Third Parties: The Chickens Come Home to Roost

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Alternative Titles

- “No Company is an Island”
- “Oh What a Tangled Web We Weave”
- “Myth: No need to Worry, We’ve Outsourced It”
- “I am My Vendor’s Keeper”
- “We are Family: All Our Third Parties and Me” (apologies to Sly and the Family Stone)
Third Parties Essential

- Popularity in last 20 years of “outsourcing” work
- Wrongly assumed that outsourcing meant getting rid of responsibilities
- Every business has at least supplies, and many have contract employees, agents, lobbyists, etc.
- Reputation of company, for better or worse, is placed in the hands of these third parties
Who is a Third Party?

- Suppliers (products and service providers), anyone who helps you sell your product/services and fulfills your contracts

- Examples: consultants, sales reps, head hunters, temporary staffing agencies, brokers, law firms, auditing firms, collection agencies, joint venture partners, distributors, consortium partners, IT help, asset managers, customs agents
Risk Exposure

- Third party actions on your behalf affect your reputation – can harm or enhance
- Legal liability for actions of vendor
- Guilt by association if vendor is investigated on something not related to your work
- Examples:
  - Supplier of your goods runs a sweat shop (Nike)
  - Chinese manufacturer of your dog food brand has “quality issues” (poison)
  - Your agent lavishly entertains government officials
  - Distributor sells product to a legally prohibited market (i.e. sanctioned country)
  - Temporary workers sent by temp agency not checked for criminal background or immigration status
  - Lobbyist bribes government official
  - Marketing consultant misuses customers’ private data
The 7 plus steps for your own company’s E&C program should be considered for a third party.

Not all vendors have the same risk profile (either in the task you want them for or their own business model) so a risk assessment is essential.

All third party programs should include adoption of relevent Code sections and policies and procedures, risk assessment, mitigation steps, monitoring and auditing process, way to raise and address issues.

Create written guidelines, policies and procedures for the third party process.
Suggested Guidelines

1. business justification for hiring third party
2. review of local laws that require a third party rep, permit them, limit liability to right to terminate
3. due diligence process – experience, financial stability, qualifications
4. review of compliance and ethics reputation
5. documentation of justification for hiring – owned by business manager
6. detailed disclosure checklist for third party – aids in due diligence
7. checklist for all due diligence process (truncated for less risky)
8. documented reference checks
9. discussion/training/education about company’s Code of Conduct
10. establish approval process in company including senior level executive
11. written agreement - contract
Due Diligence on Agents: investigate, then marry

- Conduct due diligent process before you hire an agent
- High risk task or location should include personal interviews, site visits, questionnaires, references, research
- assess qualification to perform job
- Check integrity reputation: honest, meets contract, transparent
- Document entire process and update throughout relationship
- Create and follow appropriate management oversight and approvals
DD on Agents, cont’d

- Make sure actions in process are matched to stated policies and procedures
- Make sure approval complies with banking practices
- Process to resolve all “red flags” uncovered in due diligence
Due Diligence on non-Agents

- Includes: business partners, joint ventures, suppliers, resellers, subcontractors
- Identify owners, officers, managers and verify information
- Determine government relationships/ownership
- Charges, allegations, violations re improper payments, corruption risks, other violations of law
- Questionnaires, in person interviews, desk top check of public information
- Document entire process and show verification of information
- Level of due diligence determined by risks assessed
Contract: put it in writing while you’re still in love

- Since a third party is not your employee, all obligations related to “risk” with their performance obligations should be in the written contract:
  
  - anti-corruption clause
  
  - identify all relevant laws related to their service
  
  - right to terminate for compliance violations
  
  - right to audit contract for compliance with terms
  
  - require proper record keeping
  
  - require adoption of parts of your Code of Conduct (or theirs if meets standard) that relate to their service
  
  - make clear how questions or reports of violations are to be addressed, i.e. hot lines
  
  - require reporting on change in status relevant to reputation, business ownership, legal violations, etc.
  
  - make training and education requirements clear
Who’s in Charge after the Hiring?

- Each third party must be actively managed by someone in the company.
- This person maintains the documentation on the third party and updates it when necessary.
- Degree of supervision depends on degree of risk with the vendor, their task, and their geography.
- Audit schedule needs to be created and implemented.
- Evaluations of adherence to the contract, made and analyzed for compliance.
- Updates on changes in ownership and changes in business model of third party.
- Company manager of third party needs to be evaluated on their performance of this management task (third party’s failure or success is also the company’s manager).
Third parties are a necessity in today’s business world

Business leaders must understand that they are not necessarily a cheaper alternative

The same rigor in ensuring an effective ethics and compliance program for the company, applies to its third parties.

Third parties who have effective E&C programs have a competitive advantage with their customers - engenders trust

Risk assessments, programs addressing the particular risks, strong contracts, and internal management are essential