



# BDO Consulting

ANTI-CORRUPTION SERVICES

*Proactive Compliance Measures to Prevent and Detect Failures in your Anticorruption Compliance Program*

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# Agenda

## I. Introduction:

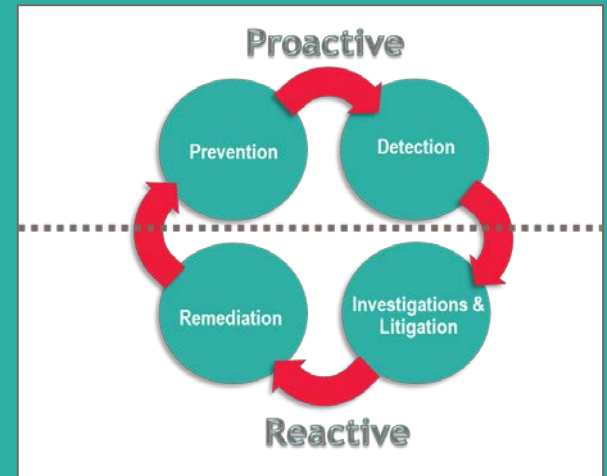
- A. Need for proactive anticorruption compliance measures
- B. Proactive vs Reactive Compliance
- C. Overview of the Compliance Cycle

## II. Proactive Compliance Measures:

- A. Risk-based Policies, Procedures, Internal Controls
- B. Oversight & Accountability
- C. 3<sup>rd</sup> Parties: Vendors, Agents, M /A targets & JV Partners
- D. Ongoing Monitoring:

# Introduction

- Why Important?
- Definitions: Proactive vs. Reactive
- Anticorruption Compliance Cycle

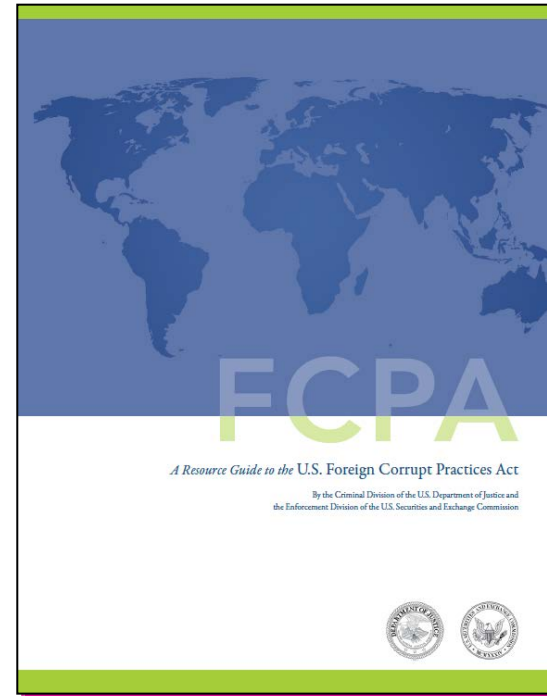


# Need for Proactive Anti-corruption Compliance Measures

## Example:

### The U.S. DOJ's and SEC's FCPA Guidance (2012)

- In November 2012, the U.S. DOJ and SEC jointly issued *A Resource Guide to the U.S. Foreign Corrupt Practices Act*
- Identifies ten "Hallmarks of Effective Compliance Programs"
- U.S regulators give meaningful credit to companies that implement a comprehensive risk-based compliance program
- US authorities are increasingly amenable to companies self-monitoring their own compliance through proactive compliance measures
- Following global trend of giving credit for good faith efforts to comply



# Definitions

## Compliance (Overview):

**Proactive** and **reactive** measures consisting of internal controls, policies, procedures and other tools (collectively, “controls”) for **preventing, detecting, investigating** or **remediating** ethical, regulatory or legal failures.

## Proactive Compliance:

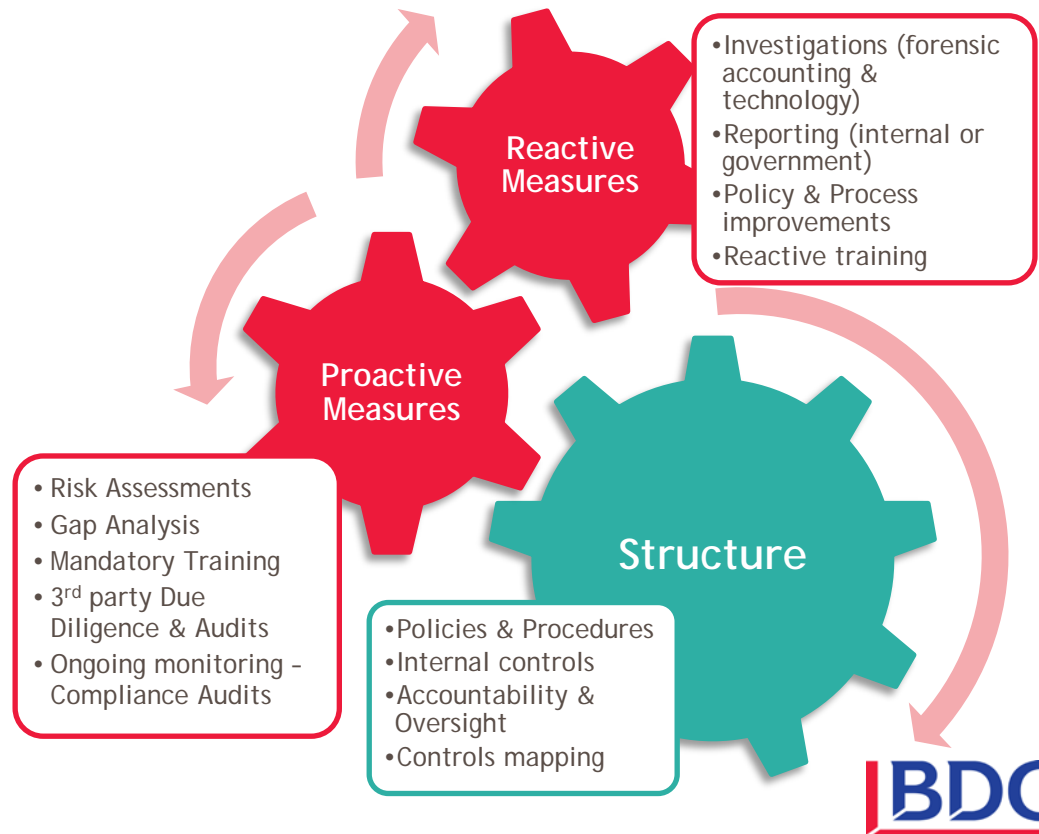
Structure and proactive compliance measures:

**Structure** consists of the organizational infrastructure, governance, and resources for managing compliance, including the code of conduct, other policies & procedures, and internal controls; mandatory training; and oversight & accountability.

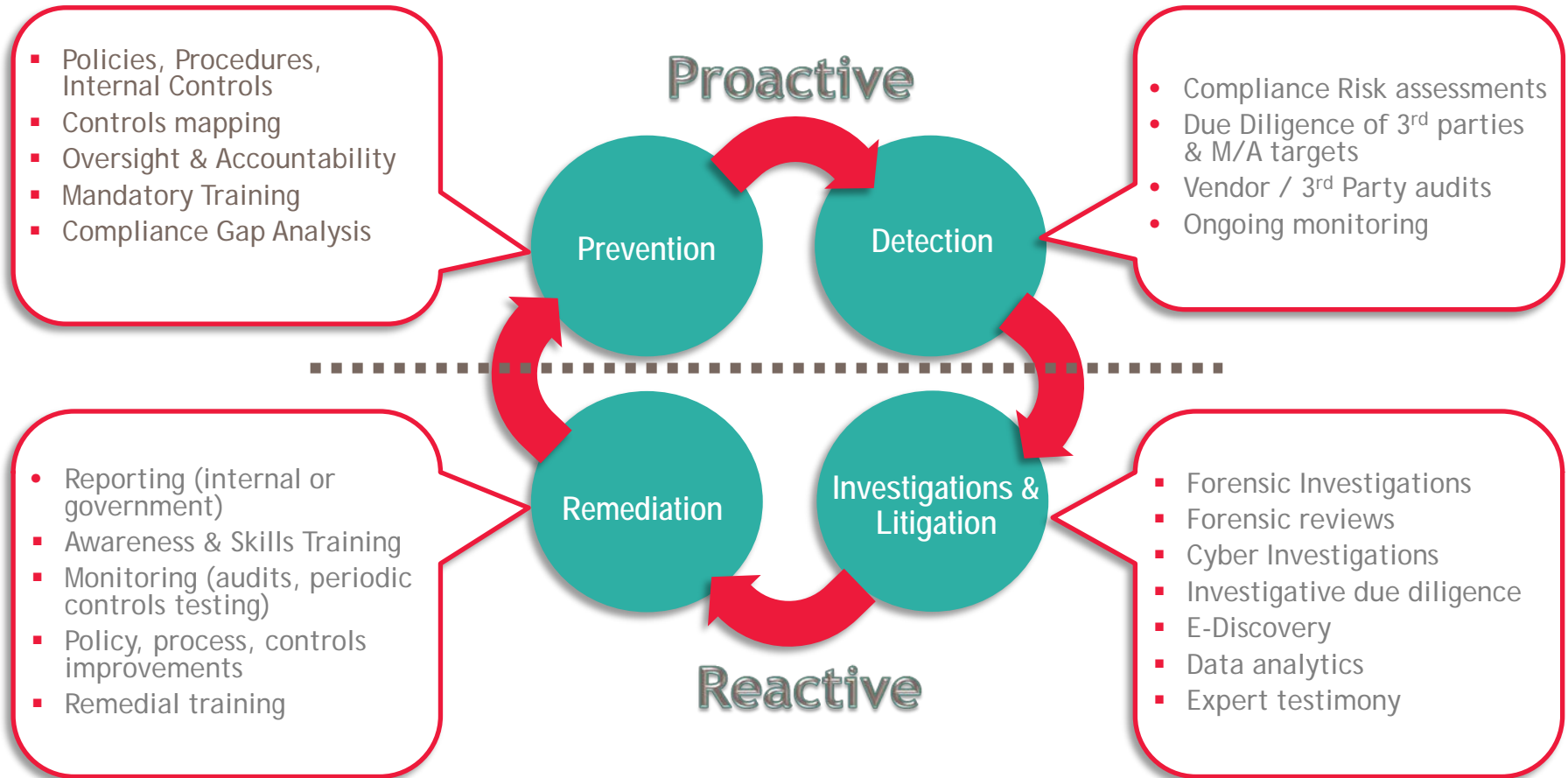
**Proactive Measures** include gap analysis; risk assessments; controls testing; ongoing due diligence of third parties, M & A targets or JV partners; and technology-enabled monitoring systems; mandatory compliance training.

## Reactive compliance:

Measures include investigations (with or without forensic technology), reporting (could include expert testimony), policy & process improvements, due diligence of existing 3<sup>rd</sup> parties & reactive training.



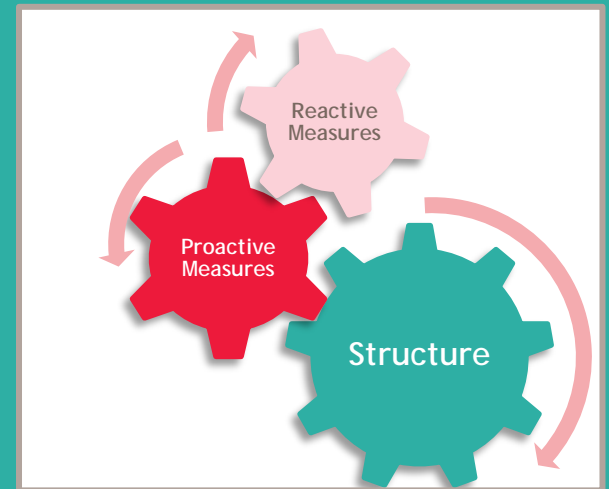
# Overview of the Anti-Corruption Compliance Cycle



*Mitigating Compliance Failures Throughout the Cycle of Compliance*

# Proactive Compliance Measures

- Risk-based Policies, Procedures, Internal Controls
- Oversight & Accountability
- 3<sup>rd</sup> Parties: Vendors, Agents, M /A targets & JV Partners
- Ongoing Monitoring



# Risk-Based Anti-Corruption Compliance Program

## Consider Anticorruption Risks:

- Compliance program should be developed around and evaluated by actual risk exposure
- **Identify anticorruption risks** taking into consideration
  - corporate culture / employee awareness
  - industry
  - countries of operation
  - interactions with government officials
  - sales network
  - internal pressures/market forces (“fraud triangle”)
- **Rank risks** considering likelihood, severity & frequency of possible failures
- **Mapping** - Map controls to rules and regulations where they are derived so if changes in laws, relevant controls can be quickly identified and adapted.

## Consider Best Practices:

- Develop policies, procedures and controls (or improve existing controls)
  - for preventing/detecting anticorruption
  - conforming to **best practices**, given company size, industry - including
    - Gifts, entertainment, meals and travel expenses
    - Charitable contributions
    - Facilitation payments vs small bribes
    - Due diligence of third parties
    - Mandatory contract clauses
    - Mandatory training
- Anticorruption “**Gap Analysis**”

*Policies and Controls Should be Continuously Reviewed & Improved*





# Oversight & Accountability

## Communication & Culture:

- From top down - not just statement but frequent mention
- When & how -
  - Not just a statement on website - affirmative efforts required.
  - Insert into business discussions
    - statement during CEO town halls
    - “compliance minute”
  - Reward good behavior
    - recognition during evaluations,
    - awards for outstanding ethical efforts
- Message
  - It is the right thing to do
  - It is a competitive advantage
  - The Company enforces policies
- Mandatory Training

## Structure:

- Resources: Must be resources to effectively develop and monitor program
- Responsible Party - One qualified person with authority to make decisions must answer for compliance failures

## Enforcement:

- Processes in place to take action & resolve quickly
- Reporting - Multiple avenues, anonymous
- Penalties
  - relatively uniform for similar offences & circumstances
  - Significant for severe or repeat behavior
- Track violations - number, types, geographical hot spots, trends

# 3<sup>rd</sup> Parties - Proactive Measures

## Includes:

Vendors, Agents, M & A Targets and JV Partners

## Risk-Based Due Diligence:

- Government involvement
- Customer - owned or controlled
- Conflicts of interest
- Industry
- Geographic location
- Relationship
- Bank accounts

## Contract Clauses:

- Certification of compliance
- Reporting of business activities
- Rights to audit relevant books & records

## Audits: Periodic or incident related

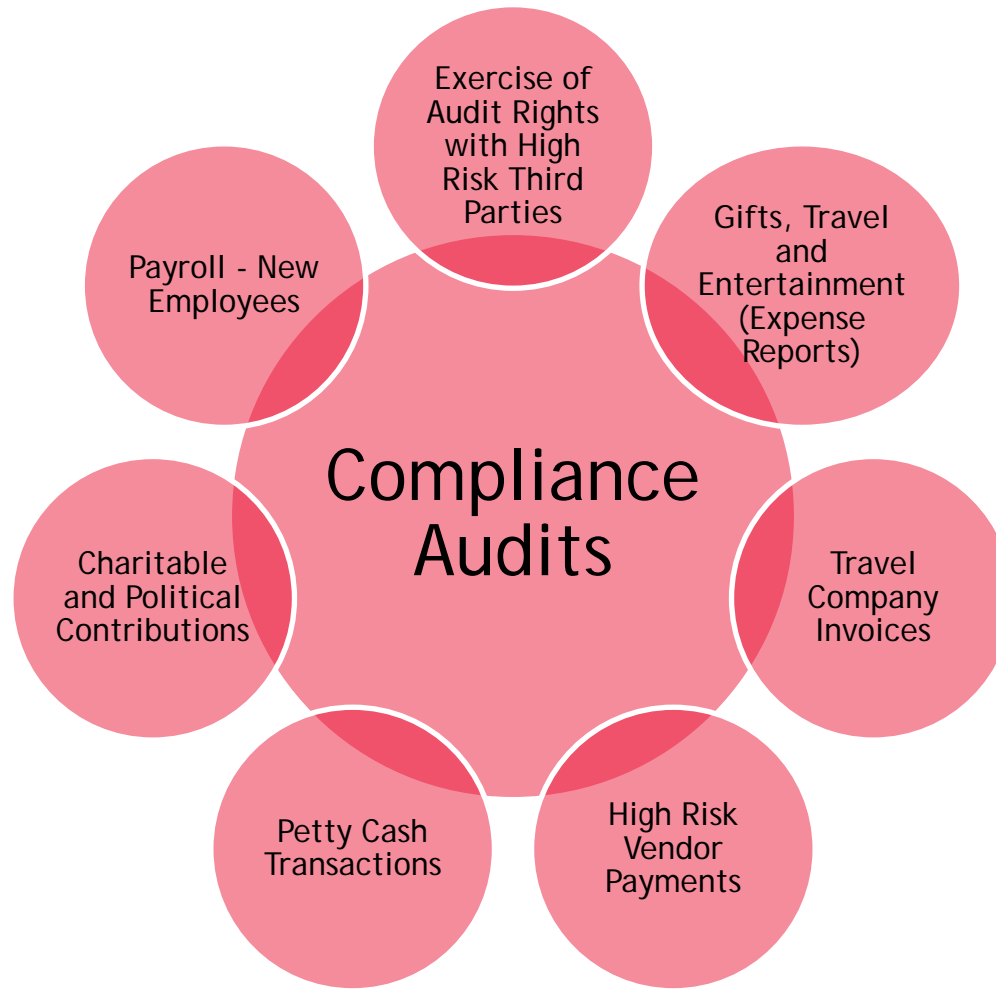
- Contract clauses are key
- Books & records relevant to relationship
  - Periodic reports of business activities
  - T & E expenses
  - Payments for services
  - Vendors related to services



# Ongoing Monitoring - Anticorruption Compliance Audits (aka Risk Assessments)

- Don't rely on annual financial audits to monitor compliance- only designed to examine material transactions, which do not include most transactions where bribery is hidden
- Consider [Anticorruption compliance audits](#) periodically or based on "hot spots"
  - Interviews with business managers & key personnel
  - Look at HR incident reports for bullying, harassment, theft, etc.
  - Periodic self-assessment questionnaires
  - Look to compliance incidents reported - number, types, geographical areas, businesses, trends
  - High risk countries of operation
    - Anticorruption risk
    - Volume of business
    - Nature & extent of government interactions
    - Local business regulation & enforcement
- Plan to continuously update and improve policies, procedures and internal controls to mitigate risks

# Compliance Audits



# Compliance Audits - Charitable and Political Contributions

- Obtain listing of charitable contributions processed since the last audit
- Identify trends
- Determine the selection process for the charitable organizations
- Determine if adequate level of due diligence was conducted to ensure that the organization is not affiliated with a foreign government official
- Determine if the political and charitable contributions are in line with the Company policy and procedures and if appropriate approval was obtained prior to making the payments

# Compliance Audits - Petty Cash Transactions

- Obtain listing of petty cash replenishment payments processed since the last audit
- Determine if the number of replenishment payments appear reasonable
- Identify any trends in the replenishment amounts, i.e. 5000 Rs. every week
- If petty cash reimbursements are tracked on a spreadsheet, determine if a vendor is consistently being paid through petty cash
- Randomly select the supporting documentation attached to the replenishment request for review

# Compliance Audits - Gifts, Travel and Entertainment (T&E)

- Obtain listing of T&E payments processed since the last audit
- Select the following type of payments for testing:
  - Unusual employees submitting for T&E reimbursements, i.e. administrative assistant filing for reimbursement
  - Employees who receive the same amount of reimbursement periodically
  - Expense reports below the audit threshold
  - Expense reports for employees in the sales department
  - Expense reports for management level employees
- When reviewing the expense reports determine:
  - If employees are submitting expenses or purchasing items that do not seem reasonable according to local living costs and custom
  - Is the supporting documentation provided with the expense reports easy to forge

# Compliance Audits - Travel Company Invoices

- Obtain a report of details of the travel being billed to the Company, i.e. name of the passenger traveling, flight details, cost of air fare, hotel, etc.
- Select the following type of payments for testing and review:
  - Travel for individuals who are not employees of the Company
  - Air fare costs over a pre-determined threshold
  - Travel destination not in line with the business of the Company
  - Hotel costs over a pre-determined threshold
  - Travelers with the same last name
- Determine how travel ticket cancellations are refunded to the Company, select several cancellations and ensure that funds have been received by the Company



# Compliance Audits - High Risk Vendor Payments

- Use data analytics identify high risk vendor payments for review
- Red flags can include:
  - Vendors without address or contact information
  - Vendors who only received one payment
  - Vendors that receive same amount of payment every month/quarter
  - Vendors that receive even \$ amount of payment - e.g. 100,000
  - New vendors added to the financial system since the last compliance audit
    - Review these payments to see how the vendor was selected
    - Type of service provided by the vendor
  - Vendors whose address matches the address of a customer
  - Payments sent to a foreign bank account
  - Repeated payments to the same vendor just below the corporate or additional approval threshold

## Compliance Audits - Payroll (New Employees)

- Obtain listing of New Hires for the Company since the last audit
- Select the personnel files for the following type of employees for testing:
  - Unusual titles or newly created positions
  - Any new employee who does not have a userID or login credentials to the Company systems
  - Unusual salary profile or where salary does not match the job level
- Randomly select personnel files for several employees to determine if their credentials match the job description and responsibilities

# BIOS

## **JULIA K. BAILEY, J.D., M.B.A**

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BDO Consulting Managing Director



Julia K. Bailey leads BDO Consulting's Compliance practice in Washington, DC with nearly 20 years of experience in providing international, political and regulatory compliance services as in-house counsel for Fortune 100 multinational corporations.

Ms. Bailey is a licensed attorney, certified Six Sigma Black Belt, and experienced corporate leader. She has experience in developing and managing global compliance programs, leading investigations, creating and implementing training programs, and overseeing compliance audits for industry-leading organizations both domestically and abroad.

Prior to joining BDO, Ms. Bailey served as Assistant General Counsel, International Transactions and Compliance of Honeywell International, Inc., where she managed all aspects of global anti-corruption and political compliance programs. She also served as Associate General Counsel of International & Domestic Compliance at BAE Systems, Inc. and as Special Counsel, International for Northrop Grumman Corporation.

Borrowing from her in-depth experience and knowledge of compliance issues, Ms. Bailey is a regular speaker on topics ranging from anti-corruption, ethics and compliance, international trade, and corporate political activities, among others.

## **NIDHI RAO, CPA, CFE, CFF, CIA**

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BDO Consulting Director



Nidhi Rao is a Director in the Greater Washington, D.C. office of BDO Consulting. She has more than 15 years of experience conducting global investigations. Ms. Rao conducts corporate internal investigations and provides forensic accounting services in response to government inquiries and regulatory enforcement actions, whistleblower complaints, and matters involving violations of the Foreign Corrupt Practices Act (FCPA).

Ms. Rao has managed investigations in South Asia, South America, and Europe. She is also fluent in Hindi.

Ms. Rao has led numerous investigations for matters involving employee misconduct and embezzlement, bribery, corruption, kickbacks, fraudulent conveyances, self-dealing, money laundering, and ponzi schemes. She also has extensive experience investigating and documenting fidelity bond claims for the insureds, the underwriters and as a neutral investigator as well as quantifying economic damages in complex civil litigation.

Prior to joining BDO, Ms. Rao worked at Fortune 1000 companies focusing on conducting global internal investigations and forensic reviews. Ms. Rao has also been published in several national publications and has presented at various conferences on such topics as fraud investigations, FCPA, corporate governance, fraud prevention, and risk assessments

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