Guidelines Relating to Bribery

Introduction

These guidelines summarise the legal situation that arises when an employee at Linköping University (LiU) is offered or offers gifts, meals or other advantages. They are based on the regulations for accepting and giving bribes.

Since LiU is a government agency whose operations are carried out under commission from the public, LiU employees must follow legal provisions intended to guarantee that administration and decision-taking are characterised by objectivity and impartiality (the principle of objectivity). This means that LiU employees must never act in a manner that may bring into doubt the objectivity or impartiality of LiU. It must not be possible even to raise the suspicion that a LiU employee has been influenced by untoward desires or considerations in his or her work.

The overall aim of these guidelines is to prevent bribery at Linköping University. A second aim is to demonstrate how an employee can think and act when faced with various issues relating to bribes. The guidelines describe the applicable regulations and provide examples of advantages that should normally be permissible, and advantages that are never permissible.

The guidelines have been drawn up in accordance with the Vice-Chancellor’s decision of 13 June 2016, protocol 2016-18 § 2 (reference number LiU-2016-00027). They have been drawn up by the Legal Office at LiU.

Linköping, 24 May 2017

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1The following documents have been used as background when drawing up these guidelines: “Om mutor och jäv – en vägledning för offentligt anställda” (Finansdepartementet and SKL, 2009), “Riktlinjer mot mutor” (Uppsala University, UFV 2014/937), and “Riktlinjer för att förhindra mutor vid Stockholms universitet” (SU 31-2408-12).
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1 Bribery

Legislation governing bribery is laid down by the Swedish Penal Code. The offence is entitled **taking a bribe** or **accepting a bribe** (Chapter 10, Sections 5 a-c of the Swedish Penal Code).

The offence **accepting a bribe** (previously known as “passive corruption”) means that an employee or commissioned agent receives on behalf of himself/herself or on behalf of a third party undue advantage for carrying out his or her employment or the commissioned task. To request or accept the promise of undue advantage is also taking a bribe. It may also be considered to be an offence if an employee or commissioned agent carries out the action before he or she took up employment or received the commission, or after the termination of the employment or commission.

The offence **giving a bribe** (previously known as “active corruption”) means that a person provides, promises or offers undue advantage to an employee or commissioned agent for carrying out his or her employment or commissioned tasks.
Note that this is an offence independently of whether the advantage is accepted by the recipient or not.

An advantage is considered to be “undue” if it is intended to influence the recipient or influence confidence in an action. It is, thus, not necessary that influence actually occurs: it is sufficient that that there is a risk of influence.

2 Bribery or business entertainment?

These guidelines relating to bribery overlap to a certain extent the area of application of LiU’s “Riktlinjer för representation, gåvor samt förmånsbeskattning” (reference no. LiU-2015-01603). The table below shows the situations in which these various policy documents apply. The table makes it clear that these guidelines apply to cases in which an employee is offered advantages by an external party. They may be relevant also in cases in which LiU or a LiU employee offers advantages to an external party. In cases of the latter type, the question arises of where to draw the boundary between what is permissible business entertainment and what is impermissible. In contrast, in cases of a totally internal situation – in which LiU pays for an advantage for a LiU employee – it is solely LiU’s guidelines for business entertainment, gifts and the taxation of benefits that are applicable.

<table>
<thead>
<tr>
<th>Situation</th>
<th>Policy document</th>
</tr>
</thead>
<tbody>
<tr>
<td>An external party offers an advantage to a LiU employee</td>
<td>Guidelines Relating to Bribery</td>
</tr>
<tr>
<td>A LiU employee offers an advantage to an external party</td>
<td>“Riktlinjer för representation, gåvor samt förmånsbeskattning och Beloppsgränser för representation och gåvor” (reference no. LiU-2015-01603) and Guidelines Relating to Bribery, Section 5.6</td>
</tr>
<tr>
<td>LiU pays for an advantage for a LiU employee</td>
<td>Riktlinjer för representation, gåvor samt förmånsbeskattning (reference no. LiU-2015-01603)</td>
</tr>
</tbody>
</table>

3 The responsibility of the individual

The final responsibility for assessing whether a gift or advantage that has been offered can be accepted lies with the person who receives the offer. If uncertain, the individual should discuss the matter with his or her immediate superior or the
procurement manager. No-one within the university, however, can permit an employee, in a manner that frees the employee from responsibility, to accept an advantage that is objectively a bribe. The person who accepts an advantage is always legally liable.

4 Employees at particularly high risk

Certain categories of employee are at a particularly high risk for offers of bribery, and particularly stringent demands for independence are placed on such employees. Even a symbolic gift may constitute bribery for such employees. The principal categories of employee at particularly high risk are:

- employees whose duties include the exercise of public power (admission and examination)
- researchers who may come to a position of dependency on a supplier of research funds
- students (who may give their own results away to their examiners)
- employees who work with purchasing or procurement, and
- employees who deal with suppliers.

5 Due and undue advantage

5.1 Stricter requirements for government employees

The boundary between due advantage and undue advantage may differ from one time to another, and between different fields of activity. The courts, however, place particularly strict demands on employees in the public sector, and particularly in cases in which the operations involve the exercise of public authority.²

A reward may be considered to be undue even if it is not given with the intention of causing the recipient to act in a certain manner, and the assessment is not affected if the recipient can demonstrate that he or she has not been influenced by the advantage. Against this background, employees at LiU should consider any advantage given by an outsider as undue if it can be suspected to have influenced the performance of duties.

² See Wolters Kluwer’s comment to Section 5a of Chapter 10 of the Swedish Penal Code.
5.2 Questions to consider when offered an advantage

The list below contains some questions that an employee should pose when offered an advantage. These may help to determine whether the offer can be accepted or not.

- Is this an advantage and why is it being offered to me?
- Is there any coupling between the advantage and my professional duties?
- What is the nature of the advantage? What is its value?
- How much, if any, influence do I have on the relationship of my employer with the one who is offering the advantage?
5.3 **Examples of advantages that should normally be permissible**

- An occasional justified meal, in association with work
- Small samples of merchandise or advertising articles, when given during a company visit or similar event
- Simple gifts in the context of an ongoing contractual relationship, according to general commercial practice, such as cakes, biscuits or confectionery from a supplier in the Xmas period. It is necessary that such gifts can be consumed at the workplace and shared between all members of a unit or division.
- Simple gifts of gratitude from students, provided that they can be enjoyed at the workplace and shared between all members of a unit or division. Examples are flowers and food items of low value.\(^3\)
- Simple gifts of gratitude from PhD students in association with their doctoral disputation, provided that the gift can be considered socially justified and follows generally accepted customs.\(^4\)
- Ornamental objects that lack significant market value, and comparable moderate commemorative gifts to guests, to mark, for example collaboration or a company jubilee, etc.
- Simple gifts of appreciation when celebrating significant birthdays, or when an employee is off sick.

5.4 **Examples of advantages that are not permissible**

- Gifts, with the exception of small samples of merchandise, advertising articles, gifts of appreciation, ornamental objects and commemorative gifts, as specified in Section 5.3
- Money, gift vouchers or any other form of value document (shares, bonds, etc.)
- Meals beyond an occasional justified meal in association with work
- Fully or partially paid recreational trips and holidays
- Tickets for sporting events, theatre performances and other cultural events

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\(^3\) A definite limit to the value has not, however, been established. Advantages of insignificant value involve a very low risk of undue influence, and thus cannot be considered to be undue. (See Wolters Kluwer’s comment to Section 5a of Chapter 10 of the Swedish Penal Code)

\(^4\) See Wolters Kluwer’s comment to Section 5a of Chapter 10 of the Swedish Penal Code.
• Participation in discounts and bonus schemes for, for example, hotel nights and train or air travel (frequent-flyer programmes), if the advantage is ascribed to the employee and not the employer.
• Participation in parties, dinner parties and conferences that are not part of the employee’s duties or university operations.
• Leisure opportunities, such as the use of a vehicle, boat, vacation home or other accommodation for private use.
• Supplementary deliveries for private use of goods or services from a supplier used by the employer, such as office material, building material and services within transport and artisanal professions.
• Loans given on any other conditions than market conditions, and loans given under particularly beneficial conditions.
• Commercial credit.
• Remission of purchase price or debt, capital payment or interest payment.
• Advantages to relatives or friends. If a relative or friend wants to participate in an arrangement, they must pay a fee to cover costs.

Participation (or the opportunity to participate) in sporting events, social activities, leisure activities, travel, parties, dinner parties and similar is not acceptable if these take place independently of the work and university operations. Simple such activities may, however, be accepted in association with university operations and at employee gatherings, if they are not the principal focus of the operations or the gathering.

5.5 Gifts from students and companies

Accepting gifts or advantages from students before or after admission and examination involves a large risk for bribery. For this reason, it may be appropriate to discuss the issue of receiving gifts from students at the start of the course. Simple gifts of gratitude from PhD students in association with their doctoral disputation, may, however, be considered socially justified and to follow generally accepted customs.

Accepting gifts or advantages from companies that LiU employees deal with as part of their duties, such as various suppliers, also involves a large risk for bribery. It cannot be assumed that the companies are conversant with the regulations that govern gifts to governmental employees. In order to avoid difficult problems associated with defining boundaries, therefore, it is appropriate to use the precautional principle and decline any offer that is not obviously acceptable. It is also appropriate to inform companies about the risk of bribery – not only the risk that the company be guilty of giving a bribe but also the risk that the LiU employee be guilty of accepting a bribe. If it is not possible to avoid participating in an event, the company can often present an invoice.
Advertising offers and similar offers given to LiU employees are to be assessed by the procurement manager, who will, in turn, contact the supplier.

5.6 Celebratory gifts

LiU has drawn up a document giving limits for the value of celebratory gifts (reference no. LiU-2015-01603). It has been assessed that gifts with a value not exceeding the limits specified in the document cannot normally be regarded as giving a bribe.

6 Reporting suspected bribery

If bribery is suspected, it must be reported to the deputy university director who has particular responsibility for the university’s administrative development. More information about such reporting is available in the document handläggningsordning för hantering av misstänkta oegentligheter och brott.