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KPMG in Central and Eastern Europe
Forensic – Anti-Bribery and Corruption

Managing Third Party Intermediaries: Getting ahead of the curve

"Third party due diligence must be robust, thorough, impeccably documented and preserved."

Former DOJ Fraud Section Deputy Chief Mark Mendelsohn, FCPA Conference, November 2009

Regulators tasked with the enforcement of anti-bribery and corruption ("ABC") laws are increasingly focusing their efforts on companies' use of Third Party Intermediaries ("TPIs"). It is not possible for a company to avoid liability under ABC legislation such as the US Foreign Corrupt Practices Act ("FCPA") or UK Bribery Act ("UKBA") by 'turning a blind eye' to activities undertaken on its behalf by TPIs, whether or not those activities were explicitly or implicitly sanctioned. Regulators expect a company to take measures to establish the propriety of the TPIs it engages.

In recent KPMG surveys , respondents from multinational corporations have consistently rated the tasks of performing effective due diligence on new TPIs and auditing the activities of existing TPIs as the most challenging ABC issues they face. This article sets out our approach to helping companies take control of their relationships with TPIs.

Step 1 – Identifying TPIs

TPIs can take many forms, so the first task is to identify who among your existing partners could be considered to be TPIs. Figure [x] below sets out some of the entities that we have seen defined as TPIs.

There is no 'one size fits all' strategy to TPI identification, but typical approaches are multi-faceted, drawing on various available data sources. Steps may include:

- Reviewing vendor and customer master files
- Reviewing partners associated with transactions allocated to relevant expense types
- Interviewing owners of relevant business processes.

Once TPIs have been identified, a register should be constructed which categorises each TPI according to the services it provides and the industry in which it operates. These categorisations will be used to determine the due diligence steps appropriate to the TPI.

Step 2 – Establishing TPI Due Diligence processes

Having identified existing TPIs, the next step is to establish appropriate TPI due diligence measures and embed them into the company's existing business processes. These measures should cover both:

(i) Identification/evaluation of TPIs at the commencement of a business relationship; and

(ii) Dealings with TPIs throughout the business relationship.

Again, adopting a 'one size fits all' strategy would be misguided: for example, the due diligence measures appropriate to customs agents would be different to those appropriate to lobbyists. Rather than applying all measures to all TPIs, applying measures according to a risk-based approach can help a company to control compliance costs.

Depending on a TPI's categorisation (as established in Phase 1, or upon commencement of a new relationship) the due diligence process applied to a TPI may include:

- Reviewing contracts to ensure the TPI's obligations for ABC compliance are clearly agreed
- Requiring the TPI to make regular ABC compliance confirmations
- Requiring relevant TPI staff to participate in ABC training
- Subjecting the TPI to an ABC compliance audit
- Ongoing monitoring of transactions with the TPI
- Performing regular Corporate Intelligence checks on the TPI.

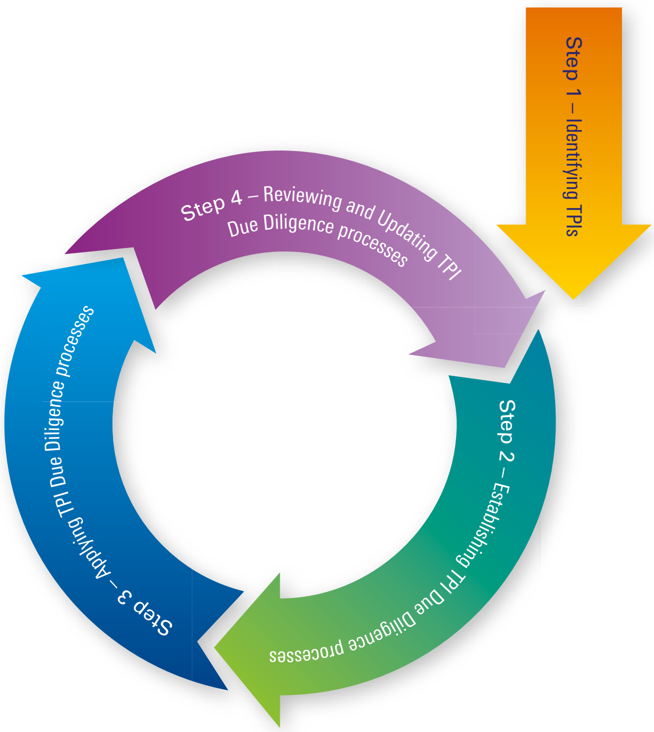
It is important that the processes themselves and the application of the process to each TPI are effectively documented: being able to clearly demonstrate the actions taken and the basis for those actions may prove vital should your business face regulatory attention.

Step 3 – Applying TPI Due Diligence processes

Once appropriate TPI Due Diligence measures and the circumstances in which they apply have been set out they need to be applied in practice. Success will depend on closely integrating the required measures into broader business process flows and establishing clear lines of accountability for compliance.

Step 4 – Reviewing and Updating TPI Due Diligence processes

It is not sufficient to establish TPI Due Diligence processes and start applying them: they also need to be periodically reviewed, tested, and updated where necessary to ensure they remain fit for purpose despite changing circumstances.



TPIs can help a business to thrive in existing markets and enter new ones, but getting things wrong can result in unwanted regulatory attention. By adopting the structured approach to the management of the bribery and corruption risks set out above, your organisation will be able to enjoy the benefits of using TPIs while avoiding the problems.

To discuss the issues raised in this article further, please contact the Forensic team of KPMG in Central and Eastern Europe at *ceeforensic@kpmg.com*

Jimmy Helm
Head of Forensic
Partner, Forensic
T: +420 222 123 430
E: jhelm@kpmg.com

Michael Peer
Partner, Forensic
T: +420 222 123 359
E: mpeer@kpmg.com

kpmg.com/cee