



# DUE DILIGENCE CHECKLIST

**A Step-by-Step Guide to  
Managing Third-Party Bribery  
and Corruption Risk in 2024**



## Why is due diligence so important?

Companies operating in today's global business environment must navigate ever-strengthening Anti-Bribery and Corruption (ABC) regulations. Some of the last year's most significant recent enforcement actions against companies arose from alleged due diligence failures, leading to fines, legal action, strategic risks and reputational damage. This should prompt companies to carry out effective supply chain due diligence to mitigate bribery & corruption, modern slavery and wider ethical conduct risks.

Moreover, several trends have converged in 2024 to make due diligence more important than ever. The most significant is that carrying out due diligence on third parties' Environmental, Social and Governance (ESG) impacts is no longer optional, but essential. Consumers, investors and employees now expect companies to demonstrate a positive ESG record, while more legislation mandating firms to carry out human rights and environmental due diligence is expected to come into force in 2024 and beyond. There also been an acceleration of sanctions changes since the start of the conflict in Ukraine, and companies should screen third parties against sanctions as part of due diligence.

## What should my due diligence checklist include?

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 with 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.

LexisNexis' checklist is different. It recognizes that regulatory requirements change, so it highlights some of the key laws against foreign bribery at the time of posting and suggests how companies can remain compliant. Our checklist also captures the latest changes in mandatory human rights due diligence requirements, and forewarns firms of further changes to come. Alongside this, it provides easy-to-follow steps to implement an effective due diligence process which confronts the full range of third-party risks in 2024.



## Risk-based due diligence checklist

A best practice due diligence process should follow a risk-based model. This means assessing the level of risk of a given third party, and carrying out enhanced due diligence on higher risk entities. The first step in this process for companies is to understand more about their third parties by asking the right questions. For example:

### **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 ABC legislation to help counter bribery and corruption

## 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.

**Carrot as well as stick:** The US Corporate Enforcement Policy was updated in 2023 to strengthen the incentives offered to companies to voluntarily disclose evidence of wrongdoing and improve their compliance. Companies that self-report can now receive up to 75% off the recommended fine—an increase on 50% previously.

## 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.

## 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.

## France

**Compliance obligations:** Under the Sapin II law, 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:** This [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.

## Netherlands

**Penalties for bribery:** Under the Dutch Criminal Code, companies found guilty of bribery can be fined up to €900,000, or up to 10% of their turnover from the previous year—as well as forfeiting any proceeds from the crime. Any individuals convicted may receive up to six years in prison.

**Extraterritorial application:** The law is broad in scope and covers companies headquartered in the Netherlands who have been involved in bribery outside the country.

**Targeting improved enforcement:** A report by the OECD in 2022 expressed concern about the historically “low level of foreign bribery enforcement” in the Netherlands, and recommended more resources are allocated to the Dutch Prosecution Service. This is expected to lead to improved enforcement in the coming years—in fact, the OECD noted that six foreign bribery investigations have been opened since it last reported on the Netherlands in 2020.

## Italy

**Tackling foreign bribery:** Italy’s Criminal Code makes foreign bribery a criminal offence, and covers both active and passive bribery.

**Enforcement on the agenda:** The Anti-Corruption Law of 2012 empowered the National Anti-Corruption Authority to investigate and prosecute alleged bribery and corruption. Major anti-financial crime investigations were also opened by regional enforcement agencies in Italy in 2023, targeting alleged corruption by employees of an international tobacco firm, involving an Italian national who was a senior EU official.

**Sanctions focus:** An amendment to the law in summer 2023 brought in new criminal penalties to cover a much wider variety of sanctions violations. Prior to this, fines or imprisonment were only in place for violations of export restrictions on certain materials.

## Spain

**Corporate bribery is a criminal offence:** Spain’s Criminal Code (or ‘Codigo Penal’) makes it an offence to offer a bribe to a public servant or government authority. It specifically covers companies, and includes offenses carried out by third parties or individuals on their behalf.

**Incentives for compliance:** The Criminal Code provides scope for companies to escape criminal prosecution if a compliance and/or risk management program was in place, and it was proven that the offence was carried out by someone who managed to evade these controls.

## Nordic countries

**Criminalizing bribery:** The [Norwegian Penal Code](#) makes bribery by individuals or companies a criminal offence. 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 EUR850,000 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](#).

## Brazil

**Bribery:** The Clean Company Act of 2014 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.

## Hong Kong

**Private sector bribery:** [The Prevention of Bribery Ordinance](#) makes it an offence 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 offence 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.

## 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 offence 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.

## Middle East

**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.

**Enhanced enforcement:** Since 2021, Saudi Arabia has expanded its Anti-Bribery Law to cover private companies, and set up an Oversight and Anti-Corruption Authority to investigate corruption allegations and refer companies to a criminal court.

“ 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.”

# The road towards due diligence requirements around ESG

The most notable trend 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- . It was approved by the European Parliament in June 2023.
- The EU's Council and Parliament provisionally agreed in December 2023 that the law would improve the investigation and prosecution of "environmental crime offenses". Punishments could include jail sentences for individuals and at least 5% of turnover for companies with more than 500 employees and an annual turnover of more than €150 million—with lower thresholds for higher risk sectors.

## Germany

- 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.

## Netherlands

- 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.
- A series of recent and forthcoming laws have introduced new ESG standards for companies in the Netherlands to meet. The Environment Act, which comes into force in 2024, requires companies to refrain from any activity which damages the environment or they could face enforcement action and penalties.

## UK

- The UK's Modern Slavery Act 2015 was the world's early leader in human rights due diligence legislation, requiring large UK companies to publish an annual statement on steps taken against human trafficking or modern slavery within their organization or supply chain.
- In summer 2022, the government proposed an updated Modern Slavery Bill which would require firms' statements to address their due diligence processes and spell out their assessment of risks and the steps taken to mitigate them.
- A bill introduced to the House of Lords in November 2023 proposed a duty on companies to prevent human rights and environmental harms in their activities or those of their suppliers and third parties. It would also apply to foreign companies doing business in the UK.

## Italy

- Italy has a long history of legislating for companies to carry out good governance. A law introduced in 2001 established the principle of corporate crimes, and acknowledged that management decisions could lead to crimes. This has been interpreted to mean that companies must carry out ongoing due diligence to identify and mitigate risk of crimes. Since 2001, the law has been extended to apply to human rights violations and environmental crimes.
- The EU's forthcoming Directive is expected to lead to further amendments to Italy's legislation, or a new piece of legislation altogether, to clarify that human rights due diligence is legally mandatory.

## Spain

- The government opened a consultation in 2022 on proposed legislation to require companies operating in Spain to carry out environmental and human rights due diligence on their activities and their supply chain.
- The legislation is likely to wait until the EU's Corporate Sustainability Due Directive has been finalized, to ensure it aligns with these supranational requirements. The Spanish government has been actively involved in debates around human rights due diligence because the final stages of the Directive were negotiated under Spain's presidency of the EU in the second half of 2023.

## 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.

## Singapore

- 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

## Hong Kong

- 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.

## Japan

- The government announced in May 2023 that only companies who carry out human rights due diligence will be eligible to bid for public projects.
- The government has previously issued guidelines urging companies to monitor human right abuses in their supply chains and disclose any findings. In 2023, Japan's Ministry of Economy, Trade and Industry published a list of risks in different sectors, products and regions which companies should monitor for.

## Australia

- The 2018 Modern Slavery Act requires companies to describe their approach to due diligence, and in May 2023 the government proposed making it mandatory for companies to implement human rights due diligence.
- The Fair Work Act 2023 compels businesses to provide documents related to alleged workplace sexual harassment.

More countries are considering adopting similar legislation in 2024-25. Even in jurisdictions 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.

“ With these rules, we want to stand up for human rights and lead the green transition. We can no longer turn a blind eye on what happens down our value chains. We need a shift in our economic model.”

– Didier Reynders, Commissioner for Justice, European Commission



# 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 2023:

**A multinational telecommunications company headquartered in Sweden** was fined \$206 million for allegedly breaching a Deferred Prosecution Agreement which was struck with US regulators in 2019. This concerned reported bribery and corruption involving Politically-Exposed Persons (PEPs) in Djibouti, China, Vietnam, Indonesia and Kuwait.

**A UK-based multinational tobacco company** was fined \$508 million over alleged violations of US sanctions against North Korea. The company was reported to have circumvented sanctions by moving funds using US banks, North Korean banks, its Singaporean subsidiary, and other intermediaries.

**A company in the Netherlands** had to pay \$62 million over alleged violations of the US FCPA over sales of medical equipment in China. The US regulator said that the company's subsidiary in China offered discounts which "created a risk" that distributors would make "improper payments to government employees" in state-run hospitals.

**A Dutch extractives firm** settled with the US Securities and Exchange Commission over the alleged payment of bribes to public officials in Angola in exchange for contracts. The company had to pay around \$8 million.

**A German asset management firm** was fined \$19 million over allegations of "greenwashing" by making misleading statements about its ESG products and investments.

**Major automotive companies in Germany** faced prosecution related to alleged human rights violations in China. Although a conviction has not followed, this was the first case brought under the new Supply Chain Due Diligence Act.

“ Companies should be on notice that we will closely scrutinize their compliance with all terms of corporate resolution agreements and that there will be serious consequences for those that fail to honor their commitments”

— Kenneth A. Polite Jr., Assistant Attorney General at the US Justice Department

# 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 bureaus 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 and bribery.

### **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.

### **Are you confident in the quality of that data?**

The amount of data produced grows exponentially each year, while technological developments are making it easier than ever for bad actors to spread inaccurate and misleading information. Compliance officers therefore need to ensure they only rely on data from high-quality, accurate and clearly provenanced sources.

### **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 fulfil 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.

## **Online data, including social media**

The volume of data produced online has increased exponentially in recent years, so compliance officers should monitor web sources—including social media—for relevant information about their customers and third parties.

## **Trustworthy data**

The data sources available to companies have multiplied so companies should ensure they understand the provenance of each dataset which they use for due diligence. This will allow them and their technology platforms to make risk-based decisions from accurate and trustworthy data, rather than propaganda or misinformation.

**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>• Enquiries 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>
Information about a third party's ESG commitments, and how that company has delivered against those commitments through its actual ESG impact and record.	<ul style="list-style-type: none"> <li>• Questionnaire for business partners</li> <li>• Media research</li> <li>• ESG data</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. While in the financial services sector, new Wolfsberg Principles released in 2023 identified many “red flags” for banks to screen customers and third parties against—including the involvement of PEPs.

##### 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, 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?
- What is a country’s reputation for human rights violations, environmental pollution and other ESG factors, and how do its regulators ensure companies meet ESG standards?

## 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 major compliance trend in 2024 is the continued global expansion of mandatory human rights and ESG due diligence requirements for companies. While this brings a significant change to the traditional model of compliance,

the change is far simpler if a company uses a provider of data and technology whose sources for due diligence already include ESG data.

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: the bedrock of effective due diligence

**Nexis Diligence+™** can help your team to perform **due diligence research** on a company or individual and be assured the results cover all the bases. No other company can match the quantity and quality of our data, which covers:

- An unrivaled collection of reputational, legal and financial content, including sanctions, blacklists, Interpol watch lists, and more.
- A global news archive that draws from more than 50,000 sources, some dating back 40 years.
- A trove of legal documents, including cases, dockets, verdicts and more.
- ESG ratings and news so you can determine who is (and isn't) living up to their commitments.
- The ability to maintain an auditable trail of your searches and findings.

**Nexis Diligence+™** can help you **leverage data and technology** to take your due diligence to the next level. Its features include:

- Conduct due diligence at scale. Nexis Diligence+™ offers high-volume, scalable searching capabilities to streamline your process and save you time.
- Get results faster. Nexis Diligence+™ enables you to launch a search and derive results at high speeds.
- Take advantage of visual, at-a-glance risk information. Sometimes you need the quick take. Nexis Diligence+™ offers this snapshot in-product, for downloading and in-report delivery.
- Customize your dashboard and risk scoring. With Nexis Diligence+™, you can tailor your dashboard and adjust the risk-scoring methodology to reflect your company's unique needs.
- Add people and entities for analysis with ease. Nexis Diligence+™ allows you to upload entities at volume via a spreadsheet.
- Appreciate easier data manipulation. For example, with Nexis Diligence+™, you can access a condensed view of all saved entities, annotate results, and export them into an Excel spreadsheet.

### Q: Do you want your due diligence solution to be:

- Thorough and Trustworthy     Scalable and Streamlined     Efficient and Easy

### A: Why not have all three?

**Nexis Diligence+™** A higher standard in due diligence.

See how Nexis Diligence+™ can take your due diligence to the next level.

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