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Klink & Co., Inc.*5 do's and don'ts for Corporations Using Investigators***Klink & Co., Inc. - Your Global Risk Management Partner****October 2009****In This Issue**[5 Do's and Don'ts for Corporate Investigations](#)**Look for our next upcoming risk advisory, India****Dear Client,**

Corporate counsel, CFO's, HR and other key corporate executives must carefully consider when and how to conduct investigations. This advisory highlights the risks of moving forward without considering the benefits and risks of utilizing corporate resources to investigate business opportunities, people, competitors and others.

5 DO'S AND DON'TS FOR CORPORATE INVESTIGATIONS

Deutsche Bank's hard earned reputation was being sullied in the international media on September 22, 2009, as a result of an investigative project undertaken in 2006. As far as I can tell, the investigative activities undertaken by the bank are still being evaluated for the possible imposition of regulatory and criminal penalties by the German authorities, but regardless of whether those penalties come to pass, this was not perhaps the best example of a well conceived investigation. One must move cautiously when a global bank wishes to investigate one or more of its more notable shareholders (renting the house of the shareholder not a good idea, by the way)

Deciding whether to conduct an investigation is no different then, than deciding on the wisdom of initiating litigation, or doing anything else that could benefit or harm a business. Spending time thinking about whether to investigate, the objectives of the investigation, the methods and steps to take, are vital and important in every case, but are especially true when the client is a well known business like Deutsche. And these thinking sessions should be done with experienced professional investigators.

Consider another investigation: the HP case, where certain people, one of whom was a well regarded and bright attorney in HP, decided to investigate links between board members and the media. Those investigative acts

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turned out to be both unethical and criminal, and resulted in a massive clean-up effort managed by my friend and former Justice Department colleague, a very bright guy named Michael Holston, who was later named as General Counsel of the company.

When acting as corporate counsel, or outside counsel for a company, it is imperative that you utilize thoughtful persons to assist you, and this includes investigative consultants. True professionals of all kinds, and this includes investigators, will tell you whether to proceed and the whys and why nots along the way.

Professional investigators will provide you with options, both technological and traditional, act as a true consultant to your firm, and not just be someone getting paid and who blindly follows directions. The moral isn't to avoid doing an investigation when warranted, but rather, to be sure that the investigation is being pursued for good reasons and by smart people.

As someone who has conducted hundreds of investigations for large corporate clients, I suggest the following 5 Do's and Don'ts:

1. Do consider the true benefits and costs of the investigation and these include media fall-out, the dollars and cents costs, likely success, and the deliverable. As a general rule, when considering whether to conduct an investigation, know that clients spend way too much chasing assets and doing surveillance, and way too little doing background checks of people before they hire them or give them money.
2. Don't have your mind made up about the scope and particulars of the investigation before considering all the options. Consult with a professional and obtain all the facts possible before proceeding.
3. Don't let emotions sway the direction of the investigation and do not make fore-drawn conclusions based on incomplete facts. When I was working as a young lawyer at a law firm, a partner once told me that emotions always cost the client double. This is equally true in the investigative world.
4. Not to sound too patronizing, but please include the investigative staff when discussing investigative strategies. A quick plug for the investigative business: I was a federal and state prosecutor for over 10 years and won my share of cases. I thought that those jobs had trials and tribulations, but I am surprised that the job of investigator requires considerable skill sets. Our job is at least as challenging as being a trial lawyer. So, be firm in your opinions and directives with your chosen investigative staff, but also recognize that the investigator may have seen this movie before and doesn't like the ending.
5. Finally, and critically, do share all that you have with the investigative staff you retain. Provide the investigators with relevant documents, give them access to knowledgeable people, and more. This is no time to hide the ball. Hiding the facts from your investigative staff is somewhat like hiding that chest pain you have from your doctor: it makes him work harder, but it may not get you the right diagnosis

For more information about our advisories, investigative and due diligence capabilities, or FCPA compliance services, please contact Dave Nolan in New York at 212.292.5116, Howard Jones in London at 44 (0) 207 016 9734, or another Klink & Co., Inc. professional at 1-800-836-8916.

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