Data as an Asset

Mid-Atlantic CIO Forum

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Overview

Data is a valuable and critical corporate asset, requiring protection.

Not just in the context of privacy and data security but also in connection with business operations and corporate valuation.

Overview

To fully benefit from owning data, the information must be fully accessible to those in the organization requiring access, protected against unauthorized access, and capable of transfer in connection with corporate transactions.

Agenda

- Acquiring Data in a Corporate Transaction
- Data Classification
- Managing Risk Issues Associated with Data Access and Handling

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Due Diligence Planning for Post-Acquisition Use and Protection

Acquiring Data in a Corporate Transaction

Acquisition of Data – Due Diligence

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- Why does this matter?
- Can we actually use the data we are buying for our intended purposes?
- Did the target comply with applicable statutory and regulatory requirements?
  - Acquiring Company may have liability based on the target's non-compliance.

Acquisition of Data – Due Diligence

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- Diligence Information: May have to scale to the deal.
- Obtain information on the target's data and security policies and procedures.
- Obtain information regarding any known concerns.
- Collect copies of relevant vendor contracts.
- The results of this diligence review may impact the price paid for the target and may also affect timing to close.

- Develop a questionnaire that tracks the deal - the questionnaire will vary depending on the nature of the target's business.

Acquisition of Data – Due Diligence

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Questions for Due Diligence:

- What personal information is collected and maintained?
- What is it used for?
- Which sorts of third parties (outside of the target) have access to this information?
- Is information transferred across borders?
- How is data maintained and secured?
- Has the target been the subject of any proceedings tied to privacy or information security? Has the target been accused of violation of privacy or data security laws?
- Have there been any cyber or security breaches in the past year/few years, where data has been compromised?

Acquisition of Data – Documenting the Findings

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The transaction documents should incorporate the due diligence results:

- Clarify definition of data transferred.
- Include representations and warranties.
- Address related indemnities and coverage for liability.
- Schedule important details.
- Perhaps include interim remediation by the target.

Acquisition of Data – Planning Post-Acquisition

- Develop an action plan to deal with data concerns that continue post-closing.
- Prioritize – Not everything requires an "A" effort/immediate resolution.
- Integration of target personnel with Company's policies and requirements.
- Be prepared for public response to the acquisition.

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How to Classify Policies for Protection

Data Classification

Data Classification – How to Classify

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Done correctly, the classification policy allows information to be "tagged" with a risk level that determines:

- Who has access?
- Required encryption levels.
- Storage and Transmittal Requirements.
- Retention Requirements.

Data Classification – How to Classify

Generally three categories:

- Confidential
  - A “secret” level may be added
- Internal/Business Use Only
- Public

Data Classification – Policies for Protection

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Examples of Data Classification policies include:

- Encryption requirements
- Storage and access rights
- Mechanism for upgrading and downgrading information
- Disclosure requests
- Procedures for auditing of the policies and procedures

- Customize based on the Company's business and nature of data involved.

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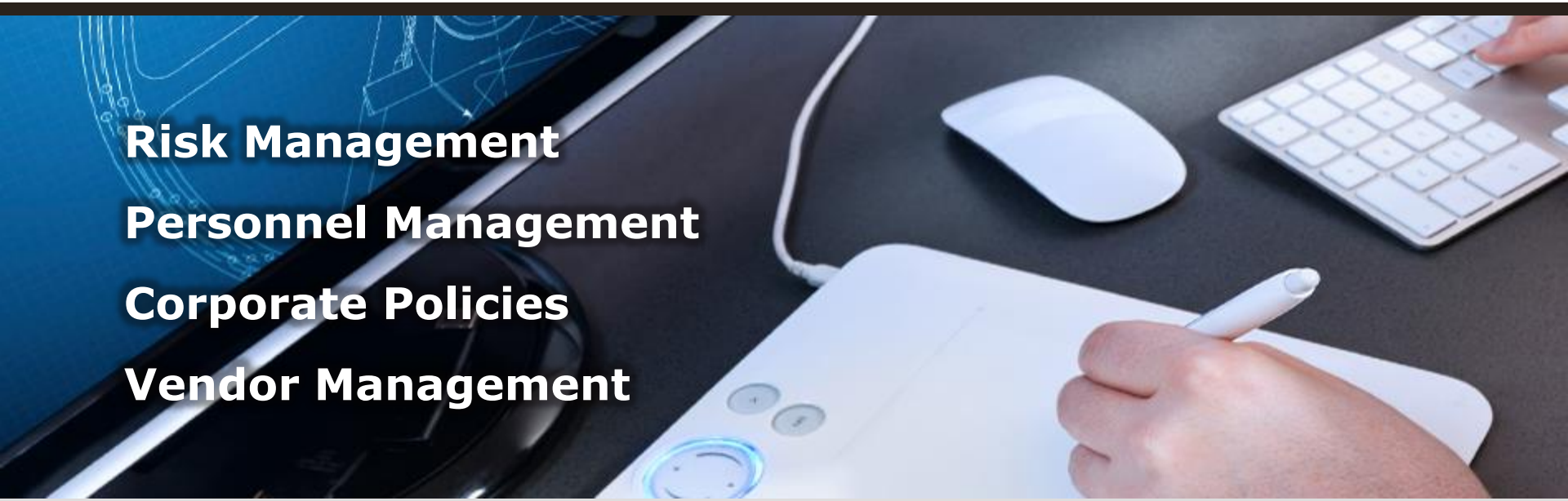

Managing Risk Issues Associated with Data Access and Handling

Internal Considerations

- The best offense is often a strong defense.
  - Can we use our corporate practices and policies to structure, manage and back-stop vendor obligations?
- Security policies and controls – cyber and physical.
- Insurance and general risk management program.
- Personnel management and employee training.

Internal Considerations - Insurance

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Insurance is an additional back-stop against liability and the market is changing.

- Changing privacy laws are resulting in increased litigation and desire for proactive coverage.
- Specific to cyber coverage but there may be coverage under the CGL/other policies.
- True privacy coverage but – higher review scrutiny and higher premiums and retentions.
- Don’t forget: the duty to defend is broader than liability coverage.
- Do your homework before purchasing a cyber liability policy.
- Don’t void your policy by failing to implement basic data security measures or for untimely notice of incident to carrier.

Internal Considerations - Insurance

Insurance comes in many forms…

- Technology/Professional E&O
- Media Liability
- Security and Privacy Liability
- Privacy Regulatory
- PCI DSS
- Data Breach Event
- Loss of Income/Extra Expense/Digital Assets
- Extortion Threat
- Property Damage and Bodily Injury

Internal Considerations - Insurance

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- Third Party:
  - Privacy and Network Security
  - Privacy Regulatory Proceedings and Fines
  - PCI Fines, Expenses and Costs
- First Party:
  - Privacy Breach Response Services
  - Cyber Extortion
- Will the policy cover acts/omissions of the vendor and at all levels?
- KEY POINT - Read your policies for coverage AND exclusions. Work with an experienced risk manager and broker!

Internal Considerations - Employees

Employees are your first line of defense

- Personnel Management and Training.
- Establish and use employee training; implement and disseminate clear policies.
- “See something, Say something” culture.
- Implement security protocols to limit access to information for those who need it.
- Security starts at the top!

Internal Considerations – Policies

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Clear and consistent company guidance provides a roadmap for employee behavior and also demonstrates your commitment to protecting company assets and client information.

- Develop and maintain an insider threat protection program.
- Other corporate policies.
- Identify and catalogue risk points – data collected and maintained, networks, physical intrusion points.
- Review, maintain and update!

Managing Risk – Vendor Management

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A "best practices" plan for managing third party providers:

- Risk Profile: Assess possible outcomes, given the specific scope and circumstances of the project.
- Selection: Mitigate risk, through selection criteria, contract terms, adjusting scope of exposure.
- On-going Oversight and Risk Management: Requires ongoing communications and monitoring of vendors and internal risk positions.

Managing Risk – Vendor Management

- Take a broad view of the scope of due diligence required and scale from there
- 20/80 Rule
- Develop template agreements
- Plan for interruption and service issues
- Monitor on a regular basis
- Plan for termination scenarios

Firm Overview

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