
December 2013

What if your Christmas gift is a bribe?

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, be considered improper and 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*. Our Christmas gift to you therefore, is to give some hints which will help you make your own assessment.

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 of Business Conduct is considered stricter than the Swedish anti-corruption legislation and thereby provides a good indication whether a particular action is in compliance with the anti-corruption legislation or not. However, even if the Code of Business Conduct is more detailed than the anti-corruption regulation 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 this year IMM has created an Ethics Committee. This Ethics Committee may, on the request of a company or an organization, against a fee, 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.

The IMM Secretary-general Helena Sundén hopes that the Ethics Committee will receive many questions from companies or organizations. The purpose of the Ethics Committee is that the decisions will provide good guidance into the interpretation of the Code of Business Conduct. According to the rules of procedure of the Ethics

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Committee the Ethics Committee should deliver its decision within two weeks after the request has been made. The Ethics Committee is hoping to be able to keep pace with the business society. It remains to be seen whether this will be the case as or when the number of requests grow.

To date, the Ethics Committee has published two decisions; one concerning the public sector and one concerning the private sector. Below, we summarize these two decisions. The decisions in full (in Swedish or summaries in English) can be found [here](#).

The first decision of the Ethics Committee (*Decision 2013:1*) concerns a trade organization which planned to arrange a trade fair. The purpose of the trade fair was to market the industry concerned as attractive. As part of the invitation the trade organization planned to offer the first 100 registered participants a free of charge hotel accommodation as well as a free of charge dinner. The question was whether such offer is consistent with the Code of Business Conduct.

According to point B5 of the Code of Business Conduct 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. The Ethics Committee found that the actual offer is not consistent with the Code of Business Conduct. The finding was based on the following considerations; the offer was aimed at persons in the public sector (*the position of the recipient* – public sector), the value of the offer was SEK 2000 and of a kind not often offered to such group of persons and furthermore as such not connected to the business activity of the receiver (*nature and value of the benefit* – unusual, not connected to business and not moderate). The Ethics Committee further criticized that the trade organization did not intend to ask the permission of the public authority before sending out the offer (*the forms for offering the benefit* – not made in an open manner).

The second decision of the Ethics Committee (*Decision 2013:2*) concerns a private company within the manufacturing industry which was planning to invite new and existing clients to a visit at the business factory in Germany. The company was planning to cover all costs in relation to the visit which would span over two days and include travel, accommodation and lodging. The question for the Ethics Committee was whether such an offer is in consistence with the Code of Business Conduct and more specifically whether the conditions of point B7 – under which conditions a company may grant, promise or offer benefits to employees or contractors in another company – were met.

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The Ethics Committee found that the concerned offer is in consistence with the Code of Business Conduct. The finding was based on the following considerations. The offer was made openly as it was made to the head of the receiving company who then got to decide which one of his employees that could travel (the forms for offering the benefit – made in an open manner). The visit had a purely business related content and the agenda was open and transparent (*the nature of the benefit* – business related), and the cost was acceptable as the factory de facto was situated in Germany and there were no other ways to exhibit it (*value of the benefit* – moderate and acceptable).

Not unexpectedly the Ethics Committee was more restrictive in its interpretation of the Code of Business Conduct when the benefit was aimed at the public sector. With the help of the Code of Business Conduct and the two decisions by the Ethics Committee were below summarize a few hints which we hope will be helpful in making some of the more important decisions this Christmas.

Christmas 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.
- 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.
- 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.
- 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 often offered can be considered improper.
- Why not ask the permission from the public authority before offering the gift?

Christmas gifts to the private sector:

- Always check your own company's business ethics code or anti-corruption policy. There may for example be specific monetary limitations set for gifts.
- 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.

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- 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 retrained with gifts if you are in negotiations or are about to enter into such with the recipient company.

In summary – always check your own company's business ethics code or anti-corruption policy. Be extra careful when planning gifts to the public sector. Always have a legitimate purpose with your gifts and consider carefully the value of the gift as well as the position of the recipient.

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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