

Due Diligence for the Extended Enterprise

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PARSONS

COMPLIANCE WEEK 2012

ELEMENTS OF AN EFFECTIVE 3RD PARTY DD PROGRAM

- Internal buy-in and support
 - Must understand and fully support the process
 - Internal training critical
 - Devote sufficient time & resources to process
 - Can't be a "when I get around to it" attitude
- Risk-based vetting process
 - Level of inquiry dependent on country risks
 - TI Corruption Perception Index a good place to start
 - Commerce Department country experts
 - World Bank/CIA/Other Internet Sources
 - Basic process should stay the same, no matter risk level
 - Can't be a "check the box" process

ELEMENTS OF AN EFFECTIVE 3RD PARTY DD PROGRAM

- Full cooperation from 3rd party
 - Willingness to provide information itself is an indication of appropriateness of 3rd party retention
 - More efficient, less costly process if 3rd party understands and cooperates fully

- TRAINING, TRAINING, TRAINING

ELEMENTS OF AN EFFECTIVE 3RD PARTY DD PROGRAM

- The last three years have been busiest years for enforcement actions in 33-year history of FCPA
 - 2010 was busiest year, with 56 Enforcement Actions
- Bigger fines
- More individual prosecutions
 - “It is our view that to have a credible deterrent effect, **people have to go to jail.**”
 - Mark Mendelsohn, former deputy chief of DOJ Criminal Division’s Fraud Section

Recent FCPA Enforcement Actions

*Former KBR Chrm. & CEO
Agrees to 7 Years in Prison*

*Panalpina fined \$70M
For Customs Officials Bribes*

*Siemens Pays \$800M in Fines for
Bribery in 10 Countries*

*Lucent Technologies
Pays \$2.5M for Improper
Recording of Travel Expenses*

*Daimler Chrysler pays \$93M in Fines for
Improper Commissions, Travel Expenses
And Gifts to Chinese Officials*

ITXC Executive Sentenced to 18 Months for FCPA Violations

COMPLIANCE WEEK 2012

Due Diligence for the Extended Enterprise

Michael Osajda

*Ethics & Anti-Corruption Consultant
World-Check/Thomson Reuters*



COMPLIANCE WEEK 2012

Due Diligence for the Extended Enterprise

- Compliance Goals
- No violations
- No prosecutions
 - Morgan Stanley

Due Diligence for the Extended Enterprise

- DOJ on Morgan Stanley's Compliance Program
 - Morgan regularly updated its policies
 - Frequent training
 - Due Diligence, including transaction monitoring
 - Random audits of people and partners

Due Diligence for the Extended Enterprise

“We have developed an automated system that assists in risk-ranking prospective business partners. An employee who wishes to retain a business partner must answer a series of detailed questions about the business partner. Those answers receive a scored risk rating, which helps us determine the appropriate level of due diligence that is needed. The system also facilitates and memorializes appropriate approvals for the retention and serves as repository for business partner contracts.”

- Raja Chatterjee

Due Diligence for the Extended Enterprise

Some Common Risk Factors

- Relationship
 - Sales agent
 - Consultant
 - Distributor
 - J/V Partner
 - Acquisition/Merger target
 - Supply chain counterparty
- Location
 - High risk/low risk
 - Transparency International/Country Check

Due Diligence for the Extended Enterprise

- Some Common Risk Factors
 - Interface with governments
 - Size of transactions
 - Compensation scheme
 - Red Flags

Due Diligence for the Extended Enterprise

- Risk based due diligence
 - Third party record check
 - More extensive investigation
- Appropriate levels of review/approval
 - Dependent on risk profile