

CONDUCTING EFFECTIVE THIRD-PARTY DUE DILIGENCE

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Third-Parties Management

- **Due Diligence**
- **Contract:**
 - Representation and Warranty;
 - Right to Audit ; or
 - Right to Terminate.
- **Compliance Training/Monitoring**

Conducting Effective Third-Party Due Diligence

- Under the U.S. FCPA, the U.K. Bribery Act, and many other local anti-corruption laws, a company may be held liable not only for the corrupt actions of its employees, but also a third party's actions when that third party acts on its behalf
- Many of the major corruption cases that have arisen in the pharma and device sectors have involved the use of local third party distributors, agents, consultants or advisers

Conducting Effective Third-Party Due Diligence

- Companies can be held liable for the acts of third parties when they have:
 - actual knowledge of the corrupt acts;
 - suspicion that a bribe is likely to be paid; or
 - trying to avoid knowledge that a bribe will be paid.
- Due Diligence protects, “I really didn’t know or didn’t have reason to know....”

Conducting Effective Third-Party Due Diligence

- Step 1: Evaluate the nature of the risk by type of third party
- Step 2: Fill in a questionnaire and verify the answers
- Step 3: Identify red flags
- Step 4: Mitigate red flags

Scope of Third-Parties - Example -

1. distributors, agents
2. consultants or advisers relating to products approval, products pricing and customs clearance