



# **End of corruption – proposed Swedish legislation**

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# Current situation

- Two (three) different chapters in the Penal Code
- General wording and unclear definitions



- category of persons unclear and inconsistent
- “ a bribe or other improper reward”
- different scope of protection public/private sector
- lack of clarifying case law and other guidance

# Objective Proposed Legislation



to

- establish *a clear legal framework* to combat corruption;
- bring the legislation *up to date* with 21<sup>st</sup> Century developments;
- and – most of all – *gaining trust* on the national and corporate level

# Proposed legislation



- Penal provisions complemented by a business law code
- All employees and contractors – improper influence
- Definition of improper reward
  - nature and value of benefit
  - connection benefit and recipient's work/commission
  - recipient's position in relation to provider and to recipient's employer or client
  - transparency, initiative
  - general market practice, industry standards

# Breach of trust (Penal Code 10:5) *trolöshet mot huvudman*

- Clarification that breach of trust also comprises bribery
- Anyone who demands, accepts a promise or receives a reward to the benefit of the donor/other party to the detriment of the company/organisation
- Protection of the interests of the principal

# Bribery (Penal Code 10:5a and 10:5b) *givande respektive tagande av muta*

## Three situations:

- 1) **intention to** (*Swe: avsikt att*) unduly influence or reward the exercise of public authority or public procurement or to reward such influence
- 2) **aims at** (*Swe: ägnad att*) unduly influencing or rewarding other employees or contractors in the exercise of their employment or contracts (i.e. other than those in (1))

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- 3) **aims at** (*Swe: ägnad att*) unduly influencing the outcome of competition subject to commercial betting

# Negligent financing of bribery (Penal Code 10:5d) *vårdslös finansiering av muta*



Special criminal offence if

- assets offered, promised or given on behalf of a company
- to intermediary which represents the company (position or contract)
- used to finance bribery
- gross negligence

# Proposal for a Swedish Code of Gifts, Rewards and Benefits in the Business Sector

- Self regulation
- Complement to the criminal law provisions
- Accounting Act or the Foreign Branches Act
- Guidance “with a margin”
- Both to and from other parties
- Preventive measures, partners
- Compliance with the Code → assumption re: no improper benefit
- Non-compliance with the Code → no automatic assumption re: improper benefit





# Increased transparency and clarity, but ....

- Why not a separate Bribery Act?
- Bribery – but not breach of trust – typically effects decision making, involves two parties and lacks obvious plaintiff
- Definitions public/private sectors remain unclear
- Still “improper reward” and still “aimed at”
- Vague connection proposed legislation – proposed code
- Beware of substantial differences between industry codes
- Need for guidelines

.....and of course, the Bill is yet to be seen

