



Policy on Bribery and Corruption

Introduction

The Board of Trustees and senior management of PEN International are committed to a zero-tolerance policy on bribery and corruption, recognising that bribery is contrary to fundamental values of integrity, transparency and accountability and undermines organisational effectiveness. This paper sets out the principles of the policy; its procedures and guidance are currently under development.

1) Bribery Act 2010

- a) This memorandum summarises the significant changes in UK anti-corruption law brought about by the Bribery Act 2010 and the urgent need for PEN International to take appropriate action to ensure awareness of the offences amongst the Trustees and employees of PEN International and to protect against incurring liability to the extent such actions have not already been taken.

Issue

- b) The Bribery Act 2010 (the "Act") came into force on 1 July 2011. It introduced changes in the law that could have an impact on the conduct of PEN International's activities, both in the UK and abroad, in that:
 - i) It extends the crime of bribery to cover all private sector transactions (previously bribery offences were confined to transactions involving public officials and agents).
 - ii) It contains a new strict liability offence of failing to prevent bribery – in other words, it is not necessary to prove knowledge and/or intent. An organisation will only have a defence to this offence if it can show it had "adequate procedures" in place to prevent bribery.

- iii) Its scope is extensive – the offences are very broadly defined and it has significant extra-territorial reach.
- c) The offences contained in the Act carry criminal penalties for individuals and organisations. For individuals, a maximum prison sentence of ten years and/or an unlimited fine can be imposed; for companies, an unlimited fine can be imposed.
- d) PEN International will review its anti-corruption procedures to ensure they are sufficiently robust to prevent corruption and to mitigate the risk of committing an offence under the Act.

Bribery offences

- e) The Act contains four offences:
 - i) A general offence covering offering, promising or giving a bribe.
 - ii) A general offence covering requesting, agreeing to receive or accepting a bribe.
 - iii) A distinct offence of bribing a foreign public official to obtain or retain business.
 - iv) A new strict liability offence for commercial organisations where they fail to prevent bribery by those acting on their behalf.
- f) The Act is not retrospective.

The offence of failing to prevent bribery: strict liability and the adequate procedures defence.

- g) A commercial organisation commits an offence if a person associated with it bribes another person for that organisation's benefit.
- h) A person is "associated" with a commercial organisation if it performs services for or on behalf of the organisation, regardless of the capacity in which they do so. This can be construed broadly and could cover, for example, our agents,

employees, intermediaries, contractors and suppliers, all of whom could render PEN International guilty of this offence.

i) This is a strict liability offence: there is no need to prove negligence or the involvement and guilt of the 'directing mind and will' of the organisation. This makes the offence easier to prove and will probably lead to more corporate prosecutions and convictions.

j) *Adequate procedures defence*

PEN International is responsible for assuring that "adequate procedures" are in place to prevent bribery. "Adequate procedures" are not defined in the Act but the Ministry of Justice has published guidance on what adequate procedures might involve.

i) The guidance, which is under development will set out the following six principles for PEN International to follow:

(1) Proportionate procedures.

(2) Top level commitment.

(3) Risk assessment.

(4) Due diligence.

(5) Communication.

(6) Monitoring and review.

ii) Once adopted guidance will be regularly reviewed, regular risk assessments will be undertaken and PEN International will ensure that adequate procedures to prevent bribery in place.

Overseeing policy implementation

The Board of Trustees appoints Jarkko Tontti, its Treasurer to be responsible for organisational compliance with its bribery and corruption policy. The responsibilities include

- Reviewing and agreeing procedures for assessing risks of bribery on employees, including whilst on overseas missions and on procedures for mitigating risks.
- Reviewing and agreeing “due diligence” criteria by which partners will be assessed for risk of bribery and corruption.

Employees Responsibilities

a) Knowledge

As a significant responsibility for resisting bribery rests with employees, PEN International employees will be required to develop their knowledge on law and policy in relation to the Bribery and Corruption policy, guidance and procedures. Hence employees will be required to certify that they have read and understood the following documents:

PEN International Policy on Bribery (its guidance and procedures)

Bond’s Anti-Bribery Principles and Guidance for NGOs (2011) “RESIST: Resisting Extortion and Solicitation in International Transactions”

b) Overseas missions

When travelling on overseas missions employees are required to complete a security assessment. This has been amended to include a new procedure relating to bribery risk assessment.

c) Centres

PEN International shall share this policy with its Centres. Centres receiving funds via PEN International will be request to comply with the policy by drawing up their own policy, guidelines and procedures. As part of the risk assessment procedure for sub granting or new projects, employees, drawing on the documents listed in the section entitled “Knowledge” above, will be required to work with Centres and/or consultants to assess the risk of bribery associated with each project.

Potential indicators of corruption

(Source: UK Serious Fraud Office)

Abnormal cash payments

Pressure exerted for payments to be made urgently or ahead of schedule

Payments being made through 3rd party country (eg. goods or services supplied to country 'A' but payment is being made, usually to a shell company in country 'B')

Abnormally high commission percentage being paid to a particular agency. This may be split into two accounts for the same agent, often in different jurisdictions

Private meetings with public contractors or companies hoping to tender for contracts

Lavish gifts being received

Individual never takes time off even if ill, or holidays, or insists on dealing with specific contractors him/herself

Making unexpected or illogical decisions accepting projects or contracts

Unusually smooth process of cases where individual does not have the expected level of knowledge or expertise

Abusing decision process or delegated powers in specific cases

Agreeing contracts not favourable to the organisation either with terms or time period

Unexplained preference for certain contractors during tendering period

Avoidance of independent checks on tendering or contracting processes

Raising barriers around specific roles or departments which are key in the tendering/contracting process

Bypassing normal tendering/contractors procedure

Invoices being agreed in excess of contract without reasonable cause

Missing documents or records regarding meetings or decisions

Company procedures or guidelines not being followed

The payment of, or making funds available for, high value expenses or school fees etc on behalf of others.

Bribery - the offering, promising, giving, accepting or soliciting of money, gifts or other advantage as an inducement to do something that is illegal or a breach of trust in the course of carrying out an organisation's activities.

Corruption – the abuse of entrusted power for private gain.

Extortion - the unlawful use of one's position or office to obtain money through coercion or threats. One example would be when customs officials request undue 'customs duties' from importers as a condition to clear their goods.

Facilitation payments - These are bribes and are usually small unofficial payments made to secure or expedite the performance of a routine or necessary action to which the payer of the facilitation payment has legal or other entitlement.

Gifts and hospitality – these can range from small gifts (such as diaries) to expensive hospitality (tickets for major events, holidays etc). Extravagant gifts and hospitality may be used to disguise bribes that are intended to induce improper behaviour.

Solicitation – the act of a person asking, ordering or enticing someone else to commit bribery or another crime.

Whistleblowing – the sounding of an alarm by an employee, director or external person to express concerns about or to attempt to reveal neglect or abuses within the activities of a company. (see whistleblowing policy)

Approved by the Board of Trustees, at their Board meeting in Amsterdam, 30 and 31 May 2015



Jarkko Tontti

Treasurer, PEN International