

We're No. 1: What Level of Due Diligence Should You Perform?

New Zealand is generally recognized as having some of the lowest instances of corruption across the globe, at least that is the perception. Over the past 3 years it has either been Number 1 or led outright the Transparency International Corruptions Perceptions Index with scores of

- 2010-9.3
- 2009-9.4
- 2008-9.3

It was, therefore, with some surprise that I came across a story referred to in yesterday's Corruptions Currents blog by the Wall Street Journal (WSJ), on a website in New Zealand, Stuff.co.nz, entitled "*NZ firms linked to money laundering*" authored by Michael Field.

The article reported that companies created in New Zealand had been linked to "Russian crime, a Mexican drug cartel and Romanian extortion." Additionally it reported that certain companies created in New Zealand had been tied to a company alleged to have smuggled arms into North Korea. These were accomplished by the creation of New Zealand shell companies which were used to move monies through to avoid detection.

The article reported certain international criticisms of New Zealand corporate registration protocols. The Canadian Financial Transactions and Reports Analysis Centre, "identified the "exploitation of New Zealand's weak company registration laws" as a problem. International expert Martin Woods was quoted in the article as saying that shell companies were "ideal vehicles for money launderers, tax evaders and arms traffickers". But the topper is the following line, "The government admits there is a problem but says it has had other priorities" but we do note that this final quote is not attributed.

The problem all of this raises for a compliance practitioner here in the US is how to evaluate a company for due diligence purposes? The Transparency International Corruptions Perceptions Index is a generally recognized index that many companies rely on to set the appropriate level of due diligence. New Zealand, with a sterling score of 9.3 or 9.4 and a ranking of Number 1 over the past three years, is a country that may be perceived to have one of the lowest levels of corruption in the world. However, the article in Stuff.co.nz demonstrates the need for active and strong due diligence in all places across the globe.

The article reports that one individual was, at one point, listed as a Director of over 300 New Zealand formed companies. Another person, listed as the Director of the New Zealand company alleged to have been involved with the shipment of arms to North Korea was "convicted of 75 breaches of the Companies Act for giving false addresses on registration forms". Both of these examples cited in the article should give pause to companies when they set their due diligence levels. A traditional Level One US/UK database search may not be enough to protect your company.

You may need to move to a more sophisticated search such as one which makes a database search for in-county records. It is certainly important to know if and when a person holds multiple Directorships in various and not obviously related companies. This should raise a very big Red Flag.

The moral of this story is that due diligence is not a rote exercise. Care must be given in all phases. Simply because you are doing compliance due diligence for Foreign Corrupt Practices Act (FCPA) issues does not mean you can ignore money laundering and export control issues. I have written on compliance convergence and heard my colleague Howard Sklar talk on this several times. Your compliance program needs to be cognizant and integrated to evaluate and manage these risks for your company.

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