Australian Government

Australian Trade and Investment Commission

Red flags – Working with Associates

Companies need to exercise the appropriate due diligence into those within their organisations and supply chain to ensure that corruption and bribery risks are identified and managed appropriately. The new Australian anti-bribery framework holds companies liable for their “associates” where they bribe foreign officials. The definition of an associate is very broad and applies to subsidiaries both in Australia and overseas. Associates are likely to include:

- consultants
- intermediaries
- lobbyists
- lawyers
- sales and marketing firms
- contractors
- members of joint ventures

Managing Red Flags

Any significant warning signs or red flags identified in the course of the due diligence process should be addressed before proceeding with any proposed engagement.

Red flags identified should be documented with a clear audit trail demonstrating any further actions taken, how any issues were managed and the decision of whether to proceed.

The following questions may arise when considering red flags in dealing with associates:

- Is there an excessive level of hospitality or gift giving?
- Is the other party making requests for secrecy? If the other party is asking for discussions to be “off the record” or to avoid media attention should trigger suspicion
- Is your company operating in a high-risk industry or jurisdiction? Mining and resources, construction, security and aerospace sectors are especially susceptible to increased risks of bribery issues
- Does the associate make unusual or suspicious payment requests? For example, the associate insists on cash payments to be made to another party, to offshore accounts, makes urgent requests for money or if there is a lack of documentation
- Does due diligence identify past allegations or incidents of corruption or illegal activity?
- Are there are parties involved in the engagement that have no substantive commercial role?
- Does the associate object to including reasonable contract terms regarding compliance with anti-bribery laws or other relevant laws?
- Does due diligence identify that the associate is a shell company or has some other unusual corporate structure?
- Is a government official advising that the company needs to pay excessive licence fees in order to proceed with a project?
- Does the other party refuse to provide reasonable information – for example on beneficial ownership in the case that the associate is a company?
- Does the party request increased payment for ‘speeding things up’ or to circumvent red tape?