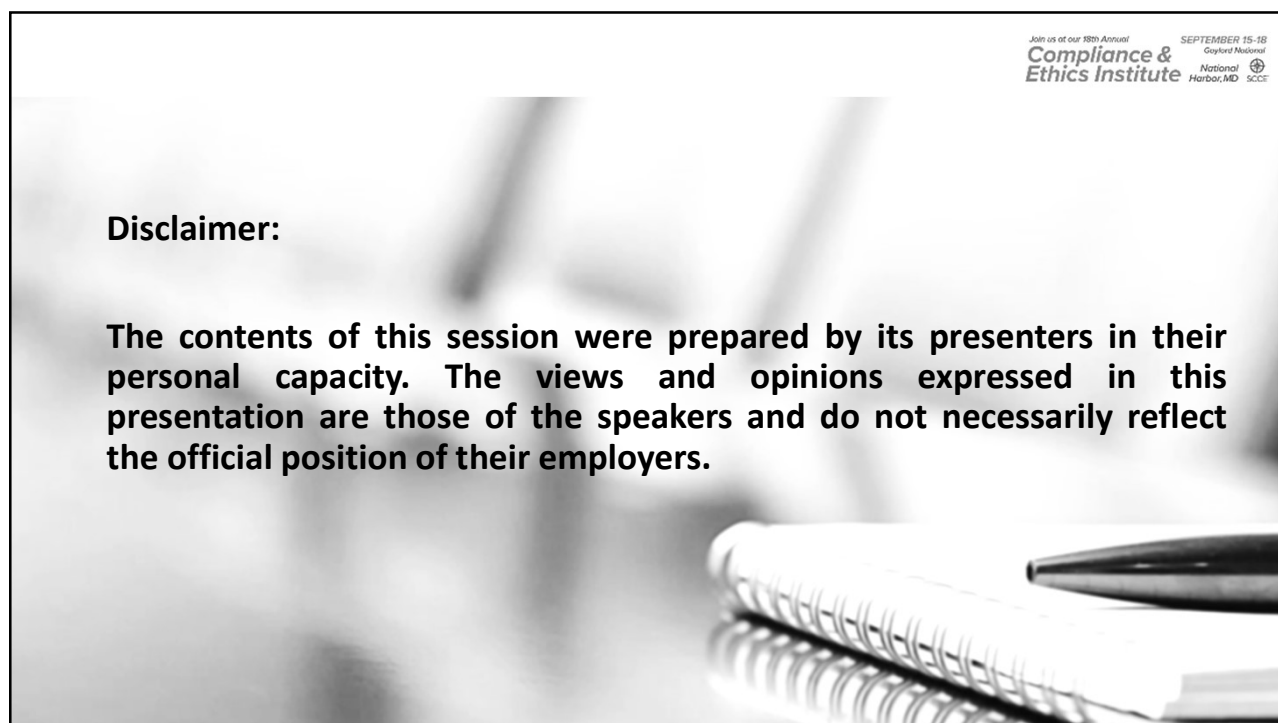




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- **2019 FCPA Around the Globe: Review the largest and latest global third-party related bribery violations.**
 - Edwin Broecker, Partner, Quarles & Brady
- **One-size does not fit all: How to implement and manage a risk-based third-party management program globally**
- Emanuel Batista, Director, Kroll, a Division of Duff and Phelps;
- **Technology and Human Capital: Learn best practices to jumpstart your Third Party Management Program with a combination of both approaches.**
 - Fernanda Beraldi, Senior Director, Ethics & Compliance, Cummins Inc.;

3



4

Third-Party Corruption Updates

2019 is on pace to be a very big year in terms of settlement dollars for violations of the FCPA

Consistent with the past, the overwhelming majority of the violations involve the use of third-parties

2019 also saw Prosecutors providing Guidance on various topics

5

Top Enforcements

Mobile TeleSystems PJSC (MTS)

- \$850M (top 5 of all time)
- Russian mobile phone company paying bribes to enter Uzbekistan market
- Use of shell companies to hide beneficial owner
- Diversions to charities and other sponsorships
- Overpaying for the operating company owned by government official
- MTS was third telecom company to violate FCPA in connection with Uzbekistan (VimpelCom (\$398M) and Telia (\$483M))



6

Top Enforcements

TechnipFMC plc

- \$296M* (\$214M shared with Brazil; \$81.9M to US)
- Used intermediary consultant to pay bribes to employees of Petrobras and the Workers' Party founded by former President Lula
- Also used intermediary company in Monaco to pay bribes to Iraqi government officials
- 3 year deferred prosecution agreement



7

Top Enforcements

Walmart

- \$282M
- Weak internal controls in Brazil, China, India and Mexico
- Ignored red flags and didn't provide training
- Excessive compensation (\$127,000) to a Brazilian permitting consultant allowed company to get operating permit in 9 days
- Paid \$4M to an intermediary in Mexico one in-house counsel said was corrupt
- \$900M in investigation expenses



8

Top Enforcements

Fresenius Medical

- \$231M
- Widespread bribery and use of intermediaries and consulting arrangements for doctors/government officials involved in awarding business
- At least 17 countries
- 2 year monitor and additional year of self-reporting



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Top Enforcements

Cognizant Technology

- \$25M
- Bribe to obtain construction permit in India
- President & Chief Legal Officer authorized contractor to pay bribe and issue change order

Microsoft

- \$25M
- Hungary, Saudi Arabia, Thailand & Turkey
- Used third-party distributors and gave excessive discounts to resellers



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Other Interesting Notes

Mexico's new President froze the assets of the former CEO of Pemex on allegations of bribery

Mexico passed "National Law for Dominion Extinction" allowing for seizure of assets derived from illegal activities (burden shifting statute)

Canada's Remediation Agreement regime effective October 2018

Serco Group PLC DPA (UK) holds parent entity responsible to ensure that subsidiary entity comply even though parent entity not involved in fraudulent conduct

France Anti-Corruption Agency refused to sanction company for insufficient corruption prevention program

11

New Italian Anti-Corruption Law



- **"Bribe Destroyer" (*Spazzacorotti*) Law**
- **Contributions to political parties and foundations more transparent and aim to combat public-sector corruption**
- **Broadens the definition of "foreign public official"**
- **Provides benefits for voluntary disclosures by individuals**
- **Introduces a new crime of undue trading of influence**
- **Provides a benefit for corporate cooperation**

12

Prosecutorial Guidance

November 2018 - DOJ updates Yates Memo

- Now companies must “identify every individual who was *substantially* involved in or responsible for the criminal conduct”

March 2019 - DOJ updates Corporate Enforcement Policy

- Reinforces voluntary disclosure to obtain cooperation credit
- Ephemeral messages
- Mergers & Acquisitions

April 2019-DOJ updates guidance on Evaluation of Corporate Compliance Programs

- Elaborates on the "seven elements"

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French Anti-Corruption Law



- June 2019-France adopted a 18-page guideline on Corporate Settlements
 - "Convention Judiciaire d'Intérêt Public"
 - Only the French financial prosecutor (not the anti-corruption agency)

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SFO's Corporate Co-operation Guidance

August 2019-SFO releases
"Corporate Co-operation
Guidance"

- Clarifies what cooperation looks like in connection with the Deferred Prosecution Agreements Code of Practice and Guidance on Corporate Prosecutions



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Join us at our 18th Annual
**Compliance &
Ethics Institute**
SEPTEMBER 15-18
Gaylord National
National Harbor, MD
SCCE

One-size does not fit all:
How to implement and manage
a risk-based third-party
management program globally

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Understanding the Level of Risk of your Third Parties

What level of risk do you expect your relationship with this company or individual to represent to your business?

- Not all third party relationships are equal and we know you know your business best. Your experience and insight helps determine the level of due diligence that will best address your needs.

Does the company or individual operate in a highly regulated industry?

- Third parties operating in highly regulated industries deserve the additional scrutiny

17

What Are You Looking to Achieve through Your Due Diligence

Screen all third parties

Screening third parties generally requires tapping into additional litigation and regulatory databases and sources available on top of sanctions, enforcement actions, and PEP checks

Taking into account the geographical location of the third party

Challenges such as media coverage, public record transparency, and geopolitical context make different reports more appropriate than others in different jurisdictions.

Considering the industry where the third party operates

Third parties operating in industries that are vulnerable to lawsuits generally warrant more thorough due diligence.

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Understanding your Needs for Due Diligence

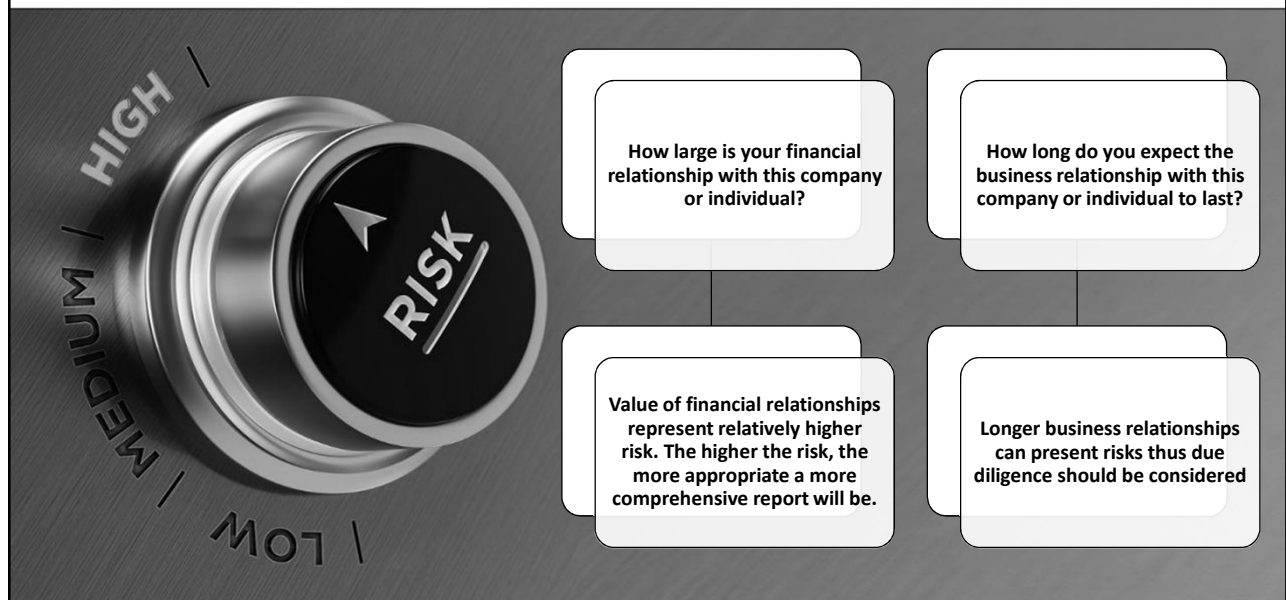
What's the Purpose of the Due Diligence?

- Different scopes of reports are more appropriate depending on what you are trying to accomplish
 - Ensure compliance with statutes and regulations (e.g. AML, FCPA, UK Bribery Act)
 - Fulfilling a company policy requirement
 - Mitigate potential reputational risk to your organization
 - Conduct pre-transactional vetting



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Considerations for Due Diligence



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Common Due Diligence Pitfalls and Regional Challenges

SEC and DOJ's Common Due Diligence Pitfalls

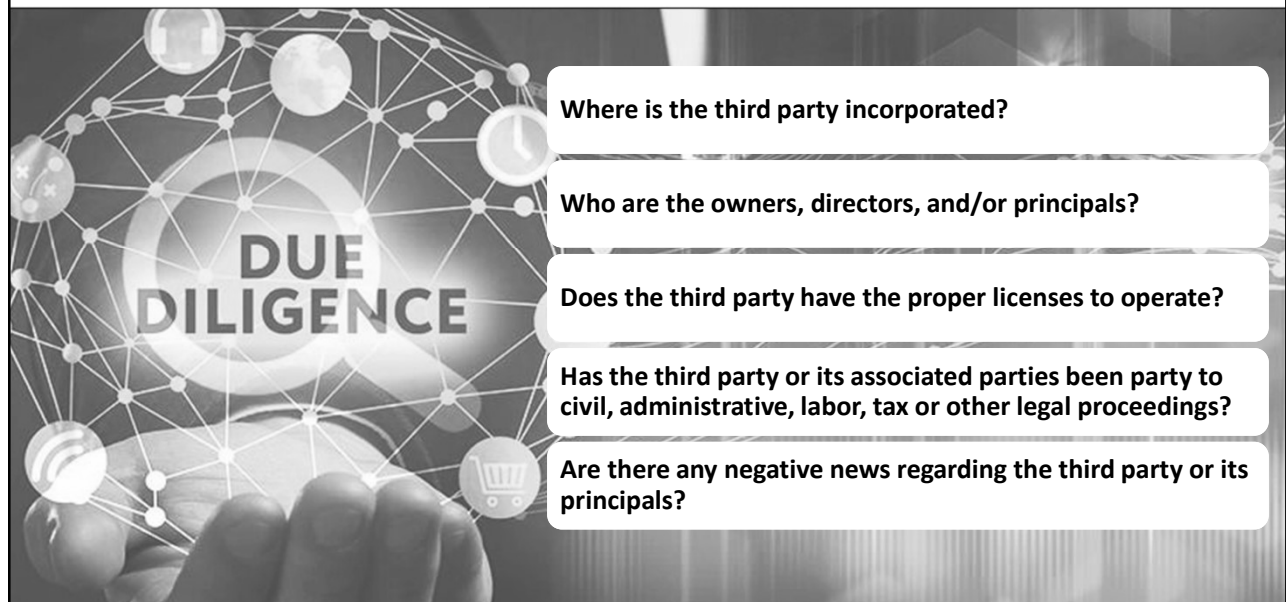
- Failing to conduct timely and sufficient due diligence
- Failing to adequately validate and verify information provided by business partners
- Failing to act on identified red flags

Regional Due Diligence Challenges

- Lack of digitalized data
- Lack of cultural and jurisdictional awareness
- Different languages
- Low public profile third parties

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Corporate Due Diligence Elements



DUE DILIGENCE

- Where is the third party incorporated?
- Who are the owners, directors, and/or principals?
- Does the third party have the proper licenses to operate?
- Has the third party or its associated parties been party to civil, administrative, labor, tax or other legal proceedings?
- Are there any negative news regarding the third party or its principals?

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Politically Exposed Persons (PEPs)

"A politically exposed person (PEP) is defined by the Financial Action Task Force (FATF) as an individual who is or has been entrusted with a prominent public function"

Do you know if your third party has significant relationships with government officials?

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Factors that Impact Reputational Risks

Consider the reputational of your third party in the industry and location where it operates

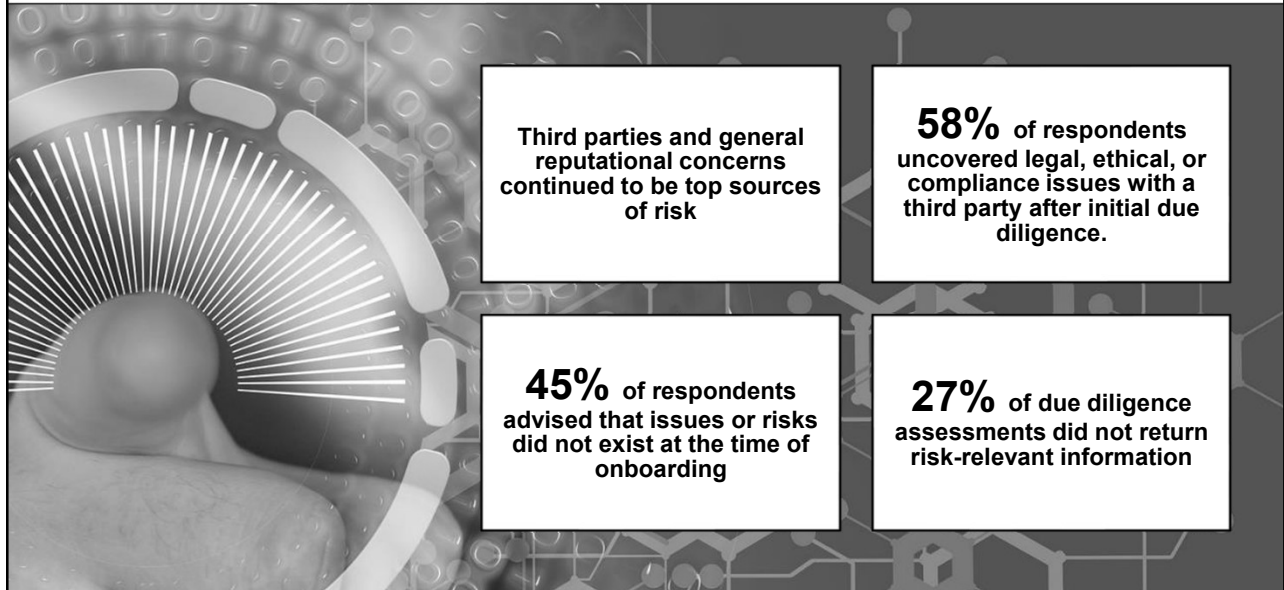
How is your third party viewed by its competitors, clients, industry leaders, and providers?

Review previous regulatory and industry findings regarding potential risks

How do you proceed with the third party?

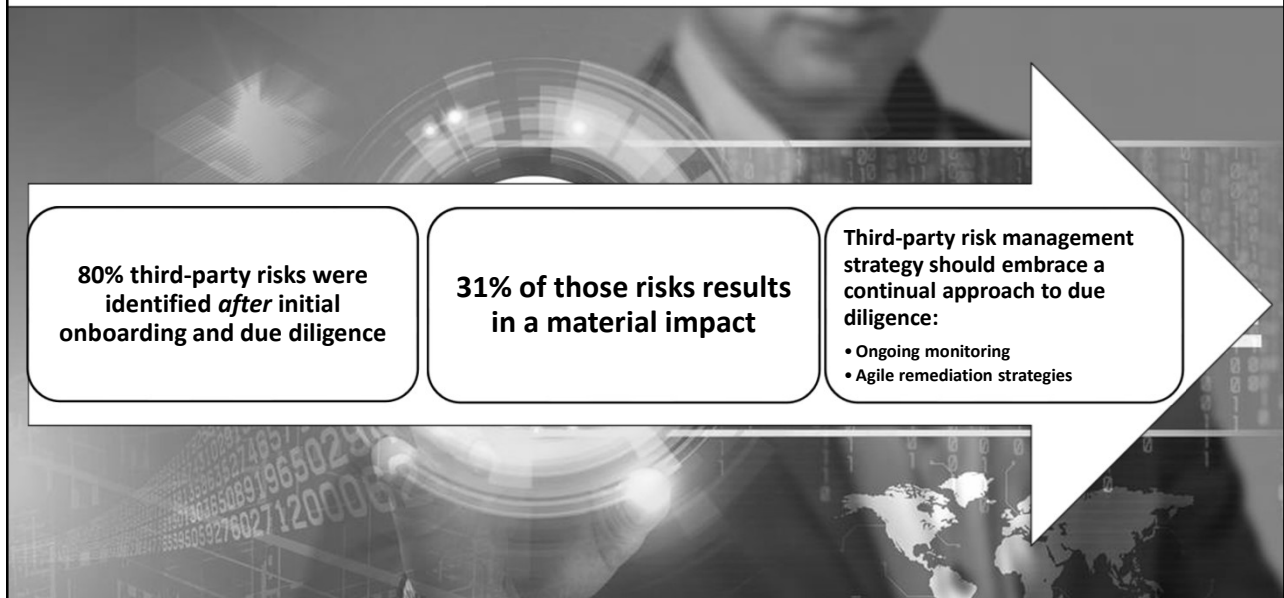
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2018 Kroll Anti-Bribery and Corruption Benchmarking Report



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2019 Gartner Third-Party Risk Management Survey



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2019 Compliance Week Survey

80% expect bribery and corruption risks to increase

38% never trained their third parties

43% have third parties in high-risk or sanctioned jurisdictions

50% are doing business in high-risk areas

56% of third parties failed to meet organization's standards - reputational or integrity issues

54% said that less than ¼ of third parties go through DD

27

Three Key Findings for Legal and Compliance Leaders

By Compliance Week

Streamline Due Diligence to focus on critical issues

Identify opportunities to reduce due diligence and streamline processes with a focus on critical risks

Establish internal triggers to monitor for change

Monitor your third party network with triggers to signal changes in the third party relationship

Create controls and incentives to monitor for change

Manage high-risk third parties and improve ongoing monitoring

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US DOJ – Evaluation of Corporate Compliance Programs

A well-designed compliance program should apply risk-based due diligence to its third party relationships

The degree of appropriate due diligence may vary based on the size of the nature of the company or transaction

The company should have an understanding of the qualifications and associations of third party partners



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Third Party Due Diligence Practices

Risk-based and Integrated Processes

Appropriate Controls

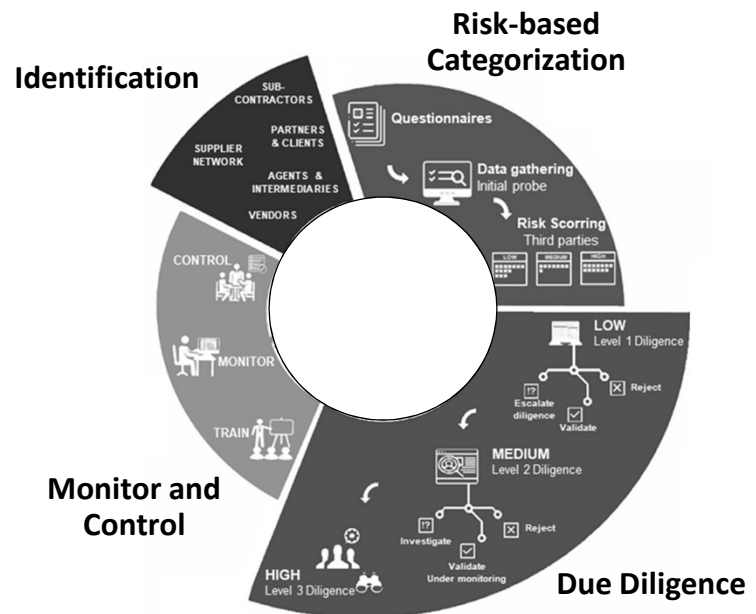
Management of Relationships

Real Actions and Consequences



30

Develop a Risk-Based Approach
to **Due Diligence**
and **Third Party Risk**
Management



31

Ideas for Third Party Risk Management

- ✓ Create a risk-based onboarding questionnaire
- ✓ Ongoing monitoring based on the risk profile of each third party
- ✓ Require prior notice for the third party's contact with government officials as well as minutes meeting
- ✓ Conduct compliance training of relevant third-party personnel
- ✓ Document the business justification for use of each third party
- ✓ Know as much about your third party as possible



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**Technology and Human Capital:
Learn best practices
to jumpstart your
Third Party Management
Program with a combination
of both approaches**

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Humans and Technology in E&C



Is it Humans vs. Technology OR... Humans and Technology?

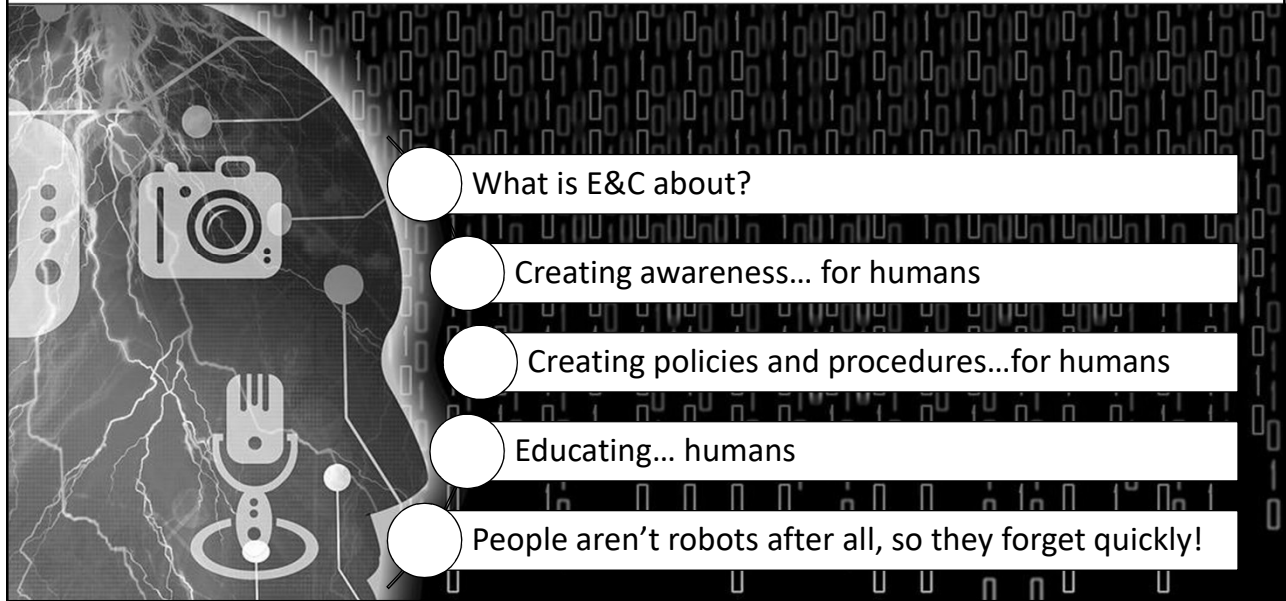
Tech is not a silver bullet

Tech must be used as leverage to boost efficiency and improve culture

Ethics and Compliance is about culture, responsibility and accountability, traits that pertain to.... humans

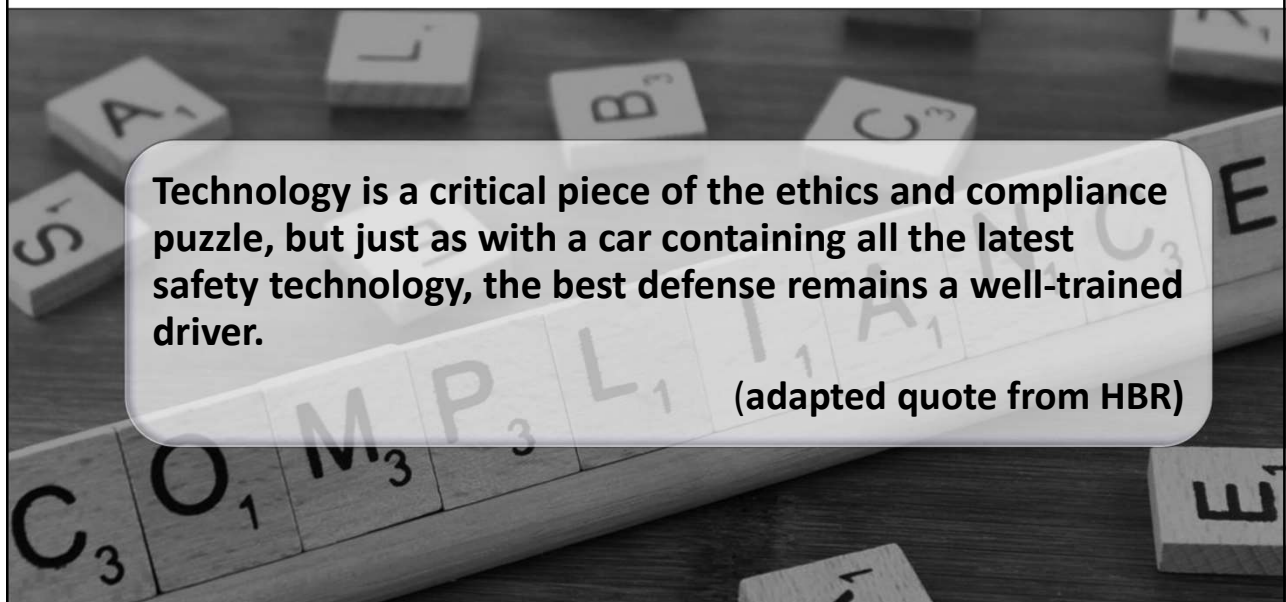
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Humans and Technology in E&C



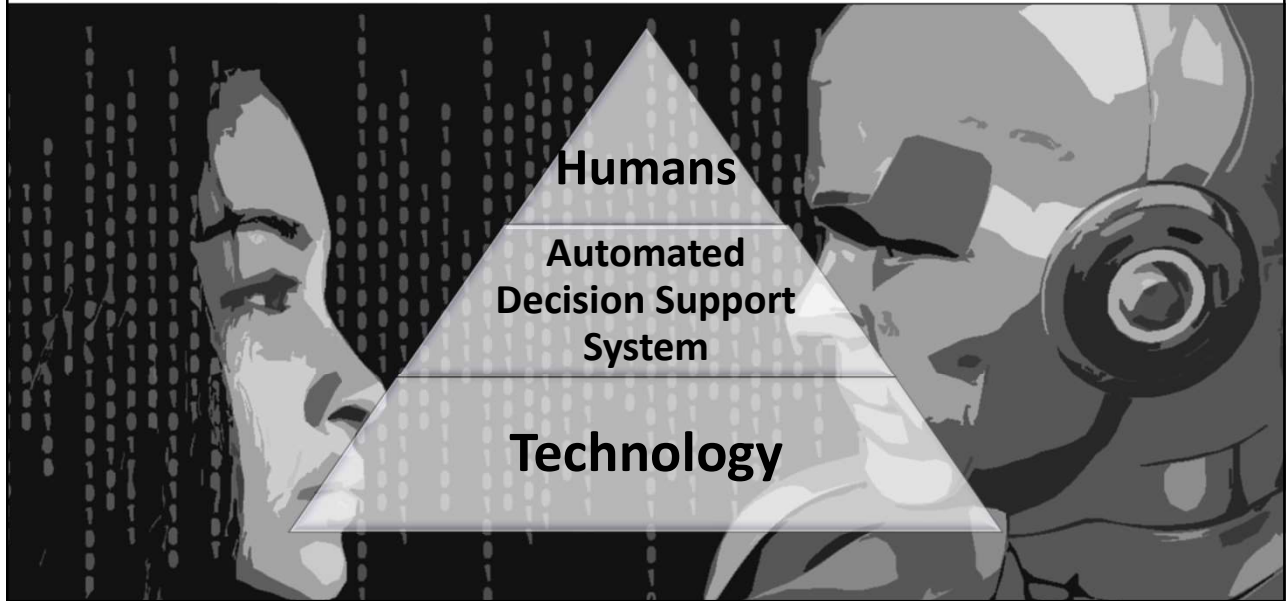
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Humans and Technology in E&C



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Humans and Technology in E&C



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E&C System



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Risk Identification

Identifying the types of 3rd parties

Classifying parties in previously identified “buckets”

Maintaining a repository

Creating a repository

Risk “calibration”

Verifying risk “calibration” in intervals

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Risk Mitigation

Tone at the Top

Training

Communication

Due Diligence

E&C Clauses

Reporting

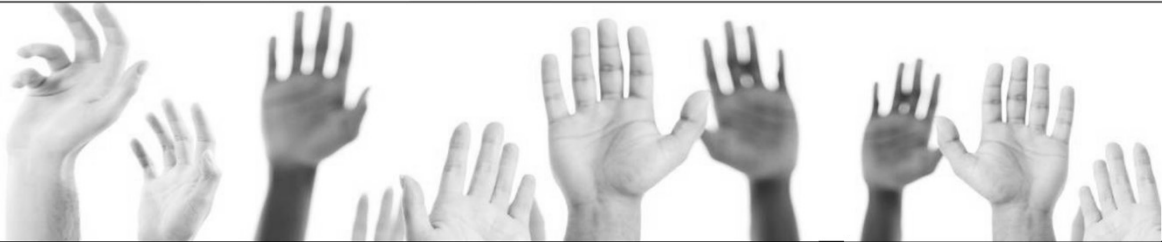
Investigation

Oversight

Improvement

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Q&A



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