



INFORTAL WORLDWIDE
STRATEGIC CORPORATE INVESTIGATIONS

**BEST PRACTICES IN
EXECUTIVE DUE DILIGENCE**

Best Practices in business due diligence should always include a comprehensive review of all senior executives. The purpose of due diligence is to ascertain whether executives being hired (or acquired) have provided the company with full disclosure of their background and prior substantive issues.

This is necessary to protect a company's Board of Directors, improve risk management, comply with federal regulations, and optimize corporate profitability. Effective due diligence will reveal issues such as corruption and money laundering or inappropriate political influence that may violate the Foreign Corrupt Practices Act FCPA.

Infortal Worldwide strongly recommends a Best Practices approach when conducting Executive Due Diligence. Following multiple public company accounting scandals, the federal government introduced the Sarbanes Oxley Act in 2002. All public companies today are required to submit an annualized assessment of the effectiveness of their financial accounting & internal auditing systems.

Infortal's statistics show that 20% of executives do not pass a deep-level due diligence check.

All too often, companies rely on what they know about an Executive who has "worked in their industry for many years" and is generally well known for their business acumen and experience. However, what companies do not know is whether that person has an unknown or undisclosed history: bankruptcies, sexual harassment claims, civil litigation/ litigious history, SEC violations, & even criminal convictions may not be known to colleagues in the industry.

Why screen executives?

1. Protect the interests of the corporation
2. Protect the fiduciary responsibilities of the Board of Directors
3. Minimize liability exposures for the company from future inappropriate activities & crime
4. For corporate governance, FCPA & Sarbanes Oxley compliance
5. Rule Of Thumb: if you have not personally known executive for at least 10 years then you do not know the person well.

CASE STUDIES:

The candidate's "history" can be checked in advance to avoid the embarrassment and public damage to your company at a later date. Many examples of this exist:

- A General Manager who is also the CEO of a competing company with annual revenue of \$40 million
- A healthcare company whose CEO has been sued for prior sexual harassment with a settlement costing the company over \$3 million plus legal fees
- A CFO who has lied about their education; company's stock price drops nearly \$20m in one day
- Senior Financial Manager who had spent 9 years in federal prison for cocaine & manslaughter conviction (with prior history of cocaine possession); the information was covered up by "extended" employment dates.
- Corruption of a senior executive team with history of money-laundering, racketeering, drug trafficking & murder.

None of these histories were disclosed and all details were deliberately covered up.



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IMPACT TO YOUR COMPANY:

Officer-level involvement in other businesses that have not been disclosed can cause many problems later for your company if the second business is encumbered with lawsuits, FCPA or SEC violations, encounters negative publicity linked to your Executive, or worse is involved in criminal actions of any kind.

Due Diligence Objectives:

1. Determine whether the person is who they say they are
2. Check the veracity of their qualifications and stated history
3. Analyze gaps and undisclosed information
4. Assess how this information is matched with public records (factual verification)
5. Examine discrepancies, and complex business & judgment issues that may occur at the Executive Level
6. Determine any undisclosed, unexplained, criminal or litigious behavior
7. Determine whether all information has been disclosed to you during or prior to your business transactions

Results:

Of particular interest are existing public record information including Federal and State (County level) criminal issues, civil law suits, financial issues, industry/business contacts, reputation and standing, involvement in business(es) including growth, business strategy, financial oversight (P&L), involvement as principal or shareholder of other business enterprises, any record of past and current litigation history, bankruptcies and other fiduciary and financial information which may exist with regard to the individual.

ISSUES OF CONCERN:

A brief summary of the typical issues of concern which are evaluated during an effective Executive Due Diligence investigation include:

- History of criminal activity: all crimes at federal & state levels.
Ranging from money laundering, racketeering & bribery to drug abuse & various misdemeanor crimes.
- Real Estate crimes (non-prosecuted), real estate high-cash transactions (incl. money-laundering activities)
- Fraud, computer crimes, child pornography, tax crimes, counterfeiting, securities fraud,
- Interstate crimes (interstate bankruptcies, Theft of intellectual property, etc).
- Serious civil litigation issues: SEC violations, etc.
- Evidence of litigious behavior
- Undeclared, unresolved & resolved civil lawsuits
- Involvement in other business entities at the officer/director level (declared & undeclared): Department of Corporations searches.
- Inconsistent or unstable financial management and inability to meet financial obligations
- Outstanding county, state or federal tax liens, large outstanding child support amounts
- Various types of irresponsible behavior in senior management positions
- Terrorist List status
- Denied Persons status
- Federal sanctions for inappropriate financial dealings; both domestic and international (OFAC & SANCTNS).
- Foreign in-country investigations for foreign nationals (did they work/ behave legally before transferring to the USA); additional costs may be involved for overseas investigation.
- Negative professional references & information (more often shared with neutral parties like Infortal).
- Personal & professional judgment regarding disclosure of information in any or all of the above



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- Management issues: Macro or micro management, team building capability, market penetration of new products/services
- Reference checks if conducted: Ability or inability to build world-class organizations; Ability to raise new capital vs. burn rate; Competitive intelligence issues

BEST PRACTICES EXECUTIVE DUE DILIGENCE SCOPE

Executive background investigation components should include the following:

1. State (County level) Civil court checks at all jurisdictions (up to three counties per name) where the subject lived or worked in the past seven years and where the subject was located during that time.
2. State (county level) Criminal court checks at all jurisdictions (up to three counties per name) where the subject lived or worked in the past seven years and where the subject was located during that time.
3. Federal (Inter-State) Civil court record checks of all court filings, including litigation history and declarations of federal bankruptcy regarding the subject and business entities they may have been involved with.
4. Federal Criminal court record checks of all court filings regarding the subject and business entities they may have been involved with.
5. Review of all cases involving the subject, which can be located, if any.
6. Education (up to two degrees earned).
7. Employment verifications (up to 5 prior employers)—only if requested.
8. Driving History records (one state).
9. Real Estate Records (up to 5 states of residence).
10. Suits, Liens, Judgments & Bankruptcies review (one state).
11. Department Of Corporations Search. Corporate ownership information, including company affiliations, names of principals and current active status.
12. Fictitious business statements
13. UCC filings, in states where the subject is known to have resided.
14. Credit checks of persons who have provided a signed release for such checks (A signed Disclosure Notice is required of the individual in compliance with the Fair Credit Reporting Act, FCRA).
15. Financial and assets checks directed toward locating the financial means and liquid assets of the subjects.
16. Media and Internet search to determine whether the individual has involvement in other businesses, fields or entities that may have bearing on the subject's history.
17. OFAC Office of Foreign Assets Control—U.S. Department of Treasury's master list of specially designated nationals, blocked persons, and denied persons from the Department of Commerce's Bureau of Export Administration list.
18. National Financial Institutions Sanctions & Legal Actions (SANCTN). File provides formal sanctions against members of financial & healthcare service industries.
19. Federal terrorist list review.
20. Denied persons list review.
21. Specially Designated Nationals (SDN) & Blocked Persons, U.S. Treasury Department.
22. Professional Licenses.
23. Other License (Medical, Chartered Accountant/CFA, State Bar, Pilot License, etc), as indicated.
24. Registered Sex Offender (National, State, County lists).
25. Detailed Reference Interviews (typically 6 to 8 references including supplied and developed references focused on competitive intelligence, personality traits, & lifestyle issues). References are conducted only if requested (additional charges apply).

The investigations focuses on public records and other information sources. A detailed report with recommendations are provided when the investigation is concluded.



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WHAT INFORMATION IS NEEDED?

1. Resume
2. Employment application form (this is preferred wherever possible)
3. Signed FCRA Disclosure Notice (required for Credit History review & analysis); provide the candidate/executive with a copy of the federal Consumer Right To Know notice. The candidate must be allowed to receive a copy of the report under federal law.
4. Include all of the following information:
 - subject's full legal name
 - social security number
 - date of birth
 - driver's license number (& State Of Issue).
 - Show any other names the person is known by (AKA's).
5. Prior addresses for the last 7 years.
6. To effectively verify prior employers list job title, salary (show commissions & bonuses), dates of hire, and eligibility for rehire. If this information is not provided to Infortal, we will not be able to confirm it for you.
7. To effectively complete education verification, provide the type of degree, major awarded, name of University, and year degree was earned.
8. Professional & Medical licenses: number, type, and State of Issue

Typical duration: 7 to 15 business days, with progress update starting at the 4th business day.

Note: If the background is conducted for pre-employment purposes (and the subject is subsequently not hired for any reason at all, then Pre and Post Adverse Action Notices must be sent to the subject/candidate). Infortal can provide assistance to complete this step for Fair Credit Reporting Act (FCRA) compliance.

CONTACT:

Infortal Worldwide is a licensed investigations & security consulting firm with over 25 years of expertise in conducting Executive Due Diligence background checks and Business Investigations globally.

For additional information on Executive Due Diligence and Business Risk Mitigation contact:

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