



Q&A IN RELATION TO BRIBERY OFFENCES IN SWEDEN

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1. Legal Framework

What is the legal framework governing bribery in Sweden?

- The Swedish Penal Code (SPC) contains provisions regarding bribes in Chapter 10 (On embezzlement, other acts of breach of trust and bribery).
- There are other laws containing regulations around bribery, such as the Income Tax Act, according to which it is stipulated that a bribe is not deductible.

2. What Constitutes a Bribe?

What constitutes a bribe?

- Both receiving and giving bribes are illegal. The provisions on bribery apply to corrupt acts within both public and private sectors and cover all employees and persons performing assignments based on contract, election, appointment or duty such as members of Parliament, board members, lawyers and consultants. The regulation also includes participants and functionaries in competitions where general betting is arranged (e.g. sports events).
- A bribe is defined under the SPC as an employee or other such person as described above who receives, gives, etc. (see below) an improper benefit for the exercise of the employment or the assignment. Further, it is considered a bribe to receive an improper benefit even if the act was committed before the offender undertook the relevant employment or after the employment was terminated. It is also considered a bribe if the improper benefit is received by someone else, but from which the offender indirectly benefits, for example, an improper benefit given to a family member or an organization where the offender is engaged.
- The benefit itself can be of material nature and have an economic value (e.g. donations, discounts, rights of use, commissions, loans, guarantees and credits). The benefit can also be veiled, such as work services, reduced charges, reduction of interest and repayments or high consultancy fees. Further, the benefit can be intangible (e.g. recommendations and ratings).
- The assessment of whether a benefit is improper is based on all relevant circumstances. The starting point for the assessment is the interest that the criminalization intends to protect; for the public sector this is generally public confidence in the proper exercise and integrity of public authorities, and for the private sector this is generally loyalty towards the principal. The benefit is improper if the benefit is intended to affect or devoted to affect the performance of a person, inducing conduct that amounts to a breach of an expectation that a person will act in good faith, impartially, or in accordance with a position of trust. An overall assessment shall be made on a case-by-case basis, in particular concerning the nature of the service, the nature of the benefit and the value of the benefit.
- The above descriptions are the most common forms of bribery. There are two other situations which can also constitute a bribe according to the SPC. Firstly, it is a bribe to influence another person's decision or action in the exercise of public authority or public procurement, or to make someone influence another person's decision or action in the exercise of authority or public procurement (trading in influence). Secondly, a bribe can be constituted by a trader who provides money or other assets to someone representing the trader in a particular matter (negligent financing of bribery).

What are the principal offences under this legal framework?

- Receiving, accepting a promise regarding a bribe, or requesting a bribe (Chapter 10, section 5a of the Penal Code);
- giving, promising or offering a bribe (Chapter 10, section 5b of the Penal Code);
- trading in influence (Chapter 10, section 5d of the Penal Code); or
- negligent financing of bribery (Chapter 10, section 5e of the Penal Code).

3. Jurisdictional Reach

What is the jurisdictional reach of the legal framework?

- The offense is considered universally applicable. Both Swedish and foreign employees and contractors are covered by the criminalization, for both private and public sectors.
- If the act was committed abroad, the Swedish court generally has jurisdiction provided that, inter alia, dual criminality is at hand and certain criteria regarding the offender's nationality is met. The sentence cannot be stricter than prescribed by the other country's law. When making the assessment on whether the benefit is improper, the other country's law should to some extent be considered.

4. Who may be liable?

Who may be liable for bribery? (public officials, private individuals, legal entities etc.)

- Individuals in both the private and public sector may be held liable for bribery.
- Legal entities cannot be liable for bribery under Swedish law. Instead, the company's representatives may be held liable for bribery. However, the legal entity may be affected by other penalties, such as a corporate fine if the company, for example, has failed in its control of the company, or forfeiture of the benefit (i.e. property received) where the bribe or the value of the bribe is to be handed over to the state.

Can a parent company be liable for its subsidiary's involvement in bribery?

- A legal entity can in general not be held liable for bribery.

5. High Risk Areas

Are facilitation payments (i.e. small payments to speed up routine governmental action) considered bribes?

- Yes, provided they meet the criteria for constituting a bribe, facilitation payments are considered bribery, no matter how small the amount. There are no fixed value limits.

Does the legal framework restrict political and charitable contributions?

- A political or charitable contribution could be considered a bribe if it is given or received with the intention of inducing a person to act improperly, or as a reward for having done so, making the same assessment as described above.
- A contribution for promoting the policy of a party as such is not considered improper.
- It may be noted that, according to the Transparency in Financing of Parties Act (*lag (2018:90) om insyn i finansiering av partier*) political parties have an obligation to report which funds have been received and from whom. In addition, it is prohibited to receive anonymous financial contributions over a certain amount.

Does the legal framework place restrictions on corporate hospitality?

- The Penal Code does not contain any express provisions with regard to corporate hospitality. Any financial or other advantage given in this context would need to be assessed in accordance with the provisions described above.
- When assessing whether or not the benefit is improper, one shall consider if the benefit has a social or operational justification, (i.e. if the benefit falls within the framework of ordinary courtesy between people or constitutes a general practice or accepted custom in serious business).

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- Gifts in connection with Christmas etc. as well as work lunches and study trips are generally considered fair. In the private sector, benefits of a marketing nature are generally considered fair and acceptable.

6. Legal Defences

Are there any defenses for bribery offences?

- There are no specific statutory defenses to charges under the SPC.

7. Regulatory and Enforcement Bodies

What are the key regulatory or enforcement bodies with regard to bribery?

- The Swedish Prosecution Authority has a national unit, the National Anti-Corruption Unit, which administers investigations involving corruption crimes such as bribery.
- The Police Authority has a National Anti-Corruption Unit, which investigates corruption crimes. In addition, the unit also works with crime prevention.

8. Legal Consequences

What are the legal consequences of being found guilty of bribery offences?

- Individuals face up to two years' imprisonment and/or an unlimited fine on conviction. If the crime is gross, individuals may face up to six years' imprisonment.
- Companies can receive a corporate fine of between SEK5,000 and SEK10,000,000.
- An individual and/or company may also face confiscation of criminal property (i.e. the proceeds of crime) arising from the offence.

9. Deferred Prosecution Agreements

Are deferred prosecution agreements (DPAs) or other similar settlement mechanisms available?

- No

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Transparency International UK

10 Queen Street Place,
London,
EC4R 1BE

www.transparency.org.uk
twitter.com/transparenc yuk

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