DUE DILIGENCE CHECKLIST





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WHAT SHOULD MY DUE DILIGENCE CHECKLIST INCLUDE?

A due diligence checklist takes you step-by-step through the information you need in order to carry out a thorough investigation when you're contemplating a new commercial relationship or a prospective business partner. Some due diligence checklists offer a narrowly defined area of application, suitable if you're preparing for a business takeover or a real estate transaction, but inappropriate for your own business as it stands. Other due diligence checklists take a more extensive approach, yet turn out not to cover all you need at the end of the day.

Rather than focusing on either a narrow or broad scope, our due diligence checklist includes questions aligned to situational risks to help you determine the level of third-party due diligence investigation required to mitigate risk.



RISK-BASED DUE DILIGENCE CHECKLIST

WHAT COUNTRIES DO YOU CONDUCT BUSINESS IN, AND WHERE ARE YOUR BUSINESS CONTACTS?

☑ ALL MY BUSINESS PARTNERS ARE BASED IN MY OWN COUNTRY.

➡ You need to take account of the compliance legislation and requirements in your own country.

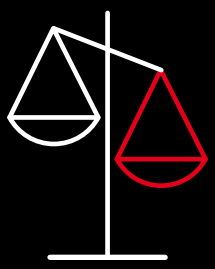
☑ I SUPPLY EXCLUSIVELY TO CUSTOMERS IN MY OWN COUNTRY, BUT I BUY IN GOODS AND/OR SERVICES FROM BUSINESSES BASED ABROAD.

➡ You need to take account of the compliance legislation and requirements in all of the countries in question. Laws such as the UK Bribery Act, the UK Modern Slavery Act and the U.S. Foreign Corrupt Practises Act (FCPA) explicitly state that they also apply to businesses that run commercial operations outside the UK or the USA.

ARE FOREIGN LAWS LIKE THE UK BRIBERY ACT AND THE U.S. FOREIGN CORRUPT PRACTISES ACT (FCPA) RELEVANT TO ME?

Both the UK Bribery Act and the U.S. FCPA may be relevant to you. The following table shows you the actual situations in which the UK Bribery Act and the U.S. FCPA do or do not apply.

Provisions	UK Bribery Act 2010	US Foreign Corrupt Practices Act
Extraterritorial application	Yes, under sections 1, 2 and 6, persons are also liable for breaches of this Act outside the UK if they are "closely connected" to the UK. The "failure to prevent bribery" applies to: a) businesses from the UK that have commercial operations in the UK or elsewhere; and b) every legal entity, irrespective of its corporate base, that has commercial operations in the UK or forms part of a commercial operation in the UK.	Yes, the FCPA applies to offences committed entirely outside the territorial boundaries of the USA by U.S. issuers (traders in securities) and their representatives or employees, as well as to acts by American citizens and residents, irrespective of where those acts occur.
Liability towards third parties	Yes, there is liability for actions by persons working for or on the instructions of the business.	Yes, the FCPA prohibits the payment of bribes by third parties. It is a breach of the law to make a payment to a third party knowing that this payment is fully or partly destined, either directly or indirectly, for a foreign official. "Knowing" in this context includes both a deliberate breach and willful acquiescence. The third parties specified here also include partners in a joint venture or agents.



Provisions	UK Bribery Act 2010	US Foreign Corrupt Practices Act
Negligence relating to documentation requirements	This is governed by other legislative provisions.	Yes.
Criminal sanctions	Natural persons: maximum of 10 years' imprisonment and an unlimited fine. Businesses: an unlimited fine.	Companies and other businesses are liable for fines not exceeding U.S. $2 million per infringement. Civil servants, board members, shareholders, employees and agents are liable for fines up to a maximum of U.S. $250,000 per infringement and a maximum of 5 years' imprisonment. Under the Alternative Fines Act, the actual fine can be increased to double the benefit that the accused attempted to secure by way of the bribes. Monetary fines imposed on natural persons may not be paid by their employer or the owner of the business.
Bribery of foreign officials	Yes (section 6).	Yes, the FCPA deals exclusively with the bribery of foreign officials (15 U.S.C. Art. 78dd-1(a) and (f)(1)).
Bribery in the private sector	Yes, the key provisions in the Bribery Act apply to both public and private sectors, except for infringements relating to a Foreign Public Official (FPO).	No.
Proof of bribery	Yes (section 2).	No.
Intent	Not straightforward. Intent is required for some offences under sections 1 and 2. There is no requirement for intent, in the sense of "corruption" or "acting against regulations", for offences that relate to an FPO (s. 7).	If there is an alleged infringement of the bribery guidelines under the FCPA, it has to be proved that the accused had the requisite premeditation relating to his actions (e.g. negligence, recklessness, intent) (15 U.S.C. Art. 78dd 1(f)(2)).
Backhander payments	The Act contains no exception for backhanders.	Permitted, in specifically described circumstances, if payments to foreign officials have the aim of accelerating or ensuring "the performance of normal government procedures". Excluded from this are decisions by foreign officials to award a new contract or continue a joint venture with a particular party, for instance by granting or extending a licence (15 U.S.C. Art. 78dd-1(b) and Art. 78dd-1(f)(3)).

Source: The UK 2010 Bribery Act Adequate Procedures (Transparency International UK)

HOW MUCH RISK CAN BE FORESEEN IN DOING BUSINESS WITH THE COMPANY IN QUESTION?

☑ THE RISK IS RELATIVELY LOW. IT'S A SMALL, LOCAL BUSINESS HERE, WITH REGIONAL SUPPLIERS.

➡ Perform **simplified due diligence** for low risk entities and individuals, based on information provided by your intended business partner, supplemented by background research using the internet or a specialised due diligence database.

☑ THE RISK IS RELATIVELY HIGH. IT'S A BUSINESS WHOSE OPERATIONS INCLUDE WORKING IN EMERGING MARKETS OR HIGHLY-REGULATED INNDUSTRIES. I HAVE NO IDEA WHAT LINKS IT MAY HAVE WITH OTHER PARTIES.

➡ Use a specialised database to perform **enhanced due diligence**. This is the most efficient way you to discover signs—through negative news mentions, company data or legal information—that the business in question poses a risk due to past or current economic offences or payment difficulties.

☑ THE RISK IS VERY HIGH. I KNOW NOTHING ABOUT THE BUSINESS'S STRUCTURE; IT'S A HIGH-VALUE CONTRACT AND AN ENHANCED DUE DILIGENCE HAS RAISED ISSUES THAT NEED FURTHER CHECKING.

➡ Bring in an outside adviser. There are professional bureaus that can uncover information through local investigation that are unlikely to be discovered using online information alone.

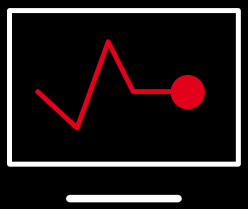
ARE THERE ANY POLITICALLY EXPOSED PERSONS (PEPS) INVOLVED IN THE COMMERCIAL RELATIONSHIP?

☑ NO, THE RELATIONSHIP IS NON-POLITICAL IN NATURE.

➡ Indirect links with politicians or other government officials are often hard to identify. The best way to rule out the possibility of any PEPs working for the business is to run a check against a PEP list.

☑ YES, SOME PEPS MAY BE INVOLVED IN THE RELATIONSHIP.

➡ Perform a PEP check in relation to the individuals in question. People who have links to government officials and politicians are particularly susceptible to corruption. If you are active in the financial sector, it's especially important to check out PEPs, but other sectors, such as pharmaceuticals, have proven vulnerable as well.



HAVE YOU INVESTIGATED ANY ADVERSE REPORTS ABOUT YOUR BUSINESS PARTNER?

☑ Analyse any adverse news about your business partner—and not just by looking at recent news reports. If you uncover negative news about the business such as a connection to corruption—even from a long time ago, you should still ask yourself whether you really want to get into a business relationship. If the business is still embroiled in corruption scandals, you may end up committing offences yourself.

IS THE BUSINESS OR INDIVIDUAL CURRENTLY INVOLVED IN LEGAL ISSUES OR HAVE A LITIGIOUS HISTORY?

☑ Look for legal cases related to the business. Bankruptcies and liens could signal a financia risk. Lawsuits related to product liability could pose both reputational and financial threats.

HAVE YOU OBTAINED INFORMATION ABOUT THE TRUE BENEFICIAL OWNERS?

☑ Nowadays, it's no longer straightforward to identify true beneficial owners if the business in question is reluctant to cooperate. Concealed beneficial ownership, however, presents intrinsic risks. This is why we recommend some robust form of ongoing due diligence. It's a way of minimising the risks of hidden corruption, bribery and money laundering.

WHY OPEN WEB RESEARCH IS NOT ENOUGH

Given the complexity of performing third-party screening and due diligence, you need access to a wide variety of sources, not all of which are available as free online sources. For a thorough analysis, you should review:

SANCTION LISTS

Sanction lists are lists of countries, entities and individuals against whom national or international sanctions have been imposedin connection to conflict, human rights abuses, terrorism or other serious offences. Sanctions may stem from one or more resolutions of the UN Security Council, decisions by other international cooperative bodies and national government rulings. Examples of sanctions include arms embargos, trade embargos, bans on immigration, freezing of bank accounts and restrictions on diplomatic or military relations.The important sanctions lists include those of the United Nations Security Council (UNSC), the U.S. Office of Foreign Assets Control (OFAC), European Union Common Foreign and Security Policy (CFSP) and the UK HM Treasury.

WATCH LISTS

Third parties should also be screened against relevant law enforcement lists from Interpol, the U.S. Federal Bureau of Investigation (FBI), and national or regional wanted lists issued by police forces in any countries connected to the business or individual subject to your due diligence investigation.

Such lists may be related to terrorist screening or crime. Crime-related lists, for example, contain information about natural and legal persons regarded as risks. These would include sentenced criminals and known names from the world of organised crime. Examples of crime-related lists include the FBI Most Wanted Terrorists and Interpol Most Wanted.

POLITICALLY EXPOSED PERSONS (PEPS) LISTS

PEPs pose a higher risk of exposure to bribery, corruption, moneylaundering practices or other economic offences on the basis of their influential positions, whether in government or in another organisation. A distinction is drawn between international and national PEPs (for example government leaders, eminent politicians and top military officials) and individuals who fulfil or have held important posts in an international organisation (directors, top managers, etc.) and their immediate support staff. If a potential customer or business partner is identified as a PEP, you must ensure effective risk management by means of an enhanced due diligence procedure.



COMPLIANCE-RELATED LISTS

Compliance-related lists contain information about natural and legal persons against whom enforcement measures have been taken, such as a fine, restriction of commercial activities or exclusion.Examples of compliance-related lists are the Financial Claims Enforcement Network List, the World Bank List of Debarred/Ineligible Firms and the list of the CSSF in Luxemburg.

OTHER SOURCES OF INFORMATION

- COMPANY PROFILES
  A company profile contains information on the formal legal incorporation of the business in question, its corporate structure, ownership relationships, control mechanisms and so on.

- SUMMARY OF LEGAL PROCEEDINGS
  You will find information in summaries of legal proceedings about legal actions in which the legal or natural person in question may have been involved.

- NEWS REPORTS
  Current and archived news reports can play a useful part, for instance for checking the reputation or official status of natural and legal persons. Regard news reports as being a supplement to traditional sources for due diligence investigation.

By checking across a broad collection of content relevant to due diligence investigations, you reduce the risk of overlooking important information or failing to satisfy the statutory compliance requirements.

CHOOSE YOUR SCREENING AND DUE DILIGENCE TOOLS CAREFULLY

HOW DO I SET ABOUT IMPLEMENTING A SYSTEM FOR DUE DILIGENCE AND SCREENING?

- **Set clear requirements and objectives**, which the screening and due diligence technology must satisfy, in support of the requirements management and to define the return you are looking for. The starting point here is identifying the risks to which your business is exposed through a risk assessment.
- **Test, investigate, compare and assess** the systems that meet your needs. Decide whether the functionality of the potential systems coincides closely enough to the requirements of your own business and consider what resources can be supported or replaced by the systems within your own business.
- Bear in mind the **long-term factors** (new rules on commercial economic supervision, increases in red tape surrounding commercial aspects) and look into whether the proposed due diligence and screening tools are scalable, flexible and readily adaptable to evolving regulations and your workflow. For instance, can modules be added and can the system be tailored to a specific method of budget management?
- Note the options for **business-specific adaptations and flexible management functionality**, so that your system can be optimised on the basis of your company policy and the risks you face.
- Select an **implementation model** that **coincides with your company's IT policy** (for instance hosting by a provider or implementation in-house).
- Note the options for **multiple language support** (interfaces, content, translation tools and so on).
- Check out whether there are adequate **training and support options** available (free/paid for, a specific number of hours, specific training options, etc.).
- Note the options for **generating management reports and audit data**, so as to be able to satisfy statutory compliance requirements and maintain and assess the return from your system.
- Look into the options for integration of **regular appraisals of commercial aspects**, in order to ensure that the technology can keep pace with any changing requirements under corporate or other legislation or with changes in your risk profile.
- Find out whether there are regular **checks of the provider** and whether up-to-date information is regularly available about new functions and content.



WHAT INFORMATION IS REQUIRED FOR CONDUCTING EFFECTIVE DUE DILIGENCE RELATING TO A THIRD PARTY, AND WHERE CAN I FIND IT?

Information to be requisitioned and checked	Sources
The complete official name, registered address and Chamber of Commerce (or equivalent) number of the proposed business partner.	• Questionnaire for business partners • Consulting local trade register
Information concerning shareholding structure and shareholders of the proposed partner, as well as parent companies and/or subsidiaries that are fully or partly owned by the proposed partner.	• Questionnaire for business partners • Consulting local trade register
A listing of the board members and management team of the proposed business partner, and also of all other employees who will be providing services to your business. This summary must include information about the biography of the relevant individuals, their civic status, their relations with PEPs and any links with other enterprises. This is also where references may be included, if appropriate.	• Questionnaire for business partners • Consulting local trade register • Media research
Information about other customers of the proposed business partner and any third parties with which it maintains a regular business relationship (particularly civil servants and government organisation employees), including information on how those relationships came about.	• Questionnaire for business partners • Media research • Enquiries with local businesses and embassies • Watch lists and PEP databases
Financial information, including annual financial statements and reports, as well as information about any bankruptcies affecting the business and its board members in the past.	• Questionnaire for business partners • Consulting the trade register • Media research
Information about possible legal proceedings and official investigations pertaining to the business or any senior employees of it, paying special attention to any allegations of corruption.	• Questionnaire for business partners • Reports of legal proceedings • Media research
The precise nature of the contemplated relationship with the business partner, which services are involved, how these services will be provided and by whom, and how the payment for them is worked out.	• Questionnaire for business partners • Contractual documents
What measures and procedures the proposed business partner applies to counteract bribery and corruption (if appropriate) and what due diligence measures were taken when entering into other third-party business relationships.	• Questionnaire for business partners

Source: "Due diligence: know your business partners" (Reed Smith): Serious Economic Crime: A boardroom guide to prevention and compliance (UK Serious Fraud Office)

WHAT COMMONLY OCCURRING EXTERNAL AND INTERNAL RISKS NEED CONSIDERATION PRIOR TO ENTERING INTO A BUSINESS RELATIONSHIP?

EXTERNAL RISKS

- **WHICH SECTOR-RELATED RISKS SHOULD I BE TAKING INTO ACCOUNT?**
  Raw materials industries, the construction sector and road-building, for instance, are characterised by a significantly increased risk.

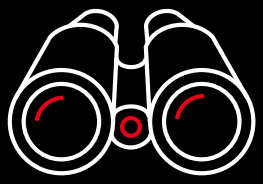
- **WHICH TRANSACTION RISKS SHOULD I BE TAKING INTO ACCOUNT?**
  There are high risks attached, in particular, to gifts for charitable or political purposes, transactions relating to licences and permits, and expenditure associated with public tendering.

- **WHICH BUSINESS OPPORTUNITY RISKS SHOULD I BE TAKING INTO ACCOUNT?**
  Risks arise, for instance, with large order volumes, projects with a large number of contractual partners, contracts that have clearly not been awarded at the going market rates and contracts without any clearly legitimate purpose.

- **WHICH BUSINESS PARTNER RISKS SHOULD I BE TAKING INTO ACCOUNT?**
  Transactions with foreign civil servants, consortia or joint-venture partners and with PEPs— politicians and also individuals who are subject to their sphere of influence— are all potentially risky.

- **WHICH COUNTRY-RELATED RISKS SHOULD I BE TAKING INTO ACCOUNT?**
  Typical country-specific risks include widespread corruption, poor legislation on fraud prevention, and the inability of government, the media, local businesses and society at large to effectively promote transparent strategies and rules for trading and investment processes. You should be asking the following questions when analyzing country-specific risks:

  - Are there any embargos or sanctions in force that might form an obstacle to doing business with the country in question, or even prohibit this entirely?
  - How have changes of power worked out in the past in the country in question? Were the elections free of violence? Is there any recent evidence that a new leader has failed to comply with obligations that were entered into between the previous leader and investors? For instance, has the new leader revoked licenses or permits for foreign investors that had been granted by the previous leader?
  - Is there a risk that the political balance might be shifted in the future? If, for instance, the country is governed by a single individual, is he or she in good health? What are the transitional rules for the installation of a new government?
  - Are there conflicts with neighbouring countries that might have an impact on the situation in the country in question?



INTERNAL RISKS

- **HAS THE BOARD AND SENIOR LEADERSHIP TEAM CLEARLY EXPRESSED A VISION RELATED TO REGULATORY AND ETHICAL COMPLIANCE?**

  Experts agree that a lack of top-down leadership hampers risk mitigation.

- **ARE THERE SHORTCOMINGS IN THE EDUCATION, SKILLS AND KNOWLEDGE OF EMPLOYEES?**

  In order to mitigate risk effectively, employees and third-parties alike need training relevant to their roles to help ensure compliance.

- **DOES AN ORGANISATION RELY ON A "BONUS CULTURE"?**

  Numerous, well-publicised compliance breaches are associated with a bonus culture that encouraged excessive risk-taking.

- **ARE CLEAR INTERNAL GUIDELINES AND PROCEDUES IN PLACE REGARDING APPROPRIATE EXPENSES?**

  Insufficient clarity concerning business meals, corporate gifts or gifts to political and charitable organisations open the door to compliance violations.

- **ARE SUITABLE FINANCIAL CONTROLS IN PLACE?**

  A lack of transparent financial control increases risk exposure.

WHICH TYPE OF DUE DILIGENCE SOLUTION IS THE RIGHT ONE FOR ME? CAN I MAKE DO WITH FREE SEARCH ENGINES? OR SHOULD I BE USING PAID ONLINE INFORMATION SERVICES, SPECIALIST DATABASES OR THE EXPERTISE OF AN OUTSIDE ADVISER?

WHEN SELECTING A DUE DILIGENCE SOLUTION, YOU SHOULD BE GUIDED BY THE DEGREE OF POTENTIAL RISK TO WHICH YOUR BUSINESS MIGHT BE EXPOSED. THE HIGHER THIS RISK IS, THE MORE AGGRESIVE YOUR DUE DILIGENCE SHOULD BE.

- **FREE SEARCH ENGINES SUCH AS GOOGLE**
  The internet contains innumerable free research tools. Convenient, easy-to-use and often offering worldwide coverage,free search engines therefore provide a satisfactory basic service for performing due diligence and can also be used as a supplementary tool. Not all of the available information can be tracked down using the free search engines, however. Increasingly, archived content can only be accessed following registration and sometimes also payment (a paywall). As the relevant data sources change from one day to the next, it becomes difficult to achieve consistency in your research. The validity of many sources is also difficult to verify. Another problem is the poor degree of security. IP tracking can easily be used to identify businesses and individuals who are performing due diligence research. Finally, free search engines generally offer no customer service or guarantee.

- **PAID ONLINE INFORMATION SERVICES**
  You can buy the information you require effectively if you use a paid online information service. Also, the content is current and reliable and is kept regularly up-to-date. Access is generally well secured. If, however, you change the information you require, it may be necessary to consult additional data sources from other providers at extra cost. This means that whoever prepares an investigation will regularly have to tackle unfamiliar user interfaces. This diffuse method of working detracts from the consistency of your processes and forces you to collate information from various sources into standard reports. In turn, this means that the results will not be available as quickly.

- **SPECIALISED DATABASES**
  Due diligence-focused databases aggregate information from many providers. You gain access to all the available content via a uniform user interface. This ensures a consistent investigation process and a high degree of efficiency. The content is managed by the provider, is up-to-date and reliable. Access is satisfactorily secure. Also, you only need to enter a single contract. If you have any questions during your research, you can generally submit these to the customer support department. Support may be free, depending on your contract. If you want to use a database for your due diligence investigation, you should check in advance whether the requisite content is available and appropriate to the risks faced by your business. Check, for instance, whether the database contains information about the countries you are interested in and whether the content is extensive enough. For research at an international level, there should also be a large amount of content available in other languages.

- **EXTERNAL ADVISER**
  If you want to outsource your due diligence, you can bring in an external adviser. An external adviser will also be equipped to collate relevant data in the field. This is of considerable importance, particularly in high-risk markets. However, the costs of buying in external advice are high, even for just a simplified investigation. If there is a high demand for performing this type of simplified investigation, outsourcing to an external adviser is not an economical solution. Another significant factor is the inevitably longer lead time. In addition, any reports will have to be revalidated on a supplementary basis at a later stage.

MITIGATING RISK IS AN ONGOING PROCESS

Even after you have investigated a prospective business partner, supplier or other third party as part of an on-boarding due diligence process, you have to go beyond a checklist. Regulators recommend periodic reviews—ongoing due diligence and monitoring—to mitigate risk. A one-time check offers no guarantee that the business in question will not expose you to reputational, regulatory, financial or strategic risk in the future. The threat isn't to organisations alone. Individuals who can be proved to have been guilty of corrupt behaviour or to have been involved in it in the context of a commercial relationship can indeed be sentenced to a hefty fine or even imprisonment. The financial sanctions and damage to reputation will in turn have an impact on your own business. If you're a compliance manager, board member or business manager, the best way to prevent problems of this sort is by putting in place a watertight Compliance Management System (CMS).

RISK BASED DUE DILIGENCE AND MONITORING PROCESS

1 INPUT NAME INTO WORKFLOW, CASE MANAGEMENT AND AUDIT

2 IDENTIFY
Request identification data collected from client or third party.
- Questionnaire
- Identity Documents
- Source of wealth & funds
- Beneficial Ownership
- Group Structure
- Incorporation Documents

3 CHECK WATCH LISTS
Batch search global sanctions, regulatory, enforcement and PEP lists.
- Sanctions Lists
- Regulatory Watch lists
- Politically Exposed Persons list
- Customer Internal List
- Negative News

4 RISK ASSESSMENT
Set criteria determines risk of engaging with client or third-party and extent of due diligence and monitoring applied.

5 SIMPLIFIED DUE DILIGENCE
Basic checks applied if low risk entity
- Identity Verification
- Web Search
- Company Verification
- Beneficial Ownership
- Group Structure

ESCALATE Y/N?

6 ENHANCED DUE DILIGENCE
More in depth checks applied if high risk entity
- Negative News
- US Public Records
- Legal Cases
- Company Data
- PEPs and Watch lists

ESCALATE Y/N?

7 OUTSOURCED DUE DILIGENCE
More specialist checks applied if high risk entity
- OUTSOURCE DUE DILIGENCE TO RISK CONSULTANCY
  For specialist local market investigations

8 ONGOING MONITORING
Automated batch checks against watch lists and negative news. Periodic refresh of full due diligence.
- Sanctions Lists
- Regulatory Watch lists
- Politically Exposed Persons list
- Customer Internal List
- Negative News

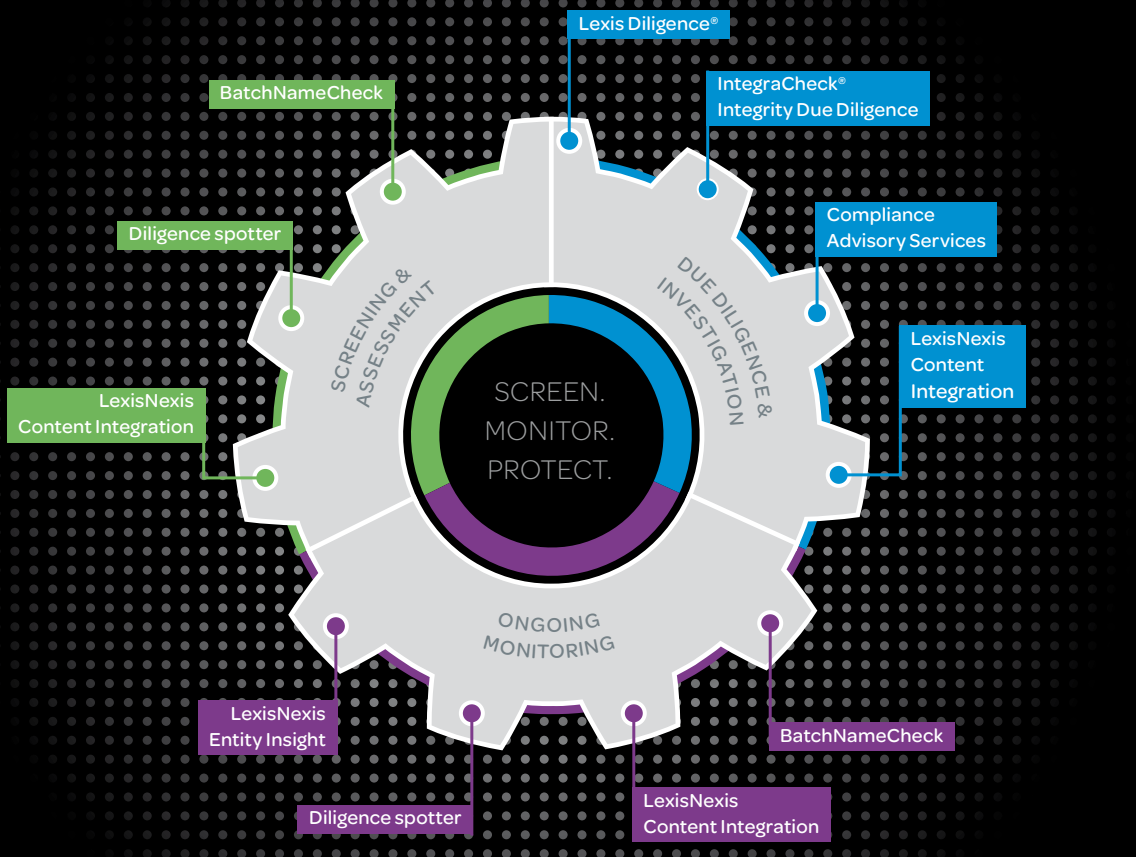
HOW LEXISNEXIS CAN HELP

We help companies deliver good profit by enabling them to build and maintain trusted relationships.

We support our customers in mitigating business risks, meet their strategic goals and accomplish greater return on investment. Using our efficient, agile and cost-effective due diligence and monitoring solutions empowers our customers to find the information they need on people, companies and countries. Our experienced industry specialists and thought leaders are well-versed in the evolving requirements our customers need to address.

LexisNexis Business Insight Solutions delivers interconnected and flexible product modules aligned to the customer workflow including:

- PEP, watch list and negative news screening
- Enhanced due diligence and reporting
- Proactive supply-chain and third-party risk media monitoring that leverages PESTLE-based risk scoring
- Outsourced due diligence, compliance and risk advisory
- Content integration and data feeds into proprietary systems



For more information

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