

Committee:	Date:
Risk Committee of the Barbican Centre Board	13 October 2015
Subject: Bribery Act 2010	Public
Report of: Head of Internal Audit and Risk Management	For Information

Summary

This report provides information on the Bribery Act as requested by the Committee. The Bribery Act 2010 came into force on 01 July 2011. This paper is intended to explain the legislation to the Committee.

Recommendation(s)

Members are asked to note the report.

Main Report

Background

1. The Bribery Act came in to force on 01 July 2011. It provides a modern and comprehensive scheme of bribery offences that will enable courts and prosecutors to respond more effectively to bribery in the UK or abroad.

What does the act do?

2. The Bribery Act 2010 replaces the disjointed and complex offences at common law and in the Prevention of Corruption Acts 1889-1916.
 - a. Creates two general offences covering the offering, promising or giving of an advantage, and requesting, agreeing to receive or accepting of an advantage.
 - b. Introduced a corporate offence of failure to prevent bribery by persons working on behalf of a business. An organisation can avoid conviction if it can show that it has adequate procedures in place to prevent bribery.
 - c. Made it a criminal offence to give, promise or offer a bribe and to receive or accept a bribe either at home or abroad. The measures also cover bribery of a foreign public official.
 - d. Increased the maximum penalty for bribery from seven years to 10 years imprisonment, with an unlimited fine.

What does this mean?

3. A base understanding of the legislative offences is essential in order to assess the risk level present within the Barbican and the level of adequate procedures that need to be implemented to achieve satisfactory and proportionate compliance.
4. Essentially the Act defines bribery, in the simplest form, as anything that induces or intends to induce improper performance. There are four offences within the Act:
 - Offering, promising or giving a bribe.
 - Requesting, agreeing to receive or accepting a bribe.
 - Bribing a foreign public official.
 - A corporate offence of failing to prevent bribery.

In respect of the first two, more general offences, improper performance can be explained as the party receiving the inducement would be deemed to have behaved improperly if they, in carrying out the relevant function or activity, such as awarding a contract, were expected to act in good faith, impartially or in accordance with a position of trust.

5. Legally an inducement is a pledge or promise that causes an individual to enter into a particular agreement. There is an element of proportionality when considering what could be construed as an inducement.
6. A person committing the offence of bribery does not have to be the person who physically receives the inducement; the crime can be committed either through direct action or through a third party.
7. The legislation is far reaching and has liabilities attached to offerings where an inducement, offered by an organisation is declined by the intended receiver; the consideration is whether the offer benefited or could have benefited the target organisation.
8. The third offence which relates to bribing a foreign public official includes bribing anyone working for 'a foreign government entity' at any level. The Act again goes further to include those organisations which perform 'functions of a public nature' which could include organisations such as privatised utility companies.
9. In addition to proving any of the three prior offences, to fall foul of the corporate offence, a person needs to be deemed to be connected to an organisation. This connection could be found if they perform services on the organisation's behalf including, but not limited to being employees, agents, intermediaries, joint ventures or subsidiaries.

10. Once a person has been shown to have committed any of the three offences and found to be connected to an organisation which comes under the Act's jurisdiction beyond all reasonable doubt, the burden of proof falls upon the organisation to defend that they had not negligently failed to prevent a bribe; the test for this is on the balance of probabilities. This can be achieved by demonstrating implementation of adequate procedures and how they are embedded within the organisation's culture and governance framework.

How does the Bribery Act impact upon the Barbican?

11. The legislative requirements bind all individuals and organisations defined with the Act.
12. Consequences of not implementing adequate procedures should bribery be found at the Barbican include:
- a. Risk of organisation being penalised with an unlimited fine.
 - b. Serious reputational damage sustained, impacting on the standing of the organisation amongst its peers, staff morale, public image and regulatory bodies through revealing an ineffective governance framework.
 - c. Financial loss sustained through non-award of contracts which represent best value for money as a result of contracts awarded subjectively from inducements.
 - d. Conviction of the corporate offence can result in disbarment under both EU and US rules.
13. Ensuring the legislation and the adequate procedures become embedded in the organisation's existing framework and control environment not only provides compliance with the legal framework but more than that, it is indicative of strong governance arrangements. In the following two sections, this report seeks to explain the guidance issued by the Ministry of Justice and how this practically and proportionately can be incorporated into existing Barbican structures.

Adequate Procedures

14. The Ministry of Justice has issued guidance on the adequate procedures deemed necessary to defend a charge of negligently failing to prevent a bribe. These are based on six core principles.

Principle One – Proportionate Procedures

15. An organisation's procedures to prevent bribery by persons associated with it are proportionate to the bribery risks it faces and to the nature, scale and complexity of the organisation's activities. They need to be clear, practical, accessible, effectively implemented and enforced.

- Articulate the anti-bribery stance by having an anti-bribery policy dovetailing it into Codes of Conduct and relevant policies (Whistleblowing, Gifts and Hospitality, Declaration of Interests, Recruitment, Procurement, charitable/political donations and facilitation payments etc).
- Ensure transparency and recording of decision-making.
- Make clear what the penalties are.
- Communicate to all levels within the organisation.

Principle Two - Top Level Commitment

16. The top level management of an organisation (be it a board of directors, the Committees, SMG, Team Leaders) are committed to preventing bribery by persons associated with it. They foster a culture within the organisation in which bribery is never acceptable.

- a. Get involved in developing the anti-bribery stance and be able to demonstrate how you're doing it.
- b. Communicate and tailor it to your audience.
- c. Lead by example.

Principle Three - Risk Assessment

17. The organisation assesses the nature and extent of its exposure to potential external and internal risks of bribery on its behalf by persons associated with it. The assessment is periodic, informed and documented.

- a. Look at your procurement and commercial activities- what do you buy/sell, who to, where and how?
- b. Think 'Country/Sector/Transaction/Business Opportunity/Business Partnerships'.
- c. Document your reasoning and re-visit regularly.

Principle Four - Due Diligence

18. The organisation applies due diligence procedures, taking a proportionate and risk based approach, in respect of persons who perform or will perform services for or on behalf of the organisation, in order to mitigate identified bribery risks.

- a. Think of who performs services for you and how you are re-assured (or not) that they won't bribe on your behalf.
- b. Look at your recruitment, HR and partnering processes – are the checks made proportionate to the risk?

- c. Look for previous history/track-record and financial indicators of distress/pressure.

Principle Five – Communication (including training)

19. The organisation seeks to ensure that its bribery prevention policies and procedures are embedded and understood throughout the organisation through internal and external communication, including training that is proportionate to the risks it faces.

- a. Consider who you need to tell.
- b. Consider content, language and tone...it may need to be tailored to suit.
- c. How best can you roll it out? Face to face, e-learning, intranet.
- d. Remind of stance, ethics, policies, processes and how to report concerns.

Principle Six –Monitoring and Review

20. The organisation monitors and reviews procedures designed to prevent bribery by persons associated with it and makes improvements where necessary.

- a. Revisit as often as proportionate. Business changes and so do the risks.
- b. Keep it simple or go for the 'belts and braces' approach? Monitor transactions again in proportion to the risk.
- c. Get external re-assurance that what you are doing is adequate.

Chris Harris

Head of Internal Audit and Risk Management

E: chris.harris@cityoflondon.gov.uk