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The Power And Protection Of Reliable Information

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THE KRELLER GROUP

The major components are in place – the sales department of a major U.S. technology company headquartered in California found a strategic partner to introduce a new computer chip to the Asia Pacific region. The market studies have shown that substantial profits are likely. The potential sales agent, a company based in Singapore, seems reputable and claims to be established for several years in their industry. However, before the contracts are signed and the deal is done, the technology company's legal department will work in conjunction with the director of the corporate security department to ensure that a due diligence investigation focusing on the background of the potential agent is performed. This will prove to be a fortuitous decision.

To maintain strict objectivity with so many dollars at stake, and take advantage of in-country resources that were not available to the technology company (mentioned above), the Director of Corporate Security decided to outsource portions of the due diligence investigation on the potential partner in Singapore. The initial investigation of the company confirmed the corporate structure, financial standing and position of the principals. Further research revealed that one board member of significant standing within the subject company had been dismissed from a similar position with another corporation for poor management of entrusted state property and repeated malpractices in the management of company finances. Media research was conducted that revealed local news articles and additional information relating to the previous infractions. Due to the level of commitment intended, the client decided to abort the engagement of the subject company despite its initial positive appearance.

While the growth of global commerce may lead to great rewards for U.S. companies, the potential pitfalls of doing business internationally are plenty. In West Africa, a third-party agent of a U.S.-based *Fortune 500* company offered improper payments to a government official to secure a contract for a multi-million dollar environmental project. A top executive of a foreign subsidiary of a U.S. telecommunications provider is discovered to have ties with South American drug cartels in Venezuela. Bribery. Corruption. Fraud. These examples, and many more, force U.S. companies to be more informed about the backgrounds of their foreign business associates.

The need for due diligence may arise in any number of international agreements: strategic partnerships, joint ventures, mergers and acquisitions, vendor verification and customer acquisition, distributors and resellers, upper-level employees, sales agents and consultants, and licensing and franchising agreements. U.S. companies are now recognizing the need to do everything in their power to make certain that they aren't involved with unscrupulous international partners. "Risk and ruse are not often obvious," states John Twomey, Executive Vice-President of the Kreller Group. "Any good decision is founded on an understanding of the situation and the parties involved. Due diligence will not eliminate the risks of international business, but it offers the best measure of protection."

Protect Your Company. Protect Yourself

The Foreign Corrupt Practices Act ("FCPA") was passed by Congress in 1977 after federal investigations in the mid-1970's discovered over $300 million in suspect or outright illegal payments made by hundreds of American businesses to foreign officials to influence favorable business decisions. Designed to ensure that American companies conduct international business ethically, the FCPA is jointly enforced by the Department of Justice and the Securities & Exchange Commission. It consists of two parts: anti-bribery provisions and accounting provisions.

Violations of FCPA provisions carry both criminal and civil liabilities resulting in steep fines and imprisonment. Business entities are subject to initial fines up to $2,000,000, while individual officers, directors, stockholders, employ-

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ees, and agents may be fined up to $100,000 and imprisoned up to five years for criminal violations of the anti-bribery provisions. Actual fines may be much higher according to the Alternative Fines Act. Violators may be fined up to twice the amount of gain sought in the transaction in which the violation took place. Consequences of willful violations of accounting provisions include fines of $2,500,000 or $1,000,000 for business entities or individuals associated with the business, respectively. Civil prosecution of violations of either the anti-bribery or accounting provisions may result in additional fines up to $500,000 (dependent upon the severity of the violation) or fines not to exceed the pecuniary gain of the transaction. Persons or firms violating the FCPA may still be subject to other governmental actions, including the suspension of government procurement rights (for indictment alone) and suspension or refusal of export licenses, which can close the doors for many businesses.

Not only is government enforcement of the FCPA increasing – the Department of Justice has investigated more cases of bribery in the last five years than the previous twenty – but more laws are being created and enforced to aggressively attack fraud, bribery, and corruption. The Patriot Act was designed to prevent the financing of terrorism and money laundering by foreign and domestic criminals. Sarbanes-Oxley is forcing companies to fight fraud. Furthermore, other countries are starting to follow suit in attempting to end foreign bribery for business gain as well. Whereas the FCPA was once a stand-alone type of legislation, several other countries have adopted similar policies, largely resulting from global anticorruption initiatives from the Organization for Economic Cooperation and Development.

There is an ever-increasing attention, both at home and abroad, of practicing business ethically and responsibly. Now more than ever, companies are recognizing the need to know precisely with whom they do business to protect their dollars and reputations.

Obtaining Reliable Information

When business deals, and ultimately dollars, hang in the balance, the information obtained through due diligence efforts must be reliable. Many companies are using outside investigative agencies to provide information in conjunction with their internal efforts. With no vested interest in the outcome, outside agencies provide a straight, unbiased and objective approach to due diligence, and may offer additional resources not available to requestors. However, in the aftermath of September 11, with increased attention to and enforcement of laws regarding foreign trade, several of these agencies have emerged trying to cash in on trends. Due diligence on investigative agencies themselves is certainly appropriate before choosing a vendor.

To help ensure the accuracy of information, investigative firms incorporate research by local, on-the-ground contacts to supplement electronic information. A wealth of knowledge is available by utilizing various online and database resources. For instance, software programs exist that screen government sanction and denied parties lists and search for online media articles. However, the electronic availability of other types of information, court records and business registration articles, for example, varies from region to region, country to country, and sometimes city to city. Qualified and credible local investigators must be aware of local laws and customs and know the best way to access information otherwise not available. Local investigators will also have contacts within local embassies, consulates, and other regulatory agencies that help offer insight on less tangible things, like a business's reputation. A multi-faceted approach to due diligence, using electronic information and on-the-ground research in tandem, offers the most thorough and accurate method to find the facts.

The reliability of information is dependent entirely on the qualifications and experience of the local investigator doing the research. Investigators in the U.S. are often former law enforcement agents: officers from the FBI or other federal agencies, various state police units, and local police departments. Internationally, contacts will come from various backgrounds and vocations. Many international investigators are former United States government employees who were assigned to various international embassies, consulates, etc. who have chosen to remain in the country of their original assignment. Other investigators may be former military and legal personnel, who serve as valuable resources because of their knowledge of local customs and practices. In addition, many investigators include former high-ranking agents and officers from federal police units in many foreign countries.

Typical investigations focus on personal and company backgrounds, criminal history, fraud discovery, government affiliations, prospective investments, civil litigation history, and hidden assets. However, it is crucial that investigative firms have the unique ability to adjust and fine-tune any investigation to suit their client's specific interests and objectives.

Conducting The Investigation

The process of performing an investigation begins with a consultant acquiring information on the subject and developing an understanding of specific objectives and concerns for the case at hand. This information and understanding is then passed on to the investigative team where a head investigator assumes control of the process. This head investigator disseminates the information to the appropriate agents and contacts within the region and country of focus and the investigation is started. During the investigation it is essential that the client and the investigators maintain communication channels. As the investigators start "digging up" business intelligence, the ultimate objectives of the investigation may change and additional work may or may not be needed. That is why it is important for clients to have a strong relationship with their due diligence firm. As John Twomey points out, "Due to their complexity and sensitivity, some investigations require the 'do whatever it takes approach.' But, not every situation warrants tens of thousands of dollars to be spent on obtaining background information. More often than not, clients have specific issues that can be addressed while keeping costs controlled."

Use the power of reliable information to protect your business. Do the due diligence.