DICO Guideline

G01 – Business Partner Compliance

DICO

Deutsches Institut für Compliance

Disclaimer

DICO guidelines are directed to Compliance Practitioners. They are designed to provide an introduction and overview on the subject. Therefore the guidelines deliberately avoid highlighting special cases and identifying legal exceptions.

DICO guidelines provide the reader practical and actionable recommendations on Compliance issues. On this basis, publishing a guideline aims for initiating a discussion regarding the subject matter but is not meant to constitute any kind of binding standard.

DICO guidelines constitute practical considerations by Compliance Practitioners and are not intended to give legal advice. No one reading or utilizing these guidelines should rely on this document for legal advice, but instead should seek such advice from competent legal counsel.

Send your suggestions and contributions to info@dico-ev.de. We look forward to a lively discussion and thank you for your constructive support.

Foreword

Business Partner Compliance is a tool of the Compliance Management System (the “CMS”). As with other components of the CMS, each company‘s approach to Business Partner Compliance is different; there is no “one-size-fits-all solution.” The following principles are for general guidance; these recommendations may be adapted depending on the unique profile of the company and its risks.
Like other compliance tools, Business Partner Compliance is also an active feedback system. Once the approach has been designed and implemented, it does not remain unchanged. New information regarding risks or changes in the risk profile of the company, such as due to new business opportunities or the development of new geographic markets, must be continuously taken into consideration and the system must be appropriately adapted and developed further.

Business Partner Compliance is important for companies of all types and sizes. Even if a company already takes robust measures to comply with laws and rules internally, a Business Partner‘s violations of law or regulations can greatly damage that company. Under certain conditions, a company may be legally obligated to analyze Business Partners, such as under money laundering or international sanctions laws, as well as foreign laws with extraterritorial effect (e.g., UK Bribery Act).

In addition, transactions with suppliers, which are later found to have violated human rights, can damage the reputation of the company. And the actions of intermediaries, who bribe other parties in the interest of the company, can lead to liability for the company. For this reason, foreign legislation, such as the UK Bribery Act and the U.S. Foreign Corrupt Practices Act (the “FCPA”), can provide for much more severe liability related to improper acts of Business Partners than do those in Germany.

This guideline has been drafted by the Working Group Business Partner Compliance at DICO – Deutsches Institut für Compliance e.V. (German Institute for Compliance) www.dico-ev.de and has been first published in October 2014. Members of the Working Group are compliance practitioners of BDO AG Wirtschaftsprüfungsgesellschaft, Berlin Risk Limited, Bertelsmann SE & Co KGaA, Dentons Europe LLP, Deutsche Bahn AG, Deutsche Telekom AG, EnBW Energie Baden-Württemberg AG, FICO Tonbeller AG, LLR Legerlotz Laschet Rechtanwälte, Talanx AG, ZF Friedrichshafen AG, LexisNexis GmbH.

1. Introduction

1.1 Business Partner

The term "**Business Partner**" refers to any party, which has business contact with the company, and is not an employee or manager of the company. This includes a large group of external persons and companies with which the company does business, regardless of how much and the type of business they do. For this reason, the definition includes customers, suppliers, subcontractors, sales representtatives, advisors, and partners in joint ventures as well as the smallest service providers ("one man shops") and intermediaries.

Qualification as a Business Partner does not mean, however, that a comprehensive inspection ("Due Diligence") is always necessary. Rather, the scope of analysis – and whether a separate analysis is even necessary – depends on various factors, which are explained in this guideline.

1.2 Business Partner Compliance

Business Partner Compliance ("BPC") includes all compliance activities before and during the ongoing business relationship (e.g., code of conduct for Business Partners training measures, audits, contract clauses). Here, BPC must be viewed from two perspectives. On the one hand – and most importantly – this refers to the analysis of external third parties of all kind by the company. On the other hand, companies must also deal with being analysed by other companies.

1.3 Goals of Business Partner Compliance

Business Partner Compliance serves numerous purposes – like other compliance tools. First of all, legal requirements such as money laundering regulations, export control law requirements, and the provisions of the FCPA and UK Bribery Act are fulfilled In addition, compliance measures protect the company against liability risks and reputation damage. Business Partner Compliance promotes business success as both corporate and private customers increasingly place emphasis on a "clean" product. The compliance requirements that companies place on each other often noticeably exceed the legal requirements.

Ultimately, compliance systems provide additional benefits beyond the legal and regulatory compliance itself. Supplier and customer credit and quality risks can also be monitored and tracked by means of Business Partner Compliance.

About DICO:

DICO – Deutsches Institut für Compliance e.V. was founded in November 2012 in Berlin at the urging of leading compliance practitioners and experts. As a nonprofit organization DICO has members from all industries in Germany, including wellknown DAX companies, auditing and law firms, and from the science industry.

DICO considers itself to be an independent interdisciplinary network for exchange between economy, science, politics, and administration and considers itself to be a central forum for the consistent and practical promotion and further development of compliance in Germany. DICO promotes compliance in Germany, defines minimum standards in this area, assists with proposed legislation, and simultaneously promotes practical compliance work in private and public companies, promotes training, and develops quality and procedural standards.

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