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Due Diligence: Our Client Has Been Sanctioned

By L Burke Files, CDDP, President, Financial Examinations & Evaluations, Inc (01/08/2014)

It happened. As silly as it may seem it really did happen. One of our cherished client trust companies was working for a client that got sanctioned. That is when we got the call.

When one runs an international organization with men and women from many counties the organization and its professionals are saddled with the professional’s nation’s contrasting and competing ideologies... and restrictions.

Recently, because of the troubles in Ukraine several nations imposed sanctions on a number of persons and companies. March, April and June of this year several nations and organizations sanctioned several parties in Russia, Ukraine, the Crimea and a Fin. The US was not the only nation to express its displeasure – in formal terms. Norway, Great Britain, Canada, Switzerland, Liechtenstein, Austria, Germany, Australia and the EU to name a few, were some of the countries involved.

The current troubles in Ukraine date from long ago. There are different religions and different outlooks. There has also been a long history of self serving, utterly corrupt and unfortunate leaders. They remind me a bit of Detroit’s past leadership – corrupted and greedy leaders – so greedy they stole too much – and crashed the city. So be it, life moves on, and so will the Ukraine.

But Ukraine is not alone; events and troubles exist, at least at this time, all around the world. We can only try to serve those who retain us to the best of our abilities.

But we need to be more worldly in our outlook, as we are professional men and woman of the world serving clients from around the world.

So what do we need to do to keep abreast of the sanctions and our clients?

The first is to keep on top of the news. Sanctions are conflict without weapons, it is economic warfare plain and simple and the declarations are open and published. If you think governments are OK – with a little violation here and there – look at the fines leveled at BNP Paribas. While BNP is an exceptional case in many ways, one only needs

to look at the US\$3,226 device sold by Daltek and the export of US\$33,000 of cosmetics by Essie Cosmetics all exported to Iran to understand the seriousness of the regulators. While these amounts were small be assured both companies were charged with violations of the International Emergency Economic Powers Act (IEEPA) by the Office of Foreign Assets Control (OFAC). These prosecutions were for the violation of sanctions. Sanctions set forth by both the US and EU.

But not all people and companies are sanctioned in the same way. Some people may be sanctioned by Canada and not the US – I know, go figure. Many others may be sanctioned by Norway and Switzerland and not the EU. This is the case for the round of sanctions having to do with the troubles in Ukraine. But troubles can be found elsewhere.

It is quite possible you are working for a client and, as is often the case we are not just a vendor, but part of the asset management team actively working with the client’s

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business affairs. These clients may move items of value to and from sanctioned countries or to and from persons or business that are sanctioned. As we are part of their financial management team we are required to provide our services in a complaint manner. As a member of the financial team you have to check the assets, the origin and destination of the assets, and the counter parties to the transactions against all sanctions list that may apply. That can be a half a dozen or more lists very easily. The EU and US lists are just the start, several countries maintain their own independent sanctions lists that can be very different from the US and EU.

Troubles can occur between Venezuela, Columbia and Ecuador. Or troubles can occur between Kashmiris and Indians, or between the Hatfields and the McCoys – such is the nature of conflicts and sanctions. Some new animosities pop up while old rivalries dissipate. In the mean time each party will have their own sanctions list that must be consulted.

We cannot be caught short in our planning or thinking. Even the idea that if we only recruited professionals from neutral countries such as Switzerland and Norway we would be without the need to check for sanctions. But Ukraine's troubles have proved this rule of thumb fanciful. Or maybe we can just recruit from nations not yet developed enough to have an opinion such as Costa Rica, Angola, Namibia, or Laos – but what would we have for diversity of skills and language. Hmong is a very descriptive language I am told, but not widely spoken.

So we must deal the hand we are dealt – and work with people in those places and times with a combination of skills, language fluency, specific ability and – the national prerogatives of the professionals citizenship allow.

So what does one do when one's nationality prohibits dealing with a newly sanctioned person? To tell the truth, disengage as quickly as possible. Document the time you were made aware of the issues as well as what you did to disengage. Preserve the record internally and with legal counsel, unless you have a requirement of disclosure in your home jurisdiction – and leave it at that.

So what else can we do, as we often have people from so many countries working in our offices. On a recent visit to a service provider in Hong Kong - I counted no less than eight different nationalities in the office of one medium sized financial service provider. What happens when one of your clients is from Zedland, and she and her businesses have been sanctioned by the US and EU? Do you keep her as a client, but make sure only non-US and EU employees look at or have access to her file? Do we set up internal walls to do just that?

From the sanctions experts queried in the US and EU on this very matter I got two very good answers. "Gee, we had not thought of that possibility" and "Wow, that's a tough one."

The world is undergoing a severe transmutation of ideologies, economic, and national boundaries. Colonialism is gone, those commonalities of interest appear dashed. Now, more than ever it appears to me that each is – tribe for tribe with national boundaries and citizenship becoming less meaningful. That is until you have a bunch of Zedland clients serviced in your Hong Kong office advised by staff from the EU, US and Canada, when Zedland gets hit with sanctions from the US and EU but not from Hong Kong or China?

The motto of the Boys Scouts is to 'Be Prepared' - but how does one prepare for the above scenario?

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