

Committee(s): Risk Committee of the Barbican Centre Board	Date(s): 8 November 2016
Subject: Bribery Act Update	Public
Report of: Town Clerk	For Information
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Summary

The Risk Committee of the Barbican Centre Board previously considered the implications of the Bribery Act on the Centre, particularly in the context of touring exhibitions and the potential situations that Barbican International Enterprise (BIE) staff might find themselves in. Further papers were subsequently submitted outlining the policies, guidance and training currently in place for all Barbican staff, as well as the arrangements with respect to BIE (Barbican International Enterprise) contracts and the provisions therein designed safeguard against the risks related to the Bribery Act 2010.

Following the recent announcement of Government proposals to extend liability for corporate crimes to Boards, it was requested that the potential impacts on the Barbican Centre Board be explored. This paper provides this and also takes the opportunity to report on the strengthening of a particular clause within the BIE contracts relating to the Bribery Act, pursuant to suggestions made at your June meeting.

Recommendation(s)

Members are asked to:

- Note the report.

Main Report

Background

1. In October 2015, the Risk Committee of the Barbican Centre Board received a report setting out the implications of the Bribery Act 2010 for the Barbican. In January 2016, the Risk Committee of the Barbican Centre Board then received a further report clarifying the guidance and training in place for Barbican staff, followed by an additional update in respect of the various policies and contractual arrangements in place at its June 2016 meeting.
2. In the wake of recent Government announcements concerning proposals to extend liability for corporate crime to Board Members, it was asked that an analysis of the potential impact on the Barbican Centre Board be provided. This report sets out the current knowledge in relation to the issue and also provides an update in respect of an outstanding contractual query raised at the June meeting.

Proposed Extension of Liability for Corporate Crime

3. In September, the Attorney-General gave a speech which referred to proposals to introduce new offences of “failing to prevent” criminal activity. The text of the speech can be found at the following location:
<https://www.gov.uk/government/speeches/attorney-general-jeremy-wright-speech-to-the-cambridge-symposium-on-economic-crime>.
4. Currently, companies are only liable for failing to stop bribery. The new proposals seem to be aimed at preventing Boards from claiming they are unaware of criminal activity which takes place at an operational level, raising the possibility of businesses being prosecuted for crimes such as the Libor rigging scandal.
5. The speech makes reference to a promised consultation, which has yet to materialise. Nevertheless assuming, as seems likely, that the new offences will be modelled on section 7 of the Bribery Act 2010, it will apply to any corporate body carrying on a “business”. This word does not have a precise definition, but it may be arguable that some areas of the City Corporation’s activity could be considered a “business”, including the Barbican Centre.
6. Some salient points to note at this stage are:
 - The new liability will be that of the corporate body. No plans have been announced to extend the individual criminal liability of directors or other corporate officers.
 - The new liability will only apply to specified economic crimes. Examples given by the Attorney-General include money-laundering, false accounting and fraud.
 - Liability will not arise if the corporate body can show that it had adequate procedures in place to prevent the relevant conduct.
7. It is however too early in the legislative process to make any definitive assessment. The Remembrancer’s office will monitor and analyse any consultation and ensuing legislation as and when they appear, with further updates to this Committee as appropriate.
8. If Members have any specific concerns they would wish to raise, these will be passed on to the Remembrancer’s office for consideration as any further developments are assessed.

Contractual Safeguards

9. At your June meeting, Members were advised that all contracts issued in relation to BIE tours are thoroughly reviewed and amended by Neil McConnon and the City Solicitor’s department on a case by case basis, taking into account the specifics arising during the course of negotiations and related to the continent and country set to host the exhibition.
10. The particular clauses within the “template” contract, which forms the basis of each BIE exhibition contract, were provided for Members’ information and it was observed that there was some scope for strengthening the reference to the

Bribery Act and the requirement placed upon Producers. It was asked that this be explored outside the meeting and the clause strengthened accordingly.

11. Consequently, the clause was revised in accordance with the advice given and is set out below (additions in italics):
 - a) The Producer shall comply with the following anti-corruption conditions:
 - i. Any person or body engaged or appointed by the Barbican either to provide services or execute works or supply goods or materials of any kind or nature whatsoever or who hires or uses any Barbican property who shall give offer or allow any gratuity gift or benefit of any kind to any person in the Barbican's employ (whether under a contract of or for services) shall not be engaged or appointed by the Barbican in respect of any further such provision execution or supply nor permitted any further hire or use.
 - ii. The provisions of paragraph (i) shall apply whether or not the giving offer or allowance was (a) made by an employee, agent or sub-contractor of the person or body and (b) authorised by the person or body.
 - iii. Persons and bodies to whom paragraph (i) applies shall have their attention drawn to the provisions of the National Code of Local Government Conduct (as amended from time to time).
 - b) The Producer shall comply at all times with the provisions of the Bribery Act 2010, in particular Section 7 thereof in relation to the conduct of its employees, or persons associated with it. *Moreover, the Producer warrants that at all times it shall have in place adequate procedures designed to prevent acts of bribery from being committed by its employees or persons associated with it, and shall provide to the Barbican at its request, within a reasonable time, proof of the existence and implementation of said procedures.*
 - c) Any breach by the Producer of condition (a) or (b) shall entitle the Barbican to terminate this Agreement with immediate effect and recover from the Producer any losses arising from such termination.

12. Member may also wish to note that the Comptroller & City Solicitor's department have also recently been asked to update some the Centre's Sponsorship Agreements and Venue Hire Agreements, as well as some of the Works Contracts for the exhibition galleries and this is currently under review.

Conclusion

13. This report sets out an initial understanding of forthcoming legislation related to proposed extension of liability for corporate crimes and also updates on recent changes to clauses relating to the Bribery Act contained within BIE contracts. Members are asked to note the contents of the report.

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