



The Swedish Anti-Corruption Institute (IMM) issues a revised Code to Prevent Corruption in Business

Since 2012, the Swedish Anti-Corruption Institute's ("IMM") guidelines have been an important cornerstone in promoting self-regulation as a measure to combat corruption in the Swedish business industry. In keeping up to date with current societal trends, the code, previously called the "Code on Gifts, Rewards and other Benefits in Business", has been revised in order to adapt to the evolving business environment, and introduces new guidelines on preventive measures and intermediaries. To mark its revision, IMM's guidelines have been renamed the "Code to Prevent Corruption in Business" ("the Code").

The updated version of the Code, which came into effect on 14 August this year, serves to clarify the legal framework on bribery, in addition to promoting higher ethical standards for the business industry. Following an extensive review of the business climate, the updated Code emphasizes a more active stance on corruption, and provides guidance on proactive measures, benefits and intermediaries.

Divided into three sections

Structurally, the Code now consists of three sections: (i) Preventive measures, (ii) Benefits and (iii) Intermediaries. The Code includes two entirely new sections, relating to preventive measures and risks associated with intermediaries. Generally, the Code provides additional room to make assessments on a case-by-case basis.

Preventive measures

The new section on preventive measures highlights the importance of proactive measures in combating corruption. The measures required for each company depend on the size and ownership structure of the company, as well as the business activities being carried out and the risks of corruption which the company faces.

The Code lists several components which should be a part of companies' anti-corruption work:

- **Top-level commitment** - Includes ensuring that adequate resources and expertise for preventive anti-corruption work are in place, and regularly informing the Board of Directors of the company's anti-corruption measures.
- **Risk-analysis** - Including recurrently identifying risks and in what areas they are prevalent, the consequences if risks materialize and current deficiencies in the management of risks.
- **Internal anti-corruption rules** - Companies must have written anti-corruption rules which include the company's overall anti-corruption position, specific guidelines and rules, the department or person responsible for the rules, and which establish a routine in the event of a breach.
- **Communication and training** - The company must ensure that employees are regularly trained on internal anti-corruption rules and procedures.

- System for due diligence of intermediaries and other third parties - Including procedures for managing corruption risks associated with intermediaries and third parties other than intermediaries.
- Reporting system - Companies must ensure that it is possible to report suspicions of corruption without risks of reprimand, and have procedures in place for following up reports.
- Tools for checking and monitoring - Companies should have internal control systems for the implementation of the preventive measures.

Benefits

The guidelines on benefits, which are defined as having a tangible or intangible value for the recipient, have been clarified, and the revised Code now stipulates three requirements in order for a benefit to be deemed legal. Note that requirements relating to benefits differ depending on if they are given to the private or public sector, where gifts to recipients in the latter sector, and to recipients in sensitive industries, are subject to a stricter assessment. According to the Code, a benefit:

- Must be given transparently;
- Must be moderate; and
- Must not influence or risk influencing the recipient's decision of performance of his or her duties.

In line with the previous code, the assessment of gifts depends on the identity of the recipient and the gift giver. The previous prohibition on benefits to persons in the public sector has been repealed and replaced by a situation-based assessment, where stricter rules apply to recipients in the exercise of public authority and public procurement as well as to other recipients in the public sector.

An example which illustrates how strict rules on benefits to individuals of public authorities and public procurement are, is the fact that representatives of a public authority carrying out on-site visits at a company over lunchtime in the context of a supervisory case may not be offered a simple lunch.

The public and publically financed sector is distinguished from the private sector in the Code, meaning that banks and insurance companies are no longer treated in similar ways as the public sector. However, benefits to individuals in banks and insurance companies continue to be subject to a higher degree of restrictiveness under the Code.

The possibility to invite employees from the public sector to gatherings where food is served has been made slightly more generous, and for the private sector the relevance in business terms and, and an assessment of the occasion, are emphasized.

The IMM's Ethics Committee's decision clarifying that work-related benefits of insignificant value - such as coffee and biscuits - are allowed, has been codified in the new Code. It is however noteworthy that the revised Code does not include an exact sum or value determining the legality of a benefit, but continuously recommends a case-by-case assessment.

Intermediaries

The Code furthermore stipulates new guidelines regarding intermediaries, addressing growing challenges of handling intermediaries internationally. An intermediary is defined as a person appointed by a company to represent it in a particular matter, and to whom it supplies money or other assets, wherein the actual function of the person is decisive and not its title. The guidelines on intermediaries require each company to:

- Conduct a full risk-assessment of intermediaries: Including an assessment of the risks associated with the country in which the intermediary operates or is registered in, the risks of the industry, contract type and links with public officials.
- Control and evaluate each intermediary: Including an assessment of the identity, beneficial owner and financial background of the intermediary, the form of remuneration, the attitude towards corruption and the integrity, reputation and expertise of the intermediary
- Establish an escalation procedure within the company as to how intermediaries are to be evaluated and controlled.

OECD reports such as the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions are recommended to be used as a base for evaluating the risk-levels of countries.

In addition, the risks of the industry in which the intermediary operates should be evaluated, where industries characterised by a large proportion of public procurement, requirements for permits to carry out activities or has frequent contacts with public authorities in order to carry out business activities are generally more exposed.

As for the evaluation of intermediaries, the guidelines state that there is a high risk of criminal liability if the beneficial owner of an intermediary cannot be established, despite extensive checks.

Summary

The core amendments of the revised Code are the new sections on preventive measures and on active control and assessment of intermediaries. Through the updated Code, IMM has drawn up a more comprehensive framework for the business industry.



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