




Third Parties: The Chickens Come Home to Roost



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Marjorie W. Doyle, JD, CCEP-F
Marjorie Doyle & Associates, LLC
marjoriadoyle@comcast.net

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 suppliers, 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

“What’s Good for the Goose...”: Ethics & Compliance

Programs for Third Parties

- 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 relevant 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)

Summary

- 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