

CONSTANTINE

CANNON

NEW YORK • WASHINGTON • SAN FRANCISCO • LONDON

Whistleblower Law & Practice in the US & Beyond

Carolina González

Senior Associate, Whistleblower Representation Group
Constantine Cannon LLP London

Overview

I. International WB Practice – Trends

- Cases
- Clients
- Areas

I. Other WB Laws – Expansion

- Canada
- South Korea
- UK
- EU Directive on Whistleblowing – a new opportunity?

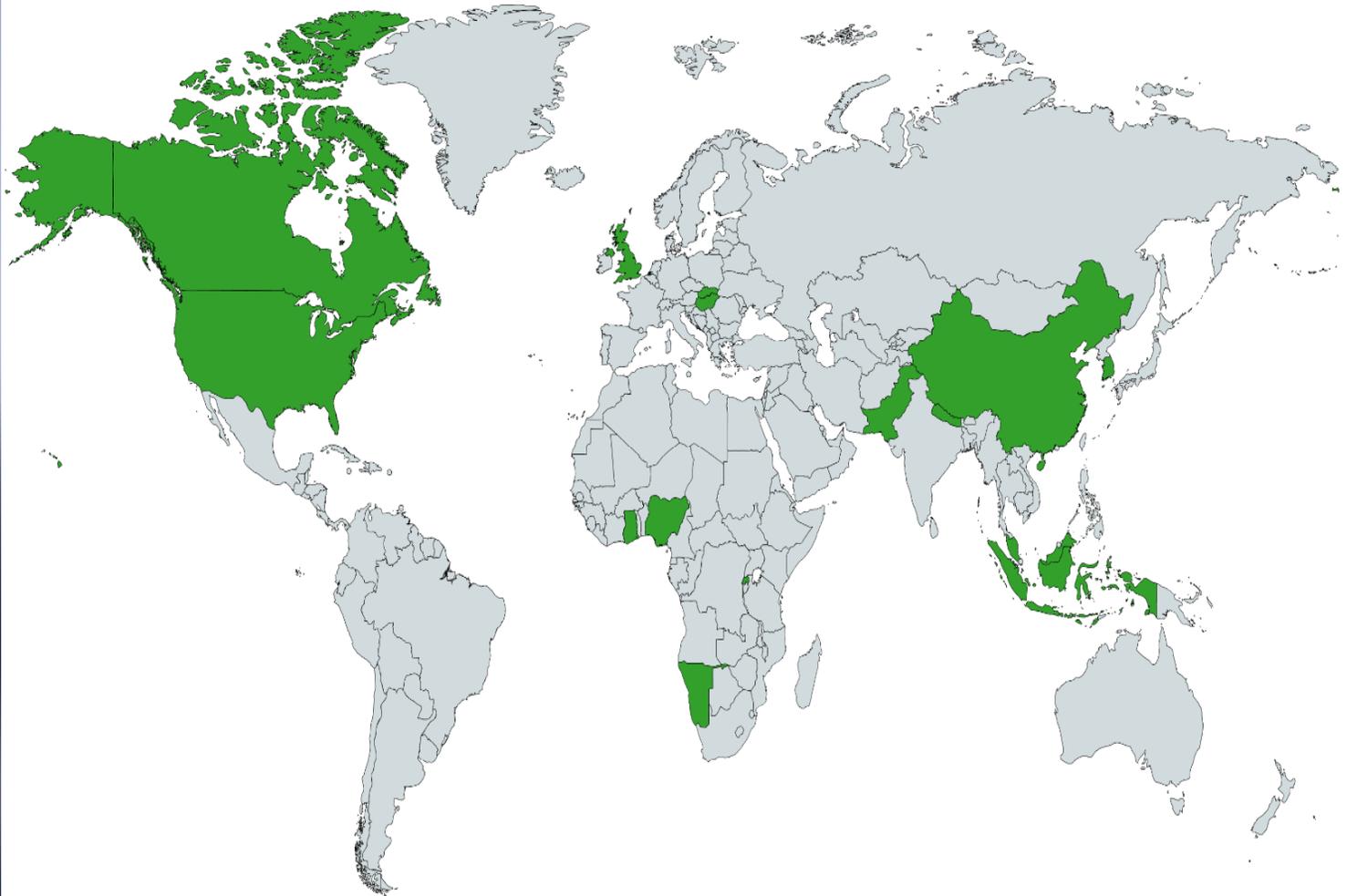
II. Why Whistleblowing is Good for Companies

- Recent Research

International WB Practice

- **Cases**
 - Agency cases
 - ✓ SEC
 - ✓ CFTC
 - ✓ IRS
 - ✓ DOT/NHTSA
 - FCA cases
 - ✓ Transshipment
 - ✓ Government contracts (bid rigging)
 - ✓ Data breaches
 - ✓ Humanitarian Aid
- **Clients**
 - International
 - No need to be a US citizen or resident to qualify
 - Surge in compliance and auditor-type whistleblowers
- **Areas**
 - Never a dull moment (plenty of variety):
 - Financial services industry-related frauds
 - FCPA and money laundering
 - Data breaches

Countries with some form of whistleblower rewards



Other WB Laws - Canada

- Ontario Securities Commission
Very similar to SEC WB program (July 2016)
 - Recovery threshold: CAD over \$1M
 - Awards range from 5% to 15%
 - Awards are capped at CAD \$5M
 - Confidentiality and anonymity provisions
 - As of 06/2018, 200 tips
 - As of 03/2019, CAD \$7.5M in payouts to 3 WBs
- Expose violations of Ontario Securities Act
- Toronto Stock Exchange listed companies

Other WB Laws - Canada

- Offshore Tax Informant Program (OTIP)
WB rewards for exposing Offshore Tax Evasion
 - Recovery threshold: at least CAD \$100K
 - Awards range from 5% to 15% of tax recovered (excluding interest and penalties)
 - No award payment until full amount is recovered and case is finalized
 - As of 03/2018, the Canada Revenue Agency has entered into 30 contracts with WBs and identified CAD \$29M in additional taxes and penalties
 - Reports indicate at least CAD \$1M has been paid to WBs.

Other WB Laws – South Korea

- Tax Evasion Informant Reward Program
 - Awards range from 5% to 20% of tax recovered (excluding penalties) for providing “significant information”
 - No award payment until full amount is recovered and case is finalized
 - Awards capped at 4B won (\$3.5M)
- Foreign Financial Account Report Reward Program
 - Awards range from 5% to 15% of tax recovered (excluding penalties)
 - Awards capped at 2B won (\$1.8M)
 - WBs can report under both programs

Other WB Laws – UK

- HMRC
 - Pays discretionary awards
- Competition Markets Authority
 - Up to £100,000 reward for reporting illegal cartel activity
- CPS – pays informants
- PROPOSALS/MORE TO COME?
 - FCA – 2016 flirtation w/ incentives & rejected
 - Ongoing interest in Parliament – **APPG for Whistleblowing**

Other WB Laws – EU Directive

- Approved by EU Parliament (04/2019) and by Council (09/2019)
 - 27 EU Member States must implement the new rules within two years (deadline December 2021)
 - Sets out common *minimum* standards
- No rewards, but introduces:
 - **Clear reporting procedures and obligations for employers**
 - Companies with over 50 employees/ annual turnover over €10m must set up internal procedures to handle whistleblower reports
 - **Safe and effective reporting channels**
 - Should be set up within companies and through competent national authorities (investigate + provide feedback)
 - **Prevention of retaliation and effective protection**
 - Protections against dismissal, demotion, and other type of retaliation.
 - Requires national authorities to inform citizens about available whistleblowing procedures and protections

Why Whistleblowing is Good for Companies

- WB reports are a valuable tool in identifying risk and addressing concerns
- Companies with robust internal reporting channels are less likely to receive substantial government fines and material lawsuits filed against them
 - Kyle Welch & Stephen Stubben, *Evidence on the Use and Efficacy of Internal Whistleblowing Systems* (Sept. 2019)
 - ❑ Presents empirical analysis of actual internal WB reports by looking at Navex Global data
 - ❑ Universe: nearly 2M internal WB reports filed with 1,135 publicly traded US companies

Presenter Contact Information

Carolina González
Senior Associate
cgonzalez@constantinecannon.co.uk

Constantine Cannon LLP
London office:
90 Bartholomew Close
London EC1A 7BN
+44 (0)20 3959 0700