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Using Risk-Sorting for Smarter International Compliance

From the Experts

Sue Reisinger

Like most large multinational companies, Dell Inc. engages with many third parties across its business and around the world. And that means Dell's chief compliance counsel, Joseph Burke, has his hands full on most days making sure those third parties are trustworthy.

That's why Dell and Burke, who is the company's global coordinator of compliance counsel, have turned to a risk-sorting system that helps them put the most company resources where the risks are higher—and save when it can determine that the risks are lower.

The idea seems to meet with government approval. In its latest guidance on the Foreign Corrupt Practices Act [PDF], the U.S. Department of Justice states that the "assessment of risk is fundamental to developing a strong compliance program."

Alexandra Wrage, president of TRACE International and a columnist for CorpCounsel.com, explained, "In some [industries], like aerospace and defense, the challenge is less daunting because they tend to have a smaller number of agents and consultants working on very large deals. As such, investing thousands of dollars in each due diligence review can make sense."

But Wrage said other industries, like the technology sector, "may have tens of thousands of partners, with each accounting for a very small portion of the overall international revenue." In such cases, the cost of due diligence on each one "can quickly overshadow" the financial gains, she added.

"If a company has 50,000 partners—not uncommon—even a very light review at $150 per partner gets to $7.5 million quickly," Wrage noted.

And even baseline due diligence, she said, requires companies to identify true beneficial ownership; look for ties to the government, if any; conduct screening against international watch lists; and ask the usual questions about past misconduct, bankruptcies and such. "Most companies have added to these items questions about conflict minerals and trafficked labor, which are relatively new risk areas," she said.

So Wrage's nonprofit organization came up with a new tool, called TRACEsort, to help companies filter their third parties and identify the highest risks.

Burke told CorpCounsel.com that Dell's compliance team worked directly with TRACE and its own anticorruption counsel to build a customized version of TRACEsort to address Dell's specific needs.

The tool "can be calibrated both to the diversity of the population being vetted and to Dell's particular risk appetite for one aspect of our business as opposed to another," Burke explained. "For example, we are likely to apply a higher vetting standard to a small reseller selling to government customers in a risk-centric country than we are to a larger, and potentially better-known, supplier of routine products or services in a less risky environment."

He said third parties are evaluated on the basis of a wide range of risk-related criteria, including geographic location, degree of agency, likelihood of interaction with government officials and other related risk factors.

TRACE obtains information on ownership structure from each third party by direct inquiry, Burke said, and each third party also provides a compliance program self-assessment.

Other companies are taking due diligence seriously as well. A recent survey of general counsel and compliance officers found that 30 percent of companies in North America, Europe and Asia stopped doing business with a partner because of corruption risks.

And while other risk-sorting programs are on the market, Burke said, "We believe that this process, using the TRACEsort tool to obtain direct input from the third party itself, enables greater accuracy and reliability to the risk-assessment process than other tools provide."

The tool is just the latest in TRACE's efforts to battle corruption. In recognition of that fact, Wrage received the lifetime achievement award for service to the compliance industry at the Women in Compliance Awards in London on March 20.

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