be carried out more in depth and the scope broadened. An expanded review should include an analysis of the partner’s ownership structure, background, qualifications, technical and financial standing.

Agreements with partners should, when it is not unnecessary, provide that the partner undertakes not to provide improper benefits and that the company may terminate the agreement if the partner does provide such benefits.

11. Fees

Irrespective of the nature of the fee paid to the partner, the fee shall to the extent possible be based on objective grounds. The fee shall correspond to a reasonable and fair compensation for the tasks carried out by the partner. Payments in cash or to a bank in a country other than where the partner carries out its business or is registered may only be carried out in exceptional cases and only if justified by business reasons.

Fees can be calculated and determined in a multiplicity of ways. It is important that fees are not paid without it being possible to determine to whom and why the fee is paid. By determining to whom a fee is paid is meant, amongst other things, that the company knows who the ultimate recipient of the payment is. Payments in other ways than what is customary shall be avoided, if possible.

Payments shall typically be effected through the banking system to the country in which the partner operates or is registered. A partner may have fully justifiable reasons to use a bank in another country, for example if the banking system does not work satisfactorily in the country where the partner operates. Thus, exceptions from the main rule shall be accepted only if there are valid material business reasons. Particular caution should be observed for cash payments.

D. Preventive measures

12. Policy

Companies should adopt a policy setting out measures to prevent improper influencing. The policy should be adapted to the company's size, nature and ownership structure, the business carried out and the risk for improper influencing within the company.

The policy ought to include a statement that the company complies with this code and could further include guidelines on:

- a) analysis of the risks for bribes and corruption and improper influencing in the company,*
- b) which benefits that the company's employees may accept for their own account and how reporting to the company should be made,*
- c) which benefits that the company's representatives may provide to employees of other companies,*
- d) amount limitations for providing and accepting benefits,*
- e) education of employees on the contents of the policy and its application,*
- f) who or which department is responsible for the company's policy and to whom the company's employees should turn for advice or to provide information on suspected irregularities,*
- g) management of the risk of partners granting benefits in breach of this code, possible industry rules to which the company has committed, work rules or the policies of the company,*
- h) how foreign group companies shall conduct themselves in issues dealt with by this code,*
- i) how to implement the policy,*
- j) reviews of the policy,*
- k) follow-up of compliance with the policy, and*
- l) tools for maintaining the code as a living document within the organization.*

With respect to the content details of the policy, it is the responsibility of each company to adapt the policy to the company's specific needs. The main issue for the contents of the policy is what risks a particular company faces. Upon the adoption of a policy, therefore, particular attention shall be paid to identifying the risks faced by that company.

E. Administration of the code

13. This code is administered by the Swedish Anti-Corruption Institute (Swedish: *Institutet Mot Mutor*)

Entry into force

The code was initially approved by the board of directors of the Swedish Anti-Corruption Institute on 31 August 2012 with effect as from 1 September 2012.

This revised code enters into force on 20 November 2014.

QUESTIONS AND ORDERING DOCUMENTATION

For more information on IMMs publications and documentation, please log onto www.institutetmotmutor.se – click on tab “Publications”.

If you have general questions and issues in determining whether a benefit is permitted or could be deemed as a bribe in violation of law or as corruptive marketing, please contact *Institutet Mot Mutor*.

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