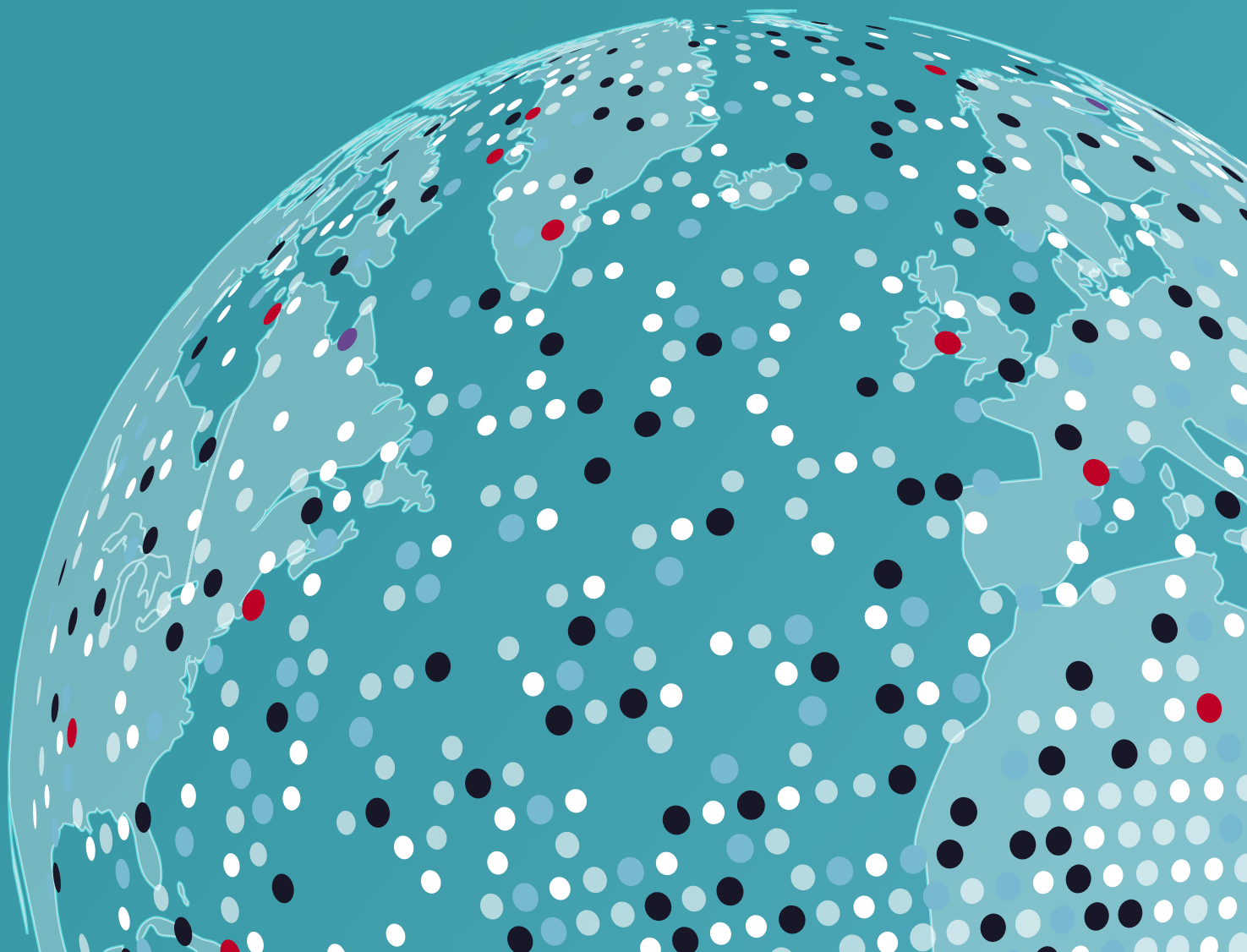


# Due Diligence Checklist

A Step-by-Step Guide to Managing Third-Party Bribery and Corruption Risk in 2023



# What should my due diligence checklist include?

Companies operating in today's global business environment must navigate ever-strengthening anti-bribery and corruption regulations. Some of the most significant recent enforcement actions against companies arose from alleged due diligence failures, leading to fines, legal action, strategic risks and reputational damage. Meanwhile, there are growing expectations around companies' understanding of their Environmental, Social and Governance (ESG) impact, including new legislation mandating them to carry out human rights and environmental due diligence. All this should prompt companies to carry out effective supply chain due diligence to mitigate bribery & corruption, modern slavery and wider ethical conduct risks.

A due diligence checklist takes you step-by-step through the information you need to consider to help carry out a thorough investigation when you're contemplating a new commercial relationship, a prospective business partner or monitoring an existing one. Some checklists offer a narrowly defined area of application. This is suitable if you are preparing for a business takeover or a real estate transaction, but inappropriate for your own business as it stands.

Other due diligence checklists take a more extensive approach but turn out not to cover all you need to surface the relevant risks. Rather than focusing on either a narrow or broad scope, our checklist includes questions aligned to situational risks to help you determine the level of third-party due diligence investigation required to mitigate risk. Our checklist also recognizes that regulatory requirements change, so it highlights some of the key laws against foreign bribery at time of posting and suggests how companies can remain compliant.

# Risk-based due diligence checklist

## **What countries do you conduct business in, and where are your business contacts?**

### **All my business partners are based in my own country.**

You need to understand and follow the compliance legislation and requirements in that country.

### **I supply exclusively to customers in my own country, but I buy in goods and/or services from businesses based abroad.**

You need to take account of the compliance legislation and requirements in all of the countries in question. Laws such as the UK's Bribery Act and Modern Slavery Act, the US Foreign Corrupt Practices Act (FCPA) and Brazil's Clean Company Act explicitly state that they also apply to businesses that run commercial operations outside local markets. While supranational regulations like the Corporate Sustainability Due Diligence Directive require all companies operating in or doing business in the EU to carry out human rights due diligence. Moreover, regulators from different jurisdictions are increasingly cooperating on cross-border investigations and extraterritorial enforcement actions.

### **Are foreign laws applicable to me?**

Anti-bribery and corruption laws in the US, UK, Europe, South America and Asia might be relevant to you, depending on where your company does business. Several recent laws have specified extra-territorial application. In the following pages, we look at examples of major global legislation against foreign bribery and corruption.

# Selected extracts from global legislation to help counter bribery and corruption

## Foreign Corrupt Practices Act (US)

**Bribery of public officials:** [The FCPA of 1977](#) prohibits giving “anything of value” to a foreign public official to obtain or retain business.

**Extra-territorial reach:** The FCPA applies to offenses committed anywhere in the world by US citizens, residents, companies and certain non-US individuals and entities.

**Liability towards third parties:** The payment of bribes by third parties is prohibited, and it is a breach of the law to pay a third party when it is known that this is fully or partly destined for a foreign official.

## Bribery Act (UK)

**Extending the FCPA:** [The Bribery Act of 2010](#) went further than the ‘gold standard’ US law in targeting bribery in the private sector, not just of foreign public officials. It also made companies liable for failing to prevent bribery by a person associated with them.

**Incentivizing compliance:** The Act offers a “full defense” to organizations that can prove they have “adequate procedures” in place to prevent persons associated with them from committing bribery.

**Risk-based:** The Act says companies’ compliance procedures should be proportionate to the risk of bribery they face. Large organizations operating in an overseas market where bribery is known to be commonplace will likely need to do more to prevent bribery.

**Developing legislation:** The UK’s capacity to tackle financial crime (including bribery) was strengthened with the passage of the [Economic Crime \(Transparency and Enforcement\) Act](#) in 2022.

## German Criminal Code (Germany)

**Criminalizing bribery:** The German Criminal Code makes bribery of public officials illegal, and it applies outside the country as long as one of the participants is a citizen or part of the bribery happened in Germany. This law affects every state in Germany, although individual states have enforcement power and some are more active in this respect than others.

**Fines:** Companies can be fined up to €10 million and/or forfeit any illicit gains for violating the foreign bribery rules, while individuals can be imprisoned for up to 10 years.

**Loss of future business:** Companies found liable for foreign bribery are disqualified from taking part in public procurement. They are listed on a competition register which was implemented in 2017, and public contractors must check this register before entering into a contract worth more than €30,000.

## Sapin II (France)

**Compliance obligations:** Companies above a certain size or annual revenue exceeding €100 million are required to put in place a corporate compliance program to prevent and detect corruption or trafficking of influence in France and abroad.

**Rewarding compliance:** The [2017](#) law allows companies to enter a judicial settlement of public interest (CJIP) under certain circumstances. Like Deferred Prosecution Agreements in the US and UK, the CJIP helps authorities to resolve corruption cases while companies can avoid a criminal conviction if they meet certain conditions like cooperation and improved compliance procedures.

**Risk-mapping:** Updated guidance released by the French anti-corruption agency (AFA) in 2021 states that mapping bribery risk must be adapted to each company according to its activities, size and structure, and it defines the role of compliance and risk officers.

## Penal and Criminal Codes (Nordic countries)

**Criminalizing bribery:** The [Norwegian Penal Code](#) makes bribery by individuals or companies a criminal offense. Individuals convicted of bribery face up to ten years in prison, while companies can receive an unlimited fine.

**Individual accountability:** Although Sweden's [Penal Code](#) does not hold legal entities liable for bribery, individuals acting on their behalf are subject to the legislation and fines can be imposed on corporations.

**Compliance fines:** Under [Finland's Criminal Code](#), companies found to have carried out bribery can be fined up to €850,000 and individuals can be imprisoned for up to four years.

**Improving enforcement:** While the Nordic countries typically have a stellar reputation for low corruption in rankings like [Transparency International's Corruption Perceptions Index](#), there have been efforts in recent years to improve their record on taking enforcement action against companies for bribery of foreign public officials. For example, Finland recently introduced new commitments to enforce its bribery laws after a warning by the [OECD's Working Group on Bribery](#) in 2020.

## Clean Company Act (Brazil)

**Bribery:** The law prohibits bribery of both local and foreign officials. In this respect, it also goes further than the FCPA which applies only to bribery of foreign officials. Politically Exposed Persons (PEPs) are a primary focus, which is unsurprising given the backdrop of the Operation Car Wash bribery and corruption investigation when the law was introduced in 2014.

**Extra-territorial application:** The Act can be enforced against Brazilian companies or individuals for actions taken outside Brazil. It also applies to foreign companies with a presence in the country—even if this is only temporary.

**Incentives for compliance:** As in the US, UK and France, companies who are investigated for bribery and corruption receive some credit from regulators for having a good compliance program in place. Self-disclosing corruption and cooperating with the authorities can also reduce a fine by up to two-thirds and avoid other sanctions.

**Sharpened focus on due diligence:** The Brazilian government published a new decree in 2022 which aimed to strengthen enforcement of the Clean Company Act, and specified new ways to measure companies' compliance programs including due diligence for PEPs and other risk factors.

## Prevention of Bribery Ordinance (Hong Kong)

**Private sector bribery:** [The Ordinance](#) makes it an offense to commit bribery in the public and private sectors in Hong Kong. However, most prosecutions target individuals because the offence of bribery requires human actors.

**PEP risk:** Any officer or employee of a public body counts as a public official in the law, which offers a broad scope because more than 110 public bodies are listed.

**Limitations:** A parent company is not held liable for a subsidiary being involved in bribery. The person committing the offense must be “directing mind and will” of the company, such as being a director. Moreover, courts have been hesitant to move forward unless a large part of the alleged bribery took place in Hong Kong.

## Prevention of Corruption Act and others (Singapore)

**Criminalizing bribery:** [The Prevention of Corruption Act and the Penal Code](#) allow for criminal enforcement action to be taken against foreign and domestic bribery.

**PEP risk:** Individuals and companies in both public and private sectors in Singapore can commit an offense for paying and receiving a bribe. There is a particular focus on domestic public officials, who are defined as members of parliament and members of a public body. Foreign bribery is not mentioned in the laws, but experts say it is covered by the general prohibition on bribery.

**Compliance incentives:** The [Criminal Justice Reform Act \(2018\)](#) introduced Deferred Prosecution Agreements, which allow prosecutors to agree not to prosecute a company if it meets conditions like implementing adequate compliance and remediation processes.

**Cross-border cooperation:** A [revision to the Mutual Assistance in Criminal Matters Act in 2014](#) improved Singapore's ability to give and receive legal assistance to and from other countries for bribery investigations.

## Federal Penal Code (UAE)

**Criminalizing bribery:** The [UAE's Federal Penal Code of 2006](#) ratified the UN Convention Against Corruption and it has been extended to include bribery of foreign public officials. It is a crime for individuals or companies to bribe foreign public officials or for foreign public officials to accept bribes.

**PEP guidance:** The law considers a foreign public official to be "any person who occupies a legislative, executive, administrative or judicial function in another country" and "any person entrusted with public service functions".

**Extra-territorial:** The Penal Code applies to a bribe committed outside the UAE if the criminal or victim is a UAE citizen, if the crime involves state property, or if the crime is committed by a public or private sector employee of the UAE.

“ There is a full defense if you can show you had adequate procedures in place to prevent bribery. But you do not need to put bribery prevention procedures in place if there is no risk of bribery on your behalf.”

— [Guidance accompanying the UK Bribery Act 2010](#)

# The road towards due diligence requirements around ESG

Among the most prominent trends in compliance today is the spread of legislation mandating companies to carry out due diligence on the human rights and environmental impacts of their business and its third parties. This trend is truly global:

## EU

- The European Commission has adopted a proposal for a [Corporate Sustainability Due Diligence Directive](#). This would require regulated companies operating in EU member states to ensure activities by the business and its suppliers comply with strict human rights and environmental sustainability criteria.
- Germany's [Supply Chain Due Diligence Act](#) will mean that, from 2023, regulated companies in the country must carry out due diligence and risk management to mitigate human rights violations in their supply chains. Failure to comply could incur fines of up to 2% of global revenue and temporary exclusion from public contracts.
- The [Child Labour Due Diligence Act 2019](#) mandates any company selling or supplying to consumers in the Netherlands to investigate whether child labor has been involved in the production process.

## US

- The US' [Uyghur Forced Labor Prevention Act 2021](#) makes a presumption that all goods produced in Xinjiang, China, came from forced labor. As a result, companies cannot import these goods to the US – unless they can prove through due diligence that forced labor was not involved.
- The [Slave-Free Business Certification Act](#) was introduced in the US Senate in 2022. If it passes, it will require certain large companies to audit their supply chain to investigate forced labor. Companies would have to publish reports on the results of the audit and document their efforts to eradicate forced labor.

## APAC

- Effective December 2022, banks in Hong Kong must ensure they meet certain requirements for managing climate risk and make appropriate disclosures on their activity to the regulators.
- Hong Kong's regulatory authorities are expected to introduce mandatory climate reporting for financial institutions and listed companies by 2025. [Hong Kong Exchanges and Clearing's Reporting Guide](#) contains requirements for financial practitioners to assess and understand their company's ESG record.
- Singapore brought in [Environmental Risk Management Guidelines](#) in June 2022. They state that banks, asset managers and other financial companies need to identify and engage with those customers who are most likely to expose them to environmental risk, then mitigate that risk.

More countries are considering adopting similar legislation, and even where there is not legislation there are growing expectations from consumers, investors and employees that firms demonstrate an ethical approach. So all firms should be prepared, which starts with improving their due diligence process.

# Examples of enforcement actions

Why does our checklist matter? Failing to follow best practice in due diligence and compliance can inflict legal, financial, reputational and strategic costs on a company. Here are just some of the enforcement actions relating to alleged regulatory breaches in 2022:

**A multinational commodity trading and mining company** was due to pay penalties of up to \$1.5 billion after investigations by regulators in the US, Brazil and the UK. It was alleged that the firm had carried out bribery and corruption in an attempt to benefit its oil operations in countries including Cameroon, Equatorial Guinea, Ivory Coast, Nigeria and South Sudan. Independent compliance monitors have also been installed at the company to monitor its compliance approach over the next three years.

**A fintech firm** was fined \$360,000 by the United Arab Emirates' regulator over alleged due diligence failures in its Anti-Money Laundering approach. The regulator said the firm had failed to carry out enhanced due diligence on high-risk customers after a business relationship had started. The firm was also found not to have properly assessed the risk of customers posed according to their nationality and geography.

**A US-based waste management firm** agreed to pay over \$84 million in response to investigations by Brazilian and US regulators into the apparent bribery of foreign officials in Brazil, Mexico and Argentina. The company was alleged to have paid over \$10 million in bribes between 2011 and 2016 to retain business advantages which led to over \$21 million in profits. The investigation was resolved through a Deferred Prosecution Agreement, which included a condition that the company would retain an independent compliance monitor for two years to ensure it improves its compliance program.

**A Luxembourg-based steel manufacturer** had to pay over \$78 million to resolve claims by the US Securities and Exchange Commission that its Brazilian subsidiary allegedly paid bribes to win contracts from a state-owned company. The regulator said the firm lacked sufficient controls to mitigate "known corruption risks" in the country.

**A telecommunications firm based in South Korea** was fined \$6.3 million over alleged violations of the Foreign Corrupt Practices Act around bribery of public officials in South Korea and Vietnam. The US regulator said the company was "lacking relevant anti-corruption policies or procedures". South Korea's authorities also indicted the company and many of its executives over alleged illegal political contributions.

**A UK company with strong links to Hong Kong** was fined £30,000 for allegedly breaching European sanctions related to the conflict in Ukraine by doing business with a firm that was subject to an asset freezing order. Although the penalty was relatively small, the firm suffered reputational damage with coverage in the *Wall Street Journal* – a reminder to firms that due diligence should also include ongoing monitoring of sanctions changes.

“ The consequences of violating the FCPA are clear: Companies that bribe foreign officials for business advantage will be held accountable.”

— Assistant Director Luis Quesada of the FBI's Criminal Investigative Division.



# The direction of travel

As we saw earlier with the rise of mandatory due diligence legislation in this report, it is no longer sufficient for compliance officers to screen a third party for indicators of bribery and corruption alone. Effective due diligence in the modern business environment should also encompass ESG factors like a company's human rights record and environmental impact.

Nonetheless, regulation and enforcement against bribery and corruption continues to get stricter, and a number of trends are making it harder for foreign bribery to go undetected by regulators. Mutual legal assistance between national regulators and increasingly extra-territorial application of laws has increased the pace of global enforcement actions. More countries have adopted—or are considering adopting—a version of a Deferred Prosecution Agreement which incentivizes companies to follow a rigorous due diligence and compliance checklist. Where once the US FCPA stood virtually alone as the legal threat to foreign bribery, companies operating internationally are now at risk of prosecution for activity in their supply chain in multiple jurisdictions.

While there are important differences in national anti-bribery and corruption laws, following best practices around due diligence and compliance makes it more likely that a company will be compliant and be able to identify and manage bribery and corruption risks. This starts with asking and answering the following questions:

## How much risk can be foreseen in doing business with the company in question?

**The risk is relatively low. It's a small, local business here, with regional suppliers.**

Perform simplified due diligence for low-risk entities and individuals, based on information provided by your intended business partner and supplemented by background research using the internet or a specialized due diligence database.

**The risk is relatively high. It's a business whose operations include working in emerging markets or highly-regulated industries. I have no idea what links it may have with other third parties.**

Use a specialized database to perform enhanced due diligence. This is the most efficient way to discover signs—through negative news mentions, company data or legal information—that the business in question may pose a risk due to past or current economic offenses or payment difficulties. Some databases will provide a risk score and automatic updates when the risk level changes and allow

compliance officers to produce reports ready for the C-suite and auditors.

**The risk is very high. I know nothing about the business's structure; it's a high-value contract and enhanced due diligence has raised issues that need further checking.**

Bring in an outside adviser. There are professional bureaux that may uncover additional information through local investigations which are unlikely to be discovered using online resources alone.

## Are there any Politically Exposed Persons (PEPs) involved in the commercial relationship?

### No, the relationship is non-political in nature.

It is still recommended to check for potential PEP risk in relation to the individuals in question, the company and wider associates. That's because people who have links to government officials and politicians may pose a corruption risk. If you are active in the financial sector, it's especially important to conduct PEP checks, but other sectors such as pharmaceuticals have proven vulnerable as well. Specific datasets on companies and executives can help you to identify PEPs, while adverse news searches may indicate additional risks. Conducting ongoing monitoring of all names against PEP lists is also recommended as an individual's status may change.

### Yes, some PEPs may be involved in the relationship.

Then it is essential to check for potential PEP risk against individuals, the company and wider associates. This should be done on an ongoing basis using the same datasets outlined in the bullet point above.

## Have you investigated any adverse reports about your business partner?

Analyze adverse news about your business partner—and not just by looking at recent news reports. If you uncover negative news about the business such as an alleged connection to corruption, you should investigate further before getting into a business relationship. If the business is still embroiled in corruption scandals, you may end up being liable for offenses yourself. News sources should be global and in multiple languages, reflecting the international nature of supply chains and corruption risk.

## Is the business or individual currently involved in legal issues or do they have a litigious history?

Look for legal cases related to the business. Bankruptcies and liens could signal a financial risk. Lawsuits related to product liability could pose both reputational and financial threats.

### Have you obtained information about a third party's true beneficial owners?

Nowadays, it is no longer straightforward to identify true beneficial owners if the business in question is reluctant to cooperate. Concealed beneficial ownership, however, presents intrinsic risks so we recommend robust ongoing due diligence. This can minimize the risks of hidden corruption, bribery and money laundering.

### Do you have the data you need to assess corruption risk?

Companies often have a lot of data on their customers—for example, individual banks record millions of transactions. But this is rarely enough to identify the risk that a current or prospective third party is implicated in bribery and corruption. It is usually necessary to buy in trusted and accurate datasets on companies, sanctions, watch lists, legal cases, PEPs, adverse news and more. Companies can either integrate this data into their own due diligence process, or use an external tool to carry out due diligence and ongoing monitoring. In the following pages, we look in more detail at the sources you need most.

## What data sources should I screen third parties against?

### Sanction lists

Sanction lists identify countries, entities and individuals against whom national or international sanctions have been imposed in connection to conflict, human rights abuses, terrorism or other serious offenses. Sanctions may stem from one or more resolutions of the UN Security Council, decisions by other international cooperative bodies, and national government rulings.

Examples of sanctions include arms or trade embargoes, bans on immigration, freezing of bank accounts and restrictions on diplomatic or military relations. The important sanctions lists include those of the United Nations Security Council (UNSC), the US Office of Foreign Assets Control (OFAC), European Union Common Foreign and Security Policy (CFSP) and the UK HM Treasury.

### **Watch lists**

Third parties should also be screened against relevant law enforcement lists from Interpol, the US Federal Bureau of Investigation (FBI), and national or regional wanted lists issued by police forces in any countries connected to the business or individual subject to your due diligence investigation. Such lists may be related to terrorist screening or criminality. Crime-related lists, for example, contain information about natural and legal persons regarded as risks. These would include sentenced criminals and known names from the world of organized crime.

### **PEP lists**

A distinction is drawn between international and national PEPs (for example government leaders, eminent politicians and top military officials) and individuals who fulfill or have held important posts in an international organization (directors, top managers, etc.) and their immediate support staff. If a potential customer or business partner is identified as a PEP, you must ensure effective risk management by means of an enhanced due diligence procedure.

### **Compliance-related lists**

Compliance-related lists contain information about natural and legal persons against whom enforcement measures have been taken, such as a fine, restriction of commercial activities or exclusion. Examples of compliance-related lists are the Financial Claims Enforcement Network List and the World Bank List of Debarred/Ineligible Firms.

### **Company and Ultimate Beneficial Ownership data**

A company profile contains information on the formal legal incorporation of the business in question, its corporate structure, ownership relationships, control mechanisms and so on. Data on Ultimate Beneficial Ownership is particularly important as it helps compliance officers to understand the full picture of who controls third parties. The pace of change in corporate structures means that this data should be refreshed regularly as part of an ongoing monitoring process.

### **ESG data**

ESG risk assessments are challenging for many reasons. One such reason, cited recently by the Hong Kong Institute of Certified Public Accountants, is that the diversity of ESG information makes standardized reporting difficult. Nonetheless, a third party's ESG record can be assessed by carrying out targeted searching for key terms (from "environmental" to "forced labor") across a database holding wide range of trusted sources. This should include news coverage, PEPs and sanctions lists, financial reports and more.

### **Legal proceedings**

Compliance officers should check summaries of legal proceedings in which the legal or natural person in question may have been involved.

### **News reports**

Current and archived news reports can play a useful part, for instance for checking the reputation or official status of natural and legal persons. Regard news reports as a supplement to traditional sources for a due diligence investigation. Data should be scraped from a long list of authoritative news sources across the world – preferably tens of thousands of sources. Being able to filter for negative mentions is useful for exposing the risk of unethical conduct.

**By checking across a broad collection of content relevant to due diligence investigations, you reduce the risk of overlooking important information or failing to satisfy the statutory compliance requirements.**

# Choose your screening and due diligence tools carefully

## 1. Where do I start in implementing a system for due diligence and screening?

- Set clear requirements and objectives, which the screening and due diligence technology must satisfy, in support of the requirements management and to define the return you are looking for. The starting point is identifying the risks to which your business is exposed through a risk assessment.
- Test, investigate, compare and assess the systems that meet your needs. Decide whether the functionality of the potential systems coincides closely enough to the requirements of your own business and consider what resources can be supported or replaced by the systems within your own business.
- Bear in mind the long-term factors (new rules on commercial economic supervision, increases in red tape surrounding commercial aspects) and ask whether the proposed due diligence and screening tools are scalable, flexible and readily adaptable to evolving regulations and your workflow. For instance, can modules be added and can the system be tailored to a specific method of budget management?
- Note the options for business-specific adaptations and flexible management functionality, so that your system can be optimized on the basis of your company policy and the risks you face.
- Select an implementation model that coincides with your company's IT policy (for instance hosting by a provider or implementation in-house).
- Note the options for multiple language support (interfaces, content, translation tools and so on).
- Check whether there are adequate training and support options available (free/paid for, a specific number of hours, specific training options, etc.).
- Note the options for generating management reports and audit data so you can satisfy statutory compliance requirements and maintain and assess the return from your system.
- Look into the options for integration of regular appraisals of commercial aspects, in order to ensure that the technology can keep pace with any changing requirements under corporate or other legislation or changes in your risk profile.
- Find out whether there are regular checks of the provider and whether up-to-date information is regularly available about new functions and content.

## 2. What information is required for conducting effective due diligence relating to a third party, and where can I find it?

INFORMATION TO BE REQUISITIONED AND CHECKED	SOURCES
The complete official name, registered address and Chamber of Commerce (or equivalent) number of the proposed business partner.	<ul style="list-style-type: none"> <li>• Questionnaire for business partners</li> <li>• Consulting local trade register</li> </ul>
Information concerning shareholding structure and shareholders of the proposed partner, as well as parent companies and/or subsidiaries that are fully or partly owned by the proposed partner.	<ul style="list-style-type: none"> <li>• Questionnaire for business partners</li> <li>• Consulting local trade register</li> </ul>
A listing of the board members and management team of the proposed business partner, and all other employees who will be providing services to your business. This must include information about the biography of the relevant individuals, their civic status, their relations with PEPs, and any links with other enterprises. This is also where references may be included, if appropriate.	<ul style="list-style-type: none"> <li>• Questionnaire for business partners</li> <li>• Consulting local trade register</li> <li>• Media research</li> </ul>
Information about other customers of the proposed business partner and any third parties with which it maintains a regular business relationship (particularly civil servants and government organization employees), and an understanding of how those relationships came about.	<ul style="list-style-type: none"> <li>• Questionnaire for business partners</li> <li>• Media research</li> <li>• Inquiries with local businesses and embassies</li> <li>• Watchlists and PEP databases</li> </ul>
Financial information, including annual financial statements and reports, as well as information about any previous bankruptcies affecting the business and its board members.	<ul style="list-style-type: none"> <li>• Questionnaire for business partners</li> <li>• Consulting the trade register</li> <li>• Media research</li> </ul>
Information about possible legal proceedings and official investigations pertaining to the business or its senior employees, paying particular attention to any allegations of corruption.	<ul style="list-style-type: none"> <li>• Questionnaire for business partners</li> <li>• Contractual documents</li> <li>• Legal sources</li> <li>• Sanction and watchlists</li> </ul>
The precise nature of the contemplated relationship with the business partner, which services are involved, how these services will be provided and by whom, and how the payment for them will be executed.	<ul style="list-style-type: none"> <li>• Questionnaire for business partners</li> <li>• Contractual documents</li> </ul>
What measures and procedures the proposed business partner applies to counteract bribery and corruption (if appropriate) and what due diligence measures they undertook when entering into other third-party business relationships.	<ul style="list-style-type: none"> <li>• Questionnaire for business partners</li> </ul>

**Nexis Diligence™ collects this information in one place. Read to the end of this checklist to learn how you can leverage that data to improve your due diligence process.**

### 3. What commonly occurring external and internal risks need consideration prior to starting a business relationship?

#### EXTERNAL RISKS

##### Which sector-related risks should I take into account?

Some sectors have a perceived higher risk of corruption, for instance raw materials industries, and the construction sector undertaking large infrastructure projects.

##### Which transaction risks should I consider?

There are especially high risks attached to gifts for charitable or political purposes, transactions relating to licenses and permits, and expenditure associated with public tendering.

##### Which business opportunity risks should I think about?

Risks arise, for instance, with large order volumes, projects with numerous contractual partners, contracts that have clearly not been awarded at the going market rates, and contracts without any clearly legitimate purpose.

##### Which business partner risks should I factor into my decision?

Transactions with foreign public officials, consortia or joint-venture partners and with PEPs are all potentially risky.

##### Which country-related risks should I be aware of?

Corruption risk varies greatly between jurisdictions. Typical country-specific risks include widespread corruption, poor legislation on fraud prevention, a weak record of enforcement action against bribery and corruption, and the inability of government, the media, local businesses and society at large to effectively promote transparent strategies and rules for trading and investment processes. You should be asking the following questions when analyzing country-specific risks:

- Are there embargoes or sanctions in force that might be an obstacle to doing business in the country in question, or even prohibit this entirely?
- How have changes of power worked out in the past in the country in question? Were the elections free of violence? Is there any recent evidence that a new leader has failed to comply with obligations that were entered into between the previous leader and investors? For instance, has the new leader revoked licenses or permits for foreign investors that had been granted by the previous leader?
- Is there a risk that the political balance might shift in the future? If, for instance, the country is governed by a single individual, is he or she in good health?
- Are there conflicts with neighboring countries that might affect the situation in the country in question?



## INTERNAL RISKS

**Has the board and senior leadership team clearly expressed a vision related to regulatory and ethical compliance?**

Experts agree that a lack of top-down leadership hampers risk mitigation, while a clear tone from the top on the importance of tackling bribery and corruption empowers employees to speak up when they come across suspicious activities. Regulators and consumers alike increasingly look to the C-suite to set out a vision and ambition around their ESG performance.

**Are there shortcomings in the education, skills and knowledge of employees regarding regulatory compliance procedures?**

Employees and third parties need training relevant to their roles to help ensure compliance and mitigate risk effectively.

**Does an organization rely on a “bonus culture”?**

Many well-publicized compliance breaches have been associated with a bonus culture that encouraged excessive risk-taking. Instead, employees should be given incentives to promote ethics.

**Are clear internal guidelines and procedures in place regarding appropriate expenses?**

Insufficient clarity concerning business meals, corporate gifts or gifts to political and charitable organizations open the door to compliance violations.

**Are suitable financial controls in place?**

A lack of transparent financial control increases risk exposure.

## 4. Which type of due diligence solution is the right one for me?

When selecting a due diligence solution, you should be guided by the degree of potential risk to which your business might be exposed. The higher this risk, the more aggressive your due diligence should be.

### Free search engines

The internet contains innumerable free research tools, of which Google is best known. Convenient, easy-to-use and often offering worldwide coverage, free search engines provide a satisfactory basic service for performing due diligence and can also be used as a supplementary tool. Not all the available information can be tracked down using free search engines, however. Increasingly, archived content can only be accessed following registration and is often behind a paywall. As the relevant data sources change from one day to the next, it becomes difficult to achieve consistency in your research. The validity of many sources is also difficult to verify. Another problem is the poor level of security. IP tracking can easily be used to identify businesses and individuals who are performing due diligence research. Finally, free search engines generally offer no customer service or guarantee.

### Paid online information services

You can buy the information you require if you use a paid online information service. This content is usually reliable and kept up-to-date and access is generally well-secured. However, if you change the information you require, it may be necessary to consult additional data sources from other providers at extra cost. This means that whoever prepares an investigation will regularly have to tackle unfamiliar user interfaces. This diffuse method of working detracts from the consistency of your processes and forces you to collate information from various sources into standard reports. In turn, the results will not be available as quickly.

### Specialized databases

Due diligence-focused databases aggregate information from many providers. You gain access to all the available content via a uniform user interface. This ensures a consistent investigation process and a high degree of efficiency. The content is managed by the provider so it is up-to-date and reliable. Access is satisfactorily secure. Also, you only need to enter a single contract. If you have any questions during your research, you can generally submit these to the customer support department. If you want to use a database for your due diligence investigation, you should check in advance whether the requisite content is available and appropriate to the risks faced by your business. Check, for instance, whether the database contains information about the countries you are interested in and whether the content is extensive enough. For research at an international level, there should also be a large amount of content available in other languages.

### External datasets

Large and well-resourced companies often maintain their own internal due diligence databases, but still require up-to-date, authoritative, global external data to power this tool. This can be bought from trusted providers, and structured and delivered in a way that is optimized for integration into the company's system.

### External advisers

If you want to outsource your due diligence, you can bring in an external adviser. They will also be equipped to collate relevant data in the field. This is of considerable importance, particularly in high-risk markets. However, the costs of buying in external advice are high, even for a simple investigation. Another significant factor is the inevitably longer lead time. In addition, any reports will have to be revalidated on a supplementary basis at a later stage.



# Mitigating risk is an ongoing process

After you have investigated a prospective business partner, supplier or other third party as part of an onboarding due diligence process, you must not consider your checklist to be completed. Regulators recommend periodic reviews—ongoing due diligence and monitoring—to mitigate risk. A one-time check offers no guarantee that the business in question will not expose you to risk in the future. The threat isn't to organizations alone. Individuals proven to have been guilty of corrupt behavior or involved in it in the context of a commercial relationship can be sentenced to a hefty fine or even imprisonment. The financial sanctions and damage to reputation will in turn have an impact on your own business. If you're a compliance manager, board member or business manager, the best way to prevent problems of this sort is by putting in place a watertight Compliance Management System (CMS).

## 1. Input name into workflow, case management and audit

### 2. Identify

Request identification data collected from client or third party:

- Questionnaire
- Identity documents
- Source of wealth & funds
- Beneficial ownership
- Group structure
- Incorporation documents

### 3. Check Watchlists

Batch search global sanctions, regulatory, enforcement and PEP lists:

- Sanctions lists
- Regulatory watch lists
- PEP lists
- Customer internal list
- Negative news
- ESG data

## 4. Risk Assessment

Set criteria determines risk of engaging with client or third-party and extent of due diligence and monitoring applied.

### 5a. Simplified Due Diligence

Basic checks applied if low risk entity

- Identity verification
- Web search
- Company verification
- Beneficial ownership
- Group structure

### 5b. Enhanced Due Diligence

More in depth checks client or third party applied if high risk entity

- Negative news
- Legal cases
- Company data
- PEPs and watch lists

### 5c. Outsourced Due Diligence

More specialist checks collected applied if high risk entity

Outsourced due diligence to risk consultancy for specialist local market investigations

ESCALATE? NO ▼ YES ▼

ESCALATE? NO ▼ YES ▼

## 6. Ongoing Monitoring

Automated batch checks against watch lists and negative news. Periodic refresh of full due diligence:

- Sanctions lists
- Regulatory watch lists
- PEP lists
- Customer internal list
- Negative news
- ESG data

## Beyond the checklist: your next steps to managing risk

Compliance solutions and data analytics technologies make due diligence and ongoing monitoring of risk more efficient and effective for companies. This process can be automated and advanced analytics can be applied to create risk scores for third parties and individuals. Any changes in their risk profiles can then automatically be flagged and auditable reports generated.

The time and effort involved in improving your due diligence process will be far outweighed by the costs of a failure of due diligence—not to mention the business opportunities and trusted relationships that come from having a reputation for transparency and compliance. This checklist should be the first step in the transformation of your company's approach to due diligence.

## Nexis® Solutions: Empowering Performance

Where enhanced data and intelligent technologies converge, helping organizations make confident decisions. Nexis Solutions, as part of LexisNexis and the global RELX corporate family, connects compliance and risk management professionals to market-leading data with a suite of scalable solutions, designed to help companies establish and maintain trusted third-party relationships. We help companies worldwide:

- Conduct efficient third-party screening and risk-aligned due diligence on a person or company across adverse and general news; PEPs, State-Owned Enterprises, sanctions and watchlists; ESG data; and more. Use the powerful, AI-enabled linking and filtering technologies built into our research platforms.
- Implement ongoing monitoring across PESTLE factors to enable proactive responses to emerging threats.
- Easily integrate enriched, connected data into in-house risk management workflows or risk analytics engines using flexible data APIs.
- Accelerate routine screening and due diligence with robotic process automation so risk professionals can focus on higher value tasks.
- Share actionable insights with the C-suite to enable data-driven decisions that address anti-bribery and corruption regulations, and mitigate reputational, financial, regulatory, and strategic risks.

All reinforced by a customer success team committed to delivering the support needed to get maximum value from our solutions.



## Nexis Solutions: the bedrock of effective due diligence

Our solutions are tailored to power companies' differing due diligence needs. Follow these links to learn how they can help you:

- Nexis Diligence™ supports an effective due diligence process with our extensive archives and news searches going back more than 40 years. Its ESG content enables users to incorporate ESG risk assessment into their due diligence research.
- Nexis® Entity Insight provides customized risk monitoring for businesses, helping to monitor specific entities and risk categories.
- Nexis® Data as a Service delivers an unrivaled collection of licensed and web content, deep archives and data to power your in-house due diligence process, delivered in an enriched format through our flexible data APIs.
- Nexis® Entity Search API pulls in over 60,000 global print, broadcast and web new sources in multiple languages to surface negative news mentions of third parties.
- BatchNameCheck® gives daily screening results and reports that help firms to identify and escalate entities that post a potential risk, in near real-time.

Why not see for yourself how Nexis Solutions can help your business? Contact us for an Instant Free Trial (subject to local availability).

To learn more about managing third-party corruption and bribery risk,  
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