Swedish anti-corruption legislation
A summary legal guide
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1. Introduction, disclaimer and copyright notice

The purpose of this booklet is to provide a general overview of certain relevant aspects of Swedish anti-corruption legislation. The idea is not to give answers to all questions related to this area, but to provide general information that is easily accessible and gives an answer to the most fundamental issues.

The materials in this booklet are up to date as of January 2016 (except where noted otherwise), and are designed to provide a convenient reference for clients to Nyman Rudenstam Advokatbyrå AB. It goes without saying that this booklet contains advice of a general nature only; the booklet is not legal advice or a substitute for legal advice with respect to any particular factual circumstance, and cannot be relied upon in lieu of legal advice. The reader should consult with qualified counsel in Sweden for legal advice with respect to particular situations.
2. Introduction

The basic provisions on bribery are found in chapter 10 of the Swedish Penal Code. The rules were reformed in 2012 in order to make them more adapted to Sweden’s international undertakings as well as to widen the scope of the provisions and to make them more modern.

The basic anti-corruption provisions are divided into the following parts:

(i) taking a bribe (section 5 (a)),
(ii) giving a bribe (section 5 (b)),
(iii) gross bribe giving or gross bribe taking (section 5 (c)),
(iv) trading in influence (section 5 (d)), and
(v) negligent financing of bribery (section 5 (e)).

The provisions will be described further below.

In this context the Swedish Anti-corruption Institute (“IMM”) should be mentioned. IMM is a non-profit organization founded in 1923 with a mission to a) promote ethical decision processes within business as well as within the rest of the community and b) prevent the use of bribes and other types of corruption as a gain for affecting decision processes.

IMM has since its inception worked for self-regulation as a means to combat corruption in society, for instance through seminars. But it has also taken an initiative to a code with the purpose to complement and clarify the legislation, which is general and in some respects can be difficult to interpret; the “Code on gifts, rewards and other benefits” (hereinafter 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 and anyone following the Code should thus be able to count on his or hers actions being legal.
3. The Swedish Penal Code

3.1 Taking a bribe

Chapter 10 section 5 (a) of the Swedish Penal Code states that an employee or a person performing an assignment, who receives, accepts a promise of or demands an improper reward for the execution of the employment or the assignment shall be convicted of taking a bribe and sentenced to a fine or to imprisonment for a maximum of two years. The act is punishable even if it is conducted before the assignment or employment starts or after it has ended.

The criminal act includes accepting a bribe on account of someone else.

3.1.1 The key elements

There are three key elements of the provision: the persons involved, the relationship within which the reward is given and the nature of the reward.

The bribe-taker can be any employee or person performing an assignment, including self-employed persons without principals. The scope of the provision is thus very wide and it targets all professionals of both the public and the private sectors. Even so, there is a difference as regards the court’s assessment when a reward is accepted in the public sector as opposed to in the private sector, see section 5 below.

The relationship between the bribe-giver and the bribe-taker must be of professional nature. The bribe must be given and accepted for the execution of the recipient’s employment or assignment and the purpose of the bribe must be to influence the way the recipient performs his or her duties. It is however irrelevant whether the recipient is actually influenced by the bribe. Difficulties may arise when two people have both a private and a professional relationship. A determination of whether a gift or a benefit has been given professionally or privately must be made considering all circumstances in each particular case.
When it comes to determining whether a reward is improper or not the nature and value of the reward can be of some guidance but are not decisive factors. Sweden has no minimal rule for what can be regarded as an improper reward, anything of monetary value can be deemed improper but also other benefits such as a membership of a certain club. The essential element when deciding whether a reward is improper is its connection to the performance of duties. By a ruling of the district court of Gothenburg in 2012, a police officer was convicted of taking a bribe for accepting a salad worth SEK 65 for not filing a report of a traffic offence.

3.2 Giving a bribe

Chapter 10 section 5 (b) of the Penal Code states that a person who gives, promises or offers an improper reward in the cases referred to in section 5 (a) (taking a bribe) shall be convicted of giving a bribe and sentenced to a fine or to imprisonment for a maximum of two years.

3.2.1 The key elements

The key elements of the provision prohibiting bribe-giving are the same as those of the provision prohibiting bribe-taking, i.e., the persons involved, the relationship within which the reward is given and the nature of the reward.
3.3 Gross bribe taking and gross bribe giving

If an offence referred to in section 5 (a) or 5 (b) is regarded as gross, the offender shall be convicted of gross bribe-taking or gross bribe-giving to imprisonment for a minimum of six months and a maximum of six years, according to chapter 10 section 5 (c) of the Penal Code.

When assessing whether an offence is gross it shall be especially considered if the act involved abuse of or attack on a position involving great responsibilities, if the bribe was of great value or if the act was part of systematic criminal activity, criminal activity of large proportions or if it otherwise was of a particularly dangerous kind.

3.3.1 The key elements

Firstly it shall be considered who has been bribed. With the wording “a position involving great responsibility” the provision aims to target bribing of people on the most important decision making positions in society, such as members of the government or judges, but also people responsible for great investment decisions within the private sector.

Secondly, the value of the given reward shall be considered. I.e., the giving or accepting of a bribe of great value is more likely to be deemed as gross than the giving or accepting of a bribe of lesser value.

Thirdly, if the giving or taking of a bribe is part of systematic criminal activity or if it is part of a criminal activity of great proportion it is more likely to be considered as gross than if it is “a onetime thing”.

It shall also be considered if the offence was of a particularly dangerous kind. A particularly dangerous kind of bribe is for example if the offender has used false documents or misleading bookkeeping or if the offender in an unscrupulous way has used someone’s dependency.

All circumstances of the particular case shall be considered when assessing whether an offence is gross.
3.4 Trading in influence

According to chapter 10 section 5 (d) of the Penal Code a person who, in other cases than those referred to in section 5 (a) and 5 (b):

- receives, accepts a promise of or demands an improper reward in order to influence the decision or action of another person related to the exercise of public authority or public procurement; or

- gives, promises or offers someone an improper reward in order for that person to influence the decision or action of another person related to the exercise of public authority or public procurement

shall be convicted of taking a bribe and sentenced to a fine or to imprisonment for a maximum of two years.

3.4.1 Key elements

Unlike the provisions on bribe-giving and bribe-taking it is, for the application of the provision on trading in influence, not necessary that the relationship between the bribe-giver and the bribe-taker is of a professional nature. The provision aims to target situations where the receiver of the reward cannot him-/herself make the decision wanted by the “reward giver” but works closely enough with the person making such decision in order to influence him or her to decide in the favour of the “reward giver”. The provision also aims to target situations where a reward is given to a family member of a person empowered to accomplish the results desired by the “reward giver”.

The person meant to be influenced does neither have to benefit from the reward nor does he or she actually have to be influenced for a crime to be committed.

The provision is limited to the public sector, i.e., the person meant to be influenced must have a position where he or she can affect public authority or public procurement for a crime to be committed.
3.6 Negligent financing of bribery

Chapter 10 section 5 (e) of the Penal Code states that a business representative (Sw: näringsidkare), who provides money or other assets to a person representing a company in a particular matter and thereby, through gross negligence, promotes giving a bribe, gross bribe-giving or trading in influence shall be convicted of negligent financing of bribery to a fine or to imprisonment for a maximum of two years.

3.6.1 The key elements

The offender is in general a business owner or someone in the management of a company. The provision aims only to target people with actual decisive power over a company.

The person committing the act which the offender promotes is someone who is representing a company in a specific matter, for instance an employee or a consultant. The provision includes the situation where a representative uses his or her high but still reasonable consideration from a company to bribe someone or trade in influence.

In order for the offence of negligent financing of bribery to be committed, the representative needs to actually have given a bribe or traded in influence. However, it is not necessary that the representative is or will be convicted of such crime.

The offender needs to have been at least grossly negligent as regards the promoting of bribery in order for a crime to be committed. There is little guidance on what constitutes gross negligence. However, the key question when assessing gross negligence is usually whether the business representative (Sw: näringsidkaren), in the particular situation, has done what can reasonably be expected of him or her to avoid that the employee or consultant committing the criminal act. For instance the requirements on pre-caution are more extensive when sending a representative to a country where bribery is widespread in society.
4. Liability

4.1 Corporate liability

According to Swedish criminal law, a legal person cannot be subject to criminal charges.

Under certain circumstances it can, however, be subject to a fine. According to chapter 36 of the Penal Code, a company can be subject to a fine of between SEK 5,000 and 10,000,000 if an act of giving a bribe or taking a bribe has been committed in the name of the company and the person acting was the CEO, a board member or someone else on a high level of management, or if the company otherwise has failed to do what can be expected of it to avoid the occurrence of the act of bribe-giving or bribe-taking.

4.2 Individual liability

An individual can be held accountable for acts of corruption committed either by the individual him-/herself or committed by a company of which the individual is somehow in charge. The criminal act of taking a bribe explicitly targets individuals who accepts bribes for performing a profession or other kind of professional assignment whilst the criminal act of negligent financing of bribery explicitly targets individuals who in their role as business representatives (Sw: näringsidkare) finance bribery. The other acts of corruption can be committed by almost any individual irrespectively of in which role he or she is committing the act.
5. The private and the public sectors

The provisions on bribery are the same regardless of whether committed by someone in the private or in the public sector. There is, however, a difference as regards the court’s assessment when a reward is accepted in the public sector as opposed to in the private sector. In the public sector the room for deeming a reward to be proper is almost non-existing and thus a reward that would have been deemed proper in the private sector may well be deemed improper in the public sector.

An important difference between the public and the private sector when it comes to the offence of taking a bribe is that a reward given and accepted openly, with the principal’s knowledge, will often be deemed as proper in the private sector whilst the openness rarely would defend the acceptance of a reward in the public sector. Rewards that are customary elements of the employment, such as business meals or educational trips of reasonable value, are usually deemed as proper. Business expenditures related to the promotion or establishment of a company can also be deemed as proper as long as they are reasonable and necessary.
4. The Code

As mentioned above, IMM has taken the initiative to the Code. The purpose of the Code is to guide companies on issues of how gifts, rewards and other benefits in business may be used; the idea is thus that when using the Code, businesses should be able to determine what constitutes a permitted benefit and what could constitute an improper benefit.

In order to determine if is permitted to provide a benefit or not, the Code divides the societal sector in which the recipient is employed/the contractor is active, into three levels,

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

(ii) Section 6 contains restrictive but somewhat less strict rules (employees/contractors of public authorities that are not exercising public authority or involved in public procurement as well as employees/contractors at publicly owned and financed companies, and in certain private sectors wherein integrity is particularly sensitive).

(iii) Section 7 contains the least strict rules (privately owned companies).

Some forms of benefits listed in Section 8 are always considered improper irrespective of the level in which the recipient operates (for instance a) monetary gifts, gift cards and the like that could be considered as cash equivalents and b) access to vehicle, boat, holiday home or the like for private use).
Further, the Code serves the purpose of:

(iv) protecting a company’s interests by ensuring that its employees are not influenced to act against the company’s best interests by handing out or receiving improper benefits;

(v) guiding a company from a business ethics perspective;

(vi) promoting the interests of the marketplace in having effective and healthy competition on equal terms; and

(vii) increasing the general trust in business, because society must be able to trust that the market operates well from a business ethics perspective.

For more information on IMM’s publications and documentation, see www.institutetmotmutor.se.