Corporate Anti-Corruption Programs are Now Essential

By Trip Mackintosh & John Anderson

Since 9-11, compliance with the U.S. Foreign Corrupt Practices Act (FCPA) has taken on new importance for small and mid-sized companies engaged in international commerce. With corruption payments linked to funds used by terrorists or others to harm the United States and its allies, anti-corruption enforcement spiked. The U.S. Department of Justice (DOJ) has aggressively pursued foreign bribery investigations over the past decade and gaming industry companies of all sizes must assess whether anti-corruption compliance controls are immediately necessary.

Anti-corruption laws generally prohibit offering or accepting anything of value to secure an improper advantage to obtain or retain business. In other words, anti-corruption laws prohibit bribery. While it may be common sense that bribery is illegal, defining what is and is not a bribe is more complicated. One country might deem a certain act a legitimate "business development activity" while another country has a law in place making that same act an illegal "bribe." Company employees and agents who do not understand applicable anti-corruption laws create a corporate liability for unknowing but costly violations. Absent clear operational guidelines and a means of verifying compliance, compliance problems are virtually certain.

The FCPA was enacted in 1977, but little attention was paid to enforcement until about ten years ago. The FCPA generally prohibits companies from bribing foreign officials and requires that certain records be retained to demonstrate compliance. Since 2001, the U.S. government has significantly increased the number of enforcement actions and broadened jurisdiction to essentially reach any company or transaction that has even a remote connection to the United States.

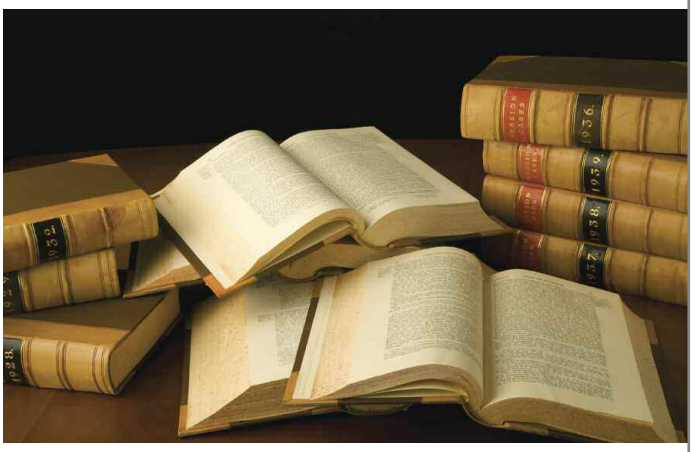
Penalties for violating the FCPA can be severe for companies and individuals. The FCPA civil penalty provisions allow for a maximum fine of $2 million per violation for the corporation and $250,000 and five years in prison per violation for individuals. As evidenced by recent enforcement actions in the gaming industry, recurring illegal acts can result in multiple violations and multi-million dollar fines.

While the U.S. government remains the primary enforcer of global anti-corruption laws, other countries have recently adopted aggressive anti-corruption laws. In fact, most countries now have such laws in place, which reflect a growing understanding that corruption may be tied to national security challenges, drug trafficking and terrorism.

Most significantly, in 2011 the United Kingdom enacted the U.K. Bribery Act. Similar to the FCPA, the U.K. Bribery Act prohibits bribing a foreign official and has extensive extraterritorial jurisdiction (including jurisdiction over any company "carrying on part of a business" in the U.K). However, the U.K. Bribery Act extends the scope of illegal conduct to include private sector bribes and applies strict liability to companies "failing to prevent bribery." While enforcement of these more recent anti-corruption laws is sporadic, the penalties are severe. Companies operating in these countries must ensure, therefore, that their local employees understand the scope of these restrictions and how the rules apply to business operations to ensure that they do not unknowingly subject the company to significant criminal or civil liabilities.

While international enforcement of anti-corruption laws has increased and penalties can be severe, the silver lining is that government enforcement agencies have begun to recognize a type of safe harbor for companies with an effective compliance program in place. In 2012, the DOJ and the U.S. Securities and Exchange Commission issued long-anticipated FCPA guidelines that include a section that makes it clear that an effective compliance program can minimize or eliminate corporate liability for FCPA violations. The guidelines set forth nine "hallmarks of an effective compliance program:"

1) A commitment from senior management and a clearly articulated policy against corruption;
2) A code of conduct and policies and procedures that are accessible to all employees;
3) Oversight, autonomy and adequate resources for the compliance team;
4) Risk assessments;
5) Training;
6) Incentives and disciplinary measures;
7) Third party due diligence procedures;
8) Confidential reporting mechanisms and internal investigation resources; and
9) An accountability function such as periodic audits or reviews.

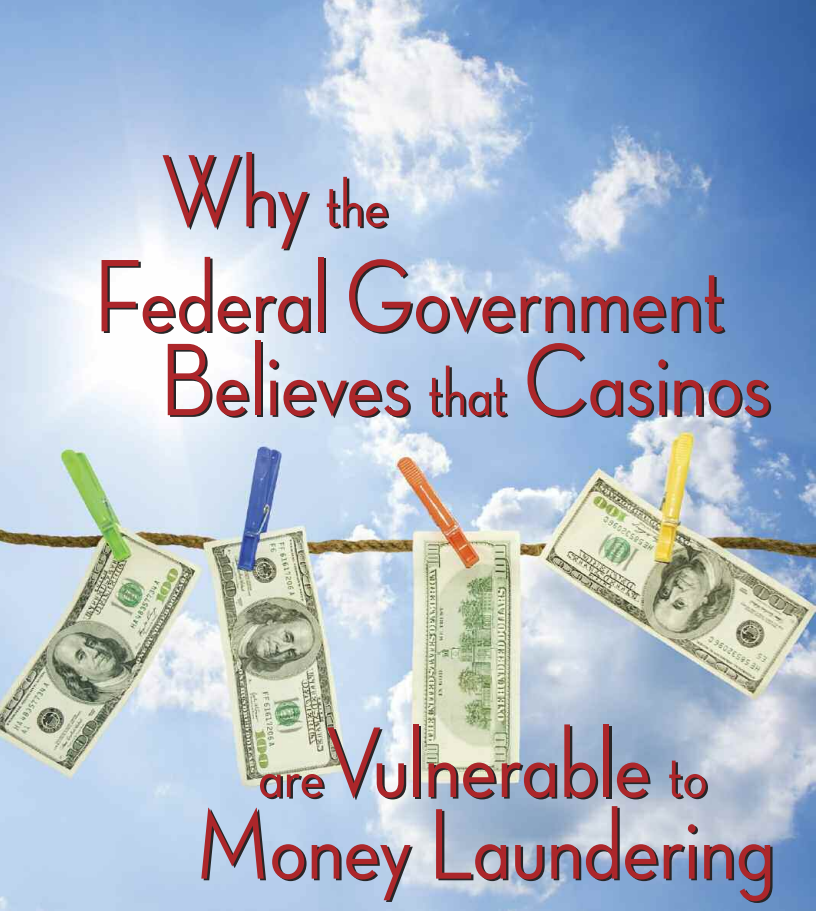


Demonstrating its commitment to reward companies implementing these sorts of programs, the guidelines specifically cite a recent DOJ decision not to pursue an enforcement action against a global financial services company that was implicated in corrupt activities by an employee. DOJ elected to prosecute only the individual employee.

Based on increased international enforcement of anti-corruption laws, significant penalties for violations, and the creation of an affirmative defense for companies that have an effective compliance program in place, it is now a prudent business practice for every company that conducts international business to have a compliance program addressing corruption. The complexity and content of the programs need to be scaled to fit actual companies. Smaller companies may not need to duplicate the substantial compliance programs implemented by large corporations. A streamlined anti-corruption policy, procedures and training program may well be adequate for most companies.

The first step is to consult a qualified professional to determine if company conduct 'intersects" with these requirements. If a compliance program is necessary, the compliance controls can be narrowly tailored to fit the business. A streamlined approach will ensure that a company does not implement overly broad compliance controls that might be inefficient and more expensive.

Trip Mackintosh (tmackintosh@hollandhart.com) is a partner with the law firm of Holland & Hart LLP and manages the firm's export control practice. Jon Anderson (jmanderson@hollandhart.com) is a partner at Holland & Hart and focuses on advising companies on international anti-corruption standards. Jon can be reached at jmanderson@hollandhart.com.



Why the Federal Government Believes that Casinos are Vulnerable to Money Laundering

By Jeffrey B. Setness & Leonard C. Senia

The days when casinos would face only civil money penalties for failing to maintain effective anti-money laundering programs may be over[1]. Based upon recent news reports as well as ongoing investigations and prosecutions by the U.S. Department of Justice, casino officials should take heed of the lyrics of Bob Dylan's 1964 hit song "The Times They Are a-Changin" when considering what the future holds for casino anti-money laundering compliance.

I. Recent Warning Signs

What has occurred in the last two years that should cause casino anti-money laundering compliance representatives and compliance committees to stand up and take notice?

The first warning sign was the June 2012 Federal criminal indictments of check cashing businesses ("financial institutions" within the meaning of the Bank Secrecy Act[2]) in both California and New York for failing to maintain effective anti-money laundering programs[3]. It is worthy of note that one of the U.S. Department of Justice prosecutors whose name appears at the end of all four of these indictments, Jennifer Shasky Calvery, was named as the Director of the Financial Crimes Enforcement Network ("FinCEN") on September 23, 2012. Is the appointment of a former federal prosecutor to the top position in FinCEN a harbinger of things to come?

The second warning sign was The Wall Street Journal article dated August 7, 2012, which stated that "[s]enior Justice Department and Treasury officials say they have grown concerned in recent years about the risk that casinos could be used for money laundering and terrorism financing, and that compliance standards in the industry aren't strong enough."[4] If government officials are stating in public that the anti-money laundering rules and regulations need to be strengthened, are proposed changes that far off?

The third warning sign was a Reuters report dated August 31, 2012, which stated that "[t]the U.S. Department of Justice is shifting its sights to a new offensive in combating money laundering: bringing criminal charges against banks and other financial institutions for weak compliance systems that fail to catch illicit money flows."[5] This "new offensive" appears to be well underway as evidenced by the criminal indictments of the check cashing businesses in June 2012.

The fourth and most ominous warning sign for casinos may be news reports that a Las Vegas casino company is under investigation by the United States Attorney's Office in Los Angeles.[6] On October 28, 2012, an article in The Wall Street Journal stated that "[p]rosecutors countered that they could indict Las Vegas Sands on charges of conspiracy to commit money laundering and possibly charge a company executive in the case."[7] Then, in June of this year, The Wall Street Journal reported that "[a] federal grand jury has been hearing witness testimony in the government's probe of Las Vegas Sands Corp.'s dealings with two high-rolling gamblers, people familiar with the matter said, a possible signal that the government's investigation is advancing."[8] Finally, The Huffington Post reported that "[g]rand juries are often used by federal prosecutors for obtaining testimony from witnesses or targets, and issuing subpoenas for documents, said lawyers specializing in white collar investigations. 'You typically go to a grand jury when you're ready for indictment, or as a strong-arm tactic' to reach a settlement, said a former federal prosecutor."[9]

However, these recent warning signs and the apparent increase in enforcement efforts by the Federal government should not come as a surprise because, for close to thirty years, the Federal government has repeatedly proclaimed that casinos are vulnerable to money laundering and other financial crimes. Since May 1985, and on a continuous basis thereafter, the U.S. Department of the Treasury ("Treasury") and later FinCEN have made it very clear they believe that casinos are vulnerable to money laundering and have repeatedly articulated the reasons why.

The first part of this article will provide the reader with a historical perspective of the Federal government's public

pronouncements, which set forth the reasons why they believe casinos are vulnerable to money laundering. The second part will examine recent investigations and prosecutions involving allegations of money laundering and that substantial portions of the defendants' ill-gotten gains were spent at casinos. The third and final part will provide a preview of where the authors believe casino anti-money laundering compliance and enforcement is heading.

At the outset, it is important to appreciate that, under Federal criminal law, not all money laundering offenses require the government to prove that the defendant conducted a financial transaction "knowing that the transaction is designed in whole or in part to conceal or disguise the nature, the location, the source, the ownership or the control of the proceeds of specified unlawful activity."[10] Specifically, Title 18, United States Code, Section 1957(a) makes it a criminal offense to "knowingly engage[] . . . in a monetary transaction in criminally derived property of a value greater than $10,000 . . ." Section 1957(f)(1) defines the term "monetary transaction" as "the deposit, withdrawal, transfer, or exchange, . . . of funds or a monetary instrument . . . by, through, or to a financial institution . . ." The term "financial institution" set forth in Section 1957 includes casinos[11]. Thus, the reach of Section 1957 includes not only the criminal who attempts to spend his or her criminal proceeds, but also the "financial institution" who does business with the criminal, knowing that the proceeds are from an illegal source.

II. A Historical Perspective

During the last three decades, the belief that casinos were vulnerable to money laundering was not confined to officials within Treasury. In October 1984, the President's Commission on Organized Crime consisting of distinguished individuals from law enforcement, academia, the judiciary, and the Congress prepared a report for then-President Reagan, recommending that casinos be subject to the reporting and recordkeeping requirements of the Bank Secrecy Act. The reason for their recommendation was "[t]o discourage the use of casinos by criminals as conduits for money laundering[12]." Also, in 1984, there were Congressional hearings before the Subcommittee on Crime in which there was testimony "that drug traffickers and other criminals have been utilizing gambling casinos in Nevada and in New Jersey with increased frequency to conceal their cash operations[13]."

In 1985, after the Commission's Report and the Congressional hearings, Treasury made casinos subject to the Bank Secrecy Act, noting that "[i]n recent years Treasury has found that an increasing number of persons are using gambling casinos for money laundering and tax evasion purposes[14]."

The Annunzio-Wylie Anti-Money Laundering Act of 1992 authorized Treasury to develop rules which would require financial institutions, including casinos, to develop and implement anti-money laundering compliance programs[15].

In March 1993, Treasury issued a final rule that required casinos to develop and implement anti-money laundering compliance programs containing the following elements: (i) a system of internal controls; (ii) internal and/or external independent testing; (iii) training of casino personnel; (iv) an individual or individuals designated to assure compliance; (v) procedures for using all available information to determine and verify, when required, the name, address, Social Security number or taxpayer identification number, and other identifying information for a person; and (vi) use of automated systems and programs to assure compliance[16]. Treasury added the last two anti-money laundering provisions because of specific compliance issues that existed in the casino industry at the time[17].

In December 1994, FinCEN put into effect the original casino AML provisions adopted in March 1993 stating that "[t]he casino industry is vulnerable . . . because casinos engage in a fast-paced cash intensive business and can provide their customers with financial services nearly identical to those generally provided by depository institutions. Federal law enforcement organizations have documented the use of casinos as surrogate 'banks' for individuals.[18]" It would be difficult to argue that casinos are not "fast-paced cash intensive business[es]" or that casinos do not provide many of the same financial servicesthat banks do. It is worthy of note that casinos were the first non-bank financial institutions required to develop and implement anti-money laundering compliance programs.

Also in December 1994, FinCEN made other significant amendments to its casino regulations, which among other things: (i) clarified the knowledge requirement for filing a currency transaction report on multiple transactions to include when employees obtain such knowledge through examining manual or automated records; (ii) required obtaining and verifying customer identification when depositing funds or opening an account or establishing a line of credit; and (iii) required records of customer transactions of more than $3,000 involving traveler's checks or other negotiable instruments[19].

Supporting Treasury's position that casinos are vulnerable to money laundering was a January 1996 report by the

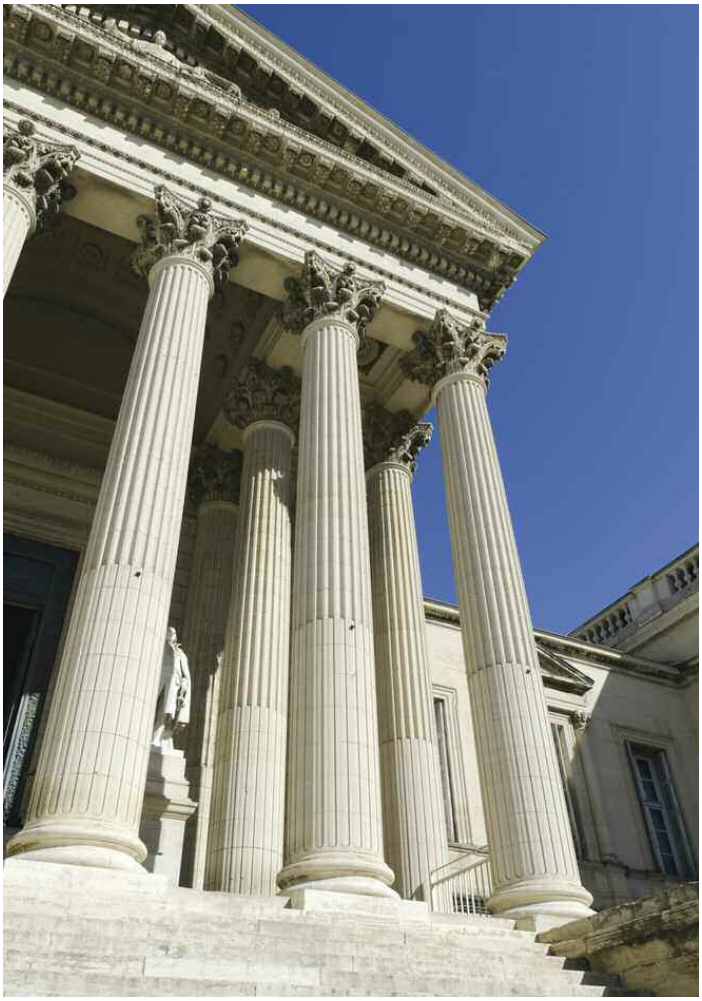
U.S. General Accounting Office which stated that "[w]ith this much cash changing hands, casinos may be particularly vulnerable to money laundering in the form of money from illegal activities being placed into legal gaming transactions[20]."

In February 1996, FinCEN expanded the coverage of its anti-money laundering programs when it issued BSA regulations applicable to gambling casinos authorized to do business pursuant to the Indian Gaming Regulatory Act ("IGRA[21]"), effective as of August 1, 1996[22]."

As the BSA regulations being imposed on depository institutions became stricter, on May 18, 1998, FinCEN proposed to amend BSA regulations to require that casinos report suspicious transactions. As justification for this proposal, FinCEN stated that: "[a]s government and industry programs have made it more difficult for customers to launder money at banks . . . , the interest of money launderers in moving funds into the financial system through non-bank financial services providers has increased. Gaming establishments have not been spared from this trend[23]." The successes of depository institutions' anti-money laundering efforts were apparently forcing criminals to find other ways to introduce their ill-gotten gains into the economy.

In September 2002, FinCEN issued a final rule that required casinos to report suspicious transactions relevant to a possible violation of law or regulation involving or aggregating $5,000. FinCEN stated that "[w]ith this rule, the Department of the Treasury extends to casinos . . . the suspicious transaction reporting regime to which the nation's banks . . . are already subject . . . These actions reflect the continuing determination not only that casinos are vulnerable to manipulation by money launderers and tax evaders but, more generally, that gaming establishments provide their customers with a financial product – gaming – and as a corollary offer a broad array of financial services, such as customer deposit or credit accounts, facilities for transmitting and receiving funds transfers directly from other institutions, and check cashing and currency exchange services, that are similar to those offered by depository institutions[24]…" In not so subtle fashion, the government was apparently taking the position that casinos in many ways are similar to depository institutions (particularly in regard to casino cage operations). In addition, the casino's final rule amended one and added other anti-money laundering compliance program requirements, namely: (i) enhanced internal and/or external independent testing by centering it on the scope and frequency that is commensurate with risks of money laundering and terrorist financing, as well as products and services provided, and (ii) requiring procedures for using all available information to determine the occurrence of any transactions or patterns of transactions required to be reported as suspicious.

In 2007, likely because of the heightened scrutiny of terrorists and how their operations are financed, FinCEN may have upped the ante in regard to casino compliance when it proclaimed that "casinos offer services that are similar to and may serve as substitutes for services ordinarily provided by depository institutions and certain non-bank financial institutions. As such, casinos are vulnerable to abuse by money launderers, terrorist financiers, and tax evaders[25]." Certainly, many of us understood that the government



believed casinos to be vulnerable to money launderers and tax evaders, but in 2007, everyone was put on notice that the government considered casinos to be vulnerable to "terrorist financiers" as well.

The view that casinos are vulnerable is not limited to government officials within the United States. In March 2009, the Financial Action Task Force ("FATF") and The Asia/Pacific Group on Money Laundering issued a report which stated "[a]s part of their operation casinos . . . undertake various financial activities that are similar to financial institutions, which put them at risk of money laundering. Most, if not all, casinos conduct financial activities akin to financial institutions including: accepting funds on account; conducting money exchange; conducting money transfers; foreign currency exchange; stored value services; debit card cashing facilities; cheque cashing; safety deposit boxes; etc. . . Casinos are by nature a cash intensive business and the majority of transactions are cash based . . . which makes casinos an attractive target for those attempting to launder money[26]."

Finally, in March 2012, FinCEN published a report entitled "Suspicious Activity Reporting in the Gaming Industry" stating, in pertinent part, once again that "[c]asinos . . . are vulnerable to money laundering and other financial crimes because of the nature of their operations[27]…"

As set forth above, for almost thirty years and, as recently as last year, Treasury and others have been telling the world that

casinos are vulnerable to money laundering and that there are similarities in the type of services that banks and casinos provide. However, is the Federal government's position on casinos based upon misconceptions about the nature of the casino industry and the type of financial services they provide? Apparently questioning the alleged similarity between banks and casinos, an article in The Wall Street Journal dated January 24, 2013 quotes a senior Las Vegas casino executive as stating "[i]f someone goes into a department store and buys a $20,000 purse, does anybody ask where [the money] comes from[28]?" Given the cash-intensive nature of the casino business and the many financial services that casinos provide, it can be argued that a casino is more like a bank than a department store. However, it appears reasonable minds can differ on this point.

III. Recent Prosecutions and Investigations

A review of recent prosecutions and ongoing investigations appear to lend credence to Treasury's concerns that casinos (just like every other financial institution for that matter) may be vulnerable to money laundering and other financial crimes. Although this article will discuss five criminal prosecutions which involved transactions at casinos, other cases could have been discussed if time and space permit. It should be noted that, in the criminal prosecutions mentioned below, no casino has been charged with any criminal offenses or assessed any money penalties.

A. 2006 - United States vs. Xu Chaofan, et al.

On January 31, 2006, a Federal Grand Jury in Las Vegas returned a Second Superseding Indictment against two former managers of the Bank of China, their wives, and a relative on various Federal criminal charges involving an alleged scheme to defraud the Bank of China of at least $485 million. In the Second Superseding Indictment, the charges included a money laundering conspiracy count in which it was alleged that the defendants conducted a variety of monetary transactions involving criminally derived property including "casino transactions in Las Vegas, Nevada[29]." At trial, the government presented evidence that checks would be delivered to Las Vegas casinos in order to establish "front money" accounts[30] and on one day alone in 1996, the checks received by one casino totaled $2,000,000[31]. The government also presented evidence at trial that during a series of gambling trips to a Las Vegas casino during 2000 and 2001, one defendant lost approximately $6 million with baccarat wagers as high as $100,000 a hand[32]. Later, as explained in the Ninth Circuit's opinion, the casino issued checks to intermediaries of the defendants "to facilitate the return of the funds to Defendants for their personal use[33]." After a lengthy trial, the jury found the defendants guilty of the money laundering conspiracy charge and a host of other Federal criminal offenses[34].

B. 2006 - United States v. Bunchan et al.

On August 17, 2006, a Second Superseding Indictment was filed in the U.S. District Court in Massachusetts alleging the Defendants James Bunchan, Seng Tan and Christian Rochon "ran a fraudulent pyramid scheme through which they solicited and obtained from hundreds of people in excess of $25 million[35]…" In addition, the Second Superseding Indictment alleged that "Bunchan, . . . used investors funds to finance a lavish personal lifestyle for himself, which included, among other things, massive expenditures at casinos throughout the United States. For example, . . . checks drawn on a WMDS bank account funded by investor proceeds show Bunchan writing as much as $200,000 in checks to a Las Vegas, Nevada, casino in a single day . . . In total, Bunchan spent in excess of $3 million of investor funds at casinos throughout the United States[36]." The charges the defendants faced included 15 counts of money laundering, in violation of Title 18, United States Code, Section 1957, with some counts making specific reference to checks made payable to casinos in Las Vegas[37]. After an eleven day jury trial, the jury found Bunchan guilty of a variety of federal crimes including money laundering[38].

C. 2007 - United States vs. Zhenli Ye Gon and United States vs. 2004 Lamborghini

On June 15, 2007, Federal prosecutors filed a Criminal Complaint and Affidavit in the case of United States of America vs. Zhenli Ye Gon, Case No. 1:07-CR-00181-EGS, in the U.S. District Court for the District of Columbia. The Affidavit in support of the Complaint charging Gon with conspiracy to manufacture and distribute methamphetamine stated, in pertinent part, that "[a]ccording to records obtained from various hotels and casinos in Las Vegas, NV, YE GON['s] net gambling activity from 2004 to 2007 resulted in the loss of approximately more than $125,917.839 USD[39]." In August 2007, the Government filed a Verified Complaint for Forfeiture in Rem in the case of United States vs. 2004 Lamborghini Murcielago, et al., Case No. 1:07-CV-01512-EGS in the U.S. District Court for the District of Columbia. Notably, the Complaint stated that "YE GON told WONG that the group [a Mexican organized crime group] instructed

him to launder the money in Las Vegas, NV and that he should gamble with the money and purchase high value items in Las Vegas[48]."

D. 2008 - United States v. Petters, et al.

On December 1, 2008, an Indictment was returned in the District of Minnesota charging Thomas Joseph Petters, Petters Company, Inc., and/or Petters Group Worldwide, LLC, with a variety of criminal offenses including money laundering conspiracy, in violation to Title 18, United States Code, Section 1956(h) and money laundering, in violation of Title 18, United States Code, Section 1957[41]. At trial, the government introduced evidence that the defendants had perpetrated a Ponzi scheme and that, by September 2008, Petters and Petters Company, Inc., owed investors over $3.5 billion[42]. In addition, according to an Affidavit of an FBI Special Agent filed in a related civil case, "On or about September 23, 2008, a Nevada Gaming Enforcement Agent has informed SAs [FBI Special Agents] that Thomas Petters is the largest comped-room guest at the . . . Casino in Las Vegas, Nevada. He also told SAs that Thomas Petters had gambling losses in excess of $10 million[43]." Following a jury trial, Mr. Petters was convicted of a variety of offenses including conspiracy to commit money laundering and money laundering[44].

E. 2009 - United States vs. Siddiqui

On December 18, 2008, a Criminal Complaint and Affidavit was filed in the case United States vs. Ausaf Umar Siddiqui which stated, in pertinent part, that Siddiqui "was involved in a kickback scheme to defraud Fry's Electronics . . . out of tens of millions of dollars[45]." The Affidavit further stated that kickbacks from various companies were deposited into a business checking account created by Mr. Siddiqui in the name of PC International LLC and that during the time from January 1, 2005 to November 30, 2008, "SIDDIQUI transferred . . . $121,855,000.00 to three (3) entities that belong to casinos in Las Vegas, Nevada[46]…" On January 6, 2009, a Federal Grand Jury sitting in San Jose, California, indicted Ausaf Umar Siddiqui, who was the Vice President of Merchandising and Operations for Fry's Electronics Inc., with a variety of federal criminal charges including four counts of money laundering[47]. On February 7, 2011, Mr. Siddiqui entered into a Plea Agreement in which he pled guilty to one count of wire fraud and one count of money laundering[48]. Cases such as Siddiqui raise interesting questions such as:

should casinos be required to know their high-roller or "whale" customers and the source(s) of the funds they utilize to gamble? Apparently, there is disagreement on this issue. In a February 15, 2009, article in the Los Angeles Times regarding Mr. Siddiqui, a casino spokesperson reported saying "If a person has a million or 2 million in his account, how are we supposed to know where it came from . . . It could be money he inherited from his mother[49]."

F. 2009 - FinCEN Advisory

On July 1, 2009, FinCEN issued Advisory FIN-2009-A003 entitled "Structuring by Casino Patrons and Personnel," in which FinCEN announced that they "recently received information from law enforcement and regulatory authorities that certain casino personnel may have complied with requests from patrons to evade, or provided instructions to patrons on how to evade, reporting and recordkeeping requirements under the Bank Secrecy Act ('BSA')[50]." The Advisory reminded casinos that structuring is against the law and that "such activity can give rise to significant civil and criminal penalties under the BSA[51]." In light of pronouncements such as this, it may be difficult to argue that casinos should not be subject to enhanced casino recordkeeping and anti-money laundering compliance program requirements.

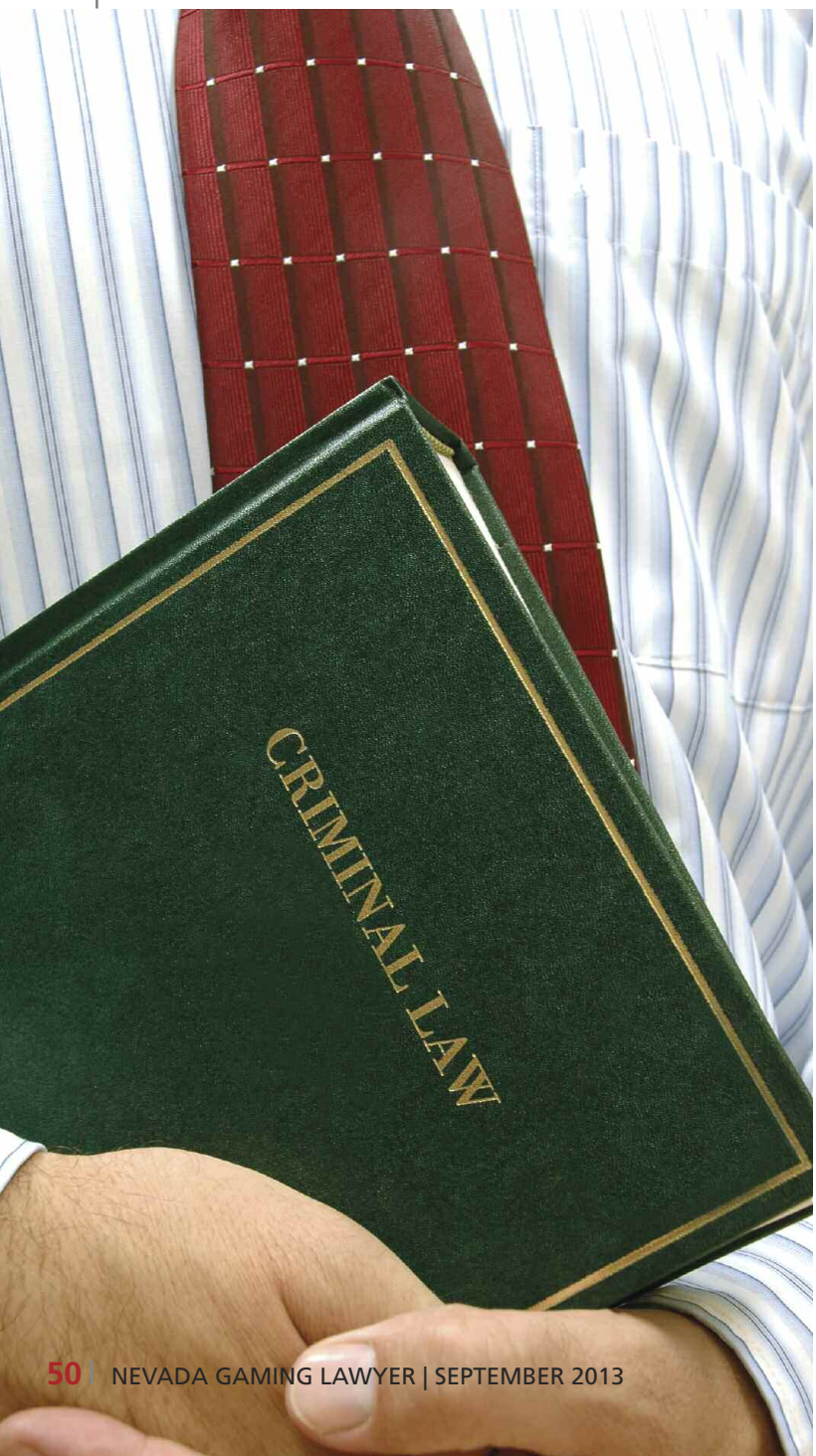
G. 2012 and Ongoing - Sands Investigation[52]

According to The Wall Street Journal article entitled "Sands Probed in Money Moves" dated August 7, 2012, "[f]ederal authorities are investigating whether Las Vegas Sands Corp. and several of its executives violated money-laundering laws by failing to alert authorities to millions of dollars transferred to its casinos by two Las Vegas high rollers, according to lawyers and others involved in the matter[53]." The Wall Street Journal article went on to identify the "high rollers" as Zhenli Ye Gon and Ausaf Umar Siddiqui and that "[a] key issue in the investigation is likely to be whether it was possible for the casino to know that the customer money came from illicit activities—which U.S. authorities later alleged—or whether the casino at least should have been suspicious enough to alert authorities[54]."

IV. What Does the Future Hold

As explained earlier, Justice Department and Treasury officials have been reported as saying that the compliance standards in the casino industry are not strong enough and, in light of recent prosecutions and investigations, it will be interesting to see what future regulatory amendments may be proposed for the casino industry in order to combat money laundering, terrorist financing, and other financial crimes. After all, the Federal government has been saying for decades that the casinos are in many respects similar to depository institutions in some of the financial services they provide. It would seem to follow that casinos may eventually be subject to more comprehensive FinCEN recordkeeping and anti-money laundering

requirements to effectively combat money laundering and terrorist financing. Indeed, a FinCEN spokesperson recently stated that FinCEN is in the "early stages" of a proposed rulemaking that "would set down more specific anti-money laundering requirements for casinos[55]." With proposed rule changes possibly "Blowin in the Wind[56]," can we also expect increased enforcement efforts in the form of investigations and prosecutions? Also, will FinCEN add other sanctions to its civil enforcement strategy applicable to non-bank financial institutions? For example, almost four years ago, it reminded the casino industry that, in addition to civil penalties, ". . . FinCEN may seek: (1) injunctive relief from a court against future violations of the BSA; . . ."[57] As the old saying goes "only time will tell." However, it may be a good idea for casinos to take a long hard look at their anti-money laundering programs to ensure their programs are up-to-date and effective.



Jeffrey B. Setness is a partner with the law firm of Lewis, Brisbois, Bisgaard & Smith LLP in Las Vegas, Nevada. Mr. Setness represents individuals and entities who are under investigation or have been charged with criminal offenses including criminal violations of the Internal Revenue Code, money laundering and structuring. Mr. Setness is also a Certified Anti-Money Laundering Specialist who advises financial institutions regarding their obligations pursuant to the Bank Secrecy Act. Prior to entering private practice, Mr. Setness was a Trial Attorney with the U.S. Department of Justice Tax Division - Criminal Section and later was an Assistant United States Attorney with the U.S. Attorney's Office in Las Vegas and Reno. As a federal prosecutor, Mr. Setness investigated and prosecuted a variety of offenses including criminal violations of the Internal Revenue Code. Mr. Setness can be reached at jsetness@lbbslaw.com.

Leonard C. Senia, B.A. & M.P.A., recently retired from his last position as a Senior Regulatory Project Officer, Financial Crimes Enforcement Network ("FinCEN"), United States Department of the Treasury. During his 21- year career with the Treasury Department, he wrote numerous Federal government regulations and guidance documents for the casino and card club industries pertaining to FinCEN casino regulatory requirements. Also, he was FinCEN's resident casino expert who provided numerous customized training classes and case support work, upon request, to Federal and State prosecutors, investigators, and examiners pertaining to: (a) Bank Secrecy Act casino regulatory requirements, (b) how casinos and card clubs are organized and operate, (c) casino computerized and manual recordkeeping and reporting systems, (d) casinos and card clubs vulnerabilities to money laundering, and (e) Internet gambling. In 2006, the Director of the Federal Bureau of Investigations recognized Mr. Senia for "Exceptional Service in the Public Interest." Currently, Mr. Senia has started consulting, lecturing, training, and writing on a variety of subjects pertaining to casino and card club gambling and operations and can be reached at lcsgamingconsultant@gmail.com. He resides in Northern Virginia.

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[1] To date, the U.S. Department of the Treasury/Financial Crimes Enforcement Network have issued civil money penalty assessments against 23 casinos for violations of the Bank Secrecy Act including a civil money penalty assessment in the amount of $1 million against the Tonkawa Tribe of Oklahoma and $1.5 million against Edward E. Street. (Assessment of Civil Money Penalty dated March 24, 2006 - FinCEN No. 2006-1) which is available at http://www.fincen.gov/news_room/ea/files/tonkawa.pdf.

[2] 31 C.F.R. § 1010.100(t)(3) (2013); 31 C.F.R. § 1010.100(ff)(2) (2013).

[3] Indictment at 8-9, U.S. v. *AAA Cash Advance, Inc. and Diana Brigitt*, No. CR 12-0559, (C.D. Cal. June 12, 2012); Indictment at 12-13, U.S. vs. *G & A Check Cashing, Karen Gasparian, and Humberto Sanchez*, No. CR 12-0560, (C.D. Cal. June 12, 2012); Indictment at 9-11, *U.S. vs. Bargain Island and George Gonchar, Case* 1:12- CR- 00396-KAM, (E.D.N.Y. June 12, 2012); Superseding Indictment at 14-16, U.S. vs. *Belair Payroll Services, Inc., Craig Panzera, Lasha Goletiani and Zhan Petrosyants*, Case 1:11-CR-00591-FB, (E.D.N.Y. June 12, 2012).

[4] Kate O'Keeffe, Alexandra Berzon, Justin Scheck and James V. Grimaldi, *Sands Probed in Money Moves, The Wall Street Journal*, August 7, 2012 which is available at http://online.wsj.com/article/SB10000872396390444320704577566803521121134.html.

[5] Aruna Viswanatha and Brett Wolf, *Dept. of Justice looks to next era of money-laundering cases*, Reuters, Aug. 31, 2012 which is available at http://newsandinsight.thomsonreuters.com/Legal/News/2012/08_-_August/Dept__of_Justice_looks_to_next_era_of_money-laundering_cases/.

[6] In considering these news reports it must be emphasized that an investigation is merely that and not all investigations result in charges being brought. It also must be remembered that that all persons and entities are presumed innocent.

[7] Justin Scheck, Alexandra Berzon, and Kate O'Keeffe, *Las Vegas Sands Discusses Possible Settlement with Justice Department, The Wall Street Journal*, October 28, 2012 which is available at http://online.wsj.com/article/SB10001424052970204005004578080510626839192.html.

[8] Alexandra Berzon and John R. Emshwiller, *Las Vegas Sands Probe: Grand Jury Hears Witnesses, The Wall Street Journal*, June 6, 2013

[9] Peter H. Stone, *Sheldon Adelson's Woes Mount with Grand Jury in Las Vegas Sands Money-Laundering Probe, The Huffington Post*, June 5, 2013

[10] 18 U.S.C. § 1956(a)(1)(B)(i).

[11] 31 C.F.R. § 1010.100(t)(5) (2013).

[12] Interim Report to the President and the Attorney General, *The Cash Connection: Organized Crime, Financial Institutions, and Money Laundering* at 58, (October 1984).

[13] Hearings Before the Subcommittee on Crime of the Committee on the Judiciary House of Representatives, *Use of Casinos to Launder the Proceeds of Drug Trafficking and Organized Crime* at 53, (1984).

[14] 50 Fed. Reg. 5065 – 5069, 5066 (February 6, 1985).

[15] Annunzio - Wylie Anti-Money Laundering Act of 1992 (Public Law 102-550, 106 Stat. 3672, 4044 (1992)).

[16] 58 Fed. Reg. 13538 - 13550 (March 12, 1993).

[17] The need for these two casino AML provisions did not exist for depository institutions in 1994, or in subsequent years for AML compliance programs required of brokers or dealers in insurance companies; dealers in precious metals, precious stones, or jewels; futures commission merchants and introducing brokers in commodities; loan or finance companies; mutual funds; and operators of credit card systems. Only the money services businesses ("MSB") AML requirements have enhanced provisions, which were based on the experiences with regulating casinos.

[18] 59 Fed. Reg. 61660 - 61662 (December 1, 1994) - modifying and putting into final effect the rule originally published at 58 Federal Register 13538 – 13550 (March 12, 1993), available at http://www.fincen.gov/statutes_regs/frn/pdf/frn19941201.pdf.

[19] Id.

[20] Report to the Ranking Minority Member, Permanent Subcommittee on Investigations, Committee on Governmental Affairs, U.S. Senate, *Money Laundering: Rapid Growth of Casinos Makes Them Vulnerable* at 29, GAO/GGD–96–28, General Accounting Office (Jan. 1996), available at http://www.gao.gov/assets/230/222140.pdf.

[21] 25 U.S.C. §§ 2701 *et seq.*

[22] 61 Fed. Reg. 7054 - 7056 (Feb. 23, 1996).Also, in January 1998, FinCEN issued BSA regulations that expanded its jurisdiction again to include the class of gaming establishments known as "card clubs." Typically, card clubs offer facilities for gaming by customers who bet against one another, rather than against the establishment. 63 Fed. Reg. 1919 - 1924 (January 13, 1998).

[23] Proposed Amendment to the Bank Secrecy Act Regulations; Requirement That Casinos and Card Clubs Report Suspicious Transactions, 63 Fed. Reg. 27230 - 27240 (proposed May 18, 1998).

[24] Financial Crimes Enforcement Network; Amendment to the Bank Secrecy Act Regulations – Requirement That Casinos and Card Clubs Report Suspicious Transactions; Final Rule and Notice, 67 Fed. Reg. 60722 – 60730 (September 26, 2002) (to be codified at 31 C.F.R. pt. 103), available at http://www.gpo.gov/fdsys/pkg/FR-1998-05-18/html/98-13053.htm.

[25] Financial Crimes Enforcement Network; Amendments to Bank Secrecy Regarding Casino Recordkeeping and Reporting Requirements, 72 Fed. Reg. 35008 - 35013 (June 26, 2007) (to be codified at 31 C.F.R. pt. 103)) and available at http://www.fincen.gov/statutes_regs/frn/pdf/casinosarfinalrule.pdf.

[26] Financial Action Task Force and The Asia/Pacific Group on Money Laundering, *Vulnerabilities of Casinos and Gaming Sector* at 25, (March 2009) and available at http://www.fatfgafi.org/media/fatf/documents/reports/Vulnerabilities%20of%20Casinos%20and%20Gaming%20Sector.pdf.

[27] Financial Crimes Enforcement Network, *Suspicious Activity Reporting in the Gaming Industry* at 2, (March 2012).

[28] Kate O'Keeffe and Alexandra Berzon, *Sands Bolsters Safeguards Against Money-Laundering, The Wall Street Journal*, January 24, 2013.

[29] Second Superseding Indictment at 7, *United States vs. Xu Chaofan, Xu Guojun, Kuan Wan Fang, Yu Ying Yi, and Kwong Wa Po*, No. 2:02-CR-0674-PMP (LRL) (D. Nev. filed on January 31, 2006).

[30] Government's Consolidated Answering Brief at 29, U.S. vs. *Chaofan Xu, Ying Yi Yu, Guojun Xu, and Wan Fang Kuang*, (No. 09-10189, No. 09-10193, No. 09-10201, No. 09-10202) (9th Cir., August 26, 2011).

[31] *Id.* at 29-30.

[32] *Id.* at 30.

[33] *U.S. vs. Chao Fan Xu, Ying Yi Yu, Guo Jun Xu, Wan Fang Kuang*, 703 F.3d 965, 973 (9th Cir. 2013).

[34] *Id.* at 974.

[35] Second Superseding Indictment at 2, *U.S. v. James A. Bunchan, Seng Tan, and Christian Rochon*, Criminal No. 06-10004-RGS, (D. Mass. August 17, 2006).

[36] *Id.* at 9-10.

[37] *Id.* at 41-43.

[38] Brief for the United States at 2, U.S. vs. Seng Tan, (No. 10-2091) (1st Cir., October 7, 2011).

[39] Criminal Complaint and Affidavit at 7, U.S. v. Zhenli Ye Gon, No. 1:07-CR-181-EGS, (D.D.C., June 15, 2007).

[40] Verified Complaint for Forfeiture in Rem at 8, U.S. v. 2004 *Lamborghini Murcielago, et al.*, No. 1:07-CV-01512-EGS, (D.D.C. filed on August 24, 2007).

[41] Indictment, *U.S. v. Thomas Joseph Petters, Petters Company, Inc. and Petters Group Worldwide, LLC*, CR 08-364-RHK, (D. Minn. filed December 1, 2008)

[42] Brief of Appellee at 25-27, *U.S. vs. Thomas Joseph Petters*, (No. 10-1843) (8th Cir., November 2, 2010).

[43] Affidavit at 21, *U.S. v. Thomas Joseph Petters, et al*, Civil No. 08-SC-5348-ADM, (D. Minn. filed October 2, 2008)

[44] Judgment in a Criminal Case, *U.S. v. Thomas Joseph Petters*, CR 08-364-RHK-AJB (D. Minn. filed April 8, 2010).

[45] Criminal Complaint and Affidavit at 3, *United States v. Siddiqui, No*. 08-70760 (N.D. Cal. filed December 18, 2008).

[46] *Id.* at 19.

[47] Indictment at 4, *United States v. Siddiqui*, No. 09-00018-JF-RS, (N.D. Cal. filed January 6, 2009).

[48] Plea Agreement, *United States v. Siddiqui*, No. 09-00018-JF-RS, (N.D. Cal. filed February 10, 2011).

[49] Richard C. Paddock, *Debt finally topples a Las Vegas high roller*, February 15, 2009, available at http://articles.latimes.com/2009/feb/15/local/me-gambler15.

[50] FinCEN Advisory FIN-2009-A003, *Structuring by Casino Patrons and Personnel* at 1, (July 1, 2009), available at http://www.fincen.gov/statutes_regs/guidance/pdf/fin-2009-a003.pdf.

[51] *Id.*

[52] In considering these news reports it must be emphasized that an investigation is merely that and not all investigations result in charges being brought. It also must be remembered that that all persons and entities are presumed innocent.

[53] Kate O'Keeffe, Alexandra Berzon, Justin, Scheck and James V. Grimaldi, *Sands Probed in Money Moves, The Wall Street Journal*, August 7, 2012.

[54] *Id.*

[55] Kate O'Keeffe and Alexandra Berzon, *Sands Bolsters Safeguards Against Money-Laundering, The Wall Street Journal*, January 24, 2013, available at http://online.wsj.com/article/SB10001424127887323854904578261363501815322.html.

[56] Bob Dylan, Blowin in the Wind, 1962

[57] FIN-2009-G004- Frequently Asked Questions – Casino Recordkeeping, Reporting and Compliance Program Requirements (September 30, 2009), Question and Answer 25 available at: http://www.fincen.gov/statutes_regs/guidance/pdf/fin-2009-g004.pdf.

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