



TRACE
DUE DILIGENCE
GUIDEBOOK:
DOING BUSINESS WITH
INTERMEDIARIES
INTERNATIONALLY

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ABOUT TRACE

TRACE is a non-profit membership association working to reduce bribery in transactions involving intermediaries including agents, representatives, consultants, distributors and subcontractors among others.

TRACE works with companies who want innovative ways to protect their reputation, communicate their business ethics and meet their anti-bribery compliance obligations. **TRACE** serves as a bridge between multinational companies and commercial intermediaries. **TRACE** provides due diligence and training services to its members, reducing the risk, time and expense involved with anti-bribery compliance.

Principals are better protected and intermediaries better served by this independent organization.

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I. INTRODUCTION

The people responsible for good corporate governance need to translate “head office” standards into practices throughout the company, even in distant and diverse settings. They need to do what they can to ensure the integrity of their employees and their marketing and supply chain. It is not enough to simply instruct intermediaries to “do what it takes” to close a deal or complete a contract on schedule and then board a flight home.

Although no amount of diligence or training can ensure that intermediaries will conduct themselves to the highest ethical standards – any more than it will with employees – there are important, practical steps that can be taken to reduce the likelihood of corrupt practices.

This guidebook is for business people, compliance officers, in-house counsel, and those responsible for vetting their company’s international business partners. It incorporates the due diligence “best practices” of more than 150 companies, representing diverse industries in different countries. Many of the recommendations and processes outlined are simple and are clearly good business practice.

Not all intermediaries require the same level of due diligence. As companies expand the universe of third parties undergoing due diligence they should assess the risk posed by each relationship to determine the appropriate level of review. This guidebook describes the roles intermediaries play in international business, the factors companies should evaluate to determine the risk involved, how to select the appropriate intermediary, and three risk-based approaches to diligence.

These due diligence procedures, conscientiously applied, will provide a company’s leadership with the confidence that they are acting in accordance with the highest international anti-bribery compliance best practices.

II. ASSUMPTIONS

The authors of this guidebook have made three assumptions.

Those responsible for ethical standards at a company will seek the advice of their lawyers on questions of law.

Those responsible for ethical standards at a company truly want to avoid inappropriate payments to customers.

Senior executives at these companies are ready to shape and sustain a corporate culture in which unethical behavior is punished. No amount of vetting, training and auditing of intermediaries will protect a company from violations of anti-bribery laws if the corporate culture does not place a premium on ethical conduct and if ultimate responsibility for compliance does not reside with its senior executives. The due diligence procedures set forth in this guidebook can meet a significant portion of a company's compliance requirements with anti-bribery laws and internal policies, but it is little more than an administrative burden on the organization if the senior management does not apply, fund, audit and enforce the underlying requirements.

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III. THE ROLE OF INTERMEDIARIES

Companies retain business intermediaries for a number of reasons:

- To gain access to and build relationships with senior government officials;
- To explore business opportunities in new regions without the expense of hiring or relocating employees;
- To penetrate an opaque or tight local market;
- To comply with local law which may require the use of a resident intermediary;
- To fulfill a business model that depends on a large volume of modest sales across a number of countries – a model that does not readily support a large international workforce;
- To expand an in-country presence on a temporary basis with as little financial risk as possible;
- To assist with the logistics of importing and exporting goods abroad;
- To provide assistance with licensing and permit requirements; and
- To provide legal or accounting services and advice in a local jurisdiction.

Benefits of intermediaries: Intermediaries can play a pivotal role in bridging the gaps of distance, time, custom and language between the corporate culture of the principal and the local business community. The best intermediaries open local markets to a company's products, provide easy access to decision-makers, identify new opportunities and trends and address customer concerns while promoting the principal's image and ethics to the world.

Local profile of companies: Regardless of the actual authority given to them by the company, intermediaries often are thought to speak for the corporate office. When a company has no local employees in the country, intermediaries may have extraordinary access to customers. For this reason, most anti-bribery laws expressly state that companies may not make inappropriate payments either directly or indirectly, *through intermediaries*.

Pressure to close the deal: The pressure on intermediaries to close a deal representing months or years of effort and expense is extraordinary. Many intermediaries are compensated on a purely commission basis. They are often paid only when their efforts result in a government contract and are often not reimbursed for expenses accrued on behalf of their principal. There is significant pressure to make a payment to a government official to "ensure" success.

IV. DETERMINING THE RISK POSED BY INTERMEDIARIES

In order to properly evaluate the risk posed by an intermediary, companies must take into account, among other things, the type of work that the intermediary will engage in on behalf of the company. Companies may use the following factors to determine the level of due diligence necessary for a particular intermediary:

- The purpose for which the intermediary is being retained;
- The nature and amount of contact the intermediary has with government officials on the company's behalf;
- The amount and type of compensation that an intermediary receives;
- The intermediary's total compensation under all contracts that the company has entered into with that intermediary worldwide;
- The volume and value of the sales of the company's products over the course of one calendar year in the territory in which the intermediary operates;
- Whether the intermediary is a publicly traded company listed on a recognized stock exchange;
- The size or value of a concession or contract granted by the government in a particular territory; and
- Whether the intermediary has exclusive rights to sell and market the company's products in a specific territory.

Companies not currently vetting their intermediaries should begin their implementation of the due diligence process with those intermediaries compensated on a purely contingent basis since they represent the highest risk. These intermediaries should be vetted using the standard review described in this guidebook. Intermediaries paid a flat hourly or monthly fee and other types of third-party relationships may have less incentive to make an illegal payment in order to secure business and, depending on other risk factors, can undergo a more streamlined due diligence review, similar to the basic review described in this guidebook. Certain intermediaries, including joint venture partners or intermediaries with significant "red flags," may require a more rigorous due diligence process such as the heightened review.

V. SELECTING INTERMEDIARIES

As with all employees or business partners, the initial stage in the vetting and retention of an intermediary should be a methodical search for the most qualified person or company. It should include:

- Documenting the business justification for selecting the intermediary, including whether alternative candidates were considered and whether there are employees in-country who could fulfill the same role;
- Assessing the risk posed by an intermediary using the guidance in Part IV of this guidebook in order to determine which level of due diligence is appropriate for the relationship;
- Documenting the expertise and resources that the proposed intermediary brings to the marketing he or she will undertake; and
- Memorializing the interview at which the responsible company representative confirms that the proposed intermediary has a good reputation in the community, understands the company's business values and agrees to conduct himself accordingly.

The person most familiar with the local business strategy should undertake the initial review, but it should be approved by management based elsewhere to ensure impartiality. The business justification should be documented in a detailed memorandum with the person proposing and interviewing the intermediary indicating in writing that they are aware of no reputational, business or other reason that would render the intermediary unsuitable to represent the company's interests.

If the justification for retaining the intermediary is satisfactory, a background review should follow. Until the review is complete, the intermediary should be instructed not to undertake work on behalf of the company. It is little consolation to companies accused of paying bribes that the intermediary was acting on a verbal agreement or simply "free-lancing" to prove his value to a potential new principal.

In certain cases, companies that are new to anti-bribery compliance will have long-standing intermediaries that never underwent an initial due diligence review. Companies who find themselves in this situation should implement their due diligence program with respect to all existing intermediaries. The argument that a company has known and worked with the intermediary for years is unlikely to be persuasive should the company find itself defending the relationship before the enforcement authorities.

Consistent application of the due diligence process will ensure that intermediaries understand that the uniform vetting process applies equally to all similarly situated intermediaries and that they or their communities are not being targeted for additional scrutiny.

The qualities that make an intermediary attractive to a company often are the same as those that make the relationship risky. Successful intermediaries are persuasive, well-connected and tenacious. A robust due diligence process permits companies to use intermediaries that are well-positioned with customers. Nevertheless, it is the relationship with customers that should receive the greatest scrutiny. If the intermediary has no business advantages apart from personal connections, a more significant inquiry is warranted.

Companies should always question the contributions of an intermediary with no technical training who is retained to promote highly technical products. Furthermore, companies should always ask themselves whether an intermediary is truly necessary for a given transaction, and, where possible, reduce or limit the role of the intermediary.

VI. DUE DILIGENCE PROCEDURES

This guidebook describes three levels of due diligence, starting with the basic, or lowest level. Each level builds on the one before; therefore, companies should conduct all of the steps outlined in the basic review during the standard review and all of the elements of the basic and standard reviews during the heightened review. Any applicable deviations will be described in the relevant section below.

Each level of due diligence consists of two types of reviews: (1) the internal review and (2) the external review. The internal review process is designed to provide the company with enough information to allow it to determine whether it can move forward with an intermediary or whether additional due diligence is required. The information necessary for the internal review may be easily obtained by a questionnaire, completed by the intermediary or by the compliance team based on discussions with the intermediary, and will require more information from business entities than from sole proprietors or partnerships.

The external review should be completed independently from both the regional business team and the intermediary. Upon satisfactory completion of the external review, the legal or compliance team should write a statement summarizing the review process and either concluding that the intermediary is or is not an appropriate choice compatible with the company's business goals and ethics. This statement should be reviewed and approved, if appropriate, by senior management with no direct interest in the selection of the intermediary.

A. BASIC REVIEW

A basic due diligence review is appropriate for low-risk intermediaries as determined by the factors described in Part IV. The due diligence conducted on these intermediaries is less onerous and can be more streamlined than the two higher levels of due diligence.

1. CONDUCTING THE INTERNAL REVIEW

As stated above, the necessary information may be easily obtained by the company, using a questionnaire, completed by the intermediary or completed by the compliance team based on discussions with the intermediary, and will require more information from intermediary companies than from individuals. The internal review should address the following primary topics:

CONTACT INFORMATION: Obtain the full name, address, telephone and facsimile numbers of the company or individual, along with an email address, if available.

COMPANY STRUCTURE: Ascertain the organizational structure of company intermediaries. Knowing whether an intermediary is organized as a partnership or corporation, with or without limited liability, can help narrow the questions to be asked about ownership.

COMPANY OWNERSHIP: Identify complete ownership. This is a less intrusive review of ownership than that undertaken during the standard due diligence process; true beneficial ownership may only be necessary if “red flags” are uncovered during the due diligence review.

COMPANY DESCRIPTION: Obtain a brief history of the company, its qualifications and the services provided. The intermediary’s website often provides insight into its level of expertise and sophistication, potential conflicts of interest and inconsistencies.

EMPLOYEES: Identify the key employees that will act on behalf of the company. In the same way that large companies cannot avoid their anti-bribery obligations by shifting the burden to intermediaries, intermediaries are responsible for the business ethics of their foreign or local employees.

REPUTATIONAL REFERENCES: Secure reputational references. These references can be obtained either during the due diligence review or as part of the company’s more general business evaluation of the intermediary.

DISCLOSURES: Ask about prior bankruptcies, criminal convictions or pending investigations for bribery, fraud, tax evasion, export or anti-trust violations. Intermediaries should also disclose whether they have been debarred from bidding on government contracts for any length of time in any country in which they do business.

CERTIFICATIONS: Obtain a certification that the intermediary is financially stable and that they maintain their books and records in accordance with internationally accepted accounting standards. Intermediaries should also certify their compliance with applicable anti-bribery laws.

2. CONDUCTING THE EXTERNAL REVIEW

The external review should uncover any adverse information an unethical intermediary might attempt to suppress during the internal review.

REPUTATIONAL REFERENCES: Ask the independent references about the intermediary’s (1) effectiveness; (2) reputation; (3) government relations and (4) business ethics. The reference can be an important source of information. In order to avoid overly subjective assessments, questions regarding reputation and ethics should be phrased to elicit a “yes” or “no” response, followed by an opportunity to elaborate.

MEDIA SEARCH: Search a global media database for the name of the intermediary, its owners, principals, partners, and key employees, if any, for the previous five years. This is a simple, but cost effective measure, and a robust compliance program would be severely compromised if no

one noticed the name of an approved intermediary associated with a bribery scandal in a national newspaper. It is important to note that allegations of corruption must be distinguished from formal charges and still more dramatically from convictions, but the inquiry cannot begin until the article is uncovered.

GOVERNMENT DATABASES: The U.S. and other government databases. A number of government organizations maintain lists of persons and organizations that have violated various laws or regulations. It is important for companies to review the names of the intermediary, its owners, principals, partners, key employees and third parties, if any, against these lists. Retaining an intermediary that is listed in a government database can be more than a “red flag” in terms of anti-bribery compliance; it can itself be a violation of other laws.

B. STANDARD REVIEW

The standard review applies to the investigation of “traditional” intermediaries that pose a moderate to high compliance risk. Examples of such intermediaries include sales agents paid on a commission basis and intermediaries who interact frequently with government officials.

1. CONDUCTING THE INTERNAL REVIEW

The questions asked in the standard review will be more invasive and require more information than the basic review. In addition to the questions asked in the basic review, the standard internal review should address the following primary topics:

COMPANY STRUCTURE: Ascertain whether business entities have subsidiaries or have entered into joint ventures. Company intermediaries with partially owned subsidiaries or joint ventures should provide the names of other subsidiary owners and joint venture partners.

COMPANY OWNERSHIP: Identify complete beneficial ownership. The goal is to ensure that real people are identified – not parent companies, holding companies or trusts – and that those people are not themselves government officials. Each person with an ownership interest should be required to disclose not only his or her own employment by the government, if any, but that of immediate family members.

Ownership information on *publicly held* companies need only be obtained on those shareholders who hold an ownership interest of five percent (5%) or more, unless there is significant ownership by the government as a result of recent privatization. (Ownership of publicly held companies can and does change from day-to-day in any event.) Companies who seek to retain intermediaries that are organized as publicly held companies and traded on a recognized stock exchange should be adequately protected by the oversight of the appropriate regulatory body.

CURRICULUM VITAE: Request curriculum vitae for each owner, director and key employee. CVs provide a useful check for previous government employment as well as qualifications for the

industry in question. Owners also should be required to provide citizenship information. There are a number of countries that limit the role of non-citizen intermediaries and company counsel will need this information to ensure that local laws are not being violated in this respect. Finally, all key personnel should be asked to provide information about any other companies for which they are officers or directors or in which they are shareholders or partners. Even if the intermediary has no ties to the local government, another company with the same ownership might have handled inappropriate payments.

COMPANY DESCRIPTION: Obtain a more detailed description of the intermediary's operations in the standard review, including years in business, number of employees, approximate revenues, primary industries supported and facilities, if relevant to the work they will undertake. As in the basic review, the intermediary's website often provides insight into its level of expertise and sophistication, potential conflicts of interest and inconsistencies.

CORPORATE REGISTRATION DOCUMENTS: Asking the intermediary for their corporate registration documents, such as their articles of incorporation or proof of registration with local tax authorities, in order to assure the company that the intermediary is properly incorporated or registered. A review of the corporate registration documents can also ensure that a company has complete and accurate ownership information.

EMPLOYEES AND THIRD PARTIES: Identifying key employees who will work on the company's behalf as well as any third parties that will undertake marketing efforts. Companies should conduct due diligence on any independent third party that the intermediary intends to engage to act on behalf of the company.

LOCAL LAW REQUIREMENTS: Ask intermediaries to identify the laws and regulations that apply to their industry in their home country. This provides company counsel with an indication of the intermediary's willingness to research and comply with governing laws. Companies should independently verify the laws and regulations provided by the intermediary.

COMPENSATION: Request the range of commissions or fees that the intermediary deems typical and appropriate for the work they will undertake and for the region. This provides company counsel with an indication of the intermediary's reasonableness and understanding of the local market. During the background review process, companies should also ascertain whether the intermediary has any business conflicts of interest that may render it unsuitable for business reasons, even though it may be deemed suitable for compliance purposes.

2. CONDUCTING THE EXTERNAL REVIEW

The external review conducted as part of the standard due diligence process should check the following additional sources:

FINANCIAL REFERENCE: If audited financial records are not available for the previous year, obtain a financial reference from a bank, an accountant or, in some cases, a supplier. Ask the financial reference about the longevity of the intermediary's relationship. The answer can provide insight

into the intermediary's stability in the community. A financial reference from a bank can provide evidence that the intermediary banks locally rather than in another country where there may be less banking transparency. Also ask whether the intermediary is a sound and reliable customer. The answer to this question can provide insight into whether the intermediary has the resources to meet their business commitments or whether they are potentially susceptible to pressure to close the deal at any cost.

MEDIA SEARCH: Undertake a more extensive media search for the standard review. Companies should search the name of the intermediary, its owners, principals, partners, key employees, subsidiaries, joint ventures and third parties for the previous ten years.

C. HEIGHTENED REVIEW

A heightened review is the most intrusive level of due diligence and requires in-person interviews and facility visits. This level of review is necessary in certain, limited situations, for example when vetting joint venture partners, acquisition targets, or intermediaries that have significant, unresolved "red flags."

1. CONDUCTING THE INTERNAL REVIEW

The heightened review should include information by in-person interviews of the relevant personnel in addition to an intermediary questionnaire. The heightened internal review should include all of the topics addressed in the basic and standard levels of review as well as the following additional topics:

INTERVIEWS WITH RELEVANT PERSONNEL: Conduct compliance interviews with the intermediary. For company intermediaries, the compliance interviews should be conducted with all relevant personnel; depending on the structure of the intermediary, this would typically include the company's owners and directors, senior management, legal and compliance staff, marketing, finance and business development personnel and those employees responsible for regulatory approvals and logistics. The list of personnel who should be interviewed can often be determined by reviewing the intermediary's organizational chart prior to scheduling the interviews.

BUSINESS PROFILE: Obtain a detailed overview of the company and industry, including other companies and products the intermediary represents and how the intermediary markets and/or sells its products or services. The intermediary should describe the business climate in the countries in which it operates.

INTERACTIONS WITH GOVERNMENT OFFICIALS: Ascertain how and when the intermediary interacts with government officials, including identifying government customers, interactions with customs, licensing and permitting officials, as well any necessary government inspection processes. To the extent possible, this should be done in advance of the interviews. Obtaining this information in

advance allows companies to identify specific topics for follow-up and discussion during the interviews with the intermediary.

Collect copies of permits, licenses, registrations, purchase orders from government customers and invoices to government customers, when possible, for further review and analysis.

FINANCIAL INFORMATION: Request access to the intermediary's books and records, as well as copies of financial statements.

COMPLIANCE PROGRAM: Obtain a copy of the intermediary's code of conduct and any relevant policies or procedures, including procedures for gifts and hospitality, charitable contributions and due diligence on third party relationships. If no formal written procedures are available, the intermediary should describe how it handles these issues when they arise.

Review the business entity's hiring and retention policies, including the manner in which the intermediary disciplines employees who violate the code of the conduct or engage in illegal activity. Inquire into whether the intermediary has taken disciplinary action against employees in the recent past.

INTERNAL CONTROLS: Review a business entity's internal controls, including processes for petty cash disbursements, invoicing, check authorizations and employee reimbursement.

FACILITY VISIT: Visit the intermediary's place of business to assess its suitability for the type of work for which the intermediary is to be engaged. For intermediaries engaged in technical or specialized work, check to determine that they have the capabilities to carry out such work.

LICENSES AND PERMITS: Collect copies of all licenses and permits necessary for the intermediary to conduct its business. These will vary depending on the industry and the type of work in which the intermediary is engaged.

2. CONDUCTING THE EXTERNAL REVIEW

The external review conducted as part of the heightened due diligence process should check the following additional sources:

EMBASSY CONSULTATION: Where possible, meet with local Embassy staff to see if they are familiar with the intermediary. Ask about the intermediary's reputation and whether the Embassy knows of any adverse information about the intermediary.

PUBLIC RECORDS SEARCH: Engage local counsel to conduct a search of all appropriate public records. The search should include a check to verify that company intermediaries are properly established and have complied with all necessary corporate filings and, where possible, a criminal records search on the intermediary's owners.

Companies may deviate from the three levels of due diligence described above by tailoring the questions they ask, or the information they seek to obtain from intermediaries, to meet their compliance needs. As with the other levels of due diligence, the goal of customized due diligence is to collect appropriate information that will enable those responsible to make an informed decision on the reliability, trustworthiness and transparency of the company's potential and existing business partners.

Depending on previous experience or the industry in which they operate, certain companies may determine, for example, that two business references rather than the three prescribed in the Standard Level are appropriate. Other companies may decide, based on the types of intermediaries they retain, that collecting a detailed questionnaire, three business references and an audited financial statement or financial statement is appropriate, but collecting business registrations is unnecessary. Companies may make these decisions for any number of reasons. Provided there is a sound risk-based analysis behind the decisions, the company should be as protected as it would if it had adhered to the three levels outlined above.

VII. DOCUMENTATION

A company's documented commitment to the establishment, implementation and enforcement of a sound compliance plan can reduce reputational damage should a bribe be paid. Moreover, such evidence may reduce criminal sanctions in some countries.

A detailed written record of the review process is therefore essential. The record should include documentation of the process outlined above, including a summary of the risk assessment used to determine the necessary level of due diligence. The review process should be memorialized and a copy maintained for the duration of the business relationship and in accordance with the company's document retention policy thereafter. These records, together with the terms of the intermediaries' retention, should be made available for inspection by the company's auditors and, upon specific request, by authorized governmental authorities under conditions of confidentiality.

The documentation should also include:

- A written commitment by the intermediary to avoid even the appearance of an inappropriate payment and to report any requests by customers for inappropriate payments to the identified point of contact within management;
- Express language prohibiting the intermediary from offering or giving anything of value to a customer in order to secure a business advantage;
- Guidelines as to when the intermediary should seek approval for any hospitality or customary gifts; and
- A requirement to certify compliance annually.

TERMS OF THE AGREEMENT: The terms of the agreement and scope of work should, in all cases, be memorialized. The following are standard principles to include in an agreement:

- No payments should be made to intermediaries other than in strict accordance with the terms of the agreement;
- The agreement should require the parties to comply with all applicable anti-bribery laws and regulations and should describe the elements of those laws;
- The agreement should require the intermediary to comply with all applicable local law requirements, such as registration and other regulatory requirements;
- Intermediaries should be required to certify annually that they have in fact complied with all laws and policies;
- The agreement should permit immediate termination of the agreement without compensation in the event of a violation of anti-bribery laws, although the laws of some countries restrict the enforcement of this clause;

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- The agreement should prohibit the intermediary from assigning its rights to a third party that has not been vetted to the same high standards, and from employing a third party to provide the services outlined in the agreement without first obtaining the approval of the company; and
 - The agreement should allow the company to audit the intermediary's books and records upon credible allegations of misconduct or reasonable suspicion of improper payments.

The intermediary should be asked to provide prompt notice of any change of ownership. The intermediary also should be required either to advise the company of any other changes or to confirm that all other information previously provided remains accurate on a regular basis.

VIII. TRAINING & MANAGING INTERMEDIARIES

Because of the trend toward the increasing extra-territorial reach of anti-bribery laws, intermediaries should be trained in the laws of principal's country, as well as instruction on the company's anti-bribery policy. Companies can either provide the training for intermediaries or require certification that the intermediary has participated in appropriate training elsewhere. In-person training should be delivered as part of a heightened due diligence review. Online training is often appropriate for intermediaries that have undergone a basic or standard review.

Companies must also manage their intermediaries after retention. Oversight does not end with the due diligence review. The activities of the intermediary should be monitored to ensure that there is no breach of anti-bribery law or the company's policy.

Due diligence and training should be refreshed at periodic intervals. Intermediaries that require a standard or heightened due diligence review should update and confirm their information annually; intermediaries that pose less risk and are vetted through the basic diligence review may only need to update and confirm their information every two to three years. Intermediaries should receive additional training during the process of updating the due diligence.

IX. TRACE “RED FLAGS”

intermediary’s expertise, relationship to government officials, financial stability and commitment to ethical business practices. During this process, there are a number of “red flags” that may not end the possibility of a business relationship with an intermediary, but which require significant additional investigation.

More investigation is required if the intermediary:

- Requests payment in cash or to a numbered account or the account of a third party;
- Request’s payment in a country other than the intermediary’s country of residence or the territory of the sales activity (especially if it is a country with little banking transparency);
- Requests payment in advance or partial-payment immediately prior to a procurement decision;
- Requests payment for extraordinary, ill-defined or last-minute expenses;
- Has an employee who simultaneously holds a government position;
- Has a family member in a government position, especially if the family member works in a procurement or decision-making position or is a high-ranking official in the department that is the target of the intermediary’s efforts;
- Refuses to disclose owners, partners or principals;
- Is owned by a government entity;
- Uses shell or holding companies or other unusual corporate structures that obscure ownership without credible explanation;
- Is specifically requested by a customer;
- Is recommended by an employee with enthusiasm out of proportion to qualifications;
- Has a business that seems understaffed, ill-equipped or inconveniently located to support the proposed undertaking;
- Has little or no expertise in the industry in which he/she seeks to represent his/her company;
- Is insolvent or has significant financial difficulties;
- Is ignorant or indifferent to local laws and regulations governing the region in question and the intermediary’s proposed activities in particular;
- Identifies a business reference who declines to respond to questions or who provides an evasive response;
- Is the subject of credible rumors or media reports of inappropriate payments; or
- Is currently under investigation or has been convicted of previous violations of law.

Even greater caution should be exercised if the intermediary is doing business in an industry or in a country with little business or financial transparency. Any “red flags” uncovered during a basic or standard due diligence review may require that the intermediary be reviewed using the next level of due diligence.

X. CONCLUSION

Although the due diligence procedures outlined in this guidebook are time-consuming, they educate both employees and intermediaries on the company's commitment to transparency. Companies can proceed with greater confidence that their business ethics will be conveyed throughout their organization and intermediary network. Intermediaries can respond with confidence when a customer or rogue employee makes an inappropriate demand. Neither party need fear the gray areas that can otherwise develop when people focus only on "doing what it takes" to close a deal.

Employees and intermediaries determined to violate anti-bribery laws are likely to do so in spite of the best efforts of in-house compliance officers and organizations like **TRACE**. For the great majority of employees and intermediaries, however, the goal is to secure legitimate business opportunities in exchange for reasonable compensation. Business relationships founded openly on this simple principle can flourish, advancing the business interests and reputation of all involved.



RAISING THE STANDARD OF ANTI-BRIBERY COMPLIANCE WORLDWIDE

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