

Due Diligence Policy

Version 4.0

Classification: **Internal**

1 DOCUMENTATION AND APPROVALS

REVISION HISTORY

This document is subject to revision control. The master electronic copy is on SharePoint

Version	Revision date	Summary of changes	Author
01	Mar 2018	Updated	--
02	January 2020	Updated	Jo Morgan
03	March 2020	Updated	Jo Morgan/Liesbet Nysen
4.0	March 2021	Updated to align to other organisational policies	S Fletcher

APPROVALS

The document requires the following approvals:

Name	Date approved	Version
Ops meeting/SMT		0.1
Operations Director		0.2
Operations Director/Director of Litigation/SLT		0.3
SLT	8 April 2021	0.4

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Distribution list	Date of issue	No. of copies
All ClientEarth staff		
ClientEarth's in-country associates and consultants		

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2 Scope and Definitions

2.1 Scope

This Policy covers the due diligence process for Partners of ClientEarth.

Prior to revisions made in March 2020, this Policy was not applicable to individual consultants and one-off consultancy agreements. Further, it was not being applied generally to individual lawyers and law firms. However, going forward the due diligence process applies in principle to all Partner relationships, including pro bono relationships.

This Policy should be read in conjunction with the Step-by-Step Guide to Contracting, the Procurement Policy and the Corporate Fundraising Policy.

The overarching principle is that, before working with any Partner, we have a reasonable level of assurance that a potential Partner will be able to achieve the desired objectives in the planned relationship.

However, given the wide range and complex nature of ClientEarth's work, it is sensible to recognise that this **must be applied on a case-by-case basis taking account of the context and the risks involved**.

Therefore **the general presumption is that due diligence is necessary before all planned relationships**.

The exceptions to this general rule are when:

- ClientEarth receives funding from Partners. These relationships are managed by the Development Team and a separate due diligence process is performed. Details of this process can be found in the Corporate Fundraising Policy.
- the proposed relationship is a continuation of an existing Programme (unless there has been a significant change in any factor) where existing Programme management will monitor performance;
- a recent due diligence assessment has been carried out on the proposed Partner and where this assessment covers the Partner's activities in a similar or related sphere of activity. Assessments have a lifespan of 3 years from the date of a signed contract or agreement (unless there has been a significant change in any factor);
- in the case of consultants, law firms/individual lawyers and/or suppliers, where assurance will be provided through existing procurement processes in accordance with ClientEarth's Procurement Policy;
- the planned relationship will be: (1) for a fixed duration of less than 1 month and (2) for a value less than £1,000.

Exceptions to the general rule which are not listed above are to be approved either by the Director of Operations, the Directors of Litigation, the CFO or Deputy CEO.

2.2 Definitions

Policy means this Due Diligence Policy.

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Partner means any external party with whom ClientEarth has a relationship. Partner refers to a wide range of relationships, including:

- relationships funded by ClientEarth and non-funded (including pro bono) relationships;
- legal and non-legal relationships; e.g., a lawyer providing a legal opinion vs. an IT consultant providing IT services;
- strategic and non-strategic relationships; e.g., a lawyer setting a clean air litigation strategy together with ClientEarth vs. a lawyer providing a specific piece of advice;
- relationships where the partner does not have a signed contract with ClientEarth;
- relationships where ClientEarth receives funding. (This policy does not apply to this point. Please refer to the Development Due Diligence Policy within the Corporate Fundraising Policy.)

Due Diligence Register means the internal log kept to record due diligence assessments. It is maintained by the Operations team and is password-protected to comply with GDPR regulations.

Due Diligence Lifespan means the three year period from the date of the signing of the contract or agreements with the partner.

3 Policy objectives

This Due Diligence Policy is a powerful risk management tool that encompasses assessment activities undertaken to assist ClientEarth in obtaining assurance of a potential Partner's capacity and capability to deliver its obligations or achieve the desired objectives under the planned relationship.

In reviewing the Partner's capacity, systems, policies and processes, ClientEarth will gain a much better understanding of the strengths, weaknesses and risks in working with that Partner, leading to a more informed and better managed relationship.

This Policy provides ClientEarth with a consistent approach for conducting due diligence during Partner assessments and selection using an agreed set of guiding principles and assessment activities. These should be applied in a proportionate fashion taking account of the nature of the Partner, the value and assessed risks of the planned relationship.

This Policy's aim is to confirm the Partner:

- both as an organisation and any known individuals with a leadership position within the organisation have robust reputational standing and align with ClientEarth's mission and values. In order to protect its reputation and integrity, ClientEarth must not enter into relationships with or accept financial support from organisations whose (business) activities are incompatible¹ with the goals of ClientEarth;
- has the technical and organisational capacity to carry out its work with high standard;

¹ 'Incompatible,' as defined in ClientEarth's Corporate Fundraising Policy means that '*...an organisation's activities are deemed compatible with ClientEarth's goals if that organisation's "mission, ethos, practices and (business) model, taken as a whole, are generally in alignment with ClientEarth's vision, mission and work."*

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- is appropriately established and has the appropriate governance and policies in place;
- has appropriate risk and financial policies and procedures in place.
- is financially stable and able to deliver as required throughout the term of the partnership.

In designing this Due Diligence Policy ClientEarth reviewed best practices and guidance provided by the Charity Commission², various major donors, and a number of policies published by other organisations within the sector.

The due diligence process should not be viewed as a barrier to partnerships, and it is not expected that only potential Partners with a perfect due diligence result will be selected. Rather, the purpose of this process is to help provide ClientEarth with a better understanding of a potential Partner so that a well-informed decision about establishing a partnership can be made. In fact, the review can be used to highlight opportunities for ClientEarth to support a potential Partner to develop policies, financial controls or risk frameworks.

Individual funders may include specific downstream partner due diligence requirements as part of the grant agreement. Those requirements should be incorporated as appropriate into the process outlined below.

4 Due diligence process

4.1 Principles

The primary purpose of the assessment is to give the Heads of Programme/Function/Geography the required assurance needed to progress the relationship with the proposed Partner. When appropriate, it will also highlight risks to be monitored and actions which should be progressed to mitigate risks.

Due diligence should be structured and the results fully documented. The checklist below should be used to guide the process.

A key outcome of the due diligence procedure is improved knowledge and understanding of our Partners and the nature and process of gaining assurance. To enable this, the Operations Team will maintain a Due Diligence Register with restricted access, recording set details of each assessment. All documents reviewed as part of the due diligence, and all notes and comments on any issues identified and agreed actions to remedy these must be maintained securely in ClientEarth's contract management system (Concord) for future reference and to check renewal dates.

All data collected as part of the due diligence process, including all notes, actions and comments must be treated confidentially within ClientEarth and only shared with staff who are directly involved in the due diligence process. In some instances, funders may require these to be shared, and in those circumstances, the Partner being reviewed should be notified of this in advance. No unauthorised disclosure of the due diligence review should be shared outside of ClientEarth.

² <https://www.gov.uk/government/publications/charities-due-diligence-checks-and-monitoring-end-use-of-funds>

The extent of the due diligence undertaken with Partners should be proportional to the risk to ClientEarth's ability to deliver on its mission. The due diligence report should begin with a statement on the nature of the proposed Partnership and an overview of the role the Partner will play in the project. It should also outline the risks to ClientEarth, its funders and stakeholders if the Partner is unable to fulfil its obligations under the partnership.

Where a partnership runs over a number of years, due diligence should be renewed at **3-year intervals from the date of the signing of the contract.**

The Charity Commission provide guidance on the questions a due diligence review should answer. These should be considered as guidance to support the due diligence process.

[Charity Commission 'Know Your Partner' Toolkit](#)

[DFID Due Diligence Framework](#)

4.2 Responsibilities

To provide a consistent approach to due diligence across the organisation, the process is owned by the Operations team, with support from relevant departments such as Finance, IT, Development and/or Programme staff.

All due diligence reports should be completed using the template and workflows on ClientEarth's contract management system (Concord). All supporting evidence should be attached to the due diligence report on Concord.

The completed due diligence report will include a summary and a list of any actions arising from the due diligence for review and sign off by the Director of Operations, or the CFO. In the event of a dispute, then this sign off will need to be escalated to the Deputy CEO.

If risks and/or control weaknesses are found they must be clearly identified and documented within the assessment report. Remedial actions should be agreed with the potential Partner and recorded in the MoU or agreement signed with the Partner. If critical weaknesses are identified, the Head/Director of Programme(s)/Function/Geography will need to make a decision on whether or not to proceed with the proposed relationship. The rationale for the decision must be recorded as part of the Head/Director of Programme(s)/Function/Geography's comments section within the report.

It is the latter's responsibility to review the content and quality of the assessment to enable them to make an informed decision on whether to proceed with the relationship or not.

If you require any advice or assistance regarding this Due Diligence Policy and process, please email the designated email address- DueDiligence@clientearth.org. This is maintained by the Operations team.

Roles and responsibilities throughout a due diligence process may occur in the following manner:

Team member who is coordinating the due diligence process is responsible for;

- initiating the due diligence process on a Partner
- liaising with the Operations team for necessary support and advice
- request appropriate evidence and documentation from Partner

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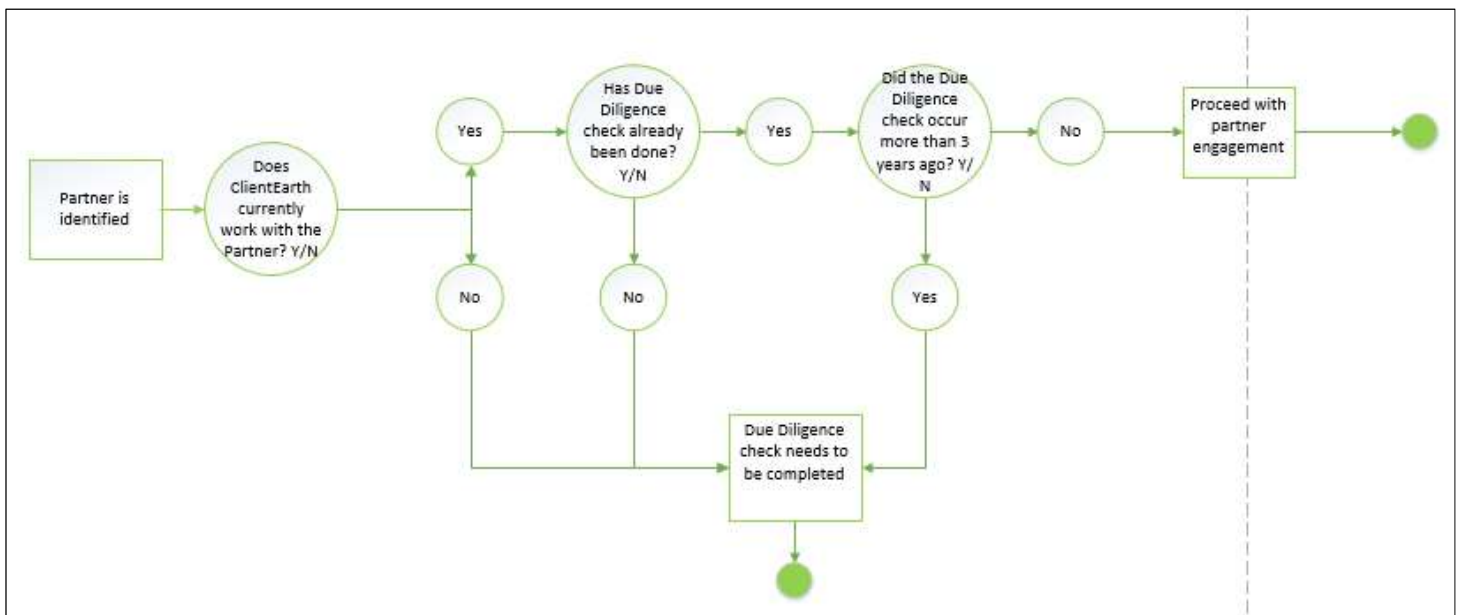
- fill in the report including background and summary of findings and identifying further actions and recommendations as necessary
- ensuring all due diligence assessments are uploaded on the central contract management system Concord

Heads/Directors of Programme/Function/Geography are responsible for:

- reviewing and signing off the due diligence assessment reports;
- implementing remedial actions identified in the assessment report if any;
- justifying their decision whether or not to proceed with the proposed relationship if critical weaknesses are identified;

Operations team is responsible for:

- assisting in determining the scope and depth of the due diligence assessment;
- engaging the Security and Compliance Officer with the due diligence process and aligning with the Safety and Security Risk Assessment (SSRA) process as necessary;
- maintaining the Due Diligence Policy;
- preparing and disseminating supporting resource material;
- maintaining a Due Diligence Register on Concord of all assessments undertaken;
- the Director of Operations will approve final due diligence assessments on Concord;
- developing and providing training opportunities;
- providing support and advice on the Due Diligence Policy and process.



This diagram is a visual guide to understanding if an assessment is required

4.3 Initiating an assessment

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To initiate a due diligence assessment, please find the due diligence report template in Concord. The template is also shown in Annex A below.

The extent of the assessment undertaken should be considered carefully. A 'light touch' due diligence approach may be appropriate if:

- ClientEarth is currently working with a Partner and the due diligence assessment is being conducted as part of a renewal process
- ClientEarth has already worked with a Partner, and interviews with staff members who have worked with the Partner confirm that the Partner is a trusted entity and has good standing in its field

An 'enhanced' due diligence approach may be considered if:

- ClientEarth has not worked with the Partner before
- The Partner is not an established organisation
- The agreement between ClientEarth and the Partner may exceed the amount of £3,000

The documentation and evidence outlined below as part of the assessment are examples only. **One's own discretion should be exercised to determine which kind of due diligence approach is necessary**, and what kinds of evidence should be gathered. Due diligence assessments must be done promptly and done **before any substantive work is done with a Partner and before any money is exchanged**.

4.4 Due diligence information

Due diligence is usually comprised of two components: (1) a review of documentation and (2) conversations with senior members of the potential Partner.

Section 5.1 contains examples of documents and evidence which can be requested from potential Partners in preparation for the senior management interviews.

The completed assessment documentation is available in the due diligence register. Anyone wishing to access this information should contact the operations team for this on: duediligence@clientearth.org.

5 Stages of research and types of documentation and evidence

The graphic below illustrates in order of priority the areas of the potential Partner which should be researched and considered as part of the due diligence process. If a Partner fails in certain aspects of its technical, governance, risk and financial practices, then this should not be considered insurmountable to continuing with the relationship. Rather, it poses an opportunity for ClientEarth to recommend implementation of new policies or processes to the Partner.

However, the prospective Partner's reputation, vision and values should be aligned to and not be incompatible with ClientEarth's and there should be no need to continue to the next steps if this is not fulfilled.

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The steps outlined below from 5.1 through to 5.5 align with the due diligence report template and cover more expansively the types of documentation and evidence that can or should be gathered as part of the assessment.

Some of these documents, marked as ‘mandatory’, must be gathered as part of any due diligence assessment.

5.1 Confirm the potential Partner has a strong reputation and aligns with ClientEarth’s vision and values.

Reputational assessment.

Conduct thorough research to determine that ClientEarth’s association with the potential Partner is compatible with ClientEarth’s work and mission. This can be evidenced for example through research of the following:

- Potential Partner’s previous, current and future projects;
- High-level research of key staff within the Partner organisation;
- High-level check with existing Partner(s) of ClientEarth in the country where the potential Partner is located;
- Critical relationships of the potential Partner;
- Details of similar pieces of work carried out by the potential Partner; and/or
- References where the potential Partner has worked with other organisations on similar projects.

Vision and values.

These documents for example can help confirm that a potential Partner’s mission, vision and values are aligned with those of ClientEarth:

- Potential Partner’s statement of vision and values;
- Potential Partner’s marketing material/website.
- **MANDATORY: a document confirming that the partner has no conflict of interests**

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5.2 Confirm the potential Partner has the technical and organisational capacity to carry out its work to a high standard.

Staff resources.

These documents for example can help confirm that the potential Partner has the staff with the necessary skills to deliver on the project:

- Job descriptions and CVs of key staff delivering on the project;
- Staff handbook;
- HR policies including health and safety, recruitment policies.

Experience

These documents for example can help confirm that the potential Partner has the necessary experience to successfully deliver on the project:

- Past experience with ClientEarth;
- Details of similar pieces of work carried out by the potential Partner;
- References where the potential Partner has worked with other organisations on similar projects.

5.3 Confirm the potential Partner is appropriately established and has the appropriate governance and code of conduct policies in place.

Legal structure.

These documents for example can help confirm that the potential Partner is legally established and has the necessary policies in place to ensure the organisation and staff are operating legally:

- Governing Document - trust deed, articles of incorporation, by-laws or similar;
- Group structure (if the partner is part of a larger group);
- **MANDATORY: Core policies outlining code of conduct including safeguarding (only mandatory for strategic partners), conflict of interest procedures, anti-bribery, whistleblowing.** These may be separate documents, or comprise part of the potential partner's staff handbook.

Management structure and resources.

These documents for example can help confirm that the potential Partner has the necessary resources and management structure to properly manage the project:

- Organisation chart and job descriptions of key personnel (management and staff involved in delivery);

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- Senior management team meeting minutes for last three meetings.

Board of Trustees.

These documents for example can help confirm that the potential Partner has an appropriately constituted board, which is engaged with the organisation:

- List of current trustees/directors, background and length of service;
- Board sub-committees (if any) and their purpose and responsibilities;
- Board and relevant sub-committee meeting minutes for last 3 meetings.

5.4 Confirm the potential Partner has appropriate risk and financial policies and procedures in place.

Financial and system controls.

These documents for example can help confirm that the potential Partner has put adequate controls in place to minimise the risk of wrongdoing, corruption, fraud or other financial impropriety from internal stakeholders or third parties:

- Expenses and allowance policy;
- Purchasing/value for money policies;
- Evidence of controls on bank and key financial system access (system and signing permissions, list of bank accounts and bank reconciliations and statements);
- Process and systems for data protection/management;
- **MANDATORY: Evidence of controls to ensure compliance with UK Lobbying Act (2014) or other lobbying registers for any partners under grants from the UK government (e.g. FCDO grant)**
- System controls/security and access levels used to protect IT systems and data from unauthorised access.

Risk management.

These documents for example can help confirm that the potential Partner is actively monitoring risks which may affect its performance and has plans in place to mitigate those risks where appropriate:

- Risk register;
- Process for reviewing and monitoring the risk register;
- Board sub-committees (if any) and their purpose and responsibilities;
- Board and relevant sub-committee meeting minutes for last 3 meetings.

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- **MANDATORY: Evidence of adequate professional liability insurance cover**

5.5 Confirm the potential Partner is financially stable and able to deliver as required throughout the term of the partnership.

These documents for example can help confirm that a potential Partner is financially viable and likely to be for the duration of the partnership:

- Financial Statements for the last 3 years;
- Fundraising strategy or projected cash flow for the duration of the partnership;
- Budget variance report for previous projects with ClientEarth or where there is no previous experience for the potential Partner's current highest value project;
- Internal management financial reports for the last 3 periods (monthly or quarterly)

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Annex A: Due Diligence Report template

Due diligence report for: [Partner name]	
Completed by: Date:	
Background: [Please provide background on the partner and the role it will play in the proposed partnership.]	
Confirm that the potential partner's has good reputational standing and their visions and values align with those of ClientEarth.	Supporting documents
Is the partner compatible with ClientEarth and does it have a solid reputation within its field?	Organisations's vision and values statement. Research into staff and previous projects Marketing material Internet research Website. Conversations with staff/ stakeholders.
Yes	
No	
Comments:	
Are the vision and values aligned with ClientEarth's?	
Yes	
No	
Comments	
Confirm the potential partner is appropriately established and has the appropriate governance and code of conduct policies in place.	Supporting documents
Is the potential partner legally established/registered?	Establishing documents. Group structure chart (if applicable)
Yes	
No	
Comments:	
Are there policies in place regarding safeguarding; whistleblowing and other code of conduct issues?	Core policies outlining code of conduct including: safeguarding, conflict of interest procedures, antibribery, and whistleblowing.
Yes	
No	

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Comments:		These may be separate documents, or comprise part of the potential partner's staff handbook.
Are there appropriate management and governance structures?		Organisation chart and job descriptions of key personnel
Yes	No	Senior Management team minutes for last 3 meetings
Comments:		List of current trustees/ directors, background and length of service. Board sub-committees (if any) and their purpose and responsibilities. Board and sub-committee minutes for last 3 meetings.
Confirm that the organisation has the technical and organisational capacity to carry out its work with high standard.		Supporting documents
Do they have adequate resources with the necessary skills to deliver on the project?		Job descriptions and CV's of key staff delivering on the project.
Yes	No	Staff handbook
Comments:		HR policies including health and safety, recruitment policies
Do they have the necessary experience to successfully deliver on the project?		Past experience with ClientEarth; and/or
Yes	No	Details of similar pieces of work carried out by the potential partner; and/or
Comments:		References where the potential partner has worked with other organisations on similar projects.
Confirm that the potential partner have appropriate risk and financial policies and procedures in place.		Supporting documents
Do they have the necessary controls in place to protect against fraud or misuse of data, from internal or external parties?		Expenses and allowance policy
Yes	No	Procurement/ value for money policies

Comments:		<p>Evidence of controls on bank and key financial system access (system and signing permissions, list of bank accounts and bank reconciliations and statements)</p> <p>Process and systems for data protection/management.</p> <p>System controls/security and access levels.</p>
Do they actively monitor and manage lobbying activities?		Evidence of controls to ensure compliance with UK Lobbying Act (2014) or other lobbying registers
Yes	No	
Comments:		
Do they actively monitor and manage risk?		Risk register
Yes	No	Process for reviewing and monitoring the risk register
Comments:		
Confirm that the potential partner is financially stable and able to deliver as required throughout the term of the partnership.		Supporting documents
Are they financially viable and likely to be for the duration of the partnership?		Financial Statements for the last 3 years Fundraising strategy or projected cashflow for the duration of the partnership.
Yes	No	
Comments:		<p>Budget variance report for previous projects with ClientEarth or where there is no previous experience for the potential partners current highest value project.</p> <p>Internal management financial reports for the last 3 periods (monthly or quarterly).</p>
Summary of findings and required actions:		

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