

Good Practice Guidelines on Conducting Third-Party Due Diligence

Partnering Against Corruption Initiative (PACI)



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I. Letter From World Economic Forum Leadership

Dear Reader,

Companies conducting business overseas face growing legal and reputational risks. These risks have become even more important because of increasingly complex business regulations worldwide, mounting pressure from regulators, enforcement agencies and civil society, and a dramatic increase in levels of business carried out in higher risk jurisdictions.

In the field of anti-corruption in particular, due diligence obligations on third parties have recently expanded in the wake of various laws such as the US Foreign Corrupt Practices Act (FCPA) and the UK Bribery Act. Under most of these laws, corporate criminal liability can be triggered when the bribe is paid by or through a third party. Companies are therefore incentivized to look into the details of transactions and their related third parties to identify and avoid the risk that third parties could bribe on their behalf.

In 2011, the World Economic Forum's Partnering Against Corruption Initiative (PACI) launched a working group charged with developing Good Practice Guidelines on Conducting Third Party Due Diligence. The guidelines are aimed at helping organizations mitigate the risk of becoming involved in corruption through third parties (e.g. agents, suppliers, joint venture partners).

Lead by the working group, this document was developed with the input of many members of the PACI community. In addition, a formal round of consultation involved key subject matter experts and partners, including the OECD, the United Nations Office on Drugs and Crime (UNODC), the UN Global Compact, Transparency International and the International Chamber of Commerce (ICC).

The PACI team would like to recognize the efforts of the working group:

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The Good Practice Guidelines on Conducting Third Party Due Diligence is meant as a practitioner's guide and is intended for all types of businesses. The guidelines will not prescribe which third parties should be subject to due diligence or rate third-party corruption risk, as these will measures will necessarily differ from company to company.

We hope that the guidelines can make a practical contribution to this concerted effort to create more transparency and mitigate associated risks.

Yours sincerely,



Elaine Dezenski
Senior Director & Head of PACI
World Economic Forum

II. Introduction and purpose of the guidelines

The fight against corruption has intensified significantly over recent years. Governments from all regions are introducing stricter laws to combat bribery in business transactions. Enforcement is on the rise, with criminal penalties for wrongdoing reaching record levels. The extraterritorial reach of anti-corruption laws also means that organizations doing business and raising capital in multiple jurisdictions can be prosecuted for acts of bribery committed anywhere in the world.

In light of this uptick in regulatory and enforcement activity, organizations are devoting more and more resources to establishing policies, infrastructure and processes aimed at fighting corruption within their own businesses and throughout their supply chains. An area of special attention has been the prevention of *indirect* corruption (i.e. through third parties), which is explicitly prohibited by the United Nations Convention against Corruption, the OECD Anti-Bribery Convention and the national legislations of their signatory countries.

Under many legal frameworks, organizations may indeed be held liable for acts of corruption by their third parties, i.e. their agents, consultants, suppliers, distributors, joint-venture partners, or any individual or entity that has some form of business relationship with the organization. Therefore, before entering into relationships with third parties, organizations are taking active steps to ensure that potential corruption risks flowing from these relationships are responsibly evaluated and managed. In fact, conducting risk-based due diligence on third parties has become a legal expectation in many countries that have ratified the OECD Anti-Bribery Convention and/or the United Nations Convention against Corruption, and conducting adequate due diligence may help organizations decrease, and under some laws even avoid, the risk of criminal culpability for corrupt third-party conduct.

These Good Practice Guidelines are designed to help organizations conduct third-party due diligence with a view to mitigating the risk of becoming involved in corruption through their third parties. The guidelines are relevant to all types of organizations engaged in business activities. They cover both bribery towards public officials and commercial bribery (between private persons).

These guidelines also reflect and build upon the core provisions of the Partnering Against Corruption Principles for Countering Bribery (the PACI Principles) and while they are not meant as a new set of obligations for PACI signatories, they do constitute what is considered good business practice based on the collective experience of PACI companies and other businesses.

What the law says

US Foreign Corrupt Practices Act (FCPA)

Under the FCPA, an organization or individual may be held liable for making a payment to a third party while knowing that all or a portion of the payment will go directly or indirectly to a foreign official. According to US Department of Justice guidance issued on the FCPA, the term “knowing” includes *conscious disregard, deliberate ignorance and wilful blindness*. To avoid being held liable for corrupt third-party payments, the US Department of Justice encourages companies “to exercise due diligence and to take all necessary precautions to ensure that they have formed a business relationship with reputable and qualified partners and representatives”.

UK Bribery Act

In its Adequate Procedures Guidance to the UK Bribery Act, the UK Ministry of Justice states that “a commercial organisation will be liable to prosecution if a person associated with it bribes another person intending to obtain or retain business or an advantage in the conduct of business for that organisation”. An “associated person” is defined as an individual or entity that “perform services for or on behalf” of an organization. In the event of failure to prevent bribery by an associated person, the UK Bribery Act provides that it is a “defence” for an organization “to prove that [it] had in place adequate procedures designed to prevent persons associated with [it] from undertaking such conduct”.

To access the national anti-corruption laws of other countries that have signed and ratified the OECD Anti-Bribery Convention, visit: www.oecd.org/daf/anti-bribery/oecdanti-briberyconventionnationalimplementinglegislation.htm

What the United Nations Convention against Corruption says

Article 21. Bribery in the private sector

“Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:

- a. The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private-sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.
- b. The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private-sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.”

What the PACI principles say

Section 5.2 (“Business relationships”) of the PACI Principles states that due diligence is relevant for all business relationships with “agents, advisers and other similar intermediaries” as well as in relation to “joint ventures”, which also applies to “non-controlled subsidiaries, consortium partners, teaming agreements and nominated subcontractors”. The PACI Principles also recommend due diligence to ensure that “contractors, subcontractors and suppliers” have effective anti-bribery policies. The PACI Principles support the inclusion of a wide range of third parties in a due diligence programme but it is clear from their provisions that the level of due diligence is not the same for all third parties.

The PACI Principles establish two basic requirements for business relationships with joint ventures, agents, advisers and other intermediaries. The first is that an organization conduct reasonable due diligence before entering into a business relationship as well as “on an on-going basis as circumstances warrant” to confirm the suitability of a third party. The second is that an organization undertake appropriate measures to ensure that the third party does not engage in improper conduct.

For a full version of the PACI Principles, visit:

http://www3.weforum.org/docs/WEF_PACI_Principles_2009.pdf

It is important to note that no one-size-fits-all solution exists for an effective third-party due diligence process. Business activities are conducted through a variety of legal structures, including subsidiaries, joint ventures, contracting and subcontracting. Not all business relationships pose the same corruption risks. An organization should therefore tailor its due diligence procedures to its individual circumstances (i.e. its size, resources and risk profile) and to the specific risks in the business relationship at stake (i.e. the identity and reputation of the third party and the scope of the services to be performed).

III. Guidelines For Conducting Third-Party Due Diligence

The essential requirement of third-party due diligence is to know one's partner. In operational terms, this means making appropriate inquiries to determine whether an organization's existing or prospective third parties are honest and can be reasonably expected to refrain from corruption. Effective third-party due diligence should help organizations reach the following conclusion:



I am confident that my agent, reseller, supplier etc. does not make corrupt payments, and that our business relationship is a normal, legitimate one. I can explain to, and convince others why my confidence is justified.



In some cases, already from the very beginning your organization may have confidence that it is dealing with a bona fide third party in a normal, legitimate business transaction. For example, your organization belongs to the food manufacturing industry and contracts with a Swiss-based distributor to resell its products to Swiss-based food retailers. Why should there be anything strange or even disquieting there? Why should your organization have to scrutinize that reseller's ownership structure or its contacts with government officials? In such a situation, your organization will be in a position to reasonably explain why its confidence is justified even in the absence of due diligence checks beyond routine commercial scrutiny applicable to any contractor.

On the other hand, in other situations your organization may lack confidence that it is engaging in a normal, legitimate business relationship with a bona fide third party. This may be the case, for example, if your organization is looking to supply oil field equipment to a large oil drilling project in Kazakhstan and an official of the Kazakh state oil company asks your organization to use a particular "business consultant" payable at 8% of the contract value, when your organization does not need, and normally does not use, business consultants and, in its home country, pays its sales agents commissions which normally range from 1-3%.

The reason why your organization should feel uncomfortable is that in contrast to the former example, there is increased geographic corruption risk in Kazakhstan (e.g. according to Transparency International's Corruption Perceptions Index) and there are a number of anomalies in comparing this setup with your usual third-party business relationships.

A Risk-based Approach

The level of scrutiny necessary for an organization to reach reasonable confidence that it is engaged in a normal, legitimate business transaction varies with corruption risk. The level of corruption risk determines how much scrutiny is required to be able to defend before a judge or a prosecutor that the organization is confident it is dealing with a *bona fide* third party. The higher the risk, the broader and deeper the third-party due diligence should be.

These Good Practice Guidelines will help organizations thoughtfully design and implement a risk-based third-party due diligence process, building on four successive steps and an underlying framework for implementation:

Risk-based Due Diligence Process Map



Effective Implementation of Due Diligence Process

- 1. Scope of Third Parties**
Understanding the universe of third parties and which ones should be subject to due diligence
- 2. Third-Party Risk Assessment**
Assessing the level of corruption risk associated with individual third parties
- 3. Due Diligence**
Conducting risk-based anti-corruption due diligence
- 4. Approval Process and Post-Approval Risk Mitigation**
Managing the approval process and mitigating identified risks

As a 5th and cross-cutting step, organizations should develop important supporting measures at an operational level to ensure the Effective Implementation of the Third-Party Due Diligence Process by the organization's personnel.

Good practice tip

Managing Existing Third-party Relationships

The focus of these Good Practice Guidelines is on conducting due diligence before entering into a new business relationship with a third party, as opposed to managing existing relationships with third parties. However, from a good practice standpoint, organizations should take appropriate measures to ensure that their current third-party relationships do not pose significant corruption risks. To do this, organizations may start by performing a general portfolio review of their existing third parties, using a list of key risk factors to identify those who may be high-risk, and develop appropriate mitigating plans in the context of existing contractual agreements.

1. Scope of Third Parties

Understanding the universe of third parties and which ones should be subject to due diligence

The first step in an effective due diligence process is to understand the organization's universe of third-party relationships and determine which third parties should be considered "in scope" and therefore subject to risk-based due diligence.

a. Defining Third Parties

It is important that third-party due diligence encompass third parties contracted in both sales and supply channels. While experience shows that sales intermediaries (such as agents or distributors) may be more frequently abused than suppliers in order to relay corrupt payments, suppliers can likewise be used corruptly.

The list of definitions below may be useful to help organizations clearly understand and categorize their universe of third parties. This list is not exhaustive; some of the definitions may be overlapping and thus covering the same type of business relationships. Each organization should therefore develop its own list to draw a full inventory of third parties with whom it is engaged.

Joint venture partner

An individual or organization which has entered into a business agreement with another individual or organization (and possibly other parties) to establish a new business entity and to manage its assets.

Consortium partner

An individual or organization which is pooling its resources with another organization (and possibly other parties) for achieving a common goal. In a consortium, each participant retains its separate legal status.

Agent

An individual or organization authorized to act for or on behalf of, or to otherwise represent, another organization in furtherance of its business interests. Agents may be categorized into the following two types:

- Sales agents (i.e. those needed to win a contract)
- Process agents (e.g. visa permits agents).

Adviser and other intermediary (e.g. legal, tax, financial adviser or consultant, lobbyist)

An individual or organization providing service and advice by representing an organization towards another person, business and/or government official.

Contractor and sub-contractor

A contractor is a non-controlled individual or organization that provides goods or services to an organization under a contract. A subcontractor is an individual or organization that is hired by a contractor to perform a specific task as part of the overall project.

Supplier/vendor

An individual or organization that supplies parts or services to another organization.

Service provider

An individual or organization that provides another organization with functional support (e.g. communications, logistics, storage, processing services).

Distributor

An individual or organization that buys products from another organization, warehouses them and resells them to retailers or directly to end-users.

Customer

The recipient of a product, service or idea purchased from an organization. Customers are generally categorized into two types:

- An intermediate customer is a dealer that purchases goods for resale.
- An ultimate customer is one who does not in turn resell the goods purchased but is the end user.

b. Lessons Learned

The experience of PACI signatories and other companies in determining which third parties should be covered by due diligence has resulted in two key findings.

First, not all of an organization's third parties must be subject to anti-corruption due diligence. Large and even medium-sized organizations can have thousands of third-party business relationships, and many of these are subject to little or no corruption risk. Submitting all of these third parties to corruption due diligence would not only be burdensome and costly in terms of time and resources, but much of the effort would add little value to the organization's anti-corruption efforts. The key to effective third-party due diligence is knowing which third parties pose the most corruption risk to the organization and targeting them for thoughtful review. Therefore, the first step is to identify "in scope" third parties through an initial screening process.

The second key finding is that not all third parties identified for due diligence will need to be subjected to the same level of due diligence. Employing a tiered approach based on the levels of risk (as opposed to a one-size-fits-all approach) can make the due diligence programme both manageable for the organization and effective in terms of mitigating corruption risks.

An additional consideration

Managing Corruption Risks Down the Supply Chain

As organizations consider which third parties need to go through due diligence, they may also need to determine how far down the supply chain their due diligence efforts should go. Indeed, an organization's third party may itself use another third party to perform their contract, thereby pushing corruption risks further down the supply chain. Therefore, organizations should consider the potential business and compliance risks which may be found in their third parties' supply chains when deciding whether to extend their due diligence efforts to the suppliers of their suppliers.

c. Initial Screening of Third Parties

To perform an initial screening to determine "in scope" third parties, organizations may start by asking themselves the following questions:

- Is the third party in an industry or geographic location perceived to have higher corruption risks?
- Will the third party perform services on behalf of the organization, or be authorized to represent the organization vis-à-vis other third parties?
- Is it reasonable to expect that the third party will come into contact with government officials when representing the organization?
- Will the third party be in a position to influence decisions or the conduct of other third parties for the benefit of the organization?

A positive answer to any of these questions may lead organizations to consider the third party under review as an "in scope" third party. In practice, agents, advisers and other intermediaries, as well as joint-venture and consortium partners, will likely be considered "in scope" third parties. Contractors, suppliers and a range of other business partners may also fall in this category if they are to perform services on behalf of the organization.

2. Third-Party Risk Assessment

Assessing the level of corruption risk associated with individual third parties

Once an organization has identified which of its third parties are “in scope” for risk-based due diligence, the next step is to define the risk and find the appropriate level of due diligence for each entity. The appropriate amount of due diligence should be guided by the results of a risk assessment process. The idea is to assess third parties as high-, medium- or low-risk third parties. Such risk assessment can be made for each individual third party or for groups of third parties. The level of risk will ultimately determine the amount of due diligence that needs to be performed, with high-risk third parties subject to a more detailed due diligence process.

a. Key Risk Indicators

The list below shows a selection of key risk indicators that an organization may use to assess the risk of corruption related to an individual third party or group of third parties.

i. Geographic location

High-risk factors: The geographic location where the third party resides and/or operates (as per the contract) is:

- A country perceived to be a high-risk country for corruption (see for example Transparency International’s Corruption Perceptions Index¹)
- A jurisdiction known to have high levels of bank secrecy and presenting a high risk for facilitating illicit financial flows (see for example the Tax Justice Network’s Financial Secrecy Index²)
- A jurisdiction that encourages or requires organizations to hire local agents to transact business for the government

ii. Industry

High-risk factors:

- The industry with which the third party conducts business transactions is perceived to present a high risk for corruption (see for example Transparency International’s Bribe Payers Index³)
- The third party belongs to an industry with a history of anti-corruption enforcement scrutiny

iii. Background and identity of the third party

High-risk factors:

- Initial Internet searches and use of news services have revealed glaring problems related to the third party’s reputation for integrity.
- The third party, or any of its senior officials, has previously been subject to regulatory action or legal proceedings as a result of alleged breaches of anti-corruption laws.
- The third party, or any of its senior officials, appears on a denied parties/persons list in consequence of national or international sanctions or as a result of past misconduct.
- The third party has little or no experience in the relevant industry sector and/or is unknown to the organization.

iv. Connection with government officials or entities

High-risk factors:

- The third party, in the course of doing work for your organization, will have frequent interaction with government officials (including customs officials), governmental agencies or government-controlled entities⁴.
- The third party is wholly or partly (directly or indirectly) owned by a government official/entity or has direct or indirect links with government officials/entities.
- The third party has previously worked for government, or is closely connected with the political elite.

v. Compensation structure of the proposed arrangement

High-risk factors:

- The third party’s compensation is to be based on performance (i.e. success fees, bonus fees and other contingency fees).
- The third party requires payment by unusual means (e.g. deviating from standard practice, to multiple accounts, with upfront payments, split into small amounts, in cash or similar, in a country or currency that is different from that of the third party’s domicile or the country where the work will be performed).
- The third party’s compensation is to take the form of a political or charitable contribution.

vi. Additional factors related to the scope of the services to be rendered

High-risk factors:

- The third party’s role is to enhance the organization’s chances of winning commercial and/or government contracts.
- The third party requests discretionary authority to handle local matters alone.

vii. Selection of the third party

High-risk factors:

- The third party was recommended by a customer.
- The retention of this specific third party was encouraged or required by a government official.

b. Risk Assessment Process

For each of the risk indicators detailed above, an organization should evaluate whether the third party and the business relationship under review present a high, medium, or low corruption risk. These indicators should then be reviewed together so that judgement can be applied on the basis of an overall risk evaluation (high, medium or low), which will trigger the level of due diligence to be applied.

Management and employee interviews are a valuable tool to help assess and substantiate risk evaluations when conducting third-party risk assessment. These conversations can provide an in-depth view of the business and help the organization benchmark what is normal in terms of scope, quantity and usual terms of third-party business relationships. The interviews can also help provide an overview of corruption risks which have either manifested historically or could materialize at present.

¹ http://www.transparency.org/policy_research/surveys_indices/cpi

² <http://financialtransparencyindex.com/>

³ <http://bpi.transparency.org/bpi2011/results/> (see “results by sector”)

⁴ In some countries, the line between private and public enterprises is blurred, and it might not be obvious that an enterprise is actually government-controlled. Pursuant to international standards, persons working for these enterprises are considered foreign public officials.

Key questions to consider when interviewing business managers and employers include:

- What are third-party contractors used for?
- When are they needed, and when can the company do without?
- What is a relevant third party's normal expertise?
- Where and how do these third parties normally operate, and what are their normal deliverables?
- What is their normal compensation scheme?
- What documentation is normally kept within the company on third-party transactions?
- What part of the relevant business division's revenue depends on sales intermediaries?
- How often are third parties usually changed?
- What is the usual selection process for third parties?
- Which third parties are involved in governmental contracts and for what purpose?

Management and employee interviews can also help get to the details of specific corruption risks or control weaknesses in a business unit by asking questions such as:

- Do you use non-standard third-party agreements?
- Do you pay rates exceeding the normal fee level?
- Have you used third parties with only post-office boxes in offshore jurisdictions and no physical offices?
- Have you used third parties where nobody ever saw their representative in person?
- Is it possible for anyone to tweak matters in the course of third-party transactions (e.g. by inflating invoices, fabricating agreements, manipulating the selection process etc.) in order to abuse third parties to covertly siphon off money from the company which subsequently may be used to corrupt others?
- What are some of the suboptimal or missing controls which could facilitate such tweaks?

In many organizations, the responsibility for conducting the risk assessment lies with the individuals responsible for the third-party relationship. Because the risk assessment of a third party is subject to good faith judgement, it is important that the risk assessment and evaluation also include consultation with and inputs from independent subject-matter experts (e.g. legal, compliance, internal audit, security and local experts). This will help ensure objectivity in the process by allowing a second set of independent eyes to weigh in on the assessment.

At the end of the risk assessment process, the evaluator should justify and document their decision to categorize an entity or individual as a high-, medium- or low-risk third party.

Good practice tips

Conduct Spot Checks to Deter Abuse in the Process

Use your compliance team to conduct spot checks of the risk assessment process. This will help reduce abuse in the system and ensure that the risk assessment process is well understood and applied by business units of the organization.

Use Technology to Make the Process More Efficient

Technology can help make a traditionally paper-based process more efficient. Several compliance software programmes providing for direct data input, work-flow management and red-flag alerts are now available in the market.

In some instances, a third party may present both high-risk and low-risk factors. While this could indicate a compromise position of a medium-risk category, some of the high-risk or low-risk factors may be so significant that they override other indicators. For example, agents who are compensated on a success fee basis, or those who are expected to interact with government officials to obtain business advantages (which are both high-risk factors), may always be deemed high-risk even if they otherwise present low-risk factors.

Some organizations may choose to design and apply a numerical system to the risk indicators to make the assessment more systematic. Other organizations may employ a risk matrix looking at the likelihood or potential impact of risk, or decide to prioritize risk indicators which must always take precedence in deciding the risk category of a third party. Whatever method is used, it is important that organizations use objectivity and judgement as core principles in the implementation of the risk assessment process.

3. Due Diligence

Conducting risk-based anti-corruption due diligence

Once an organization has decided which third parties are “in scope” for due diligence, and what level of risk the third-party business relationship poses, the main process of due diligence begins.

For low-risk third parties, this process will likely take place within the business unit looking to retain the third party and consist of basic Internet searches and database checks. For medium- to high-risk third parties, more thorough data collection and investigation will be needed and will likely require input or supervision from an independent business function (e.g. the organization’s compliance or legal department) and, in some cases, the assistance of an external due diligence service provider.

The three key elements to conduct a thorough third-party due diligence are:

- a) Data collection
- b) Verification and validation of data
- c) Evaluation of results, including identification of red flags

It is important to recognize that the due diligence process may be a cyclical one, requiring the party responsible to return to the data collection process before approval if problematic issues are identified in the verification and validation phase, or in the evaluation of red flags.

a. Data Collection

The objective of the data collection process is to assemble and document relevant information about the structure, ownership and operations of the third party, its reputation for and commitment to integrity, and its suitability for the type of business relationship being considered.

Data collection to support third-party due diligence can generally be accomplished through the following tools:

1. **Internet, database and media searches**, including denied-parties lists and politically exposed persons (PEP) screening, to obtain information about the third party’s integrity profile and to identify flagrant problems which may be of public knowledge.
2. **An internal questionnaire**, to be completed by the business unit looking to hire the third party.
3. **An external questionnaire**, to be completed by the candidate third party.

The table below provides highlights of 5 key focus areas which may be covered as part of the data collection process for high-risk third parties. For low- and medium-risk third parties, the information collected may be limited to subsets of the categories listed below.

1. Organization and Affiliations

In normal, *bona fide* business transactions, a third party will not be owned by, or closely affiliated with, a decision-maker (e.g. a public official, or a manager or purchaser within a private entity) empowered to award business to the organization.

Therefore, focus areas for data collection related to the third party’s organization and its affiliations may include:

- Contact information
- Ownership structure
- Financial situation
- Whether the third party, or any key employee or senior management member, is related in any way to a public official
- Whether any shareholder or partner of the third party is owned in whole or in part by a public official or a person related in any way to a public official
- Whether public officials or a member of a public official’s family have any interest or stand to benefit in any way as a result of the proposed agreement

Compliance Health Check

A compliance health check is a plausibility test based on limited, reasonable documentary review that encompasses questions relating to the third party’s internal organization and its capacity to counter corruption.

The aim of conducting a compliance health check is to verify the existence, within the third party’s internal organization, of:

- A code of conduct
- Internal anti-corruption policies (for example, a whistleblower policy)
- A compliance function
- Internal compliance trainings
- Internal audits in which compliance features as a topic

The compliance health check should be conducted to the extent reasonably appropriate in view of the geographic and industry risk, and the size and complexity of the third party’s organization.

2. Necessity and Proper Retention

In normal, *bona fide* business transactions, organizations engage with third parties only when they need them and they know what specific products or services they need them for. For example, your organization may need a distributor in a geographic area where its own sales force is not sufficiently staffed or sufficiently knowledgeable.

Key questions to ask related to the necessity for and selection of the third party may include:

- Why is the proposed relationship necessary?
- Why was this third party chosen?
- What other parties were considered as candidates?
- Does the third party plan to use any other entities or individuals, including subsidiaries, affiliates, partnerships or joint ventures, to perform services under the proposed agreement?
- Does the organization have previous or current relationships with the third party? Is it a known entity?

Also, in the course of normal, legitimate business transactions, an organization will ensure that it properly retains the third parties it needs. For example, it will not just choose any supplier for obtaining raw materials. Rather, it will ask various suppliers for competing offers and select the most suitable candidate in terms of quality, price and expertise.

Moreover, every organization meets natural fluctuation cycles. Some third parties will be replaced by others at certain intervals, be it because of changes in the needs of the business, or because the third parties are outrun by their competitors. Against this background, it may look suspicious if local management is reluctant to even look at the option of changing suppliers after a period exceeding normal fluctuation cycles, unless there is a convincing explanation.

Other questionable patterns to be explored are:

- It remains unclear what services the third party is providing, or what these services are used for.
- A sales consultant is retained in a geographic area or industry which is already sufficiently covered by existing (internal or external) sales forces.
- Retention of the third party was required or “warmly recommended” by a public official or a decision-maker in the private sector with whom your company has business dealings.
- Local management is reluctant to subject retention of the third party to a tender process (where such process has been benchmarked as normal).

3. Expertise

In normal, *bona fide* business transactions, organizations know what kind of expertise is required from the third party they are looking to retain.

A key question to ask relating to the expertise of the third party is:

- Does the third party, or its key employees, possess the necessary professional degrees, experience, regulatory licenses and certificates to perform services under the proposed agreement?

4. Compensation, Fees and Method of Payment

The fees paid to the third party should be reasonably commensurate with the services performed or goods delivered. This will be the case if the fee complies with normal market prices or other (e.g. internal) benchmarks. For example, an organization has to be able to explain why it pays a sales agent in Canada a commission of 2% of the sales volume, whereas in Equatorial Guinea it pays 10% for the same type of services.

- Does the compensation expected by the third party vary significantly from what is dictated by local market prices or internal benchmarks for similar services?
- Has the third party, or any key employee or senior management member of the third party, made comments to the effect that any particular payment, contribution or other activity is needed to “get the business” or “make necessary arrangements”?
- Has anyone, including the third party, requested that any payment be made out to “cash” or “bearer”, or that payments be made in some other similar form?

5. Integrity

In normal, *bona fide* business transactions, organizations abstain from contracting a third party whose integrity is questionable for the mere reason that behavioural anomalies and possible law enforcement activities may jeopardize the proper performance of this third party.

Legal Proceedings

- Has the third party, or any key employee or senior management member of the third party, ever been convicted of a felony, misdemeanour or any other crime? Has the third party made any settlements out of court for matters related to corruption, facilitation payments or fraud?
- Is there negative press coverage or findings in publicly accessible registers or filings indicating any regulatory or legal proceedings of this nature pending against the third-party organization or any of its key employees or senior management?
- Does the third party, or any of its key employees or senior management, appear on a denied-parties or -persons list?

References

- What is the general reputation of the third party according to its business/bank references and the opinion of other parties interviewed?

Other questionable behaviour patterns:

- The third party is incorporated offshore with no evidently legitimate reason.
- The third party uses bank accounts in third countries (i.e. neither in the country of service nor in the country of the third party’s incorporation) and lacks any evidently legitimate reason to do so.
- The third party uses bank accounts in countries with a low rating on the Tax Justice Network’s Financial Secrecy Index⁵.
- The third party asks for cash payment, or advance payments (where advance payments are not customary), or for splitting of the payment in several small instalments (each of which seems to fall below usual *de minimis* thresholds for anti-money laundering checks conducted by banks).
- The third party is reluctant to answer due diligence questions, in particular questions on ownership or affiliations, or answers relevant questions evasively.
- The third party has a history of selling unusually large volumes to public buyers at high prices, or without tenders (where tenders are usual), or at otherwise preferred conditions.
- The third party uses sub-contractors where such use is not customary (e.g., an agent uses an agent).
- The third party suggests, in the course of negotiations, to suddenly contract not with itself but instead with another third party affiliated with it, or suggests the use of an unnecessarily complex transaction structure whose legitimate purpose is not spontaneously clear.

Samples of detailed Internal and External Due Diligence Questionnaires incorporating questions related to the focus areas above are available in Appendix A and Appendix B.

As mentioned earlier, the depth and breadth of due diligence on a third party will differ depending on whether it has been evaluated as high-, medium- or low-risk. Here’s an example of how one organization might vary levels of due diligence based on risk:

	Necessity and Proper Retention	Expertise	Affiliations and Organization	Integrity	Fees
Low risk	Local business manager to decide	Webpage review	Check legal form and commercial register extract, get Dunn & Bradstreet (or equivalent) report	Check Google and one pertinent local paper	No special scrutiny required
Medium risk	Regional management and compliance function to decide	Ask for licenses, etc.	Ask for ultimate ownership, background check on employees	Ask for disclosures (bankruptcy, criminal register extract, etc.). Obtain internal certifications (financial stability, books and records, etc.)	Internal benchmarking
High risk	Compliance function and executive leadership to sign off	Conduct onsite visit to check appropriateness of premises etc.	Examine detailed business profile (who are their other clients, etc.). Conduct compliance health check by reviewing Code of Conduct, internal policies, etc.	Involve officers and employees, ask for CV, interview staff, etc. Ask for bank references etc., review compliance programme	Request comments from third party on usual fee range in market and certification

It is important to note that the data collection process and its supporting questionnaires can be very detailed, requiring intense effort and follow-through to complete. Organizations must find an approach and questionnaire design that appropriately aligns the amount of data collected with the degree of potential corruption risk associated with the third-party relationship under review.

b. Verification and Validation of Data

After the data has been collected, it needs to be verified and validated. While the data collection process is generally the responsibility of the business unit looking to hire the third party, the verification and validation phase should involve the participation of an independent business function (e.g. compliance or legal department), particularly in the case of entities that have been classified as high-risk or medium-risk.

During data collection, the party responsible should look for gaps or inconsistencies in the information collected through internal and external questionnaires. In case of such gaps or inconsistencies, or if any alarming fact has been discovered during the data collection process, it may be necessary to involve subject-matter experts to help examine dubious points, to request clarifying information from the third party, or in certain cases, to conduct phone interviews and site visits to address outstanding issues.

As with risk assessment, it is always relevant and wise to incorporate consultation with subject-matter experts into the process of data verification to help ensure objectivity by allowing a second set of independent eyes to weigh in on the findings.

⁵ <http://financialtransparencyindex.com/>

For certain high-risk third parties, the assistance of an external due diligence service provider may be needed to undertake the following additional tasks:

- Obtain information on previous company positions, interests of the owner and the operator's key principals.
- Conduct live, local language media research on the owner, the operator and its key principals.
- Conduct independent bankruptcy and litigation checks.
- Check the owner, operator and key principals against watch lists.
- Obtain reputational intelligence through local investigators on the owner, operator and key principals.

c. Evaluation of Results, including Identification of Red Flags

Once data has been properly verified and validated, a certain degree of judgement will be necessary to determine whether or not to move forward with the proposed third-party business relationship. To help reach such a judgement, the information collected should be tested against a "red flag" checklist. Red flags refer to circumstances suggesting a strong corruption risk that should be properly identified and mitigated through adequate safeguards.

The identification of a red flag does not mean that an organization cannot go ahead with the third-party business relationship. However, no red flag should be left unaddressed or unresolved, and organizations should implement mitigating measures that reflect the level of seriousness of the red flag(s) identified.

Examples of red flags:

- The third party appears to lack sufficient capability or staff qualifications to provide the services or goods for which it is being engaged.
- The third party wants to work without a contract (or with a vague contract).
- The third party is hesitant to make anti-corruption compliance certifications in an agreement.
- The third party has family or business ties with government officials.
- The total amount to be paid for goods and services appears to be unreasonably high or above the customary or arms-length amount.
- Unusual upfront or excessive payments have been requested by the third party.
- Indirect or unusual payment or billing procedures are being requested.

A detailed Red Flag Checklist is available in Appendix C.

In addition to the identification of red flags, organizations should evaluate whether the data collected through the due diligence process provides a "complete and honest picture" of the proposed third party's background and integrity profile. Key questions the responsible parties may ask themselves include:

- Is the information collected honest and comprehensive?
- Do I trust the source from which the data was collected or who submitted it?
- Are there outstanding issues or concerns that simply cannot be resolved?

4. Approval Process and Post-Approval Risk Mitigation

Managing the approval process and mitigating identified risks

Once a company is confident it has sufficiently robust information about the proposed third party and the specifics of the business relationship, it should be in a position to decide whether to go ahead or not with the proposed transaction. Whatever the decision, the organization should clearly document its due diligence efforts and explain the rationale for its decision. It should also identify and implement the necessary mitigating measures to address any risks exposed during the due diligence process.

The approval and post-approval processes require a strong partnership between the business unit looking to enter into a relationship with a third party and the department (or senior executives) that is responsible for compliance with applicable anti-corruption laws.

a. Approval Process

The responsibility of the risk assessment and due diligence processes should be with those within the company who are looking to enter into a third-party relationship – typically a business unit – in consultation with key subject-matter experts in the organization (e.g. compliance and legal departments). The persons responsible for the risk assessment should document the rating process in reasonable detail and renew the assessment periodically (e.g. once every three years).

Once the risk assessment and due diligence processes are complete, the organization should apply a clear system of approval for determining whether or not to move forward with the third party:

- For low-risk third parties, it is appropriate for the management of the business unit to be responsible for approving the business relationship.
- For medium- to high-risk third parties, there should be a minimum of two business units involved in the approval process:
 - the management of the business unit, and
 - another level of management which has nothing to gain from the selection of the third party (e.g. the compliance or legal department).

All documentation relating to the risk assessment and due diligence processes, and to the evaluation of red flags, should be signed by the parties responsible and retained by the organization.

b. Post-approval Risk Mitigation

Good practice tip

Proof of Services Requirements

Often corrupt third parties who are used for siphoning off funds for illegal purposes are mere phantom suppliers or fictitious services providers. They limit their activities to issuing fabricated invoices and do not effectively provide any service or deliver any goods. Organizations should, therefore, ensure that their payment processes require proof of services rendered before any payments to third parties are made.

After a third party has been approved, organizations may take any number of mitigating measures to address potential corruption risks that may have been identified in the due diligence process. The following is a menu of actions companies may consider to minimize the risk of improper conduct by their third parties. The choice of mitigating measures will depend on the type and level of risk associated with the third-party business relationship.

- Contract protections

Organizations may request to include the following provisions, representations and warranties in their contractual agreements with third parties:

- A written agreement by the third party to comply with the organization's anti-corruption policies and programmes (or other materially equivalent policies and programmes) and/or with applicable laws and regulation
- A written confirmation that the third party has read the organization's Supplier Code of Conduct and agrees to satisfy its requirements
- A "right to audit" provision, providing access to the third party's relevant records
- A provision obligating the third party to maintain accurate books and records, and an effective system of internal controls
- A contractual right of termination in case of breach of anti-corruption laws
- Provisions limiting the third party's ability to act on behalf of the company and/or to have interactions with government officials
- A contractual obligation by the third party to report on services rendered

- Monitoring measures

Organizations may consider undertaking the following monitoring activities to supervise the conduct of their third parties on an ongoing basis:

- A periodic renewal or update of the risk assessment and due diligence processes
- Recurring Internet and database searches to identify new red flags
- Implementing a post-approval assurance programme, including training activities and periodic and/or risk-based audits of the third party
- A request for the third party to submit an annual certification of compliance with applicable anti-corruption laws
- A periodic review of the third party's payment requests and payments
- Tracking unusual or excessive expenses by the third party

5. Effective Implementation of the Third-Party Due Diligence Process

Communicating on the due diligence process and ensuring its effective implementation by the organization's management and employees

A robust third-party due diligence process requires organizations to develop a number of supporting measures at an operational level to ensure the effective implementation of the process and its appropriate communication to management and employees. In addition, organizations may seek to educate third parties on the due diligence process itself and include them, as appropriate, in their compliance activities.

In particular, organizations should consider implementing the following supporting measures:

- Starting at the top

The PACI Principles ask the Board of Directors (or equivalent body), the Chief Executive Officer (or Executive Board) and senior management of signatory companies to demonstrate active and visible commitment to the company's anti-corruption programme. Along the same line, an organization's top leadership should make clear to everyone in the organization that the appointment of or partnerships with third parties should be subject to risk-based due diligence to mitigate potential corruption risks.

- Training of company employees and third parties

Training is a primary tool for communicating a company's anti-corruption standards and procedures to personnel. Training content and method should be tailored to employee responsibilities. In particular, an organization's training programme may be used to promote the integration of third-party due diligence into key business processes, such as sales, procurement, finance and marketing.

Organizations may also consider, where appropriate, the delivery of training on their anti-corruption programme for their agents, contractors and suppliers. Decisions about when and in what form to offer training support should reflect the third party's risk profile and the degree of corruption risk in the relationship.

Good practice tip

US and UK Legal Requirements Relating to Training of Third Parties

The US Federal Sentencing Guidelines for Organizations, which apply to criminal violations of federal statutes such as the US Foreign Corrupt Practices Act, mandate that an organization "shall take reasonable steps to communicate periodically and in a practical manner its standards and procedures, and other aspects of the compliance and ethics program, to ["members of the governing authority, high-level personnel, substantial authority personnel, the organization's employees, and, as appropriate, the organization's agents"] by conducting effective training programs and otherwise disseminating information appropriate to such individuals' respective roles and responsibilities".

The Adequate Procedures Guidance to the UK Bribery Act provides that “general training could be mandatory for new employees or for agents (on a weighted risk basis) as part of an induction process” and adds that “it may be appropriate to require associated persons to undergo training. This will be particularly relevant for high-risk associated persons. In any event, organisations may wish to encourage associated persons to adopt bribery prevention training”. An “associated person” is defined as an individual or entity that “perform services for or on behalf” of an organization.

- **Monitoring of the due diligence process**

Senior management of an organization should monitor the third-party due diligence process, periodically review its suitability, adequacy and effectiveness, and implement improvements where needed. In particular, the compliance department should conduct spot checks to ensure that the due diligence process is properly applied and to deter any potential abuse. It is also important for an organization to regularly reassess due diligence measures to ensure that they are adapted to the changing circumstances of the organization.

- **Consultation channels for questions and support**

The PACI Principles require organizations to “provide secure and accessible channels through which employees and others can raise concerns and report suspicious circumstances (“whistle-blowing”) in confidence and without the risk of reprisal”. The reference to “others” is meant to include an organization’s third parties. Organizations may choose to inform third parties about these channels and encourage them to seek advice when questions arise and to report suspected wrongdoing.

- **Disciplinary sanctions for non-compliance**

An organization should make clear to managers and employees that any abuse or disregard of the third-party due diligence process may lead to disciplinary sanctions, including termination in appropriate circumstances.

IV. Conclusion

Third-party due diligence is a critical component of any effective anti-corruption programme. By following these Good Practice Guidelines, organizations will help minimize the risk of being involved in corruption through their third parties. Conducting due diligence on third parties takes substantial time and energy. These guidelines will help organizations implement a risk-based and resource-effective process to meet the expectations of major legal frameworks and the core requirements of the PACI Principles.

A key factor of success is to apply judgement and objectivity at all times. For each step of the process (identifying “in scope” third parties; assessing specific levels of risk; conducting risk-based due diligence; managing the approval process and mitigating identified risks), organizations should be able to explain and document the rationale for their decisions. The effective implementation of the due diligence process also requires key supporting measures at an operational level to ensure that it is well understood and applied by all business units and employees.

Appendices

Appendix A

Sample internal due diligence questionnaire

Contents

4	I. The Third Party's Organization
4	II. The Third Party's Operations
5	III. The Third Party's Financial Data
5	IV. Selection of the Third Party
6	V. Scope of the Relationship
7	VI. Compensation and Method of Payment
9	VII. Results of Research
10	VIII. Red Flags
10	IX. Affiliate Relationships
12	X. Laws and Customs of the Country
13	XI. Third-Party References and Checks
13	XII. Third-Party Interviews
14	XIII. Compliance with Commitments
15	XIV. Final Question

Note

The data collection process and its supporting questionnaires can be very detailed, requiring intense effort and follow-through to complete. This sample internal questionnaire is meant to help organizations develop their own data collection tools. Organizations must find an approach and questionnaire design that appropriately aligns the amount of data collected with the degree of potential corruption risk associated with the third-party relationship under review.

Organizations should also design their questionnaire taking into consideration all laws that may affect the extent to which certain data and information about third parties is permitted to be collected.

General Information

By signing below I certify that I have performed such procedures and inquiries as necessary to ensure that the answers provided in this document are accurate and complete to the best of my knowledge.

Prepared by: _____
(Print your Name) Title _____

(Signature) Date _____

The Third Party's Information

Third Party's Name: _____ Principal Contact: _____
Address: _____
Mobile number: _____ E-mail address: _____

I. The Third Party's Organization

Full legal name: _____
Operational address: _____
Residential address: _____
Phone number: _____ Fax number: _____
Website: _____

Type of business (Check one): Individual Corporation Partnership

List all other names under which the Third Party has conducted business, including the time period for each.

Name	Date
_____	_____
_____	_____
_____	_____

II. The Third Party's Operations

Q1. List previous or current relationships with our organization showing the period when such relationship was active.

III. The Third Party's Financial Data

Q2. In the context of the proposed project or business commitment, provide an explanation of why the Third Party is financially suitable.

Q3. Does the Third Party have the overall financial strength to bear its proportionate share of the financial obligations of the joint association?

Yes No

In other words, if difficulties were to arise in the project, would the Third Party have sufficient capacity to bear its share of any exposure, or would they tend to look to us as the party with the deep pocket?

Comments:

IV. Selection of the Third Party

Q4. How did we come to know of the Third Party?

Indicate how we became aware of the Third Party. If the Third Party was recommended, provide the name of the individual who made the recommendation, as well as his or her company's name.

Q5. What other parties were considered as candidates?

Provide a list of any other parties that were considered and indicate why they were not selected.

Q6. Why was this Third Party chosen?

Provide an explanation of why this Third Party was selected. Provide details if it was not our first choice.

Q7. Explain why the proposed relationship is necessary and what is the added value to our organization?

Provide an explanation of why accepting this Third Party would be beneficial to our organization and the relevant project.

V. Scope of the Relationship

Q8. Describe the nature of the proposed relationship, the allocation of responsibilities, the services to be provided and the country where the services will be rendered by the Third Party.

Q9. Is the third party: (i) an agent, consultant or other third party representing or otherwise acting for our organization before government or regulatory entities or officials; assisting our company in obtaining any type of government or regulatory permit, certification, registration, licence or approval; or performing lobbying activities on our organization's behalf; or (ii) a transport, logistics or other service provider interacting with customs agents on our organization's behalf; or (iii) any third party submitting tenders to enable the sale of our organization's products or services to government agencies or entities?

Yes No

Q10. If equity or payment of development costs are involved, describe the sharing of such costs with the Third Party.

Q11. Specify the duration of the relationship with the Third Party.

List the time period and indicate why the activities or services of the Third Party are required for that period of time.

Q12. Describe the commercial arrangement with the Third Party, the contract value and the payment terms.

Indicate terms of payment, the amount of the payment and whether there will be a minimum or maximum amount of compensation. Also indicate when, where and by what means payment is to be made (e.g. wire transfer).

VI. Compensation and Method of Payment

Q13. Does the expected compensation of the Third Party for its services vary significantly from what is dictated by local custom or local law for similar services? Please explain.

Yes No

Describe how the compensation compares with such services being used by a local individual or company.

Q14. Is the compensation for such services higher than what is paid elsewhere for similar services? Please explain.

Yes No

Describe how the compensation for the Third Party's services compares with compensation for similar services in other locations.

Q15. If the business relationship with the Third Party will incur development costs or require equity contributions, will the Third Party have a carried interest either in development costs or equity? Or will they be directly funding their equity in the project or their share of development costs? Please explain.

Yes No

If the Third Party is responsible for certain costs with regard to development or ownership interest, and such costs are being paid by others, provide details.

Q16. Has the Third Party, or any key employee or senior management member of the Third Party, made comments to the effect that any particular payment, contribution or other activity is needed to “get the business”, “make necessary arrangements”, etc.?

Yes No

If yes, provide a description of such comments, including the words used, the amount of money that was said to be needed, what the money would be used for, and other relevant information.

Q17. Is there any substantial basis to believe that business in the country is frequently obtained by bribing officials and/or that such payments are common? What is the country’s rating in the Transparency International Corruption Perceptions Index, if applicable? What is the Third Party’s view of these issues? Please explain.

Yes No

Indicate how you were made aware of such information, such as from other multinational organizations doing business in-country, local contacts, periodicals or news articles, or the materials obtained from the legal department, which include the Transparency International materials.

TI Rating

Q18. Has anyone, including the Third Party, requested that any payment be made out to “cash” or “bearer”, or that payments be made in some other similar form? If yes, please explain the request in detail and indicate what measures have been taken, or procedures implemented, to ensure that such request for payment is not made for improper purposes. If you believe the request may have been made for improper purposes, please explain.

Yes No

Indicate how much payment the Third Party has indicated must be made in this form, and their reason for making such a request.

Comments:

Q19. Has anyone, including the Third Party, requested that payment be made partly or wholly to a person or company other than directly to the Third Party? If yes, please explain.

Yes No

List the other person or company that the Third Party requested that payment be made to, where such person or company is based, the amount of compensation to be directed to such person, and the Third Party’s reason for making the request.

Comments:

Q20. Has anyone, including the Third Party, requested that payment be made in a country other than the one in which the services will be performed? Has anyone, including the Third Party, requested that payment be made in a currency different to the currency of the country where the Third Party is located, or of the country in which the services will be performed?

Yes No

If yes, indicate what country and/or currency the Third Party has requested the payment be made in, and the Third Party's reason for making such a request.

Q21. Has the Third Party, or any key employee or senior management member of the Third Party, requested any false documentation (i.e. false invoicing or failure to report the payment to host country fiscal authorities) or structuring of the payment provisions for services?

Yes No

If yes, describe the request in detail, and include the name of the person making the request, the false documentation requested and the reason for it.

VII. Results of Research

Q22. Having reviewed all due diligence reports and documents prepared regarding this potential Third Party, is there anything in those materials that raises a concern about the Third Party? If yes, please describe these issues of concern and the Third Party's response when you raised these issues with them.

Yes No

Include an explanation of concerns regarding any reports or documents. Note that if any issues are raised in the materials, they must be addressed. Issues of concern may include reference to financial difficulties, legal difficulties or contradictory information. Also provide a description of the Third Party's response if the issue was raised with them.

Q23. Has the appropriate Region or Country Manager in the organization, if any, been contacted for information?

Yes No

If yes, provide a description of your discussion with the appropriate person, including their knowledge of, and previous experience with, the Third Party.

VIII. Red Flags

Q24. Did you find any Red Flags (listed in Appendix D: Red Flag Checklist)? If yes, please identify each red flag and describe the results of the investigation into the matter. Yes No

Q25. Is the Third Party, or any key employee or senior management member of the Third Party, a citizen of a country subject to sanctions? Yes No

IX. Affiliate Relationships

Q26. To the best of your knowledge, has the Third Party, or any key employee or senior management member of the Third Party, ever been employed by or performed services for our organization or any of our organization's subsidiaries or affiliates? If yes, please explain. Yes No

If applicable, provide a description of the employment period, including job description, how long they were employed for and their reasons for leaving. If the Third Party performed services, then indicate whom the services were provided to and such Third Party's contact information. The party's supervisor if they were previously employed, or contact if they were performing services, should be contacted for a reference check. Their comments, both positive and negative, should be included.

Q27. To the best of your knowledge, does the Third Party, any key employee or senior management member of the Third Party, or its subsidiaries or affiliates, have any financial interest or arrangement with any officer, director or employee of our organization or any of our organization's subsidiaries or affiliates? Yes No

If yes, provide a description of the financial arrangement, and the name of the officer, director or employee, or its subsidiaries or affiliates.

Q28. To the best of your knowledge, does the Third Party, any key employee or senior management member of the Third Party, or its subsidiaries or affiliates, have a position of responsibility (for example, as an officer, director, principal, stockholder, Third Party or owner) with any business interest of any officer, director or employee of our organization or any of our organization's subsidiaries or affiliates?

Yes No

If yes, provide a list, including the position held and the period of time it has been held.

Q29. Is the Third Party, or any key employee or senior management member of the Third Party, related (by blood, marriage or otherwise) to you (the person completing this questionnaire) or any other officer, director or employee of our organization or any of our organization's subsidiaries or affiliates?

Yes No

If yes, provide a detailed description.

Q30. Do you (the person completing this questionnaire) have a personal relationship with the Third Party or do you know of any personal relationship between the Third Party and any officer, director or employee of our organization or any of our organization's subsidiaries or affiliates?

Yes No

If yes, provide a description of the relationship, including how you came to know this individual, the current status of the relationship, etc.

Q31. Has the Third Party refused to provide any information to our organization necessary to complete any part of this questionnaire?

Yes No

If yes, explain which questions the Third Party refused to answer and any documentation they declined to provide.

Q32. Is there any indication that any aspect of this transaction will be used for an improper or prohibited purpose?

Yes No

If yes, provide a detailed explanation of what aspect of this transaction may be used for improper or prohibited purposes.

X. Laws and Customs of the Country

Q33. Is it legal for the Third Party to enter into a relationship, to perform its share of the services of the relationship and to participate as a partner with our organization?

Yes No

Comments:

Q34. Is the Third Party required by law to be licensed to perform its share of the services of the relationship, and, if so, is it properly licensed?

Yes No

Comments:

Q35. Describe the current customs of the country where the services will be rendered with respect to forming joint associations, sponsorship, as well as the standard forms and terms of payment. Describe the customary terms for paying taxes.

Yes No

For example, in the case of services, do most companies have standard billing rates and do they receive payment for services upon completion of the services? Is there a rate structure? Who is traditionally responsible for payment of taxes? Is there a value-added tax (VAT)? Does local law require any withholding? Has local counsel been queried on this, and if so, provide their response.

XI. Third-Party References and Checks

Q36. Have you contacted the lending institutions, law firms, accounting firms, etc. with whom our company has relationships for information about this potential Third Party? Yes No

List all such entities/individuals that you have contacted, including their address and phone number, how they know the Third Party, and all positive and negative information supplied with regard to such Third Party.

Q37. What is the general reputation in the community of the Third Party in the view of the persons with whom you spoke?

Provide a description of the conversation(s) you have had regarding the Third Party, including who was present, when the discussion took place, how long it lasted, and both positive and negative information received.

XII. Third-Party Interviews

Q38. Have you conducted an interview with the Third Party to discuss responses to data collection questionnaires, fill in gaps or inconsistencies, and address any issues/concerns identified in Internet/database/media search processes? Yes No

Comments:

Q39. If yes, have you prepared and attached a summary of the interview with the Third Party and the inspection of the Third Party's facilities? Yes No

Comments:

Q40. Have you prepared and attached a summary of the personal meeting, face-to-face, between senior officials of the Third Party and our organization?

Yes No

Comments:

XIII. Compliance with Commitments

Q41. Have you or other employee(s) from our organization reviewed and discussed the provisions of [INSERT NAME OF APPLICABLE ANTI-CORRUPTION LAWS] with the Third Party? If yes, provide a detailed description of the conversation.

Yes No

Provide a description of the context of the discussion, who was present, when it took place, how long it lasted, and what comments, reactions or questions, if any, the parties involved may have had.

Q42. Have you provided to the Third Party a copy of [INSERT NAME OF YOUR ORGANIZATION'S ANTI-CORRUPTION POLICY AND/OR CODE OF BUSINESS CONDUCT]?

Yes No

Date:

Q43. Have you discussed our organization's policy prohibiting the illegal conversion, concealment or transfer of money or property with the Third Party?

Yes No

Comments:

Q44. Has the Third Party confirmed its compliance with all laws and regulations of the country in which they are doing business?

Yes No

Comments:

Q45. Has the Third Party confirmed that no shareholder, partner, owner, director or employee is a Public Official, political party official, or quasi-government or political official?

Yes No

Comments:

Q46. Has the Third Party confirmed that it has fully disclosed to our organization any existing family relationships between any of its employees, partners, officers, directors or stockholders and any Public Official and will notify the company if such arrangement arises during the term of the agreement?

Yes No

Comments:

Q47. Does the Third Party accept that our organization may obtain a legal opinion from local counsel that the proposed arrangement is lawful and the Third Party shall provide assistance as necessary?

Yes No

Comments:

Q48. Provide a detailed description of any objections or concerns the Third Party may have had in relation to questions 44 to 47.

XIV. Final Question

Q49. Based on your answers to all of the questions in this questionnaire, and any other information in your possession, do you (the person completing this questionnaire) believe that our organization should partner with this Third Party?

Yes No

Provide explanation of your reasoning and describe any concerns or other factors that made it difficult for you to answer this question.

Appendix B

Sample external due diligence questionnaire

Contents

4	I. Your Organization
7	II. Your References
7	III. Your Financial Data
8	IV. Selection of the Third Party
9	V. Relationship to Government Organizations or Public Officials
10	VI. Legal Proceedings
11	VII. Affiliate Relationships
12	VIII. Laws and Customs of the Country
12	IX. Bank References
13	X. Compliance with Commitments

Notes

NOTE 1: The data collection process and its supporting questionnaires can be very detailed, requiring intense effort and follow-through to complete. This sample internal questionnaire is meant to help organizations develop their own data collection tools. Organizations must find an approach and questionnaire design that appropriately aligns the amount of data collected with the degree of potential corruption risk associated with the third-party relationship under review.

Organizations should also design their questionnaire taking into consideration all laws that may affect the extent to which certain data and information about third parties is permitted to be collected.

NOTE 2: The representative of the third party signing the questionnaire should have sufficient authority to commit to the answers provided.

General Information

By signing below I certify that I have performed such procedures and inquiries as necessary to ensure that the answers provided in this document are accurate and complete to the best of my knowledge.

Prepared by: _____
(Print your Name) Title _____

(Signature) Date _____

Direct number: _____ Mobile number: _____

E-mail address: _____ E-mail address: _____

I. The Third Party's Organization

Full legal name: _____

Operational address: _____

Registered address: _____

Phone number: _____ Fax number: _____

Website: _____

Type of business (Check one): Individual Corporation Partnership

List all other names under which you have conducted business, including the time period for each.

Name	Date
_____	_____
_____	_____
_____	_____

Q1. Is your organization publicly listed and where?

For privately owned companies, list all the owners of your organization. For publicly traded companies, list shareholders holding more than 5%.

Name	Ownership %	Nationality(ies) ¹ (if applicable)

Q2. What is the ownership structure of the parent company(ies)?

For organizations listed in Q1, list the owners of each of these organizations.

Q3. Who are the members of your organization's governing board?

Name	Ownership %	Nationality(ies) ²

Q4. Who are the principal officers of your organization?

Name	Title	Years of service

^{1,2} The questionnaire should include an explanatory note to inform the third party that the information is requested solely for the purpose of conducting checks for sanctions and trade controls and will be kept confidential.

Q5. In which countries will your organization be providing goods or services to our organization?

Q6. Who are the key subsidiaries or jointly-owned organizations that will be involved in the proposed project/partnership?

Organization name	Relationship	Location	Date/place established	Percentage owned

Q7. What is the nature and history of your business operations?

Q8. List the name(s) and title(s) of the individuals who will be responsible for working with our organization.

Name	Ownership %	Nationality(ies) ³

Q9. List all previous or current relationships with our organization and the period when such relationship was active.

³ The questionnaire should include an explanatory note to inform the third party that the information is requested solely for the purpose of conducting checks for sanctions and trade controls and will be kept confidential.

II. Your References

Q10. Please give financial references including banks, principal suppliers, etc.

Name	Address	Telephone no.	Fax no.

Q11. Please give names of other organizations with which you had business relationships (include for each: the name of the organization, your relationship with the organization, the organization's address, a contact name, a telephone number and an e-mail address).

III. Your Financial Data

Note: Financial data is sometimes treated as sensitive information and the third party may be discouraged from continuing with the questionnaire process. The questions under "Part III. Your Financial Data" are therefore optional.)

Q12. Please attach your current balance sheets and income statement as well as those of the last two years.

Q13. In the context of the proposed project or business commitment, please provide an explanation of why you consider you are financially suitable.

Q14. Do you have the overall financial strength to bear your proportionate share of the financial obligations of our joint association? Yes No

Comments:

IV. Selection of the Third Party

Q15. How did we come to know you?

If you were recommended, please provide the name of the individual who made the recommendation, as well as his or her organization's name.

Q16. Explain why the proposed relationship is necessary and what the added value to our organization is.

Q17. Do you have pertinent experience with this type of activity? If yes, please describe the previous experience(s) and the time frame of such experience.

Yes No

Comments:

Q18. Do you plan to use any other entities or individuals, including subsidiaries, affiliates, partnerships or joint ventures, consultants, intermediaries, public relations agencies, marketing agencies, logistics providers, freight forwarders, customs brokers or any individuals other than your own employees to perform services under the proposed agreement? If yes, identify their name and address, their relationship to you, and the activities they will perform.

Yes No

Comments:

V. Relationship to Government Organizations or Public Officials

"Public Official" includes:

- person holding legislative, administrative, military or judicial office for any country
- person exercising a public function for any country, government or governmental agency
- employee of a government-owned or controlled enterprise
- official or agent of a public international organization
- political party or official of a political party

As such, Public Officials include honorary government officials; members of boards, officers, directors and employees of governmental, quasi-governmental or government-owned companies; some members of royal or ruling families; and officials of such public international organizations as the World Bank, International Monetary Fund and the World Trade Organization.

Q19. To the best of your knowledge, is any key employee or senior management member of your organization a Public Official? Yes No

If yes, please provide a list of all government offices and positions held. Indicate whether these are appointed or elected positions, and for how long the person concerned held such positions.

Comments:

Q20. To the best of your knowledge, is any key employee or senior management member of your organization related (by blood, marriage, current or past business association or otherwise) to a Public Official? If yes, please explain. Yes No

If yes, please describe the relationship between such person(s) and the Public Official(s).

Comments:

Q21. To the best of your knowledge, is any shareholder or partner in your organization, or any subsidiaries of the shareholder(s) or partner(s), owned in any part by a Public Official or a person related to a Public Official? Yes No

If yes, please list the Public Official(s) and their total percentage ownership interest.

Comments:

Q22. To the best of your knowledge, does any key employee or senior management member of your organization provide financial or any other benefits to a Public Official or a member of a Public Official's family (e.g. educational or medical assistance, housing)? If yes, please explain. Yes No

Provide a list of all of the benefits given, the name of all recipients of such benefits and their relationship to the Public Official (e.g. cousin, sister, etc.).

Comments:

Q23. To the best of your knowledge, does any Public Official or a member of a Public Official's family have any interest, or stand to benefit in any way, as a result of the proposed agreement? If yes, please explain. Yes No

Comments:

VI. Legal Proceedings

Q24. Have you or any key employee or senior management member of your organization, ever been convicted of a felony or any other serious crime in the country where the services will be rendered or in any other country (other than traffic violations)? Are there any legal proceedings of this nature pending? Yes No

Describe the charges for which you or key members of your organization have been convicted or have proceedings currently pending, and when this occurred.

Comments:

Q25. Has a consent decree ever been issued against your organization, or any key employee or senior management member, by any governmental entity or political subdivision of the country where the services will be rendered or by the government of any other country? If yes, please explain. Yes No

Comments:

VII. Affiliate Relationships

Q26. To the best of your knowledge, have you or any key employee or senior management member of your organization, ever been employed by or performed services for our organization or any of our organization's subsidiaries or affiliates? If yes, please explain.

Yes No

If applicable, provide a description of the employment period, including job description, how long employed and reasons for leaving. Then indicate whom the services were provided to, or the party's supervisor if they were previously employed.

Comments:

Q27. To the best of your knowledge, do you or any key employee or senior management member of your organization, its subsidiaries or affiliates, have any financial interest or arrangement with any officer, director or employee of our company or its subsidiaries or affiliates? If yes, please explain.

Yes No

If yes, please provide a description of the financial arrangement and the name of the officer, director or employee.

Comments:

Q28. To the best of your knowledge, do you, any key employee or senior management member of your organization, or its subsidiaries or affiliates, have a position of responsibility (for example as an officer, director, principal, stockholder, partner or owner) with any business interest of any officer, director or employee of our company or any of our organization's subsidiaries or affiliates?

Yes No

If yes, please provide a list, including the position held and the period of time it has been held.

Comments:

Q29. Is any key employee or senior management member of your company related (by blood, marriage or otherwise) to any other officer, director or employee of our organization or its subsidiaries or affiliates? If yes, please explain.

Yes

Comments:

VIII. Laws and Customs of the Country

Q30. Is it legal for you to enter into a relationship, to perform the services of the partnership, and to participate as a partner with our organization? Yes No

Comments:

Q31. Are you required by law to be licensed to perform the services of the partnership, and, if so, are properly licensed? Yes No

Comments:

Q32. Describe the current customs of the country where the services will be rendered with respect to forming joint associations, sponsorship, as well as the standard forms and terms of payment. Describe the customary terms for paying taxes. Yes No

For example, in the case of services, do most companies have standard billing rates and do they receive payment for services upon completion of the services? Is there a rate structure? Who is traditionally responsible for payment of taxes? Is there a value-added tax (VAT)? Does local law require any withholding? Has local counsel been queried on this, and if so, please provide their response.

Comments:

IX. Bank References

Q33. Provide, to the extent available, a list (including location and coordinates) of the bank(s) and law firm(s) you are working with.

Comments:

X. Third-Party References and Checks

Q34. Are you aware of and agree to abide by the provisions of applicable laws, including but not limited to the [INSERT NAME OF APPLICABLE ANTI-CORRUPTION LAWS], in providing goods and services under the proposed agreement? Yes No

Comments:

Q35. Please confirm that you have read and agree to abide by our Code of Ethics and Business Conduct and [INSERT NAME OF YOUR APPLICABLE ANTI-CORRUPTION POLICY, IF APPLICABLE] in providing goods and services under the proposed agreement. Yes No

Date:

Q36. Describe your organization's compliance organization and provide copies and/or descriptions of your Code of Ethics and Business Conduct, your anti-corruption compliance policies, your compliance training activities, and your whistle-blowing channels, if any.

Comments:

Q37. Do you have a written policy in place prohibiting the illegal conversion, concealment or transfer of money or property? Yes No

Comments:

Q38. Does your organization have a corporate policy which prohibits facilitation payments? If not, under which circumstances would the policy allow for making facilitation payments? Yes No

Comments:

Appendix C

Sample red flag checklist

Part I: Complete the following based on review of information collected during the due diligence data collection process.

Red Flags		
YES	NO	
1. Industry- and location-related Red Flags		
<input type="checkbox"/>	<input type="checkbox"/>	a. Is the perceived level of corruption risk in the country where work is to be performed relatively high based on the Transparency International Corruption Perceptions Index?
<input type="checkbox"/>	<input type="checkbox"/>	b. Does the transaction involve an industry that has a history of anti-bribery violations?
2. Organization-specific Red Flags		
<input type="checkbox"/>	<input type="checkbox"/>	a. Is the Third Party new to the organization by which it is being engaged?
<input type="checkbox"/>	<input type="checkbox"/>	b. Does the Third Party appear to lack sufficient capability or staff qualifications to provide the services or goods for which it is being engaged (based on years in business, types of service performed, staffing levels, etc.)?
<input type="checkbox"/>	<input type="checkbox"/>	c. Is the Third Party reluctant to provide business references or did the response from any of the business references present a basis for concern about the Third Party?
<input type="checkbox"/>	<input type="checkbox"/>	d. Is the Third Party a lawyer, accountant or other person/intermediary who is not normally directly involved in the type of project or business activity for which it is being retained?
<input type="checkbox"/>	<input type="checkbox"/>	e. Have we been asked or directed by someone to use this specific Third Party? If so, by whom and why?
<input type="checkbox"/>	<input type="checkbox"/>	f. Does the Third Party want to work without a contract or with a vague contract?
<input type="checkbox"/>	<input type="checkbox"/>	g. Is the Third Party hesitant to make anti-corruption compliance certifications in an agreement?
<input type="checkbox"/>	<input type="checkbox"/>	h. Does the Third Party have family or business ties with government officials?
<input type="checkbox"/>	<input type="checkbox"/>	i. Have we been asked by anyone associated with the transaction to make any political or charitable contributions of any kind?
3. Transactional Red Flags		
<input type="checkbox"/>	<input type="checkbox"/>	a. Does the total amount to be paid for goods and services appear to be unreasonably high or above the customary or arms-length amount?
<input type="checkbox"/>	<input type="checkbox"/>	b. Are unusual upfront or excessive payments required (high commissions, substantial bonuses, etc.), or is the compensation to be based on performance (success fees)?
<input type="checkbox"/>	<input type="checkbox"/>	c. Are indirect or unusual payments or billing procedures being requested, such as:
<input type="checkbox"/>	<input type="checkbox"/>	i. Payments through bank accounts in a foreign country outside of the one where the services are being provided
<input type="checkbox"/>	<input type="checkbox"/>	ii. Payments to anonymous (numbered) bank accounts
<input type="checkbox"/>	<input type="checkbox"/>	iii. Payments to bank accounts containing corporate funds but held in names of individuals
<input type="checkbox"/>	<input type="checkbox"/>	iv. Payments to third persons for goods or services provided by the Third Party
<input type="checkbox"/>	<input type="checkbox"/>	v. Payments through shell companies created to receive revenues and facilitate transactions
<input type="checkbox"/>	<input type="checkbox"/>	vi. Payments in cash rather than by cheque or wire transfer
<input type="checkbox"/>	<input type="checkbox"/>	vii. Cheques made out to "bearer" or "cash"
4. Other Red Flags		
<input type="checkbox"/>	<input type="checkbox"/>	a. Will the Third Party be exposed and/or have interactions with public officials on behalf of our organization?
<input type="checkbox"/>	<input type="checkbox"/>	b. Will the Third Party be dealing with customers, suppliers and agents of our organization on behalf of our organization?

Part II: Provide additional comment below regarding any “red flag” items noted above. Comments should include additional details about each of the red flags noted, including any mitigating circumstances or proposed action steps to address the red flag.

Red Flag Index E.g. “3)c)ii”	Comments

Third Party Information	Internal management personnel responsible for completing the due diligence	
Name of Third Party:	Name:	E-mail Address:
Address:	Title:	Phone Number:

Conclusion

<input type="checkbox"/> Yes	<input type="checkbox"/> No	Based on the information provided, do you feel that the red flags that have been identified have been adequately mitigated? Comment:
<input type="checkbox"/> For	<input type="checkbox"/> Against	Based on the information provided, would you recommend for or against engaging this Third Party for this transaction?

Individual Completing this Form	Contact Information	
Name:	Signature:	E-mail Address:
Title:	Date:	Phone Number:



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