

CODE TO PREVENT CORRUPTION IN BUSINESS



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INSTITUTET MOT MOTOR

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Foreword

Since its foundation in 1923, the Swedish Anti-Corruption Institute (*Sw: Institutet Mot Mutor, IMM*) has worked to promote self-regulation as a means of combating corruption in society. Through its principals, the Institute has a broad reach both in business and in the municipalities and regions.

IMM has been a driving force in the struggle against bribery and corruption and in stressing the importance of effective legislation in this area. IMM took the initiative in the reform of legislation on bribery that took place in 2012 (see Government Bill 2011/12:79, En reformerad mutbrottslagstiftning [Reformed Legislation on Bribery]). The first version of this Code was produced in connection with that reform.

However, the rules on bribery contained in the Criminal Code are worded in general terms and are difficult to interpret, despite the reform that has taken place. The interpretation can also change due to developments in society. This Code to prevent Corruption in Business - "The Code" - should be viewed as a supplement to the legislation that complements and clarifies the criminal provisions in the sense that it provides an overall view of an ethically justifiable way of dealing with various situations and also as serving to prevent corruption.

The revision that has now been carried out has been going on for more than two years and has involved comprehensive compilation of views both on the previous version of the Code and on proposals for new and adjusted wordings. The demand for more guidance on matters concerning preventive measures and third party due diligence has been met by substantially extending the Code in these respects. The Code has also been partially restructured as far as the section on benefits is concerned and practical examples have been introduced to facilitate understanding of the rules. The name has been changed since the Code now also includes requirements for measures against corruption and is not confined to dealing with benefits.

The Code covers the entire business sector and, not least, the relationship between the private and the public sector. The issue of corruption is a complex one and often gives rise to difficult decisions as to where the boundaries lie. The compilation of views has been extremely valuable in that regard. It has also meant that widespread support for the Code has been achieved. It is hoped that the Code, as revised, will provide extended and relevant guidance and support for the prevention and management of corruption risks.

For a commentary to the anti-bribery legislation and its application, reference is made to Thorsten Cars and Natali Engstam Phalén, *Mutbrott*, 4th edition, Norstedts juridik, Stockholm 2020.

The new wording of the Code, which is managed by IMM, applies from the date hereof.

Stockholm, 14 August 2020

Fredrik Wersäll
Chairperson

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A. About the Code

1. Why this Code?

1.1 Purpose

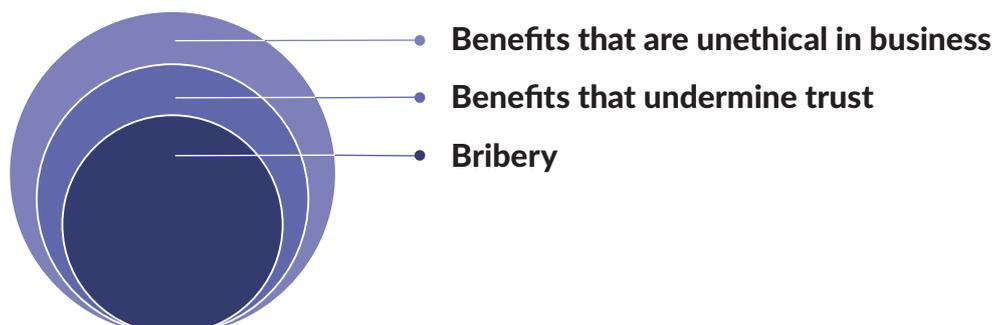
The task of the Swedish Anti-Corruption Institute (IMM) is to combat corruption and make it easier for organisations and bodies in society to deal with the risks of corruption. Since its foundation in 1923, IMM has worked to promote self-regulation as a means of combating corruption in society. This Code, along with the IMM Ethics Committee, forms the basis for self-regulation on these matters in the business sector. Effective self-regulation can lead to security for the business sector with regard to what is permitted, while at the same time helping to engender confidence in society that the business sector is maintaining high ethical standards.

The purpose of the Code is:

- to satisfy the business sector's interest in ensuring that employees and contractors do not allow themselves to be influenced to act against the company's interests by giving or receiving improper benefits,
- to increase confidence in the business sector, since society must be able to trust that the market is operating properly from the point of view of business ethics,
- to promote the market's interest in ensuring that there is effective, fair competition on equal terms.

1.2 The Code as self-regulation

The Criminal Code's provisions on bribery form the starting point for the Code. A procedure that is against the law is also incompatible with the Code. The Code also aims to ensure that benefits are not given in such a way as to damage confidence in specific organisations or bodies that are worthy of protection and that benefits are not given to other organisations and bodies in a manner that is incompatible with the ethical considerations that should apply in the business sector. The Code thus establishes an ethical standard for these situations which in some respects imposes requirements other than the rules of criminal law, see the illustration below. By adhering to the Code, companies undertake to act in a way that promotes the aims of the Code.



The Code provides guidance for companies on matters relating to preventive measures to be adopted against corruption.

The Code will help companies assess what a permissible benefit is or what could constitute an improper benefit. The rules are necessarily worded in general terms and the meaning is illustrated through the use of examples. The rules can and should be supplemented by company-specific, more detailed rules (see section C.4). The assessment in an individual case depends on the actual circumstances. Companies can ask the Ethics Committee to issue a statement on an individual case.

The Code also provides guidance to companies in matters regarding control measures that need to be adopted in relation to intermediaries in order to avoid bribery.

2. The Ethics Committee

The Ethics Committee was established by IMM in 2013. The task of the Ethics Committee includes issuing statements to promote good practice in the field covered by the Code. A decision by the Ethics Committee serves to complement and substantiate the provisions of the Code in individual cases. The Ethics Committee's decisions in anonymised form and information on the Committee and the Committee's contact details are available on the IMM website: www.institutetmotmutor.se/etiknamnden

3. Who is the Code intended for?

The Code is intended for companies engaged in business activities, regardless of whether they are privately or publicly owned, as well as for Swedish companies' branches and group companies abroad.

The Code can also be used by public authorities, municipalities and other bodies and organisations.

4. International relations

With regard to benefits, the Code is primarily written for Swedish conditions. The ethical guidelines expressed in the Code should normally also be applicable in an international context. When assessing individual cases, local customs and practices as well as accepted forms in international relations may also be of importance.



B. Applicable provisions

1. Swedish criminal provisions

The Swedish criminal provisions on bribery are contained in Chapter 10, Section 5a–e of the Criminal Code. The wording of the offence is as follows:

5 a A person who is an employee or performing a commission, and receives, accepts a promise of, or requests an undue advantage for the performance of their employment or commission is guilty of *taking of a bribe* and is sentenced to a fine or imprisonment for at most two years. The same applies to a person who is a participant in or official at a competition about which public betting is arranged, and an undue advantage for their performance of tasks in the competition is involved.

The first paragraph also applies if the act was committed before the perpetrator obtained a position referred to in that paragraph, or after that position had ended.

A person who receives, accepts a promise of, or requests a benefit for someone other than themselves is also guilty of taking of a bribe under the first and second paragraphs.

5 b A person who gives, promises or offers an undue advantage in cases referred to in Section 5a is guilty of *giving of a bribe* and is sentenced to a fine or imprisonment for at most two years.

5 d In cases other than those referred to in Section 5a or 5b, a person is guilty of *trading in influence* and is sentenced to a fine or imprisonment for at most two years if they:

1. receive, accept a promise of or request an undue advantage to influence a decision or measure taken by someone else in the exercise of public authority or public procurement; or

2. give, promise or offer someone an undue advantage so that they will influence a decision or measure taken by someone else in the exercise of public authority or public procurement.

5 e A business operator who supplies money or other assets to a person representing the business operator in a particular matter and thereby, through gross negligence, promotes giving of a bribe, gross giving of a bribe or trading in influence under Section 5d, point 2 in the matter is guilty of *negligent financing of bribery* and is sentenced to a fine or imprisonment for at most two years.

Facilitation payments are not exempt from Swedish legislation on bribery. “Facilitation payment” normally means a small payment to public officials to obtain a service or to speed up a process or a decision.

The more detailed meaning of the criminal provisions is set out in preparatory works, court rulings and legal commentaries.

In accordance with Swedish criminal law, only natural persons can commit offences. The criminal liability for bribery is therefore personal. If a criminal offence has been committed, a company can be ordered to pay a corporate fine if the company failed to adopt sufficient measures to prevent the offence or if the offence was committed by a person in an executive position or with specific responsibility for supervision or control in the company. Persons and companies can also have profits confiscated.

2. Other important considerations

Companies operating abroad must also consider legislation on bribery in the countries where the company operates.

The reach of some countries’ legislation extends outside their own country and may need to be considered by Swedish companies (e.g. US and UK).

Many industries have adopted their own rules on benefits.



C. Preventive measures

1. General starting points

Companies must adopt preventive measures against corruption. The measures must be tailored to the size and ownership structure of the company, the business activities carried out and the risks of corruption faced by the company. The preventive measures must aim to create an anti-corruption culture and must be effectively designed to avoid risks of corruption and to detect corrupt conduct.

The components that should form part of preventive work are described below. With regard to the detailed design of the individual components, each company is responsible for adapting them according to its own needs. The key issue for the design is the risks faced by the company. The measures adopted should be proportionate to the identified risks.

2. Top-level commitment

The management has a crucial role to play in order for anti-corruption work to be successful. The company's anti-corruption rules and internal and external communications in general must clearly specify the management's anti-corruption position.

The management's responsibilities also include ensuring that there are adequate resources and expertise for preventive anti-corruption work and that the Board of Directors is kept informed of the company's anti-corruption work on a regular basis.

3. Analysis of the risk of corruption

Companies must carry out regular risk analyses that specifically relate to the corruption risks faced by the company. The risk analysis should answer the following questions:

- What corruption risks does the company face and in which areas?
- What will the consequence be if a risk materialises?
- Are there any deficiencies in how identified corruption risks are managed at present?

The other preventive measures must be designed on the basis of the results of the risk analysis. The risk analysis must be reviewed annually and whenever necessary.

4. Internal anti-corruption rules

Companies must have written anti-corruption rules. These must include the company's overall anti-corruption position, as well as the specific guidelines and rules established by the company to avoid corruption (this may be done through a general policy, possibly in combination with specific guidelines for different areas such as conflicts of interest, representation and sponsorship).

The overall principles on dealing with benefits set out in this Code (Section D) can be fleshed out and adapted to the individual company through the company's own rules.

Companies must clearly state which person or department is responsible for the company's rules and from which the company's employees can obtain advice.

Companies must specifically state what happens in the event of a breach of the rules.

5. Communication and training

Companies must publicise their approach to corruption.

Companies must ensure that their employees are regularly trained on the internal anti-corruption rules and on the application of those rules. A company's intermediaries and other third parties may also need to receive such training.

6. Systems for due diligence of intermediaries and other third parties

Companies must have systems for due diligence of intermediaries as set out in Section E of this Code.

Companies must have procedures for managing corruption risks associated with third parties other than intermediaries.

7. Systems for reporting (whistleblowing)

Companies must ensure that it is possible to report suspicions of corruption without the person reporting the suspicions suffering any adverse consequences.

Companies must have procedures for following up reports.

8. Tools for checking and monitoring

Companies must have the internal control systems required to ensure implementation of the preventive measures.

The measures adopted must be regularly monitored, evaluated and updated as necessary.



D. Benefits

1. What is a benefit?

A benefit has a tangible or intangible value for the recipient. Benefits can take many different forms such as cash, gift cards, goods, services, discounts, travel, loans of money or objects, tickets to events, sponsorship, commission, employment or assignments, priority in a queue or a prestigious award.

In order for it to constitute a benefit in accordance with the Code, it must be given to an employee or contractor by someone other than the employer or the principal.

 **Example:** An employer has negotiated discounts with a company for the employer's employees. The discount does not constitute a benefit for the employees in accordance with this Code.

It must also be something that the employee or contractor would have paid the cost for him or herself.

 **Example:** A company engages a representative from another business to provide a training course in a place other than the place where the representative operates. If the company pays normal and necessary travel expenses for the person providing the training course, that does not constitute a benefit.

The benefit must be given in connection with the performance of the employee's work or the contractor's assignment (connection to the performance of duties). Benefits given between friends, for example, without any connection to employment or an assignment are therefore not included. In order for the benefit to be excluded, it must be based exclusively or substantially on a relationship other than the connection to the performance of duties.

 **Example:** A and B have been friends since childhood. B works at a company that provides services for A's employers. Because of their friendship, B invites A to dinner on his birthday. The dinner is not a benefit under this Code.

A benefit can be given directly to an employee or contractor and also to someone else or through someone else.

 **Example:** A is responsible for carrying out a procurement. A asks a potential bidder for sponsorship money for A's child's sports team. The arrangement constitutes a benefit for A.

Benefits with an insignificant value that occur in a normal work-related relationship, e.g. coffee and pastries/fruit at a work meeting do not count as benefits.

The Code uses the expressions “give” and “receive” a benefit. If giving or receiving a benefit is not permitted, the benefit may also not be offered or promised or requested or accepted. All the above situations are referred to when the expressions “give” or “receive” are used in the Code.

2. How can benefits be given and received?

2.1 Different situations

The assessment of whether it is permitted to give or receive a benefit differs depending on the occasion and the recipient.

The Code distinguishes between three types of situations that are dealt with in different sections of the Code.

2.2 Recipients in the exercise of public authority and public procurement (p. 10)

2.3 Recipients in the public sector and in publicly-financed activities in cases other than in the exercise of public authority and public procurement (p. 11)

2.4 Recipients in the private sector (p. 14)

2.2 Recipients in the exercise of public authority and public procurement

Giving or receiving a benefit in the exercise of public authority or when carrying out a public procurement is prohibited. It is irrelevant whether a benefit is given or received before or after a decision is made. The prohibition on giving or receiving benefits applies in relation to recipients who directly make decisions on or who are able to influence, including indirectly, the exercise of public authority or the carrying out of a public procurement.

 **Example:** Representatives of a public authority carry out a site visit to a company in the context of a supervisory case. A large number of documents are to be reviewed during the visit and the representatives of the public authority will be at the company over lunchtime. The company is not permitted to offer the representatives of the public authority even a simple lunch.

Where benefits are given to recipients engaged in the exercise of public authority or public procurement in situations unrelated to the exercise of public authority or public procurement, the provisions contained in section 2.3 apply instead.

 **Example:** An employee of a public authority whose duties include the exercise of public authority has been invited by an organisation to speak at a conference. The public authority employee is not involved in an ongoing case concerning the organisation. The public authority employee receives a bouquet of flowers as a thank-you for carrying out the speaker assignment. The bouquet of flowers is not included in the prohibition on benefits because there is no connection with the exercise of public authority or public procurement. The admissibility of receiving the bouquet of flowers should instead be tested in accordance with section 2.3.

Exercise of public authority means the same as in accordance with the law in general. The term includes decisions on benefits and obligations issued in accordance with a law or regulation and is binding on individuals and organisations. Examples of exercise of public authority include decisions on restaurant permits and building permits. In most cases, decisions are made by public authorities, but private companies can by law be entrusted with the exercise of public authority, e.g. in vehicle inspections.

Public procurement means actions in accordance with the Public Procurement Acts.

2.3 Recipients in the public sector and in publicly-financed activities in cases other than in the exercise of public authority and public procurement

2.3.1 Categories of recipient

Employees and contractors in the public sector and publicly-financed activities are invested with the trust of the general public. The activities are carried out in citizens' interests and must be protected against corruption. There must be no doubt that decisions are made on impartial, objective grounds. Court rulings state that the protective interest for bribery in the public sector is the integrity of the administration and the fact that the general public must be able to trust the public sector to carry out its activities with absolute honesty and impartiality. The starting point is therefore the need for caution when it comes to benefits for this category of recipient.

The public sector means the activities financed by taxes and charges that are carried out by a public body and corporations owned by the state, municipalities or regions.

Publicly-financed activities means activities in which the state, a municipality or a region provides financial compensation for the operation itself. Examples of publicly-financed activities include activities carried out privately in health care, education and social care.

Recipients engaged in the exercise of public authority or public procurement are covered by this section when section 2.2 is not applicable.

The following applies in order for a benefit given to or received by a recipient in the public sector or in publicly-financed activities to be permitted.

2.3.2 Improper benefits

A benefit is improper if it influences or risks influencing the recipient's decision or way of performing his or her duties, such as a gift of not insignificant economic or personal value to the recipient. The assessment is made on a case-by-case basis.

The following types of benefits are improper due to the fact that they are of such nature that they could be deemed to influence behaviour:

- a. monetary gifts and loans of money,
- b. testamentary dispositions,
- c. goods and services for private purposes and private discounts on goods and services,
- d. the right to use a vehicle, boat, holiday home or similar for private use,
- e. leisure or holiday travel,
- f. purchase of sexual services or visits to strip clubs and pornographic clubs, and
- g. benefits that may result in the giver gaining a hold over the recipient.

Benefits that are not prohibited under this provision must be tested against the requirements of transparency and moderation.

2.3.3 Benefits must be given transparently

Benefits must be given transparently. That means that a benefit must either be directed at the recipient's employer or principal or comply with its established policy on benefits.

Approval to receive a benefit from the recipient's employer is not sufficient in order for the giving or receipt of the benefit to be permitted; the benefit must also be moderate.

2.3.4 Benefits must be moderate

Whether a benefit is moderate is determined primarily by the financial or personal value of the benefit to the recipient. If several benefits are offered to the same employee or contractor, those benefits must be assessed in context. Thus, a benefit that may appear moderate when looked at individually may not be moderate if, together with other benefits intended for the same recipient, it increases the risk that the recipient will be influenced in his or her work or assignment.

When it comes to assessing whether a benefit is moderate, the following circumstances are to be taken into account.

– Recipient

The employment or assignment of the recipient of the benefit is significant. Some positions are subject to particularly stringent requirements when it comes to protecting integrity. This applies, for example, to persons working in or who are able to make decisions on the exercise of public authority, public procurement, purchasing and contract management. Some sectors are also subject to particularly stringent requirements when it comes to protection of integrity, such as health and social care.

The recipient's position in relation to the giver is also important. It is a red flag if a benefit is given to a recipient in close connection with decisions affecting the giver.

– The benefit

The risk of a benefit being considered improper increases according to the economic or personal value of the benefit, as well as to the number of benefits given to the same recipient. In general, therefore, care must be taken with regard to benefits of not insignificant value, benefits which occur frequently and benefits of personal value.

 **Example:** Offering a public employee lunch and coffee has been considered in a court case to constitute bribery, taking into consideration the fact that it occurred on several occasions.

– Work connection

The risk of a benefit being considered improper increases if the benefit is of a type that is unrelated to the recipient's duties. Whether the benefit has a clear link to and forms a natural and useful part of the recipient's work is therefore relevant.

 **Example 1:** Offering a meal during a meeting where work-related matters are discussed or arranging a study visit in which work-related programme items form an essential element is generally permitted.

 **Example 2:** Mingling or other gatherings to which a wide circle of people are invited which are organised with the aim of generating contacts, providing information on business activities and similar and which focus on the work connection are in general permitted, even if food and drink are offered.

In general inviting an employee or a contractor to an event with an accompanying person, e.g. a relative or friend, is not permitted. However, in some cases the nature of an arrangement may justify a different assessment.

2.4 Recipients in the private sector

2.4.1 The protective interest

In the private sector, the main protective interests are the facts that employees and contractors should be loyal to their employers and principals and that companies must compete on equal terms without unethical use of benefits. There is also a general interest in promoting sound business practices and, by extension, public confidence in the private sector.

In addition, some private sector actors are invested with specific public trust that needs to be protected. This applies, for example, to banks, financial and insurance companies, arbitrators, publicly appointed legal counsels and representatives, journalists, auditors and certification and control companies.

The following applies in order for a benefit given to or received by a recipient in the private sector to be permitted.

2.4.2 Improper benefits

A benefit is improper if it influences or risks influencing the recipient's decision or way of performing his or her duties, such as a gift of high economic or personal value to the recipient. The assessment is made on a case-by-case basis.

The following types of benefits are improper due to the fact that they are of such nature that they could be deemed to influence behaviour:

- a. monetary gifts and loans of money,
- b. goods and services for private purposes and private discounts on goods and services,
- c. the right to use a vehicle, boat, holiday home or similar for private use,
- d. leisure or holiday travel,
- e. purchase of sexual services or visits to strip clubs and pornographic clubs, and
- f. benefits that may result in the giver gaining a hold over the recipient.

Benefits that are not prohibited under this provision must be tested against the requirements of transparency and moderation.

2.4.3 Benefits must be given transparently

Benefits must be given transparently. That means that a benefit must either be directed at the recipient's employer or principal or comply with its established policy on benefits.

2.4.4 Benefits must be moderate

Whether a benefit is moderate is determined primarily by the financial or personal value of the benefit to the recipient. If several benefits are offered to the same employee or contractor, those benefits must be assessed in context. When it comes to assessing whether a benefit is moderate, the following circumstances are to be taken into account.

– Recipient

The employment or assignment of the recipient of the benefit is significant. In matters concerning recipients at private sector actors that are invested with the specific trust of the public as described above, benefits must be given or received with greater caution than in the private sector in general. Such recipients are particularly sensitive in terms of integrity.

 **Example:** A particular role is played by recipients who have a decisive influence on decisions in matters such as granting loans and settling insurance claims. No benefits must be given to these recipients in connection with decisions of that kind.

Greater caution must also be exercised with regard to benefits to recipients who have a decisive influence on decisions for the giver or the giver's company. e.g. in matters relating to purchases.

– The benefit

The risk of a benefit being considered improper increases according to the economic or personal value of the benefit, as well as to the number of benefits given to the same recipient. In general, therefore, care must be taken with regard to benefits of not higher value, benefits that occur frequently and benefits with personal value, e.g. goods or services that can be used privately.

 **Example:** Offering a purchasing manager at a company to choose a gift of a private nature with a value of a few hundred Swedish kronor if the purchasing manager orders products from the company making the offer has been considered as bribery in case law.

– Occasion

Special caution must be observed in the case of ongoing business negotiations with the recipient's employer or principal or during an on-going assignment. A benefit that would otherwise be permissible may be considered improper on such an occasion.

 **Example:** Inviting the other party to a Christmas dinner or other similar event during the negotiation of an agreement is not permitted.

– Relevance in business terms

Benefits must be relevant in business terms. Events must have a connection with the business of the organisation offering the benefit and may not be extravagant. An invitation that includes an accompanying person, e.g. a relative or friend, jeopardises the business connection.

 **Example:** It is in general permissible to combine an event that otherwise relates to business with an entertainment-oriented aspect, provided that the business aspect is the focus.

3. Reporting benefits that risk breaching the Code

If the employee or contractor considers a benefit to potentially be improper, he or she must either reject it directly or, prior to accepting it, refer the decision to his or her line manager or other person designated by the company.

In situations that are unforeseen or that arise suddenly in which an immediate rejection of the benefit is out of the question since it could damage the employee's or contractor's relationship with the person offering the benefit or pose a security risk to the employee or contractor, the recipient must report the benefit to the employer or principal as soon as circumstances allow.



E. Intermediaries

1. What is it about?

If intermediaries are not carefully selected or if they act in a way that is not permitted, it may cause material damage to the company's goodwill and give rise to legal liability for the company and its representatives. Both Swedish and foreign bribery legislation requires companies to carry out adequate due diligence on persons and organisations that are to represent the company. If the due diligence is inadequate, liability for the offence negligent financing of bribery may arise in accordance with Swedish law.

In general, the company should acquire thorough knowledge of all persons and organisations with which the company is to collaborate.

In short, it is a question of acquiring knowledge of intermediaries so as to be able to answer the following questions with sufficient certainty:

- Who is the intermediary and what underlying interests does the intermediary represent?
- Can I trust the intermediary not to act corruptly?

2. Who are intermediaries?

For the purposes of this Code, “intermediary” means a person appointed by a company to represent it in a particular matter and to whom it supplies money or other assets. The decisive aspect is not the title given to the intermediary, but the intermediary's actual function. Intermediaries can consist, for example, of agents, consultants, representatives, subsidiaries, brokers or business intermediaries.

The guidelines in this Code can also be used as for the performance of due diligence to avoid corruption risks associated with other third parties that a company works with or uses, such as suppliers.

3. System for evaluation

3.1 Design of the system

Companies must have a system for evaluating intermediaries. The system must be tailored to the company's size and ownership structure, the business operations carried out and the risk of corruption.

There must be a person specifically appointed within the company who is responsible for ensuring that such a system exists and that risk assessments, checks and evaluations are carried out in accordance with this Code. Companies must ensure that the person appointed has access to sufficient knowledge for this responsibility.

The system must ensure that the company

1. carries out risk assessments (see 3.2),
2. carries out checks (see 3.3), and
3. evaluates intermediaries (see 3.4).

The system must ensure that a company carries out the required checks following a risk assessment before engaging a new intermediary. The system a company must have for evaluating intermediaries must include procedures to ensure that recurring re-evaluation of existing intermediaries takes place according to the level of risk and if any material change takes place with regard to the intermediary in, for example, its ownership structure or if any suspicions of irregularities linked to the intermediary arise.



Example: A company has been working with an intermediary in another country for a long time. According to media reports, authorities in the country have launched investigations into suspected corruption in the industry in which the intermediary operates. The company should carry out a re-evaluation of the intermediary.

A company must have an escalation procedure for how intermediaries are checked and evaluated, depending on the risk posed by the intermediary. How this responsibility is allocated is determined by the company, but the following guidelines can be used.

Low risk: Checking and evaluation takes place in the operational activities.

Medium risk: Checking and evaluation takes place with the support, as appropriate, of a compliance officer or a person in the organisation outside the operational activities who has specific responsibility for the system for intermediaries. It is important that such a person should have no personal interest linked to the engagement of the intermediary and should not be guided by operational objectives such as sales targets.

High risk: In the case of high risk, someone at a higher level than in medium risk cases should be involved. In situations of particularly high risk such as large contract amounts in highly corrupt markets, the evaluation may need to be carried out at the level of the board of directors.

The actions and checks must be carried out independently and must be documented. “Independently” means that a company must carry out its own assessment of any data obtained from an external party.

For many companies, there is an obligation to carry out checks in accordance with legislation on money laundering and combating terrorist financing. Such checks may also be used for this purpose.

3.2 Risk assessment

3.2.1 Different risks

The risk posed by the intermediary from the point of view of corruption determines the extent of the check. For low-risk intermediaries, it is often the case that no checks or limited checks are required, whereas high-risk intermediaries may need to be thoroughly checked. The risk is determined on the basis of several factors. The most important factors to be taken into account are listed below. Added to these are the company’s knowledge and experience of a particular intermediary.

3.2.2 Country risks

Whether the intermediary operates or is registered in a country with a higher country risk is a risk factor.

The following are risk factors:

- The intermediary operates or is registered in a country exposed to corruption. If an intermediary is registered or operating in a country which has a score under 50 according to Transparency International’s Corruption Perceptions Index, an in-depth check must always be carried out before the intermediary is engaged.
- The local jurisdiction imposes requirements on aspects such as engaging local agents for the performance of business transactions.

The fact that the intermediary operates or is registered in a country that has strict banking confidentiality or tax accounting systems that are difficult to penetrate can also be a risk factor.

- 🔑 **Tools:** Guidance for assessing country risks can be obtained from OECD reports on the implementation by different countries of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, the Tax Justice Network's Financial Secrecy Index and lists of countries subject to financial or international sanctions. The Swedish Foreign Ministry's country reports on human rights, democracy and the principles of the rule of law, as well as contact with the local Swedish embassy, can also be used to assess country risks.

3.2.3 Industry risks

The fact that the intermediary operates in an industry that is particularly exposed to risk is a risk factor. Industries that are characterised by a large proportion of public procurement, requirements for permits to carry out activities or many contacts with public authorities in order to carry out business activities are generally more exposed to risk. The industries that are particularly exposed to risk may vary. The fact, for example, that there have been recent media reports of corruption scandals in a particular industry indicates that the risk of corruption in that industry is heightened.

- 🔑 **Tools:** Tools that can be used to assess industry risks include IMM's annual reports on legal cases and bank of legal cases, media reports and Transparency International's Bribes Payer Index Report.

3.2.4 Selection of intermediary

The way in which the intermediary has been selected affects the risk assessment. The fact that the intermediary has been recommended by a customer or by a decision-maker at a public body or that the aspect that qualifies the intermediary is his or her influence on or close relationship with a decision-maker in a public body is a risk factor.

3.2.5 Contract amount, type of contract and compensation structure

Contract amount, type of contract and compensation structure can all be risk factors. This applies both to contracts with the intermediary and contracts to be entered into with another party through the agency of the intermediary. Below are examples of circumstances to which particular attention needs to be paid.

- Contracts of great importance, such as long-term contracts and/or contracts with a high contract amount.
- The intermediary operates or is registered in a country other than the country in which the assignment is to be carried out.
- The intermediary will be given far-reaching powers to act on behalf of the company.

- The intermediary will assist with public procurements or in contacts with public officials.
- The intermediary's remuneration is performance-based.
- The intermediary will receive money in advance.
- The intermediary wishes for payment to be made to another party, in cash or to a country other than the country in which the party operates.
- The intermediary requires unusually high remuneration in relation to the work to be carried out.
- Sales of the company's products/services constitute, or will constitute, a large part of the intermediary's business.

3.2.6 Links with public officials or state-owned corporations

The fact that the intermediary is or is owned, in whole or in part, by a public official or a state-owned corporation or has close links with a public official, is a risk factor.

3.2.7 Categorisation of risk

In view of the different factors for assessing risk, intermediaries can be categorised according to the level of risk: low, medium or high. For example, a company can use scoring for the various risk factors in order to create a risk categorisation system for intermediaries. The level of risk then determines the level of checking required with regard to the intermediary.

The risk assessment must always be based on a weighing of risk factors emerging in the individual case and the company's own knowledge of the intermediary.

 **Example 1:** A company is to enter into a cooperation agreement with an intermediary in Sweden (low risk country). The value of the cooperation agreement is low (low risk) and the intermediary does not operate in an industry that is particularly exposed to risk (low risk). No in-depth check need be carried out, or the check may be limited.

 **Example 2:** A company is to engage an agent and the agreement stipulates a high commission for the agent (high risk) in a low-corruption country according to the Transparency International index (low risk). The value of the agreement is not particularly high and the agent's other business interests are extensive (low risk). In view of the fact that the design of the agency agreement entails a high risk, an in-depth check needs to be carried out to verify that there are no red flags indicating corruption risks in relation to the agent. Since the other risk factors indicate low risk, the intermediary may be classified as medium risk, which affects the scope of the in-depth check that needs to be carried out.

3.3 Checks

3.3.1 Purpose of the check

The check must provide answers to the questions of whether there is a real need to use an intermediary and whether it is justifiable to use the intended intermediary. The check must also serve to clarify why a particular intermediary has been chosen. The check must be proportionate to the risk category (low-medium-high) in which the intermediary has been placed according to the risk assessment.

The check must primarily focus on the intermediary, but there may be reason to also check natural persons linked to it in cases where the intermediary is a legal entity. In this respect, the possibility of processing such information may be limited by data protection legislation. At present, there is no express support in the EU General Data Protection Regulation and the supplementary legislation introduced by Sweden for processing data on the criminal background of natural persons in the context of an evaluation of corruption risks.

The check must relate to the following elements in order to detect any red flags associated with the intermediary. In addition to the red flags below, there may be other circumstances that need to be taken into account in an evaluation of the intermediary.



Tools: A number of different sources may be used for the performance of the check:

- Information directly from the intermediary through questionnaires and, if necessary, interviews with selected persons at the intermediary and site visits to the intermediary.
- Information through searches in public registers and online.
- Information from references, such as other companies that have used the intermediary or that have experience in the relevant geographical area.
- "On site" expertise with the ability to conduct independent investigations.
- Information from the company's own organisation on the reasons for selecting an intermediary and knowledge of the intermediary.

3.3.2 Identity

It is of fundamental importance to know with whom the collaboration is intended to take place and the identity of the intermediary needs to be ascertained. The check includes finding out the company name, corporate identity number or equivalent, when the intermediary was founded, the intermediary's management and board of directors, number of employees and where the intermediary is registered.

The following are red flags with regard to identity:

- The intermediary is registered in a country other than the country in which it operates.
- The contact person at the intermediary is hard to identify.
- The intermediary has too few employees for the assignment that it is to carry out.
- The intermediary has been formed recently.
- The intermediary has complex ownership structures that change from time to time.

3.3.3 Beneficial owner

Some organisations must appoint a beneficial owner. "Beneficial owner" means the natural person or persons who ultimately own or control an organisation. The beneficial owner may also consist of the natural person or persons who benefit from someone else acting on their behalf. Without information about the beneficial owner, it is not possible to ascertain the identity of the person or persons with whom the company is actually collaborating. The check on the beneficial owner also aims to investigate possible links to public officials or politically exposed persons.

The following are possible red flags regarding the beneficial owner:

- The beneficial owner cannot be established in cases where a beneficial owner must be appointed.
- It is difficult to find verifiable information about the beneficial owner.
- The intermediary is unwilling to disclose information about the beneficial owner.
- Public officials or politically exposed persons are beneficial owners.



Tools: The beneficial owner can be checked in various ways. All EU countries must have a register of beneficial owners. In Sweden, the Swedish Companies Registration Office registers beneficial owners. The beneficial owner may be checked by requesting information directly from the intermediary, asking it to supply registration documents for the companies.

3.3.4 Financial background and form of remuneration

The form of remuneration and the intermediary's financial dependence on the collaboration may constitute risk factors and the intermediary's financial background is therefore relevant.

The most recent adopted and audited annual accounts must be checked for the following red flags:

- There appear to be no actual operations carried out at the intermediary.
- There are records of deviations in the annual accounts or other aspects that appear suspicious in relation to the activities carried out by the intermediary.
- The planned engagement of the intermediary is important for the intermediary's finances.

The check must also relate to how the intermediary's remuneration is structured. The following are red flags:

- The requested remuneration deviates from market standards or from what the company normally pays.
- Payment is requested in cash or as a payment in advance.
- The intermediary asks for payment to be made in a country other than the country in which the assignment is to be carried out.

See also section 3.2.5.

3.3.5 Attitude towards corruption

The intermediary's attitude towards corruption is important. In this respect, the check also includes finding out whether the intermediary has an anti-corruption programme and how it has been implemented.

The following are red flags:

- The intermediary has a reluctant attitude towards the check and/or fails to supply requested information.
- The intermediary is not willing to accept the guarantee undertakings not to act corruptly or to agree to comply with any code of conduct the company may have for intermediaries.

- The intermediary lacks an anti-corruption programme or has implemented its anti-corruption programme inadequately.
- The intermediary lacks clear rules on the use of benefits and/or there is a low level of knowledge at the intermediary concerning corruption risks and how benefits may be used.

If the intermediary will, in turn, use subcontractors in the collaboration, it is important to ensure that the intermediary evaluates them as far as corruption is concerned and to examine the contractual conditions established for such subcontractors. Deficiencies in this respect constitute a red flag.

3.3.6 Integrity and reputation

Part of the check is to gain knowledge of whether there are any red flags linked to the intermediary's past actions, integrity and reputation.

The following are red flags:

- The intermediary is involved in legal proceedings relating to bribery or other financial crime.
- There are indications that the intermediary has been involved in corrupt actions.
- There is negative information in general about the intermediary in, for example, the media.

 **Tools:** Checks can be carried out through direct questions to the intermediary, through online searches and through the use of various databases and lists. In this regard, checks can be carried out against the World Bank list of excluded companies, the European Bank Listing of Ineligible Firms, the European External Action Service's consolidated list of companies subject to EU sanctions and local lists of sanctions, etc.

3.3.7 Expertise

It is a red flag if the intermediary lacks relevant industry experience or expertise to carry out the assignment in question. It may indicate that the intermediary is being considered due to factors other than business factors. Lack of expertise can also give rise to suspicions of corruption. The check should therefore ensure that the intermediary has the relevant expertise for the assignment and references should be requested.

3.4 Evaluation

If the check has not resulted in any red flags or other circumstances being identified, the process of entering into an agreement with the intermediary may continue.

If red flags are identified, an evaluation needs to be carried out on how these should be dealt with and whether they mean that the process of entering into an agreement with the intermediary must be interrupted or whether further measures need to be adopted to reduce risks linked to the red flags identified.



Example 1: A company's evaluation of an intermediary raises a red flag in the area of "attitude toward corruption", since the intermediary has no policy on bribery. In order to deal with this red flag, the company requires the intermediary to comply with the company's anti-corruption policy for intermediaries. The company includes in the agreement a guarantee undertaking for the intermediary that it will not act corruptly and the company provides an anti-corruption training course for the key personnel at the intermediary who are to carry out the assignment. The red flag could be dealt with in this way.



Example 2: Despite extensive checks, a company has been unable to obtain complete clarity as to the identity of the beneficial owner of a potential intermediary. If, despite this, the company chooses to go ahead with the collaboration, there is a higher risk of criminal liability if the intermediary subsequently acts corruptly.

A company must use an intermediary only if the company is reasonably certain that the intermediary will neither give nor receive bribes.



F. Management of the Code

This Code is managed by the Swedish Anti-Corruption Institute.

The Code was first established by the Board of Directors of the Swedish Anti-Corruption Institute on 31 August 2012, with effect from 1 September 2012. A revised Code was published on 9 December 2014. The current revised Code was adopted by the Board of Directors on 10 June 2020 and is valid from 14 August 2020.

Questions and ordering documentation

For more information on IMM's publications and documentation,
please visit our website www.institutetmotmutor.se.

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