
December 2014

"Article revisited"

What if your Christmas gift is a bribe?

An update due to more stringent requirements during the past year.

We are heading towards Christmas. Perhaps you are in the process of planning what to eat, where to go and what Christmas gifts to offer. As regards daily private life, this may be an easy task but what about professional Christmas gifts? It is normal to want to treat your professional contacts well, send a Christmas note, show gratitude for the past year and maybe give a small Christmas gift. But when are you at risk to cross that line which would give a gift the opposite effect, to be considered improper and to be in conflict with anti-bribery regulation? We know that even though this assessment in many cases will be complicated, it *always has to be done*.

Apart from the Swedish anti-bribery legislation it is a good idea to look into the Code of Business Conduct. This code was created within the framework of the new anti-bribery legislation in Sweden and is managed by the Swedish Anti-corruption Institute (IMM) which is a non-profit organization founded in 1923. The Code of Business Conduct is a complement to the Swedish anti-corruption legislation and is a helpful tool to assess what can be perceived as improper. The code is now stricter. On 9 December of this year IMM published a revised [Code of Business](#). The revision of the code has taken approximately a year and in the revised version it can be noted particularly that within the private sector, gifts or services of a morally questionable nature has been given a stricter approach. It is high time for companies to familiarize themselves with the new revised code and consider how the stricter demands are to be met within their organizations. According to the IMM Secretary-General Helena Sundén, the code was revised because the industry requested more stringent rules and codes of conduct for business relationships both within the public- as well as the private sector. The revised code now clearly sets out that it's superiority to customary practice or general sectorial rules unless such rules are stricter. In such a case, the more stringent rules apply. It is high time to get familiarized with the customary practice within your business sector.

Even if The Code of Business Conduct is considered stricter than the Swedish anti-corruption legislation it is important to remember that its purpose is guidance and that it may sometimes be necessary to seek help in order to interpret its meaning. As of September of last year IMM furthermore has its Ethics Committee. The Ethics Committee may, on the request of a company or an organization, against a fee,

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make a statement on whether actions planned to be taken by the requesting company/ organization is in accordance with the IMM Code of Business Conduct.

During its first year of existence, the Ethics Committee published two decisions. A summary of those decisions can be found in [our article from last year](#). During 2014 the Ethics Committee has published another five decisions both concerning the public- and the private sector. The decisions can be found [here](#).

From this year's decisions can be seen that the Ethics Committee has continued to hold a considerably stricter position in situations where offers are directed towards the public sector. In one of the decisions we were again reminded that improper conduct can be found even when low amounts are involved. In the decision 2014:3 the Ethics Committee held it improper to offer lunch with a value of SEK 20 to employees of a commune. This was not considered to be an established and accepted benefit between the private and the public sector and therefore not in line with the Code of Business Conduct.

Take-away tips:

Based on the revised Code of Business Conduct and this year's decisions from the Ethics Committee we have below updated our list of tips that we hope will be of assistance for you to make decisions on gifts within your business.

Gifts to the public sector:

- Before planning a gift to the public sector always control your own company's business ethics code or anti-corruption policy. Perhaps your company does not allow gifts to the public sector.
- A gift must never consist of cash, gift cards or other floating assets.
- Always have a legitimate purpose with the gift. The purpose must never be to affect the behavior of the recipient, such as making a certain decision.
- Never offer a gift to a person within the public sector with the purpose of securing or pushing forward a decision or other act, so called "facilitation payments". Examples of facilitation payments are payments to push forward an application for a building permit, a license or any other permit.
- Avoid offering gifts to people within the public sector with decision-making power or with the possibility to affect others with such decision-making power.
- Never offer a gift during a public tender process.
- Never under any circumstances offer remuneration to public servants for their expenses in connection with a meeting.
- Consider in particular the value of the gift (economic as well as personal value).
- What kind of gift are you planning to give? A gift with no connection to the recipients business may be judged improper. Even to offer something which is not customary can be considered improper. Bear in mind that even gifts of low value can be considered improper.
- Why not ask the permission from the public authority before offering the gift?

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Gifts to the private sector:

- Always check your own company's business ethics code or anti-corruption policy first. There may for example be specific monetary limitations set for gifts.
- A gift must never consist of cash, gift cards or other floating assets.
- The starting point is that a business-to-business gift is allowed if it is moderate and offered in an open manner:
 - When assessing moderation base your assessment on the position, age and experience of the recipient. The economic and personal value of the gift must be seen in relation to the employee's integrity and personal suggestibility.
 - The gift ought to be offered to an undetermined set of people or you could let the recipient company's management or head of department decide who may receive a gift.
- Be more restrained with gifts if you are in negotiations or are about to enter into such with the recipient company.
- In the revised Code of Business Conduct it is specifically stated that gifts that are of an unethical kind must be avoided (for instance gifts relating to games, drugs or with sexual themes).

What can you do if you already accepted a gift which you are unsure of was an acceptable gift?

Naturally, there may be situations where it is difficult to decline a gift which in your opinion might not have been acceptable or in line with the Code of Business Conduct. Sometimes the opportunity to accept or decline was simply not presented. The gift "just appeared in your mailbox" or arrived with a messenger. In such situations you simply have to do the best you can. Exactly how each situation should be handled is naturally for each and every business to decide and handle but for instance when the gift is edible, one tip is to simply share it with everybody within your organization. Place the gift in a common space in your office and simply share the chocolate or the fruit basket or the like. Another way may be to give the gift away to charity. In no circumstances should such a gift be consumed by you or be taken home to your family or private friends.

In summary - some advice

Always first check your own company's business ethics code or anti-corruption policy before giving or accepting a gift. Be in compliance with the Code of Business Conduct and know the customary practice and rules within your sector. Maybe your sector contains stricter rules.

Be extra careful when planning gifts to the public sector. Always have a legitimate purpose with your gifts and consider the value of the gift carefully as well as the

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position of the recipient. Common sense will take you far. Ask yourself the question whether you or your company could risk badwill if the gift was publicly known. If the answer to this question could be yes, it is advisable not to give or receive the gift. If in doubt, always check with a superior.

For quick decisions it could be a good idea to keep our take-away tips close by.

One wrongful decision may harm your company's reputation and brand. Make sure that your gifts will increase your goodwill instead of harming it.

Should you have any questions do not hesitate to contact us.

Happy Holidays.



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