



Code on Gifts, Rewards and
other Benefits in
Business
September 1st 2012

*English version dated December 1st 2012.
The Swedish text prevails over other language versions.*



Preface

The Swedish Anti-Corruption Institute (Sw.: *Institutet Mot Mutor, IMM*), founded in 1923, has since its inception worked for self-regulation as a means to combat corruption in society. In this manner, private business has been a driving force in the struggle against bribery and corruption and in convincing the government about the importance of forceful legislation on this topic.

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

Within the framework of the report, the Code on Gifts, Rewards and other Benefits (the “Code of Business Conduct”) was drafted. The aforementioned Government Bill specifically mentions the importance codes of conduct may have in determining what can be perceived as improper and, as a consequence, criminal behavior. The example put forward in the Government Bill of such a code of conduct (p. 21) is the code presented below, and should be viewed as a supplement to relevant legislation.

The provisions of the Swedish Penal Code on bribery are general and difficult to interpret, despite the undertaken review thereof; the Code complement and clarifies the legislation. The Code covers all businesses obliged to maintain bookkeeping, including publicly owned Companies, and covers all types of Benefits. The Code is generally stricter than the Swedish Penal Code, anyone following the Code should be able to count on his or hers actions being legal. A consequence of the Code entering into force is that the IMM’s “Ethic Guidelines” is no longer valid.

For more detailed comments to the anti-bribery legislation and its applicability, 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 is effective as from September 1st 2012.

Stockholm, August 2012

Claes Sandgren
Chairman



Code on Gifts, Rewards and other Benefits in Business (the Code of Business Conduct)

PURPOSE

The purpose of this Code is to provide guidelines on how gifts, rewards and other Benefits in business may be used to promote the operations of the business. Using the Code, businesses should be able to determine what comprises a permitted Benefit, what is an Improper Benefit and how businesses should act so as not to breach what is deemed good practice in business conduct.

Further, the Code intends to:

- protect 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.
- promote the interests of the market in having effective and healthy competition by enabling all market players to compete on equal terms.
- increase the general trust in the market place since 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 life. 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 the 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 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. If, however, someone were to breach the Code, it does not automatically mean that the undertaken action is criminal for the person offering or accepting the Benefit.

The Code provides a framework for how Companies should view Benefits in business. It is supplemented by industry rules and similar rules if they exist or are produced.

DEFINITIONS

In this Code, the following terms have the definitions provided below:

”Agent”	Anyone who, in its business, has agreed with a Company to independently work for the Company.
”Benefit”	A gift, reward or the like, which may be of material or immaterial nature and may be of value to the recipient.
”Company”	A Company as defined in Section 2 of the Code. Companies that conduct trade and that are owned 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 (relates to the recipient end).
”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.
”Improper”	That, which is from a general perspective perceived as unwanted or disloyal against the recipient’s employer or principal or other.
”Influencing (the) Action/s”	A course of action which typically influences decisions or the manner of completing work tasks.
”Influencing (the) Attitude/s”	A course of action which is typically beneficial to a relation, but does not influence neither decisions nor actions.
”Market”	Umbrella term for Companies engaging in trade, irrespective of whether they are owned privately or publicly.
”Other cooperation Partners”	Those who, without being Agents, take an active role cultivating customer relations with third parties on behalf of the Company, including individuals who sell the Company’s products for their own account.

"An/Other Company"	A Company under Section 2 of the Code, and foreign Companies that have been registered or must otherwise be deemed to carry out trade. Companies that carry out trade and are owned by Public Entities fall within the scope of the definition. (This relates to the receiving party.)
"Public Entities"	Public entities that carry out governmental or public operations. This includes, amongst others, the parliament, the government, public agencies, courts, municipalities, counties, regions and municipal unions. The term do not include private entities, e.g. a limited liability Company (<i>Swedish: aktiebolag</i>), which is owned by a Public Entity.

A. APPLICABILITY

1. The Code covers all kinds of gifts, rewards and other Benefits

Benefits without financial value are also covered by the Code. For example, this could relate to a membership to an exclusive club, a prestigious award and Benefits that, without having financial value, represent sentimental value to the recipient.

2. The Code covers Companies that are obliged 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 only because the Company maintains a branch office in Sweden, which in its turn falls within the scope of the Code. Thus, branch offices do not “infect” foreign Companies.

3. The content of this Code shall also apply to foreign Group Companies, unless particular reasons or impediments apply.

Companies should, to the extent possible, ensure that foreign Group Companies comply with this Code, or the underlying values hereof. There might be cases where an equivalent 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. It is also possible that the Code in some respects deviates from what is permitted in the other country.

B. ON BENEFITS

NON-PERMITTED BENEFITS

4. Companies may not grant, promise or offer Improper Benefits conditional on how the recipient carries out his or hers employment or his or hers exercise of public authority or public procurement.

Exercise of public authority and public procurement are regulated by detailed and vital regulations for societies governed by the rule of law. It is never, under any circumstances, permitted to grant, promise or offer any Benefit which is typically aimed at influencing the application of such regulations. Such a Benefit is always Improper.

It is not required that the Benefit is offered to the person exercising the public authority or carrying out the public procurement for it to be non-permitted. The Benefit could also be directed at another person, e.g. the deciding individual's colleague or spouse so that the recipient shall influence someone else's decisions or actions in connection with the exercise of public authority or with a public procurement procedure, so-called influence trading.

Exercise of public authority and public procurement procedures can also be carried out through private entities (e.g. limited liability companies).

5. Companies may not grant, promise or offer Improper Benefits to employees of or Contractors to public agencies or other Public Entities for carrying out the employment or assignment.

Particular interests apply to employees of and Contractors to Public Entities. Thus, there is particular reason to use caution when granting Benefits to such recipients.

Any Benefit that is aimed at Influencing Actions shall under normal circumstances be deemed non-permitted. Any Attitude Influencing Benefits complying with what are considered accepted forms for interaction between the Market and Public Entities are, under normal circumstances, accepted. In other countries, particular consideration must be given to what is locally considered accepted forms for interactions between the Market and Public Entities.

The question of whether a Benefit is Improper must be reviewed on a case by case basis against the backdrop of all relevant circumstances.

The circumstances to be considered in particular are the following:

The value of the Benefit

The risk of Influencing Action is increased by the value of the Benefit (whether financial or sentimental) and the frequency of Benefits to an employee or Contractor. In general, one should be cautious when granting Benefits of not inconsiderable value, frequent Benefits and Benefits of sentimental value. The value of the Benefit should also be reasonable in relation to the purpose of the Benefit (proportional).

The position of the recipient

The type of employment or assignment the recipient has is important. If the employee or Contractor exercises public authority or carries out a public procurement, he or she holds a special position and particular caution should be exercised when granting Benefits to such employees or Contractors. It is not permitted to offer Benefits to employees of Public Entities that have deciding influence over matters of exercise of public authority or over a public procurement procedure in which the Company has interests.

The nature of the Benefit

The risk that the Benefit is to be deemed Improper increases the weaker the link is to the tasks of the recipient. Thus, it is important that the Benefit has a clear connection to and forms a natural and useful part of the work carried out by the recipient. This would include, for example, discussing work related matters during a meal or a field trip during which work related agenda items are included.

The group of recipients and the forms for offering the Benefit

A Benefit containing access to an event should, if possible, be aimed at an undefined group of people, rather than at specifically selected individuals. Further, it is important that the Benefit is granted overtly. The requirement that the Benefit should be granted overtly means that a Benefit generally should be directed at the Public Entity itself, be or assumed to be approved by the Public Entity, or comply with the Public Entity's established policies.

Red flags

Companies should take special caution:

- If the Benefit has substantial value or is granted frequently.
- If the recipient of the Benefit has work tasks that include exercise of public authority or is carrying out public procurements.
- If the Benefit has no clear connection to the recipient's work or assignment.
- If the Benefit does not form a natural and useful part of the recipient's work or assignment.
- If the employee or Contractor is invited to an event with private companion.
- If the Benefit (of an event nature or the like) is directed at specifically selected individuals.
- If the Benefit is not granted overtly.
- If the Benefit is not proportional to the purpose of the Benefit.
- If the Benefit deviates from accepted forms of interaction between the Market and Public Entities.
- If the Benefit is initiated by the recipient.

6. Companies may not grant, promise or offer a Benefit to employees to or Contractors of Another Company or Public Entity if the Benefit relates to, for example:

- a) Monetary gifts and the like.
- b) Monetary loans, providing of security, waivers of receivables 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 providing something for the giver and that is not approved by the employer or the principal.
- e) Covert commissions or kickbacks to employees or Contractors (i.e. other entities than the Company).

The Benefits enumerated in this Section are Benefits that are in and of themselves not permitted. Thus, there is no need for a specific review of whether the Benefit is Improper. The list above is not comprehensive.

PERMITTED BENEFITS

7. Companies may grant, promise or offer a Benefit to employees or Contractors of Another Company if:

- a) It is done overtly,
- b) the Benefit is moderate, and
- c) the Benefit is not in any other way such that it would typically be considered to Influence Actions so as to affect the way the employee or Contractor carries out his work tasks or assignment.

The general starting point is that a Benefit is permitted if it is moderate and can be granted overtly. Benefits that have functional or social justifications and that can be viewed as a natural part of accepted forms of interaction in the Market are generally permitted. In an international context, particular consideration must be given to locally accepted forms for business.

Overt

The requirement on the Benefit being granted overtly entails that a Benefit normally should be directed at the Other Company directly, is or is assumed to be approved by that Company, or comply with that Company's established policies on Benefits.

Moderation

The requirement on moderation entails that the Benefit typically shall not appear to be Influencing the Actions of the recipient. Thus, the financial or sentimental value of the Benefit shall be put in relation to the employee's integrity sensitivities 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, typically appears to be Influencing the Actions of the recipient.

Even if a Benefit is moderate and is granted overtly it may be Improper. This could, for example, relate to unethical Benefits.

Events

When determining whether an event aimed at a certain group of people is permitted or not, initially Sections 7 a-c above shall be considered. In general, it is less likely for an offer to be deemed Improper if it is aimed at a wide group of people than if it is aimed at a limited group. If the parties are conducting business negotiations, or are about to engage in them, then it is advisable to be more restrictive with such events. 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 typically permitted.

Red Flags

Companies should take particular caution:

- If the Benefit is of high value or is granted frequently.
- If the employee or Contractor is offered goods or services that can be for private use.
- If the Benefit coincides in time with business negotiations with the recipient.
- If the Benefit (of an event nature or the like) is aimed at specifically selected individuals.
- If the Benefit is not known to the recipient's manager.
- If the Benefit deviates from accepted forms of interaction in the Market.

ACCEPTING BENEFITS

- 8. What has been stated herein on Companies' rights to grant 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.**

A Benefit that is reported by the recipient to its employer or principal is typically not of such nature that it will Influence the Actions of the recipient. Thus, Benefits that risk being non-permitted should be reported by the employee or Contractor to the Company for the purpose of determining whether the Benefit may be accepted or kept.

If anyone should accept a Benefit and without unnecessary delay reports the Benefit to the Company, the recipient shall not be considered to have breached this Code.

Benefits that are approved by the Company's policies or are otherwise permitted under this Code and possible industry rules do not fall under the requirement to report.

C. AGENTS AND OTHER COOPERATION PARTNERS

9. When needed, Companies shall audit 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”.

To work 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 should act Improperly, it can cause material damage to a Company’s goodwill and could entail legal liability for the Company and its representatives.

The great majority of Partners are themselves responsible for their respective businesses and for these there should be no need for specific audits of the relevant Company.

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.
- If the Partner will be granted far-reaching authority to act on behalf of the Company.
- If the Partner will be granted monetary advances.
- If the Partner demands unusually large compensation in relation to the work to be performed.
- If the Partner operates in a sector or geographical area permeated by corruption.
- If the Partner wishes that payments shall be made to third parties, in cash or to a country other than that where the Partner operates.
- If the Partner has been recommended by a decision maker of a Public Entity.
- If the Partner grants unusually large or frequent contributions to politicians.
- If what makes the Partner qualified is his influence over decision makers of Public Entities.
- If the selling of the Company’s products or services comprises a large portion of the Partners business.

The audit should initially be aimed at the Partner’s possible policies concerning counteracting corruption, and if the Partner previously has been implicated in corruption. If, when carrying out this initial audit, circumstances come to light giving rise to questions about the Partner, then the audit should be expanded.

An expanded audit should include an analysis of the Partner’s ownership structure, background, qualifications, technical and financial standing.

Agreements with Partners should, when suitable, provide that the Partner undertakes not to grant Improper Benefits and that the Company may terminate the agreement if the Partner does grant Improper Benefits.

- 10. 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 the possibility to trace to whom and why the fee is paid. By tracing to whom a fee is paid, 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 good 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 should be accepted only if there are justifiable business reasons. In exceptional cases, cash payments may be accepted.

D. MEASURES TO PREVENT BRIBERY AND IMPROPER INFLUENCES

11. Companies should if necessary for its operations adopt a policy of measures to prevent Improper influences. The policy should be adapted to the Company's size, nature and ownership structure, the business carried out and the risk within the Company of Improper influences. The policy may include:

- a) A statement that the Company complies with this Code.
- b) Guidelines on which Benefits that the Company's employees may accept for their own account and how reporting to the Company should be made.
- c) Guidelines on which Benefits that the Company's representatives may grant to employees of Other Companies.
- d) Guidelines on identifying and analyzing the risk of bribery and Improper influences within the Company.
- e) Guidelines on the education of employees.
- f) Guidelines on 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) Guidelines to minimize 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) Guidelines on how foreign Group Companies shall act in matters related to this Code.
- i) Guidelines on how to implement the policy.
- j) Guidelines on reviews of the policy.

Many Companies in Sweden are so small that it is unnecessary to produce a policy which is specifically adapted for that Company. In relation to the content of the policy each Company adapts the policy based on specific needs. The risks that a particular company faces is the main issue for the content of the policy. Upon the adoption of a policy special attention should therefore be made to identifying the risks facing the Company.

12. Companies should comply with applicable industry rules on Benefits provided they do not breach this Code.

The Code supersedes industry rules and industry practices. However, nothing prevents that industry rules and practices contain more stringent rules than the Code. Many business sectors have adopted rules that are more detailed and far-reaching than those of the Code. Companies falling within the scope of such rules should as a result apply these rules.

E. ADMINISTRATION OF THE CODE

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

Entry into force

The Code was approved by the board of directors of the Swedish Anti-Corruption Institute on August 31st 2012.

This Code will enter into force September 1st 2012.