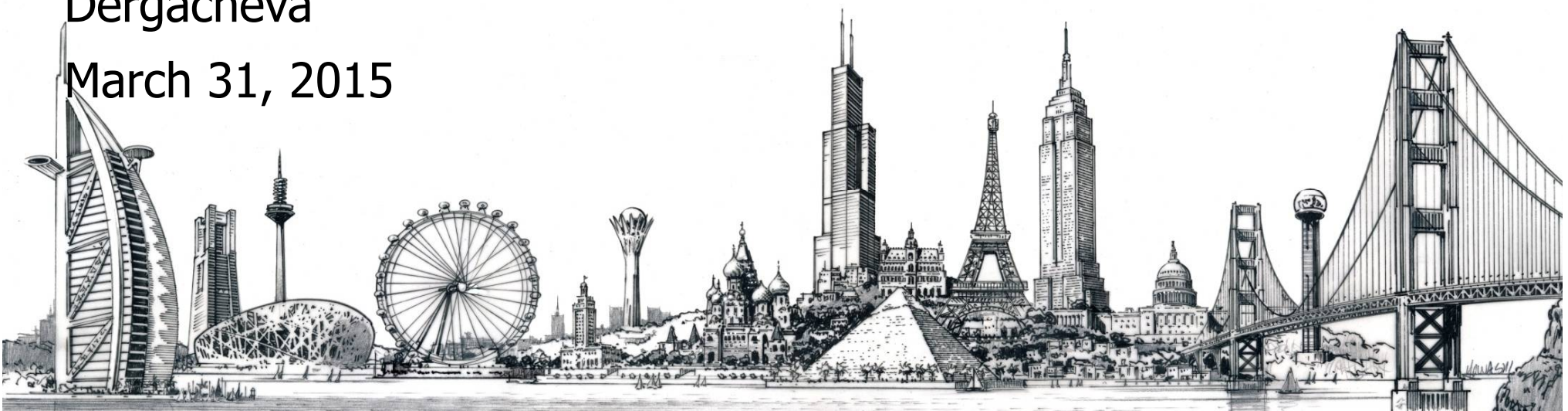


**Morgan Lewis**

# **INTERNET AND ONLINE BUSINESS IN RUSSIA**

Brian Zimble, Vasilisa Strizh, Ksenia Andreeva and Anastasia Dergacheva

March 31, 2015



# Summary

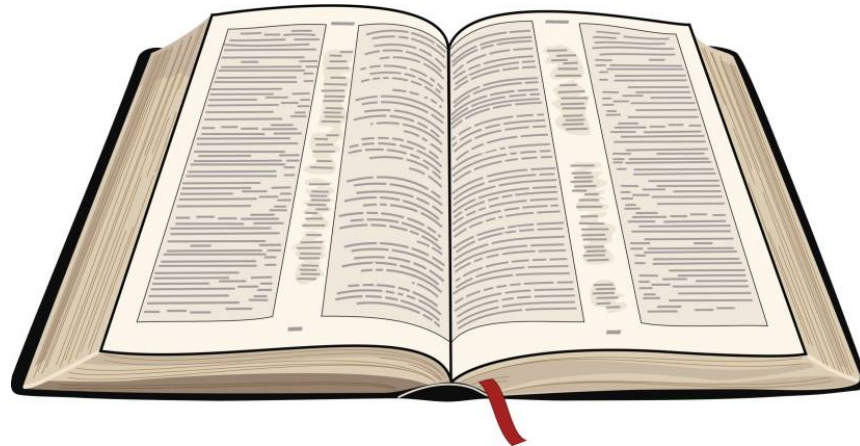
- Section 1: Amended personal data law - storage of personal data in Russia**
- Section 2: Amended information law - storage of Website users data in Russia**
- Section 3: Limits on foreign ownership of mass media**

**SECTION 01**

**AMENDED PERSONAL  
DATA LAW - STORAGE OF  
PERSONAL DATA IN  
RUSSIA**

# Key Laws

- Article 24 of the Russian Constitution
- Convention of the Council of Europe for the Protection of Individuals with regard to Automatic Processing of Personal Data (2005)
- Law No. 152-FZ "On Personal Data" (2006) (the "**Personal Data Law**")
- Law No. 149-FZ "On Information, Information Technologies and Information Protection" (2006) (the "**Information Law**")
- Chapter 14 of the Labour Code



# Key Regulators

- Ministry of Communications and Mass Media (Minkomsvyaz)
- Federal Service for Communications, Information Technology and Mass Communications Supervision (Roskomnadzor)
- Federal Service for Technical and Export Control (FSTEK)
- Federal Security Service (FSB)



# What is Personal Data?

- “**Personal data**” is any information directly or indirectly related to an identified or identifiable individual (Article 3 of the Personal Data Law)
  - No exhaustive list of information that might be considered personal data
  - As a general rule, aggregated, anonymized or purely technical data (such as cookies information, Google Analytics results or non-identifiable information automatically collected through devices) are exempted
  - According to Roskomnadzor, simply the use of **login, password, mobile number and email address** does not unequivocally identify a person, thus, may not be considered as personal data (see Letter of Territorial Division of Roskomnadzor in Moscow and Moscow region No. 7903-03-1/77 dated 27 December 2012), **but...**



# What is a Data Operator?

- No concepts of a “data controller” or a “data processor” in the Personal Data Law (relatively close concepts to those under the EU law, however)
- Personal Data Law distinguishes between “data operators” and “third parties processing personal data under the operators’ instruction”
  - **Data operator** is an individual, legal entity or a state authority that (either alone or jointly with other persons) organizes personal data processing and (or) processes personal data and determines the scope, the goals for which and the manner in which any personal data is to be processed (Article 3 of the Personal Data Law)
  - Data operator may be either (a) a Russian entity; or (b) a foreign entity having legal presence in Russia (a representative office or a branch)
  - Whether or not a foreign company having no legal presence in Russia is data operator is a gray area in Russian law

# What is a Third Party?

- No definition of a “third party processing personal data under the operator’s instruction”
- A data operator can assign (delegate) data processing to a third party, by entering into an agreement with such third party and instructing it to process the data in a certain manner and for certain goals (a so-called “**instruction of the operator**”)
- The Personal Data Law does not prescribe a form of instruction
- Engagement of a third party = transfer of personal data to a third party
- A third party may be located in Russia or abroad



# What is Required from a Data Operator?

- Any action involving personal data is “**personal data processing**”, including its collection, recording, systematization, aggregation, storage, adjustment (updating and modification), retrieval, use, transfer, depersonalization, blocking, deletion or destruction (no exhaustive list)
- There are a number of requirements for data processing carried out by data operators, which may be tentatively divided into three groups:
  - confirmation that the data processing is justified (either by the consent of the concerned individual or on other legal grounds specifically mentioned in the law);
  - establishment of organizational and technical (IT) measures aimed at the secure processing of personal data; and
  - notification of Roskomnadzor on the processing of personal data (unless an exemption of the Personal Data Law applies)

# What is this New Requirement About?

- In July 2014, the Personal Data Law was amended by Federal Law No. 242-FZ of 21 July 2014 (the “**Local Storage Law**”), which will come into effect on September 1, 2015
- New requirement: “when collecting personal data, data operators must use databases located in Russia to record, systematize, accumulate, store, amend (update and change) and extract personal data of Russian citizens”
- No official interpretation or other reliable guidance as to how to implement the new requirement



# Does it Affect My Business?



# Any Exemptions?

- The Local Storage Law does not affect data processing, if such processing is:
  - carried out pursuant to Russian laws or an international treaty and necessary for the operators to perform their functions, authorities and obligations imposed on them by the laws of the Russian Federation;
  - necessary for the administration of justice or enforcement proceedings;
  - necessary for the execution of duties by the Russian state and municipal bodies; or
  - necessary for journalistic, media, scientific, literary or creative purposes
- Controversial views of Roskomnadzor and Minkomsvyaz on the scope of exemptions



# What Data Processing Types are Affected?

- Seven types of data processing activities mentioned in the Local Storage Law:
  - data collection;
  - data recording;
  - data systematization;
  - data aggregation;
  - data storage;
  - adjustment (updating and modification) of the data; and
  - extracting of the data
- No definitions of the above processing activities
- Other types of processing activities may be performed with databases located outside Russia

# What is a “Database Located in Russia”?

- No legal definition or official interpretation
- Roskomnadzor and legal practitioners tend to interpret the term “database located in Russia” used in the Local Storage Law as a “database hosted on a server which is **physically** located in Russia”



# How to Identify Russian Citizens' Data?

- The Local Storage Law affects personal data of Russian citizens only
- According to Roskomnadzor, data operators are best-advised to “process and store locally all personal data collected from individuals in Russia, irrespective of such individuals’ citizenship”



# Is Data Transfer Prohibited?

- No, data transfers are allowed and may be performed before and after September 1, 2015 without restrictions, **but...**
  - Usually a consent of an individual is required to transfer his/her data to a third party
  - Data transfer requires "instruction of the operator"
  - No special rules on transfer of personal data to a legal entity located in Russia or in the countries-parties to the Convention of the Council of Europe for the Protection of Individuals with regard to Automatic Processing of Personal Data (Strasbourg, 1981) or in the countries approved by Roskomnadzor as "safe countries" (e.g., Israel, Iceland, Canada, Liechtenstein, Norway, Switzerland, South Korea, Japan)
  - Special rules on transfer of personal data to countries providing "non-adequate" protection of individuals' data (e.g., the US)



# List of “Safe” Countries

All countries that are parties to the Convention of the Council of Europe for the Protection of Individuals with regard to Automatic Processing of Personal Data (Strasbourg, 1981)

**Argentina**

**Canada**

**Malaysia**

**Mongolia**

**New Zealand**

**Republic of Benin**

**Republic of Chile**

**Republic of Peru**

**Republic of Tunisia**

**Australia**

**Israel**

**Mexico**

**Morocco**

**Republic of Angola**

**Republic of Cabo Verde**

**Republic of Korea**

**Republic of Senegal**

**Swiss Confederation**



# What Should I Do?

- Russian and foreign data operators that are affected by the Local Storage Law should consider relocation of the databases used for storage of Russian citizens' data, to Russia
- The IT processes and IT systems should be customized to allow collection and recording of personal data to "primary" databases located in Russia
- Once the personal data is collected in the "primary database", a data operator may assign or delegate further data processing to a Russian or foreign third party, by entering into an agreement with such a third party and instructing the third party to process the data by certain means and for certain purposes
- The deadline is September 1, 2015 (no grace period!)
- Consultations with Roskomnadzor are recommended



# What Happens If I Don't Comply?

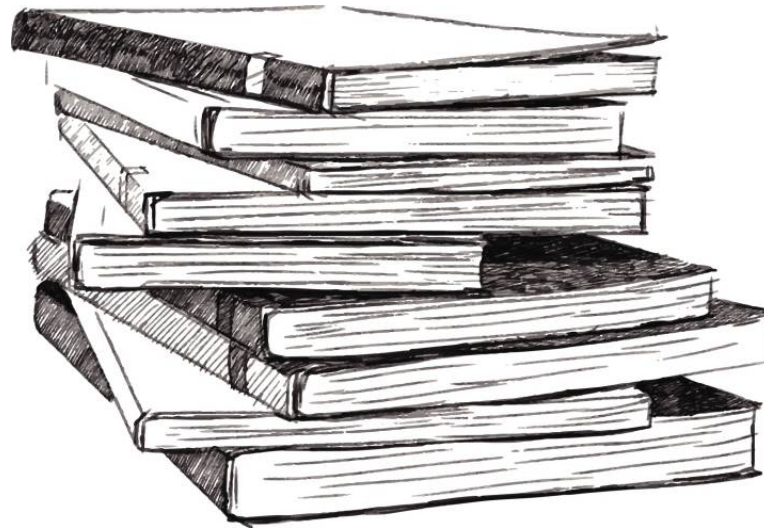
- Processing of personal data in a way that is not compliant with the Personal Data Storage Law (including local storage requirement) may lead to imposition of the administrative fine in the amount of up to Rubles 10,000 (app. USD 170)
- According to Draft Law No. 683952-6, which is currently subject to a second hearing at the State Duma, maximum administrative fine may be increased up to Rubles 300,000 (app. USD 5,160)
- Websites that do not comply with the Personal Data Law could be blocked from operating in Russia and recorded on a special register of “organizations in breach” maintained by Roskomnadzor
- Violation of the requirements to process personal data may be subject to civil and criminal liability (in exceptional cases only)

**SECTION 02**

**AMENDED INFORMATION  
LAW - STORAGE OF  
WEBSITE USERS DATA IN  
RUSSIA**

# Key Laws

- Law No. 149-FZ “On Information, Information Technologies and Information Protection” (2006) (“**Information Law**”)
- Regulations of Decrees of Russian Government No. 741, No. 742, No. 743, No. 746, No. 747 and No. 759 of July 31, 2014



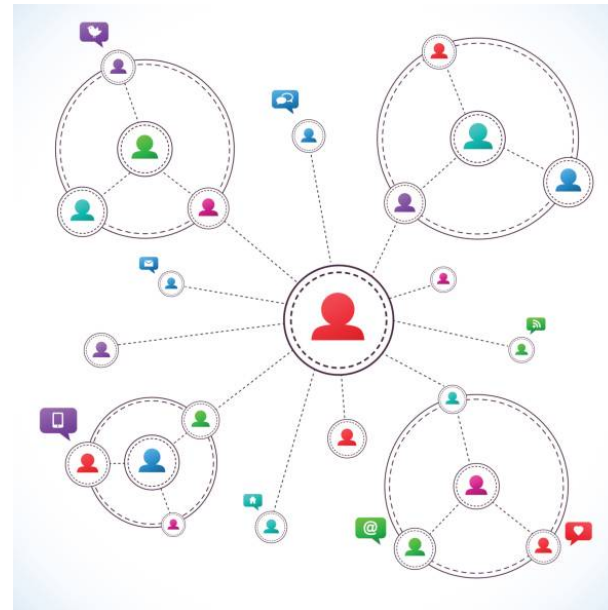
# What is this New Requirement About?

- In May 2014, the Information Law was amended by Federal Law No. 97-FZ of 5 May 2014 (the “**Internet Data Storage Law**”, also known as the “**Blogger Law**” as it also introduced certain rules on bloggers), which came into effect on 1 August 2014
- New requirements applicable to “organizers of dissemination of information on the Internet”:
  - to store information about website users and their communication in Russia for six months “from cessation of such communication”
  - to make the stored data available to Russian law enforcement authorities and to use certain hardware and software that allows such authorities to gain access to the records and monitor them



# What is an Organizer of Dissemination of Information?

- As currently drafted, the term “organizer of dissemination of information on the Internet” (“**Organizer**”) appears to cover information networks as well as any other platform (website) which gives an opportunity for website visitors to leave comments, send and (or) exchange messages or otherwise communicate
- Arguably, in the absence of clear authority, companies’ internal networks (i.e., intranets), foreign networks and cloud storage services may also be affected by the Internet Data Storage Law



# Any Exemptions?

- Exemptions from the Internet Data Storage Law:
  - state and municipal authorities;
  - telecommunication services operators;
  - individuals running websites for personal, family and household needs





# Register of Organizers

- Roskomnadzor maintains the special register of Organizers (the “**Register**”) (to some extent, information from the Register is publicly available at [www.97-fz.rkn.gov.ru](http://www.97-fz.rkn.gov.ru))
  - An Organizer is included on the Register either voluntarily or after it receives a request from Roskomnadzor
  - As a general rule, Roskomnadzor sends a request when it receives an inquiry from Russian law enforcement authorities
  - Whether or not Roskomnadzor may send a request at its own discretion is not clear



# Register of Organizers (continued)

- Currently the Register includes more than 30 services, and some of them provide limited connectivity for users, including mail services; social networks and dating services; advertising exchange networks; internet messengers; internet publications (online magazines) and a cloud storage service
- Reportedly, Roskomnadzor has already approached Facebook, Gmail and Twitter with the request that they register as the Organizers
- It is not clear whether a website owner (administrator) becomes the Organizer subject to the notification to Roskomnadzor (voluntary or upon receipt of the request) or irrespective of such notification



# What Should I Store in Russia?

- The list of data about website users and their communications that must be stored is stipulated by Russian Government Resolution No. 759 of July 31, 2014 and includes:
  - data about a user, his/her registration data (e.g., network address and protocol), IT authorization data
  - telephone number, email, address, if provided by a user
  - information about any charged services rendered to a user and payment details, etc.
- The data may be stored and provided to the Russian law enforcement authorities in Russian and in English
- The data must be provided to the Russian law enforcement authorities in respond to their standard (30 days to respond) or urgent (3 days to respond) requests
- Upon request of the Russian law enforcement authorities, an Organizer must develop a special technical plan on the use of special hardware and software (e.g., SORM 3)

# What Should I Do?

- The Internet Data Storage Law is already in force
- If you received a notification from Roskomnadzor, you must respond to it within 5 days upon its receipt
- Reportedly, the Roskomnadzor is of view that Internet Data Storage Law applies only to those companies which were included to the Register, however, this view is not supported by any formal clarification yet
- Russian and foreign data Organizers that are affected by the Internet Data Storage Law should consider relocation of the databases used for storage of website users' data to Russia
- Consultations with Roskomnadzor, FSTEK and FSB are recommended



# What Happens If I Don't Comply?

- Operating website in a way that is not compliant with the Internet Data Storage Law may lead to imposition of the following penalties:
  - non-compliance with the requirements introduced by the Internet Data Storage Law may lead to the non-compliant IT system, service or application being blocked by Roskomnadzor until the Organizer remedies the non-compliance (Article 15.4 of the Information Law)
  - failure to register as the Organizer may lead to an administrative fine in the amount of up to Rubles 300,000 (app. USD 5,160)
  - failure to record the required information and make the records available to the Russian law enforcement authorities may lead to an administrative fine in the amount of up to Rubles 500,000 (app. USD 8,600)



**SECTION 03**

**LIMITS ON FOREIGN  
OWNERSHIP OF MASS  
MEDIA**

# Does Russia Limit Foreign Investments in Mass Media?

- Yes, similar to some other countries, Russian laws provide for certain limitations on foreign investments in mass media:
  - Mass Media Law prohibits foreign entities and Russian entities with more than 50% direct foreign participation to serve as a “founder” of TV and radio channels
  - Foreign Strategic Investment Law requires that foreign investors seek special permission of the Government Committee to acquire control over large TV and radio channels and newspapers
- But until recently Russia did not prohibit indirect foreign ownership of mass media
- Online mass media were not covered by the restrictions

# What Happened?

- In October 2014 the Russian Mass Media Law was amended and **now prohibits**:
  - foreign investors, Russian citizens with dual citizenship or Russian companies with any foreign shareholding, to directly own **any** interest in a mass media organization
  - foreign investors, Russian citizens with dual citizenship or Russian companies with more than 20% foreign shareholding, to control, either directly or indirectly, **over 20%** in any shareholder of a Russian mass media organization
  - foreign investors, Russian citizens with dual citizenship or Russian companies with more than 20% foreign shareholding, to exercise **any other form of control** over any Russian mass media organization including via any shareholder of such organization
- The amendments apply to all mass media, including online mass media
- The amendments will be in force starting January 2016



# Does It Affect My Business?

- **Yes**, if any entity of the group has a mass media registered by the Russian media regulator – Roskomnadzor
  - Even if you are not primarily in mass media business your corporate website or corporate magazine might still be registered as mass media!
- **No**, if there is no registered mass media in your business
- **However**, please note that:
  - Now online mass media can, but are not required to be registered with Roskomnadzor, but this may change
  - Special attention must be paid to video streaming services to make sure that these services do not qualify as TV channels and radio and are not subject to the registration and licensing

# What Should I Do?

- Foreign investors that are affected by the amendments must consider selling or restructuring their business to comply with the new restrictions; another option is to terminate mass media registration if it is not core to the business
- The deadline is **January 1, 2016** (but there is additional one year grace period for companies with more than 80% Russian beneficial ownership)
- One of the options that is widely discussed among foreign TV channels and print media is the separation of regulated and non regulated business with further sale of 80%-100% of regulated business to the Russian partner
- Consultations with Roskomnadzor are recommended before proceeding with any options



# Are Foreign Investors Allowed to Retain Certain Degree of Control Over Regulated Business?

- This is not clear, Mass Media Law is drafted broadly to prohibit foreign investors from exercising “any other forms of control” over mass media organizations
- Special attention must be paid to the following instruments:
  - Shareholders agreements and, in particular, minority veto rights, reserved matters provisions and disproportionate distribution of profits
  - IP license agreements and, in particular, approval rights that grant IP holder control over editorial and business matters of licensee
  - Agency, services and similar agreements between regulated and non-regulated parts of the business
- Legal analysis and consultations with Roskomnadzor are recommended in each particular case

# What Happens If I Don't Comply?

- Foreign investors that will continue to own shares in a mass media organization in breach of the new restrictions after January 2016 will be denied voting and certain other shareholder rights, and such shares will not be counted for quorum purposes
- Transactions resulting in breach of the new rules will be treated as invalid
- Activities of a mass media may be suspended
- Broadcasting license (in case of TV and radio channels) may be revoked



# Q&A



**Brian Zimble**  
Moscow

+7.495.212.2500

[bzimble@morganlewis.com](mailto:bzimble@morganlewis.com)



**Vasilisa Strizh**  
Moscow

+7.495.212.2540

[vstrizh@morganlewis.com](mailto:vstrizh@morganlewis.com)



**Ksenia Andreeva**  
Moscow

+7.495.212.2527

[kandreeva@morganlewis.com](mailto:kandreeva@morganlewis.com)



**Anastasia Dergacheva**  
Moscow

+7.495.212.2516

[adergacheva@morganlewis.com](mailto:adergacheva@morganlewis.com)

**ASIA**

Almaty  
Astana  
Beijing  
Singapore  
Tokyo

**EUROPE**

Brussels  
Frankfurt  
London  
Moscow  
Paris

**MIDDLE EAST**

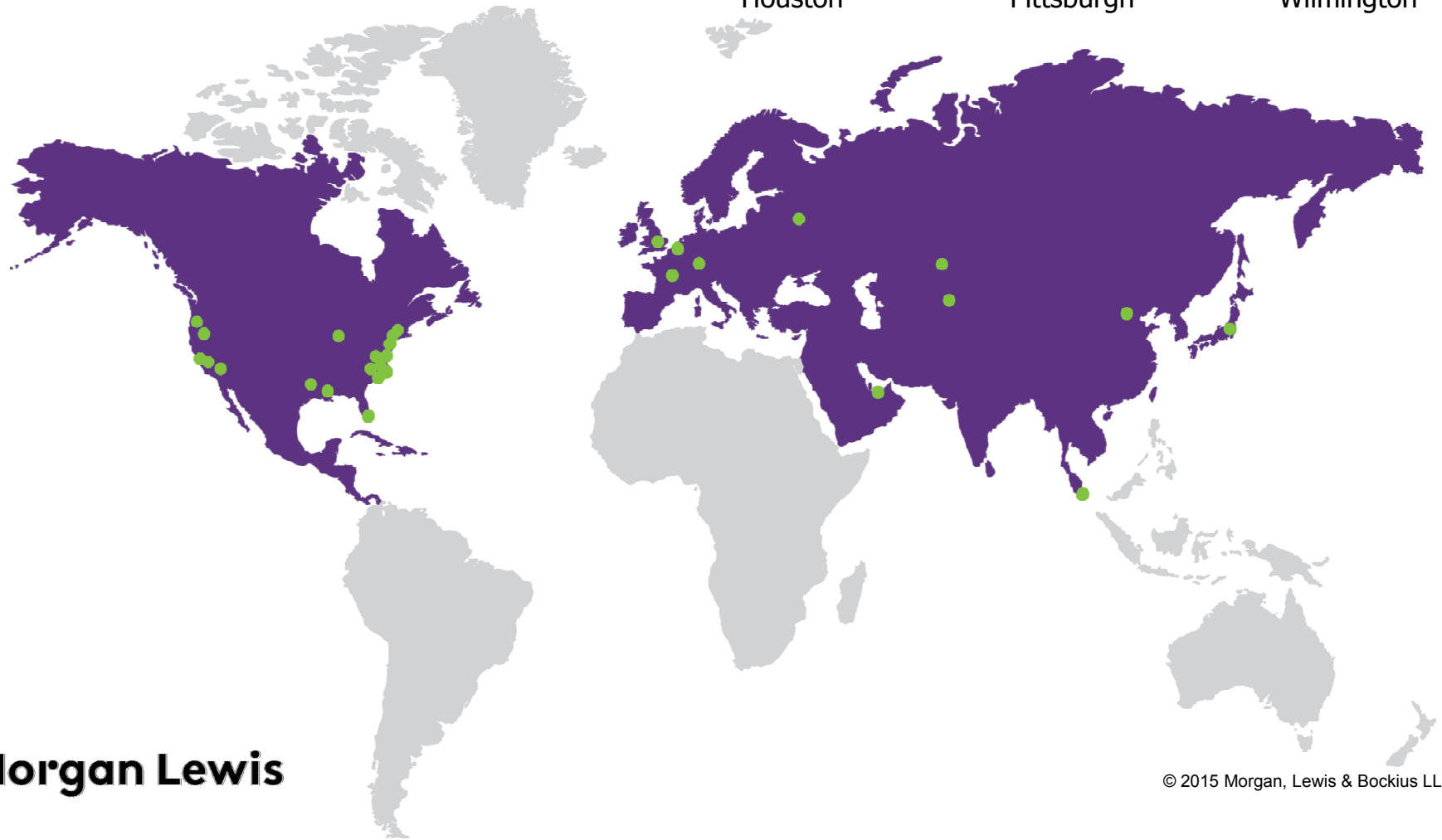
Dubai

**NORTH AMERICA**

Boston  
Chicago  
Dallas  
Harrisburg  
Hartford  
Houston

Los Angeles  
Miami  
New York  
Orange County  
Philadelphia  
Pittsburgh

Princeton  
San Francisco  
Santa Monica  
Silicon Valley  
Washington, DC  
Wilmington



# THANK YOU

This material is provided as a general informational service to clients and friends of Morgan, Lewis & Bockius LLP. It does not constitute, and should not be construed as, legal advice on any specific matter, nor does it create an attorney-client relationship. You should not act or refrain from acting on the basis of this information. This material may be considered Attorney Advertising in some states. Any prior results discussed in the material do not guarantee similar outcomes. Links provided from outside sources are subject to expiration or change.

© 2015 Morgan, Lewis & Bockius LLP. All Rights Reserved.

**Morgan Lewis**