

Modern Due Diligence: Is Corporate Intelligence a Murky World?

By Greg Hallahan, *Managing Director*



A recent Financial Times report describes the private intelligence industry as being a “murky world” and “shadowy sector” full of mystique, intrigue and secrecy. In the article, this view is juxtaposed by an M&A lawyer’s statement that he sometimes receives just “a page of Googling” from intelligence providers. So which is it?

Does due diligence today require investigators to lurk about in the shadows operating in a covert manner, and is information really as easy to obtain as simply conducting a Google search?

The reality is that good intelligence today requires a wide range of skills, and the techniques used have evolved a great deal over the past twenty or so years, particularly in Asia, given the expanding availability of information through the internet. Focusing on the provision of due diligence services, this article is designed to shed some light on modern techniques used to gather information, and to dispel some of the myths that surround the industry.

By now reputational due diligence in Asia is widely understood and accepted as being a necessary part of significant transactions. Close examination of counterparties is extremely important, especially given the extent to which private and state interests are often intertwined in Asian companies.

When examining a subject company, it is almost always a productive exercise to try to find as much information as possible in three key areas:

- how owners and key management first got into the industry;
- where their ‘first million’ came from; and
- other business interests they have become involved with along the way.

In addition, to properly understand the subject company’s operations (and potential risks associated with it) some effort should be made on researching the constellation of key third parties *surrounding* the company, with which it regularly transacts. Online research and gathering information first-hand, (human intelligence) — using modern day techniques — are highly effective in gathering all of this information.

Exciting Times for Online Research

Search engines such as Google and Baidu are tremendously powerful and can provide access to a vast array of open-source research tools. But, obtaining information in this manner has limitations that must be acknowledged.

Limitations include the flawed ranking of results (due to the search engine company’s commercial

interests and issues with ranking concepts themselves), the manipulation of rankings by keyword-stuffing and results generated based on user histories. Another significant problem with traditional search engines is that many users don’t know how to best use them, and aren’t able to search efficiently and comprehensively as a result. These limitations might result in ‘a page of Googling’ that is not very helpful in the context of reputational due diligence.



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Better information can be obtained today using more modern methods of internet research, such as:

- **Using a variety of meta-search and deep web search engines.** Searching for meta-data frequently uncovers ‘hits’ on subjects you wouldn’t normally find by just using the more traditional search engines. In addition, to maximise results the use of several search

engines concurrently — ideally complementary to each — should both broaden the coverage of the online research, and make the process more efficient. Creating custom search engines is also an option worth considering.

- **Remembering archived webpages.** Reviewing iterations of the same website over time can reveal changes that have been made to it, which is particularly useful when looking into the history of a company.
- **Using visual tools to present findings.** There are an increasingly sophisticated set of visualisation tools which are useful to better identify and illustrate corporate structures, pertinent connections between individuals and entities, and the timing of key events. These include social media analytics and relationship charts that are an effective and visually-appealing way to present findings, often making written descriptions easier to understand.

Still No Substitute for Human Intelligence

Despite the advancements in modern research techniques, the tools that are available today are not yet fully aligned to the kinds of information to be found online in Asia. In large part this is a result of the many different languages in the region, some of which are not yet comprehensively covered by these tools.

It is also the case that several jurisdictions in the region still lag behind in relation to the quantity and quality of data made available online. Indeed, in some jurisdictions (for example in parts of SE Asia), obtaining even basic corporate ownership records requires an individual to appear in person at the relevant government agency. Therefore, and where appropriate, companies should consider gathering information first-hand from well-placed local sources, known in the industry as ‘human intelligence’.



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Such discreet interviews can prove invaluable in confirming a subject individual’s identity, providing context on someone’s reputation or even expounding on allegations of misconduct.

Gathering on-the-ground information from sources who really know the subjects of interest can also help avoid misinterpreting open-source findings that are not entirely trustworthy (for example some state sponsored media content or paid-for quasi-promotional reporting). This is ever more important of course in this new era of ‘fake news’ and ‘alternative facts’!

It’s these discreet interviews that sometimes cause casual observers to assume diligence professionals are ‘shadowy’ figures operating in the ‘murky world’. The reality is however that really good intelligence which is reliable, credible and actionable, can often only be obtained through human intelligence.

As a real-life example, FTI recently conducted due diligence on a Chinese entity, that was apparently a relatively new, privately-owned company. Through close examination of the meta-data on the company’s corporate website — including a review of old archived pages of the website dating back several years — we discovered that the company appeared to be closely affiliated with a state-owned entity (‘SOE’). Human intelligence gathering from interviews with local industry sources confirmed that this company was in fact a spin-off from a sizeable SOE conglomerate, designed to look like a private company so as to avoid scrutiny.