

## Third Party Anti-Corruption Due Diligence Guidelines

### Assessing the Value Chain

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Many businesses use third parties as part of their global value chains. While third parties can be necessary and beneficial in many circumstances, they can also pose significant corruption-related risks as well. Under the U.S. Foreign Corrupt Practices Act (FCPA), the U.K. Bribery Act and many other anti-bribery laws, a company can be held responsible for the corrupt acts of third parties acting on its behalf or for its benefit. Because of these risks, corruption-focused, third party due diligence is vital before engaging business partners including agents, resellers, distributors, consultants and other service providers.

Due diligence is a process you use to get to know your business partners. In the anti-corruption context, it means gathering enough evidence, within legal limits, to be able to determine whether a partner is fit for the job and will operate ethically and in compliance with applicable law and any policies you require it to follow. The process should be reasonable, transparent and consistently followed, and it should be sustainable over time.

It is important to conduct some level of due diligence before entering into a relationship with any third party, **but there is no “one-size-fits-all” approach**. The level of due diligence required will vary depending on the corruption risk posed. In other words, your due diligence should be risk-based. The greater the risk, the more extensive the due diligence required. You should use results of your corporate-wide risk assessment to categorize business partners into high, medium and low risk categories to determine degree of due diligence required.

Important factors for determining how much due diligence is needed for a potential third party include: (1) the degree to which the third party will interact with government officials; (2) the nature of the work the third party will provide; (3) the volume of work the third party will perform for you; (4) the geography where the third party is located; (5) whether the industry is perceived to be high risk; (6) who recommended the third party; and (7) whether the third party has been subject to regulatory or legal proceedings or sanctions. This guide provides a step-by-step process by which to structure and accomplish due diligence with third parties.

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### Key Considerations for Implementing Anti-Corruption Due Diligence

#### 1. Determine the Scope of the Process/Initial Considerations

- Gather your personnel from legal/compliance and personnel from the business units responsible for business partner relationships to discuss your due diligence plan.
- Understand the business purpose behind your retention of the third party.
- Confirm whether the third party is qualified (e.g., knowledge, expertise, credentials, licenses) for the task or business purpose.
- Understand why and how the third party was chosen.
- Assign responsibilities and set timelines for completion.

2. **Perform an Initial Screening.** Again, there is no ‘one size fits all’ approach to due diligence, but of course, a low risk third party will require a less intense look. Basic screening should include:
  - Open source background check
  - Internet searches
  - Media searches
  - Simple questionnaire, including questions regarding:
    - Business structure
    - Ownership & significant shareholders
    - Connections to government officials and state-owned enterprises
    - Key clients
    - References
    - Request for audited financials
    - Third party compliance program certification: do they have a code of conduct, anti-corruption policies and procedures, a compliance function, anti-corruption training, monitoring/auditing
  - Legal proceedings searches: government investigations against company or employees, civil or criminal legal proceedings, whether company or employees appear on any watch lists
  - Sanctions/watch list review
  - Subcontractor questions: does the third party plans to use subcontractors to perform the services your company requires?
  
3. **Higher Risk:** Potential third party in higher-risk markets, industries, and transactions require greater due diligence. Also perform more rigorous due diligence where “red flags” from your basic due diligence indicate higher risk. Depending on the level of risk (medium or high) consider:
  - Hiring an external consultant
  - On-site visits to check appropriateness of the premises
  - Physical records check
  - Review of books and records
  - Sample transactions testing
  - Reviewing and verifying the third party’s anti-corruption policies and procedures
  - Interviewing employees and others
  - Asking for banking institution references
  - Obtaining information regarding business interests of the owner
  - Hiring local investigators
  
4. **Verify Due Diligence responses/information** (depending on level of risk)
  - Ask third party to clarify any risk-increasing answers.
  - Involve legal or compliance personnel in the verification process.
  - Confirm the responses from the third party and your own business unit, if it answered any questions, through the use of:
    - Open sources
    - Court records for bankruptcy and litigation checks
    - Business references
    - Subject-matter experts to verify technical information
    - Other methods available to the business
  
5. **Weigh Data and Risk to Determine and Document Decisions.** After the review, consider the riskiness of a potential business partner and the nature of the business. Once you have obtained all available information, make a reasonable, justifiable decision about whether to proceed. Also:
  - Obtain all necessary approvals.
  - Document the decision, referring to diligence and/or decisions not to proceed.

- Document any deviation from your normal diligence practices and why.
- Ensure diligence is stored in records susceptible of review and monitoring.