



## **2016 Primerus Global Conference** **October 13 – 16, 2016**

### **Essential Compliance Considerations in International Transactions – FCPA, Sanctions, Export Controls, and More**

Thursday, October 13, 2016 (3:30 p.m. – 4:30 p.m.)

**Presented by:**

**Moderator: Alan Dunn - Stewart and Stewart (Washington DC)**

**Panelist: Julian Felipe Rojas Rodriguez -- Pinilla González & Prieto Abogados  
(Bogotá Columbia)**

**Panelist: Khizar Sheikh, Esq. – Mandelbaum Salsburg P.C. (Roseland, New Jersey)**

**Panelist: Doryce Norwood- General Counsel, Circle K Stores Inc. (Phoenix, Arizona)**

1. Overview of challenges facing in-house counsel and corporate executives in the context of international transactions (Moderator)
2. Economic sanctions in multiple jurisdictions under multiple programs.
  - a. Review of US sanctions challenges (Alan Dunn)
  - b. Review of EU and Latin American sanctions challenges (Julian Felipe Rojas Rodriguez)
3. Restrictions on exports of products, software, and technology for defense and dual use reasons - multiple jurisdictions (Alan Dunn)
4. Overview of restrictions on data imports to the US from the EU, Latin America, and Asia (Khizar A. Sheikh)
5. Guidelines and Ethical Challenges Under Anticorruption Laws and Enforcement the U.S. and abroad
  - a. FCPA & EU Anti-Corruption laws: Basics of Ethical Representation (Alan Dunn)
  - b. Colombia & Latin America Anti-Corruption Laws (Julian Felipe Rojas Rodriguez)
  - c. U.S. Patriot Act – Anti-Money Laundering (Doryce Norwood)
  - d. Cross-border data transfer considerations during anti-corruption and anti-money laundering investigations and controls (Khizar A. Sheikh)
6. Other Miscellaneous Controls Essential for Due Diligence 7 Compliance in International Transactions
  - a. Anti-boycott Rules (Alan Dunn)
  - b. Essential public disclosures and contractual provisions (Khizar A. Sheikh)

# Primerus

## Essential Compliance Considerations

### Challenges Facing In-House Counsel & Corporate Executives In International Transactions

- **Alan Dunn** - Stewart and Stewart (DC)
- **Julian Felipe Rojas Rodriguez** - Pinilla González & Prieto Abogados (Bogotá Colombia)
- **Khizar A. Sheikh, Esq.** - Mandelbaum Salsburg P.C. (NJ)
- **Doryce Norwood** - General Counsel, Circle K Stores Inc. (AZ)

***DISCLAIMER:***

***This presentation is provided for informational purposes only and does not constitute legal advice.***

# Panel Agenda

- **Introduction & Overview of Challenges in International Transactions**
- **Economic Sanctions - Multiple Jurisdictions & Multiple Programs**
  - Review of US sanctions challenges (Alan Dunn)
  - Review of EU and Latin American sanctions challenges (Julian Rojas Rodriguez)
- **Export Controls - Products, Software & Technology – Military & Dual Use**  
(Alan Dunn)
- **Restrictions on Data Imports – from EU, Latin America & Asia** (Khizar A. Sheikh)
- **Anticorruption Laws and Enforcement**
  - **U.S. Patriot Act – Anti-Money Laundering Issues for Retail Clients** (Doryce Norwood)
  - **Colombia & Latin America Anti-Corruption Laws** (Julian Rojas Rodriguez)
  - **U.S. FCPA Basics & Ethical Representation** (Alan Dunn)
  - **Cross-border data transfer considerations during anti-corruption and anti-money laundering investigations and controls** (Khizar A. Sheikh)
- **Other Miscellaneous Controls On International Transactions**
  - **Anti-Boycott Rules** (Alan Dunn)
  - **Essential public disclosures and contractual provisions** (Khizar A. Sheikh)

# Economic Sanctions

- **U.S. Sanctions** (Alan Dunn)
  - Multiple Programs & Statutes / Target Countries and Individual Entities
  - Frequently Changing Regulations and Entities
  - Compliance Program is Necessary
    - Penalties & Mitigation
    - M&A Successor Liability
- **EU and Latin American sanctions** (Julian Rojas Rodriguez)
  - Review of EU and Latin American sanctions challenges
  - Blocking Statutes (Antidote Legislation)



# Export & Import Restrictions

- U.S. Export Controls on Products, Software & Technology (Alan Dunn)
  - Military (USML – Defense Items)
  - Dual Use
- Restrictions on Data Imports – from EU, Latin America & Asia (Khizar A. Sheikh)

# Data Legal Framework

## Federal Law

- GLBA
- CFPA
- HIPAA

## State Law

- State Data Breach Laws
- State Privacy Laws

## International Laws

## Negligence

- Regulator Guidance
- SRO Guidance

## Other Sources

- PCI
- Laws Affecting Customers
- Vendors
- Contracts
- Insurance

# Data Imports To The U.S.

- **Canada**
  - Canadian Anti-Spam Law (“CASL”)
  - Recent enforcement activity
- **European Union**
  - The *Shrems* Decision
  - Mechanisms to move data
    - Consent
    - Privacy Shield
    - Standard Contractual Clauses
    - Binding Corporate Rules
  - Recent enforcement activity
- **Asia**
  - Mechanisms to move data
    - Asia-Pacific Economic Cooperation (APEC) Cross-Border Privacy Rules (CBPR) system
  - Recent enforcement activity
- **Latin America**
  - Mechanisms to move data
  - Recent enforcement activity

# Data Transfer During Investigations

- **Application of Data Transfer Laws**
- **Employee Rights**
- **The “Cooperation” Question & Pushback from the Department of Justice**
- **The *Microsoft* Decision** Extraterritorial application of US laws
  - Of particular note: Article 43 of the GDPR includes a new provision, referred to by many as the “anti-FISA” provision (referencing the U.S. Foreign Intelligence Surveillance Act), clarifying that international transfers of personal data cannot be based purely on the judgment or decision of a foreign court, tribunal, or administrative authority, without the backing of an international agreement.



# Essential Disclosures / Contract Provisions

- **Disclosures**
  - Privacy Policies
  - Cookie Policies
- **Contract Provisions**
  - Data Safeguards
  - Security Incidents
  - Data Reconstruction
  - Compliance With Data Protection Laws
  - Breach Notifications
  - Notification Costs
  - Liability

# Anticorruption Laws and Enforcement <sub>1</sub>

## Anti-Money Laundering Issues for Retail Clients (Doryce Norwood)

- **MONEY SERVICE BUSINESS (MSB)** - May UNWITTINGLY BECOME MSB by TAKING ON SERVICES SIMILAR TO THAT OF A FINANCIAL INSTITUTION
  - Any person doing business, whether or not on a regular basis or as an organized business concern, providing one or more of the following services:
    - Money orders, traveler’s checks, check cashing, currency dealing or exchange or stored value/gift cards
  - AND
  - Conducts more than \$1,000 in money services business activity with one person in one or more transactions (in one type of activity) on any one day
  - OR
  - Provides money transfers in any amount.

# Anticorruption Laws and Enforcement 2

## Anti-Money Laundering Issues for Retail Clients (cont'd)

- **Money Laundering Defined**

- Placement – physically placing illegally obtained money into the financial system or the retail economy
- Layering – separating illegally obtained money from its criminal source (drugs, prostitution, human trafficking, etc.) by layering it through a series of financial transactions (such as the purchase of a money order), making it difficult to trace the money back to its original source
- Integration – involves moving the proceeds into a seemingly legitimate form, such as the purchase of real estate or an automobile.

# Anticorruption Laws and Enforcement 3

## Anti-Money Laundering Issues for Retail Clients (cont'd)

- **HIGH RISK TRANSACTIONS – SCAMS**
  1. Elder Abuse – relatives in urgent need of funds
  2. Catfishing – romance schemes
  3. Clown car – structuring
  4. Vulnerable groups – falsely promising victims large cash prizes or high-ticket items for sale over the Internet



# Anticorruption Laws and Enforcement 4

## Anti-Money Laundering Issues for Retail Clients (cont'd)

### What went wrong ?

- **HSBC Fined \$1.9B**

- Ignored known risks of doing business in Mexico when it placed certain accounts into a “low-risk” category which in essence removed them from its monitoring systems. These alleged low-risk accounts totaled over \$670B in transactions
- Failed to have adequate staff, at times, only 1-4 employees were responsible for reviewing alerts identifying suspicious wire transactions
- Despite laws to the contrary, it had business customers in Iran, Libya, Sudan, Burma and Cuba (SDNs)
- Failed to have a “know your customer” (KYC) policy

# Anticorruption Laws and Enforcement 5

## Anti-Money Laundering Issues for Retail Clients (cont'd)

### What went wrong 2?

- **MoneyGram Fined \$100M**
  - Failed to maintain an effective anti-money laundering program
  - Allowed the targeting of the elderly and other vulnerable groups through its money transfer services
  - Failed to terminate agents who they knew (or should have known) were involved in scams

# Anticorruption Laws and Enforcement 6

## Anti-Money Laundering Issues for Retail Clients (cont'd)

### The Lesson:

- Banks headquartered in both the U.S. and Europe have paid over \$5B in recent years on charges they violated U.S. regs and failed to police potentially illicit transactions
- Other examples:
  - JPMorgan Chase \$2B
  - Wachovia \$160M
  - Citigroup \$925M

# Anticorruption Laws and Enforcement 7

- **Cross-border data transfer considerations**  
(Khizar A. Sheikh)
  - During anti-corruption and anti-money laundering investigations
  - In the context of compliance and controls



# Essential Compliance Considerations

- **Other Miscellaneous Controls On International Transactions**
  - Anti-Boycott Rules (Alan Dunn)
  - Essential public disclosures and contractual provisions (Khizar A. Sheikh)

# Contacts

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