



English summary of decision 2018:1 by the IMM Ethics Committee

Stockholm 2018-12-04

The Matter

A company has requested the Ethics Committee to determine if it is in accordance with the Business Code to award an annual scholarship to a person who has distinguished him or herself in a specific field of profession. The company provides services in the specific field. Apart from the honor of receiving the scholarship, the recipient of the scholarship can choose between either receiving funding for an education or certification within the recipient's field of profession to a maximum amount of 50 000 SEK or donate 50 000 SEK to one out of two designated charity organizations.

The receiver of the scholarship can be from the public as well as from the private sector and shall be employed in Sweden. It is open for all to nominate to or apply for the scholarship on a specific web page set up by the company. The web page also provides information about the selection criteria for the scholarship as well as information about the jury members for the scholarship.

According to the selection criteria, the choice of scholar shall be based on the performance of the scholar from the current or previous years. The scholarship is awarded to someone who has performed extraordinarily, taking into account achieved results and the perception in the organization where the person is employed.

The chairman of the jury together with the CEO of the company make the initial assessment of incoming nominations and applications and then select ten candidates to be presented to the jury. The jury is comprised of three representatives from the company, the co-founder of the company (who is no longer operative in the company) and one external board member from an industry organization. The jury elects three finalists, all of which are contacted to give their approval to be included in the final selection. The winner is presented at an open ceremony arranged by the company.

The Ethics Committee has based its assessment on information provided by the company.

Considerations

The question in the matter is the following. Is it in line with the Business Code for a company to grant a scholarship for education/certification with a value of 50 000 SEK or, in the alternative, let the scholar choose between one out of two designated charity organizations to



which the company donates the same amount of money? If the Ethics Committee would reach the conclusion that the scholarship is not in line with the Code, the company has asked for guidance on how the scholarship could be adjusted to be in line with the Code.

The company constitutes a company covered by the code according to Art. A 2.

The scholarship constitutes a benefit according to Art. A 1 of the Code. Both the honor of being the recipient and the funding of an education/certification or the possibility to donate money to a charity organization constitutes benefits. If, however, the company in its own name donates money to a charity organization decided solely by the company, such donation does not constitute a benefit according to the Code.

Decisive of whether it is permitted to give a benefit is in which societal sector the recipient is employed. The Code distinguishes between three categories of persons: i) persons exercising public authority or deciding on public procurements, ii) persons employed in a sector in which particular restrictiveness should be observed, or iii) persons employed in a private company. Since the scholarship could potentially be awarded to all these categories, the Ethics Committee will try the permissibility of the scholarship for all three categories.

i. If the recipient exercises public authority or decides on public procurements.

According to Art. B 5 in the Code it is forbidden to provide a benefit to anyone who exercises public authority or decides on public procurements. It is of vital importance to a society governed by the rule of law that these functions take place without improper influencing.

In light of the restricted approach to provide benefits to recipients in this level, it is in violation of the Code to award the scholarship to anyone that falls within this category.

ii. If the recipient belongs to a category for which particular restrictiveness should be observed

According to Art. B 6 of the Code particular restrictiveness should be observed for benefits provided to employees of certain sectors. The Code lists employees or contractors at public entities, even if the employee or contractor does not participate in the exercise of public authority or in public procurements and 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 as examples of persons falling within this category. The examples in the Code not exhaustive and the Ethics Committee have in a previous decision (2015:5) decided that also journalists belong to this level.

It is not permitted to give any benefits that influence behavior to a recipient in this category. When determining the permissibility of a benefit, four circumstances should be taken into

account: *the value of the benefit, the position of the recipient, the nature of the benefit and the group of recipients and the forms for offering the benefit.* Below, each of these considerations are tried separately.

The value of the benefit

The award has a monetary value of 50 000 SEK, which is high. According to the Code, caution shall be exercised when the benefit has a non-insignificant value. However, the value must be determined in light of the type of benefit and how the value relates to it. The Ethics Committee recognizes that a scholarship differs from the typical benefit in the form of a gift or remuneration and that the granting of a scholarship serves a good societal purpose.

If the receiver chooses the alternative of a financed education or certification, the benefit consists of professional advancement. 50 000 SEK is not an unreasonably high value for such a benefit. The same reasoning does not apply if the receiver instead chooses to donate the same value to a charity organization.

The position of the receiver

According to the Code, 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. The same applies, although not as strictly, to benefits to employees or contractors at companies owned or financed by the state, counties or municipalities.

When determining the permissibility of a benefit, it is of importance whether the receiver can influence any decisions relating to the giver of the benefit. The company should make sure that the scholar cannot directly or indirectly influence any decision-making in the exercise of public authority or public procurements in relation to the company.

The nature of the benefit

The risk that the benefit is to be deemed improper increases the weaker the link is to the work assignments 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. A scholarship for professional advancement has a strong link to the work tasks carried out by the recipient and is useful for his or her work. The opposite applies to a donation of 50 000 SEK to a charity organization.

The group of recipients and the forms for offering the benefit

It is important that a 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.

For the scholarship to comply with the requirements of the Code in this regard, the company should make sure that the receiver's employer approves of the acceptance of the scholarship and that the scholarship is permitted according to the employer's policy on benefits. This can be done in conjunction with the first contact with the finalists and the company should also inform about this requirement on the web page with information about the scholarship.

As part of the requirement of providing the benefit overtly, the name and association links of the jury members should be presented in a transparent manner. This requirement must be considered fulfilled as this information is provided on the web page. It would also be appropriate to transparently announce the scholar on the web page.

iii. If the receiver is employed in a private company

According to Art. B 7 in the Code, it is allowed to provide a benefit to someone in this category, 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 the behavior of the receiver. A moderate benefit handed over overtly does normally not have an impact on the behavior.

The assessments above regarding level B 6 apply also here.

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.

For the scholarship to comply with the requirement of overtness, the company shall make sure that the receiver's employer approves the acceptance of the scholarship and that it is in accordance with the employer's policy on benefits. This can be done in conjunction with the first contact with the finalists and the company should also inform about this requirement on the web page with information about the scholarship.

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Committee recognizes that a scholarship differs from the typical benefit in the form of a gift or remuneration and that the granting of scholarship serves a good societal purpose.

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Overall Assessment

The scholarship constitutes a benefit according to the Code.

It is not in accordance with the Code to give the scholarship to someone who exercises public authority or decides on public procurements. It could preferably be communicated already on the web page for the scholarship that such persons are ineligible for the scholarship.

For other persons, the scholarship is in line with the Code insofar it covers funding for an education or certification. The receiver must also neither directly or indirectly have any influence on the decision-making in the exercise of public authority or public procurements in relation to the company. Further, all jury members as well as the winner of the scholarship must be presented in a transparent way and the company shall make sure that the scholar's employer approves the acceptance of the scholarship and that it is in accordance with the employer's policy on benefits.

The Ethics Committee has in this decision only considered whether the scholarship is permitted according to the Code and has not taken into consideration any legal aspects, for example tax related aspects.