THE ANTI-BRIBERY AND ANTI-CORRUPTION REVIEW

Sixth Edition

Editor
Mark F Mendelsohn

THE LAWREVIEWS

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SIXTH EDITION

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PREFACE

This sixth edition of *The Anti-Bribery and Anti-Corruption Review* presents the views and observations of leading anti-corruption practitioners in jurisdictions spanning every region of the globe, including new chapters covering Argentina, Canada, Jersey and Sweden. The worldwide scope of this volume reflects the reality that anti-corruption enforcement has become an increasingly global endeavour.

Over the past year, the ripple effects from several ongoing high-profile global corruption scandals have continued to dominate the foreign and domestic bribery landscape. Most notably, in Brazil, Operation Car Wash, the wide-ranging investigation that uncovered a colossal bribery and embezzlement ring at state-owned oil company Petróleo Brasileiro SA (Petrobras), has implicated many domestic and multinational firms across a range of industries, and touched a growing number of foreign countries, leading to cross-border cooperation by enforcement agencies and one of the largest foreign bribery settlements in history. In December 2016, Odebrecht SA, the largest construction company in Latin America, and its subsidiary Braskem SA, a Brazilian petrochemical company, entered coordinated settlement agreements to pay approximately US$3.5 billion in fines and penalties to authorities in Brazil, the United States and Switzerland for making improper payments to government officials, including officials at Petrobras, Brazilian politicians and officials, and political parties through Odebrecht's off-book accounts in exchange for improper business advantages, including contracts with Petrobras. Additionally, J&F Investimentos SA, the parent company of the world's largest meatpacker JBS SA, entered a leniency agreement with Brazil's Federal Prosecutor's Office, agreeing to pay US$3.2 billion for its role in corrupting more than a thousand politicians over the course of a decade. Over the past year, Brazilian enforcement authorities have increasingly utilised plea bargains and leniency agreements both to secure cooperating witnesses and encourage companies to pay fines that ultimately reduce the financial and reputational impact from harsh sanctions.

Likewise, there have been further developments in the worldwide investigations into the misappropriation of more than US$3.5 billion in funds by senior government officials from state-owned strategic development company 1Malaysia Development Berhad (1MDB). The Swiss Office of the Attorney General has been pursuing a money laundering investigation into 1MDB and two Swiss private banks with the help of Singapore, Luxembourg, and the US Department of Justice (DOJ). In June 2017, the DOJ filed additional civil forfeiture complaints seeking recovery of assets valued at approximately US$540 million. Combined with the DOJ's June 2016 civil forfeiture complaints to recover more than US$1 billion in assets, this remains the largest civil forfeiture action ever brought under the DOJ's Kleptocracy Asset Recovery Initiative. The DOJ has also turned its focus to a criminal investigation into

1MDB, particularly in relation to funds used to acquire real estate and other assets in the United States.

Judicial and legislative developments over the past year have further clarified the breadth and scope of anti-corruption investigations and enforcement. For instance, in December 2016, the French parliament passed the Sapin II law, a corporate anti-corruption law that, among other things, established the French Anti-Corruption Agency and required companies with 500 or more employees to establish a compliance programme by mid 2017. In May 2017, the UK High Court in *Director of the Serious Fraud Office v. Eurasian Natural Resources Corporation Ltd* reduced the scope of litigation privilege to communications created to obtain information when the litigation is in progress or reasonably imminent, is adversarial, and the communication's primary purpose is conducting the litigation. If upheld, this has an impact on how investigative internal investigations in the UK are structured so as to maintain legal privilege. Finally, in June 2017, the US Supreme Court held in a unanimous decision in *Kokesh v. SEC* that claims for disgorgement brought by the Securities and Exchange Commission (SEC) were subject to a five-year statute of limitations, thereby limiting the SEC's ability to seek monetary penalties for misconduct that occurred more than five years before the enforcement action.

Continuing a recent trend, the enforcement actions this year reflect cooperation between authorities all over the globe to investigate and charge companies involved in corruption scandals. For example, the successful investigation into Odebrecht SA and Braskem SA was a result of cooperation between the DOJ, the Brazilian Federal Prosecutor's Office and the Swiss Office of the Attorney General. Likewise, in January 2017, the DOJ, the UK's Serious Fraud Office and the Brazilian Federal Prosecutor's Office reached an US$800 million coordinated settlement agreement with Rolls-Royce Plc, a UK-based multinational engineering company that manufactures, designs and distributes power systems, for its role in a bribery scheme involving payments to foreign officials around the globe in exchange for government contracts. And recently in September 2017, in the only corporate Foreign Corrupt Practices Act (FCPA) enforcement action under the Trump administration to date, Swedish international telecommunications company Telia Company AB and its subsidiary entered coordinated settlement agreements with the DOJ, SEC and the Public Prosecution Service of the Netherlands, agreeing to pay US$965 million in fines and penalties for making bribe payments of over US$331 million to an Uzbek official in exchange for expansion into the Uzbek telecommunications market. This is the second settlement arising from the expansive collaborative investigation into bribe payments made to an Uzbek government official; Amsterdam-based telecommunications company VimpelCom Limited and its subsidiary entered a US$795 million global settlement last year to resolve similar allegations as a result of cooperation between enforcement agencies in, among others, Belgium, Bermuda, the British Virgin Islands, the Cayman Islands, Estonia, France, Ireland, the Netherlands, Norway, Spain, Sweden and Switzerland.

In the United States, the DOJ has continued to emphasise the importance of an effective compliance programme and self-reporting. In February 2017, the DOJ Fraud Section released a guidance document, 'Evaluation of Corporate Compliance Programs', identifying a list of 119 common questions that the Fraud Section may ask in evaluating corporate compliance programmes in the context of a criminal investigation. Relatedly, April 2017 marked the one-year anniversary of the DOJ's Pilot Program, aimed at providing greater transparency on how business organisations can obtain full mitigation credit in connection with FCPA prosecutions through voluntary self-disclosures, cooperation with DOJ investigations, and

remediation of internal controls and compliance programmes. The Pilot Program remains in effect under the current administration, but its future remains uncertain as the DOJ continues to assess its utility and efficacy. To date, the DOJ has issued seven declinations to companies that self-reported and disgorged profits under the Pilot Program, with no monitorship requirements.

I wish to thank all of the contributors for their support in producing this volume. I appreciate that they have taken time from their practices to prepare chapters that will assist practitioners and their clients in navigating the corruption minefield that exists when conducting foreign and transnational business.

Mark F Mendelsohn
Paul, Weiss, Rifkind, Wharton & Garrison LLP
Washington, DC
November 2017

Chapter 23

SWEDEN

David Ackebo, Elisabeth Vestin and Emelie Jansson[1]

I INTRODUCTION

Ranked among the top five countries on Transparency International's 2016 Corruption Perceptions Index, Sweden is generally perceived as having low levels of corruption,[2] and for a long time corruption was not considered an issue. However, in recent years several major Swedish companies have been the subject of bribery allegations in the media, primarily because of conduct relating to their foreign operations.[3] The media attention has raised awareness of the issue and the *de facto* presence of corruption and bribery in Swedish society, and has led to increased efforts to combat corruption, both by the authorities and by private entities.

Since 2012, the provisions on bribery are primarily to be found in Chapter 10 of the Swedish Penal Code (the Penal Code). The legislation was revised in an effort to modernise the anti-corruption provisions and introduce sustainable, more efficient legislation. In addition to certain editorial changes, two new provisions with two new offences were introduced to widen the scope of the anti-bribery legislation: trading in influence and negligent financing of bribery.

Sweden is continuously working to strengthen its anti-corruption framework, through legislative revisions and by placing more demands on the internal processes of companies. As a result of the efforts of the past years, Sweden now has a much more comprehensive anti-corruption system in place including legislation criminalising most forms of bribery. In the wake of the legislative developments and the media's focus on corporate corrupt behaviour, anti-corruption is much higher on the agenda in Swedish business society today compared with 10 years ago. One of Sweden's current challenges is to successfully enforce its anti-corruption legislation on acts of bribery by Swedish companies abroad.

II DOMESTIC BRIBERY: LEGAL FRAMEWORK

i Taking a bribe and giving a bribe

Pursuant to Chapter 10, Section 5(a) of the Penal Code, an employee or contractor may not receive, accept a promise of or request an improper benefit for the carrying out of the employment or assignment (passive bribery).

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1 David Ackebo and Elisabeth Vestin are partners, and Emelie Jansson is a law student trainee, at Hannes Snellman Attorneys Ltd.

2 www.transparency.org/news/feature/corruption_perceptions_index_2016. Accessed 2017-09-20.

3 See Section VI, below.

Section 5(b) similarly prohibits the provision, promising or offering of an improper benefit to an employee or contractor for the carrying out of the employment or assignment (active bribery).

The bribery offence is built on the assessment of three components: (1) the persons involved; (2) the connection between the recipient's duties and the benefit; and (3) the nature of the benefit. The same conditions apply to both offences.

ii The persons involved and the connection to performance of duties

The provisions apply to anyone who is employed or performs a function or assignment, in both the public and private sector. The benefit does not have to have any actual effect on the recipient's actions, the essential element is that the benefit is given or received in connection with the performance of duties. To constitute a bribery offence it is sufficient that a benefit objectively has the potential to affect the recipient's actions or can be construed as a reward for an already provided service.[4]

iii Improper benefit

Once a link between the recipient and the benefit has been established, criminal liability depends on if the benefit can be considered 'improper'. The term improper is not defined in the Penal Code and, in most cases, the nature of a benefit must be determined through a global assessment of all relevant circumstances in each case.

The giving of money is essentially always considered improper. However, there is no regulated minimum monetary value for an improper benefit. The value of a benefit must be put in relation to the nature of the office held by the recipient. Naturally, the giving and receiving of benefits within the public sector is viewed much more strictly compared to the private sector because of the importance of protecting and maintaining trust in the decision-making process of public authorities. Therefore, even very insignificant gifts of little or no monetary value can be inappropriate if the recipient occupies a public office or handles sensitive processes, such as public procurement.[5]

Furthermore, owing to general business practice within some industries, even a more valuable benefit can be permitted if it falls within the norms of courteous or customary behaviour, for example, certain invitations to traditional hunting events within the forest industry sector or invitations from sponsors to sporting events, if it is not in its nature to influence the recipient's behaviour. Equally, if a benefit fulfils a professional purpose for the recipient, the benefit may be permissible (e.g., a lunch with clients), as long as the purpose is proportionate to the benefit.

Personal relationships between the giver and taker can constitute an extenuating factor if the benefit is exclusively or substantially given by reason of the personal relationship and not the connection to the recipient's professional position. By way of example, in a Supreme Court case from 2009, the Court found that a son's giving of a relatively expensive wine

4 Travaux préparatoires, Prop. 2011/12:79, p. 43.

5 In 2012, a police officer was convicted of taking a bribe when he accepted a salad worth 65 kronor for not filing a report of a traffic offence. Gothenburg District Court, judgment of 12 April 2012 in criminal case No. B 14488-11.

cooler to his father's public defence lawyer was exclusively, or at least substantially, given within their personal relationship and therefore not in connection with the performance of the lawyer's duties as a public defender.[6]

Swedish legislation does not permit so-called facilitation payments.

iv Gross bribery offence

Pursuant to Chapter 10, Section 5(c) of the Penal Code, a bribery offence is considered a gross offence if it involves the abuse of power or attack on a position involving particular responsibilities. According to the same provision, it can also be a gross bribery offence if the bribe was of considerable value or if the act was part of systematic criminal activity, criminal activity of large proportions or if it was otherwise of particularly dangerous in nature.

v Trading in influence

In 2012, the new offence of trading in influence was introduced in Section 5(d) of the Penal Code. It prohibits receiving, accepting a promise of or requesting an improper benefit in order to influence a person who exercises public authority or decides on public procurements, or providing, promising or offering an improper benefit in order for the recipient to influence the decision maker when exercising public authority or deciding on a public procurement. This provision is limited to the public sector.

vi Negligent financing of bribery

In 2012, negligent financing of bribery was added to Chapter 10, Section 5(e) of the Penal Code and targets situations where a company's representatives, agents or partners provide funds to a third party. Gross negligence is enough to impose liability, encouraging companies to take appropriate action to ensure that funds are not used for corrupt purposes. Accordingly, and somewhat similar to the UK Bribery Act, this provision imposes a duty for companies to have 'adequate procedures' in place to prevent bribery being committed by its intermediaries. However, since gross negligence is required, there is no automatic liability for companies that do not have adequate procedures in place.

The provision applies to both the public and private sectors, domestically and internationally, but was mainly introduced to target Swedish companies operating in markets where there is a high risk of corruption.[7] Prior to the passing of this new legislation, there were several examples where Swedish companies' agents abroad were found to have been paying bribes without any liability for the companies or its officers.

vii The Code on Business Conduct

At the same time as the revised anti-bribery regulation was implemented in 2012, the Swedish Anti-Corruption Institute[8] presented the Code on Gifts, Rewards and other Benefits in Business (the Code on Business Conduct), which provides further guidance on the anti-bribery provisions for both the public and private sectors. The Code on Business Conduct is generally stricter than the provisions in the Penal Code and is an effective tool to promote self-regulation as a means to combat corruption in society. The Swedish

6 See Supreme Court case NJA 2009, p. 751.

7 Travaux préparatoires, Prop. 2011/12:79, p. 36.

8 Sw. Institutet Mot Mutor, IMM.

Anti-Corruption Institute also has an ethics board to which companies and individuals can turn for declarations if certain specific actions, for example planned events with clients, are in accordance with the Code on Business Conduct. The board normally publishes its decisions on the institute's website.

viii Political contributions

Political contributions are not prohibited in Sweden. Since April 2014, following the introduction of the Transparency of Party Funding Act,[9] all political parties that participate in elections to the Swedish or European Parliament are obliged to keep proper books and accounts of all party funding and to submit an annual revenue report to the Legal, Financial and Administrative Services Agency.[10] The report provides transparency on the origin of the party's funding by specifying the respective amounts received from individuals, corporations, organisations, foundations, etc. If this contribution exceeds a set amount,[11] the contributor's identity and the size of their contribution must be disclosed. Parties must also specifically disclose the size and number of all anonymous contributions made to the party. The information is made available to the public on the Legal, Financial and Administrative Services Agency website. The Agency also publishes the names of the parties from whom the annual revenue report is missing.

ix Corporate fines

Only natural persons can be held criminally liable according to Swedish law. However, legal entities can be subject to corporate fines pursuant to Chapter 36, Section 7 of the Penal Code if a criminal offence (e.g., bribery) is committed within the scope of a company's business operations, and the company has failed to undertake reasonable actions that could have prevented the criminal offence. Equally, a company can be subject to corporate fines if such an offence was committed by (1) a person of authority or with the power to represent the company or (2) by a person with special duties to monitor or control the company's operations.

Corporate fines amount to a minimum of 5,000 kronor up to 10 million kronor. A corporate fine not exceeding 500,000 kronor can be imposed through an order of summary imposition of a fine.[12] If the defendant contests the order, regular criminal court proceedings are commenced against the defendant.

The size of a fine can, to some extent, be mitigated if the company has taken actions to prevent or reduce the damaging effects of the criminal offence or reported the crime voluntarily, or if the fine would render the combined penalty on the company disproportionate to the offence.[13] A state inquiry on the corporate fines system was presented in 2016. The updated provisions are anticipated to enter into force in July 2018 (see Section VIII).

9 Sw. Lag (2014:105) om insyn i finansiering av partier.

10 Sw. Kammarkollegiet.

11 The amount is equal to half of the full price base amount established according to Chapter 2, Sections 6–7 of the Social Security Code. The full price base amount in 2017 is 44,800 kronor.

12 See Chapter 48, Section 4 of the Swedish Code of Legal Procedure. Sw. Strafföreläggande. (Translation from Glossary for the Courts of Sweden.)

13 See Chapter 36, Section 10 of the Penal Code.

Additionally, companies in breach of anti-corruption legislation face debarment from tendering for public procurement contracts pursuant to the Public Procurement Act.[14]

x Penalties

The penalty for a bribery offence is a fine or imprisonment for up to two years, or six months to six years for a gross offence. In addition to the penalty sentence, the court generally also orders disgorgement of the proceeds of the crime (i.e., the assets received with respect to passive bribery and the ill-gained revenues in case of active bribery). If confiscation is not possible because of the nature of the bribe, the receiver must pay a penalty fine equivalent to the estimated value of the bribe received.

III ENFORCEMENT: DOMESTIC BRIBERY

i Authorities and agencies focusing on corruption

To provide the Swedish Prosecution Office with specialist competence, a special public prosecution office, the National Anti-Corruption Unit (NACU), was established in 2003[15] and tasked with administering investigations regarding crimes of corruption. To provide NACU with additional support and investigative resources, a National Corruption Group was founded within the police authority in 2012, consisting of specialists within the field of corruption.

ii Deferred prosecution agreements and other structured criminal settlements

Besides the summary imposition of a fine regime for less serious criminal acts (see Section II.ix), Sweden does not have a system of plea bargains, deferred prosecutions agreements (DPAs) or other arrangements on the side of regular court processes. That being said, it follows from Chapter 29, Section 5 of the Penal Code that when determining a penalty the court shall, to a reasonable degree, take into account to what extent the defendant reported the crime voluntarily or provided information essential to the investigation of the crime. However, to our knowledge, this provision in the Penal Code has never been applied by the courts in connection with any larger corruption case. This provision is only relevant when a court is determining the proper penalty in a case of conviction in court proceedings.

Although Sweden does not have a system of DPAs, the concept is still relevant to Swedish companies. In a recent case where the Swedish telecoms operator Telia Company was accused of bribery offences abroad (see Section VI), the Swedish authorities worked together with the US and Dutch authorities who also claimed jurisdictional reach over the offences. The outcome was a global settlement in the form of a DPA.

iii Recent legal cases

Following a few high-profile corruption cases, for example in 2010 and 2014,[16] no major domestic cases have come to light in recent years. The courts continue to apply the anti-bribery provisions in cases of minor, everyday corruption that is rarely reported on.

14 See Chapter 13 of the Swedish Public Procurement Act (2007:1091).

15 Sw. Riksenheten mot corruption.

16 Gothenburg Municipality bribery scandal in 2010 and Swedish Prisons and Probations services case in 2014 (case No. B 17241-12).

Several cases concern a situation in which a carer within the home-care industry has accepted a gift or other benefit from a client, sometimes because a friendship has developed and sometimes because of undue influence on the elderly.[17] The conclusion that can be drawn from these cases is that only on very rare occasions can a carer accept a gift from a patient because the recipient's professional position as a carer typically renders the gift an improper benefit. In one instance a woman who, through testamentary disposition, had received money from a former client was acquitted by both the district court and the court of appeal,[18] because the court could clearly establish, through testimonies and documentation, that the inheritance was based on a strong friendship that had developed after the carer's employment had ended, and was not a reward for her work. For a gross bribery offence, the courts have specifically taken into account the value of the gift or benefit, undue use of public office and the severity of taking advantage of elderly people who depend on the services of their carers.

Although large-scale corruption occasionally occurs, Sweden does not generally experience systematic bribery. The most common forms of bribery appear to be instances of private individuals attempting to influence public officials, often in relation to applications for permits, to gain access to information or to avoid responsibility for minor criminal offences. Within the private sector, bribes generally consist of simple benefits of limited monetary value, such as conference trips, technical products or dinners. This finding was presented in the most recent state sanctioned report on corruption published by the Swedish National Council for Crime Prevention in 2013.[19] The same trends are seen today.

IV FOREIGN BRIBERY: LEGAL FRAMEWORK

The same government bodies that are responsible for enforcing domestic bribery laws also address foreign bribery. All of the bribery provisions in the Penal Code are applicable to acts of bribery committed abroad, provided that the acts are subjected to the jurisdiction of Swedish courts. Pursuant to Chapter 2, Section 2 of the Penal Code, Swedish courts have jurisdiction over criminal offences committed abroad if the crime was committed by a Swedish citizen, a foreign citizen domiciled in Sweden or if the criminal offence falls under universal jurisdiction. The implementation of the new provision of negligent financing of bribery was an attempt at creating further possibilities to hold both natural and legal persons liable for bribery offences committed abroad.

Additionally, there is a general requirement of double jeopardy: the offence must be penalised under the law of the country where it was committed. Finally, Swedish jurisdiction is impeded if the statute of limitations has expired in the foreign jurisdiction.

As previously mentioned, Swedish legislation does not provide an exception for facilitating payments to foreign officials.

17 See, for example, Svea Appeal Court, judgment of 11 February 2016, case No. B 8022-15; the Supreme Court, judgment of 23 November 2016 criminal case B 4940-16; Gothenburg District Court, judgment of 28 March 2017, case No. B 505-17; Nacka District Court, judgment of 2 June 2017, case No. B 5497-16; and Attunda District Court, judgment of 1 September 2017, criminal case No. B 9776-16.

18 Svea Court of Appeal, judgment of 8 September 2016, case No. B 3015-16.

19 National Council for Crime Prevention, Reported Corruption in Sweden, 2013:12, Stockholm.

V ASSOCIATED OFFENCES: FINANCIAL RECORD-KEEPING AND MONEY LAUNDERING

i Financial record-keeping provisions

The main regulations on financial record-keeping are provided in the Book-keeping Act. Chapter 4, Section 1 outlines the requirements placed on legal entities, including natural persons who carry out business activities, to maintain regular records of all business transactions, archiving all accounting information in an orderly state and in a satisfactory and transparent manner in Sweden for seven years, and closing the accounts with an annual financial statement or report each financial year. The annual statement or report shall be prepared in accordance with the provisions of the Annual Accounts Act.[20]

Additional provisions on financial record-keeping can be found in the Swedish Companies Act, the Auditing Act, the Income Tax Act and the Money Laundering Act.

Pursuant to Chapter 11, Section 5 of the Penal Code, the failure to maintain accounts can constitute a bookkeeping offence carrying a sentence of fines or imprisonment for up to two years, and in case of a gross offence, imprisonment for up to six years.

ii Money laundering

According to Sweden's Financial Supervisory Authority (SFSA),[21] an estimate of several billion kronor is laundered in Sweden each year.[22] The country's aspirations to combat this issue are visible through the recent revision of the anti-money laundering legislation.

Two primary laws in Sweden aim to regulate money laundering; the Money Laundering and Terrorist Financing Prevention Act (the Anti-Money Laundering Act) and the Money Laundering Offences Act. The latter is a penal regulation that came into force in July 2014 following a state inquiry on the need to make the anti-money laundering legislation more efficient and accessible.[23] Pursuant to the Act, the penalty for a money laundering-related crime ranges from a fine to up to six years' imprisonment.

An updated Anti-Money Laundering Act entered into force on 1 August 2017 and contains the administrative regulations that apply to entities within certain sectors.[24] Natural and legal persons that are subject to the legislation are responsible for implementing procedures to prevent and discover money laundering activities or financing of terrorism in their operations.[25] If suspicious activities are detected, such entities are obligated to immediately report the anomalies to the Financial Intelligence Unit of the Swedish National Police Board.

iii Tax law

Pursuant to Chapter 9, Section 10 of the Income Tax Act, any domestic or foreign payment that could constitute a bribe or unlawful benefit is non-deductible.

20 Sw. Årsredovisningslag (1995:1554).

21 Sw. Finansinspektionen.

22 www.fi.se/en/bank/money-laundering/, accessed on 21 September 2017.

23 Travaux préparatoires, Prop. 2013/14:121, p. 44.

24 The legislative update was carried out to ensure compliance with EU regulations on anti-money laundering and financing of terrorism.

25 Travaux préparatoires, Prop. 2016/17:173, p. 2.

VI ENFORCEMENT: FOREIGN BRIBERY AND ASSOCIATED OFFENCES

Despite recurring allegations of foreign bribery made against Swedish companies, the allegations rarely lead to a conviction. In a 2012 report on Sweden's implementation of the Organisation for Economic Co-operation and Development (OECD) Anti-Bribery Convention,[26] the OECD expressed concern about Sweden's lack of enforcement against legal persons for foreign bribery offences.[27] In the years since, Sweden has worked hard to meet the OECD's demands and reported significant progress on enforcing its offence of bribing a foreign official in the follow-up report in 2014.[28]

In the spring of 2016, several Swedish banks were implicated in what has become known as the largest data leak in history: the Panama Papers. Nordea Bank, one of four major banks in Sweden, was identified as one of the most active banks worldwide to assist its customers in setting up anonymous shell companies for the purpose of tax evasion. Once the leak became known, the SFSA initiated an investigation against Nordea.

Prior to the Panama Papers, in 2015, the SFSA carried out a general investigation into Nordea's application of the anti-money laundering legislation. The investigation exposed serious systematic shortcomings and, as a result, Nordea was issued with a warning and fined 50 million kronor.[29] To remediate, Nordea adopted a rigorous compliance plan, which the bank was still implementing at the time the Panama Papers scandal materialised. The SFSA concluded that Nordea's lack of adequate anti-money laundering procedures was the explanation behind Nordea's involvement in the Panama Papers and recognised that the bank was still working to implement proper procedures. Therefore, the SFSA announced in March 2017 that Nordea would not face any further penalties following its involvement in the Panama Papers affair.[30]

In 2012, Swedish telecoms firm Telia Company (then TeliaSonera) became the subject of investigation following accusations that the company had paid millions of dollars to the daughter of the President of Uzbekistan to obtain necessary licences and access to the Uzbek telecoms operator market in 2007. The investigation was continued by American, Dutch and Swedish authorities and, in September 2017, Telia reached a global settlement with the US Department of Justice (DOJ), Securities and Exchange Commission (SEC) and the Dutch Public Prosecution Service. As part of the settlement, Telia will pay a combined penalty amounting to approximately US$965 million. The total disgorgement of approximately US$457 million ordered by the SEC is reported as the greatest such amount ever ordered in an FCPA enforcement action.[31] However, that amount includes US$40 million for the DOJ forfeiture and US$208.5 million for potential disgorgements in the Dutch and Swedish legal proceedings. Moreover, in September 2017, the Swedish prosecutor filed charges against

26 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

27 OECD, 'Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Sweden', June 2012, p. 5.

28 OECD, 'Sweden: Follow-Up to the Phase 3 Report & Recommendations', August 2014, p. 4.

29 Decision of the Swedish Financial Supervisory Authority, Dnr 13-1784. Accessed in full at www.fi.se/sv/publicerat/sanktioner/finansiella-foretag/2015/nordea-far-varning-och-straffavgift/, 25 September 2017.

30 Kellberg, Afroditi, Nordea och Handelsbanken slipper böter i Panamahärvan, Dagens Industri, 17 March 2017, www.di.se/nyheter/nordea-och-handelsbanken-slipper-boter-i-panamaharvan/, accessed 25 September 2017.

31 See the FCPA Blog, www.fcpablog.com/blog/2017/9/25/telia-also-tops-our-new-top-ten-disgorgements-list.html, accessed on 25 September 2017.

three former executives of TeliaSonera for their involvement in the bribery scheme. As the alleged offences were committed prior to 2012, their actions will be assessed in accordance with the old anti-bribery legislation. This means that, among other things, the prosecutor must be able to show intent. The receiver of the alleged bribes must also be considered to fall under the category of persons that can be bribed pursuant to the old legislation. In connection with the filing of charges against the former executives, the Swedish prosecutor also initiated legal proceedings against Telia Company for a disgorgement of the company's alleged ill-gained profits in Uzbekistan.

The Swedish subsidiary of the Canadian rail vehicle and equipment manufacturing company Bombardier Transportation are under investigation for having channelled millions of dollars in bribes to unidentified Azerbaijan officials in order to secure a tender to supply the state of Azerbaijan with a train signalling system. Despite not providing the best offer in the procurement, Bombardier won the tender in 2013 because the competitors were disqualified by the rail authority in Azerbaijan. Criminal proceedings commenced in Stockholm in August 2017 against a Russian national and employee of Bombardier Sweden, who allegedly had a central role in the bribery scheme. Two months later the employee was acquitted by the court because the prosecutor was unable to prove that he had promised or offered an inappropriate benefit.[32] According to the Swedish prosecutor, a preliminary investigation into higher-ranking employees at Bombardier is being carried out.

VII INTERNATIONAL ORGANISATIONS AND AGREEMENTS

Sweden is a signatory of numerous international conventions on anti-corruption, for example the United Nations Convention against Corruption, the United Nations Convention against Transnational Organized Crime, the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, the Council of Europe Criminal Law Convention on Corruption and the Council of Europe Civil Law Convention on Corruption. In addition, Sweden is a member of organisations such as the Group of States against Corruption, the European Partners against Corruption and the European contact-point network against corruption.

VIII LEGISLATIVE DEVELOPMENTS

From the start of the 2017 financial year, new Swedish legislation obliges large companies[33] to report on the environmental, social and governance-related risks within their operations, including their anti-corruption policies and their strategies on how to prevent and minimise

32 Stockholm District Court, judgment of 11 October 2017 in criminal case No. B 1282-17.

33 According to Chapter 6, Section 10 of the Annual Accounts Act, companies that meet two of the following criteria are subject to the non-financial reporting demands: in the past two fiscal years the company (1) has had more than 250 employees, (2) for each of the years has reported total assets of over 175 million kronor, (3) for each of the years has reported total net sales of more than 350 million kronor.

such risks.[34] The new provisions are based on the 2014 EU Directive on non-financial reporting.[35] Sweden chose to implement more far-reaching provisions than the Directive demanded in order to target a larger group of Swedish companies.

On 1 January 2017, Sweden's first Whistleblower Act entered into force.[36] The Act does not regulate the right to blow the whistle but rather provides employees, as well as temporary workers, with protection from reprisals from the employer by placing a statutory liability for damages on the employer. The Whistleblower Act applies to both the public and the private sectors. In order for the Whistleblower Act to be applicable, a whistle-blower must first sound the alarm internally and must present a concrete suspicion of serious wrongdoing. If the employee has reasonable cause or if the employer fails to take appropriate measures, the employee can blow the whistle externally and still enjoy the protection of the Act. Should an employee commit a crime when blowing the whistle, he or she forfeits the protection of the Act.

In June 2017, the parliament passed new legislation regarding the registration of beneficial owners,[37] thus implementing the Fourth Anti-Money Laundering Directive, which entered into force on 1 August 2017. Legal entities are obligated to notify the Swedish Companies Registration Office who their beneficial owners are. By increasing transparency concerning ownership and the actual control of companies, the new law is part of ongoing efforts to prevent money laundering and financing of terrorism. Legal entities must obtain reliable information about the identity, nature and extent of the owner's interest. If such information cannot be obtained the legal entity must still inform about that lack of information to the Swedish Companies Registration Office.[38] Any changes in beneficial ownership must equally be notified.

After the investigation into Sweden's application of the OECD Anti-Bribery Convention in 2012, one of the OECD's primary recommendations was for Sweden to revise its corporate fines system to ensure that the framework is effective and in line with the convention.[39] In 2012, the team considered the provisions inadequate and far behind international standards. In May 2016, the government presented a state inquiry proposing legislative amendments to the corporate fines system, to enter into force on 1 July 2018.[40] The inquiry suggests a wider application of corporate fines to include public sector activities that can be considered equal to private business activities, as well as other activities intended to bring the legal person financial benefits. When determining the size of the fine, the inquiry suggests that the financial position of the companies be considered. Most importantly, it proposes that the maximum amount of the fine for particularly reprehensible offences should be raised from 10 million kronor to 100 million kronor – a significant increase that better corresponds to international standards.

34 Lagrådsremiss, Företagens rapportering om hållbarhet och mångfaldspolicy, 19 May 2016, p. 43.

35 Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups.

36 Sw. Lag (2016:749) om särskilt skydd mot repressalier för arbetstagare som slår larm om allvarliga missförhållanden.

37 Sw.Lag (2017:631) om registrering av verkliga huvudmän.

38 Sw. Bolagsverket.

39 OECD, Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Sweden, June 2012. Accessed in full on www.oecd.org/daf/anti-bribery/sweden-oecdanti-briberyconvention.htm.

40 Travaux préparatoires, SOU 2016:82, En översyn av lagstiftningen om företagsbot, p. 26.

IX OTHER LAWS AFFECTING THE RESPONSE TO CORRUPTION

i Privilege

Lawyers of the Swedish Bar Association have a duty of confidentiality within the framework of legal practice, pursuant to Chapter 8, Section 4 of the Swedish Code of Judicial Procedure and Section 34 of the Charter of the Swedish Bar Association, with the exception of the client's consent to reveal information or if there is a legal obligation to provide information.

All entities that are subject to the Anti-Money Laundering Act must report suspicious transactions or other anomalies within their operations to the Financial Intelligence Unit of the Swedish National Police Board. This also applies to lawyers who have reason to suspect that the legal business is being used for money laundering purposes or that a client's property or transaction has criminal origins. Lawyers (and associates) are exempt from this requirement whenever they defend or represent a client in the context of judicial proceedings or ascertain a client's legal position.

Accountants performing statutory revisions are always obligated to report suspicions of criminal activity.

ii Money laundering and data protection

As mentioned in Section VIII, Sweden recently implemented the Whistleblowing Act in an effort to improve whistle-blower protection. Prior to May 2018, companies with whistle-blower systems in Sweden must ensure compliance with the Personal Data Act[41] and the Data Inspection Agency's regulations.[42] In May 2018, the EU General Data Protection Regulation enters into force providing a single set of regulations in all EU Member States, replacing current national laws. The regulation contains stricter data protection and enforcement provisions compared to current national legislation. Whistle-blower systems must adhere to stricter technical requirements, for example, data protection (i.e., 'privacy by default') must be an integral part of any whistle-blowing system. Furthermore, the regulation imparts obligatory pseudonymisation, stricter data processor agreements and places higher demands on documentation as well as communication to employees who must be informed about their right to file complaints with the Data Protection Agency. Companies will also be obligated to notify the supervisory authority of all data breaches.

X COMPLIANCE

Compliance is viewed as an important part of business conduct in Sweden and most large and medium-sized companies have at least some basic form of internal compliance programme and relevant processes in place. For certain financial institutions, compliance is additionally regulated by decrees from the Financial Supervisory Authority.[43]

The government does not provide any general guidance on what constitutes an effective anti-corruption compliance programme. The Code on Business Conduct contains broad recommendations with respect to the implementation of policy documents, such as

41 Sw. Personuppgiftslagen (1998:204).

42 Data Inspection Board, 'Guidelines for companies: Responsibilities for personal data processed in whistleblowing systems', October 2010, available at www.datainspektionen.se.

43 Financial Supervisory Authority Regulations, FFFS 2007:16, Chapter 6, Section 9.

anti-corruption policies, as preventative measures against improper influencing.[44] The Code does not provide any more detailed guidance on how to implement an efficient anti-corruption compliance programme.

As mentioned in Section II.ix, self-reporting of an offence or a company's efforts to prevent and reduce damages can be mitigating factors when the court determines the size of corporate fines, pursuant to Chapter 36, Section 10 of the Penal Code.

XI OUTLOOK AND CONCLUSIONS

Looking back on the past few decades, it is clear that Sweden has made significant progress as far as anti-corruption work is concerned. Much of what was once tolerated as cronyism and nepotism, or accepted business practice, is now regulated and looked upon as corrupt behaviour by the media and the public. Today, most agencies, authorities and other state-controlled organisations and companies have internal control mechanisms and codes of conducts in place to prevent and deal with corrupt behaviour. This work is certain to continue as the damaging effects of corruption are abundantly clear.

As previously stated, Sweden's main challenge is to better enforce its anti-bribery legislation on instances of bribery by Swedish companies abroad. The revisions of the anti-bribery legislation in 2012 was one step in that direction, but the full effect of the revisions is yet to be seen. Currently, case law involving the two new offences (trading in influence and negligent financing of bribery) is scarce. As far as we are aware, no one has been convicted for these offences. Swedish companies are regularly facing bribery allegations in the media and the lack of convictions is seen by some as an indication that the Swedish anti-corruption framework is not sufficient. The *Telia* case is a good example of the type of situation the new provisions are intended to target. Nevertheless, the outcome in the trial of the three Telia executives is still of great interest and will likely influence the direction of future legislative updates.

Finally, it is being discussed whether Sweden should follow in the footsteps of other European countries, such as France, and adopt a system for deferred prosecution agreements or legislate on corporate criminal liability. These issues are the topics of an ongoing general debate but, so far, there are no official state inquiries or legislative proposals underway.

44 Section 12 of the Code of Business Conduct.

Appendix 1

ABOUT THE AUTHORS

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David Ackebo is a specialist partner at Hannes Snellman. Mr Ackebo's field of expertise includes international arbitration as well as domestic arbitration and litigation. He has acted as counsel for Swedish and foreign clients in complex arbitrations under various rules, such as ICC, AAA/ICDR, SCC, LCIA, SIAC, as well as in *ad hoc* administrated arbitrations. Mr Ackebo has also advised clients and acted as counsel in several high-value disputes before state courts. Mr Ackebo's broad dispute resolution experience includes, among other things, IT, telecoms, construction, M&A, real estate and securities-related disputes.

In addition to his arbitration and litigation work, Mr Ackebo has been engaged in various CSR, sustainability and anti-corruption matters, including several high-profile corruption investigations.

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Elisabeth Vestin heads the intellectual property and technology, media and telecoms (IP and TMT) practice at Hannes Snellman's Stockholm office. Her fields of expertise include IP law, privacy law, market law, consumer law, e-commerce as well as sports, media, music and entertainment law. Her practice includes drafting, interpreting, negotiating and disputing commercial agreements. She also advises on M&A in the IP and TMT field.

In addition, Mrs Vestin has worked with corporate sustainability, bribery, anti-corruption and compliance matters for over a decade. She regularly conducts presentations and training in these areas.

Because of her vast experience of working with franchise chains and other chain companies, Mrs Vestin has become a board member of the Swedish Franchise Association.

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