

# The CNMI – Interaction between US AML requirements and junket practices



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For casino gaming, the Commonwealth of the Northern Marianas Islands (CNMI) represents the intersection between US law and junket practices. The former Tinian Dynasty Hotel Casino provides lessons in how casinos operating in the CNMI will have to comply with US law relating to labor issues, employment, and anti-money-laundering (AML) controls. Of particular importance is AML compliance. There are a number of factors at play that make the use of junkets increasingly risky, not only in the CNMI but in other parts of Asia as well. The use of junkets in Asia to attract high-value players to casinos is the most controversial aspect of gaming in Asia.

**A** licensed casino operating in the CNMI is subject to the US Bank Secrecy Act in general and the casino AML rules and regulations promulgated by the US Department of the Treasury and Financial Crimes Enforcement Network (FinCEN)<sup>1</sup>. The former Tinian Dynasty, located on one of three islands that comprise the CNMI, was subject to a 150-count federal indictment for violating casino AML laws and regulations in 2015 initiated by the Office of the US Attorney for Guam and the CNMI. As a result, the Tinian Dynasty entered into a non-prosecution agreement admitting to the violations and an agreement to pay an approximate US\$3 million fine to the US Department of Justice. Most significantly, the terms of the non-prosecution agreement stated that if any material violations were found during the four-year term of the agreement, the indictment would be reinstated. In addition, and separate and apart from the USDOJ fine, FinCEN fined the Tinian Dynasty US\$75 million<sup>2</sup>. Under the terms of the settlement, Spectrum Gaming Group was brought in to monitor casino operations for compliance with AML laws and regulations with dual reporting to the management of the casino and to federal law enforcement. The casino closed in the fall of 2015.

AML issues are likely to be a major issue in conjunction with the operation of the temporary Best Sunshine casino that opened in the fall of 2015 in Saipan, another island in the CNMI. News reports have indicated that there may be a federal AML investigation of Best Sunshine. Irrespective of whether or not Best Sunshine is under investigation for AML matters, compliance with American AML laws for any casino operating in the CNMI is a major issue of concern. Casinos operating in Macau and throughout parts of Southeast Asia are dependent upon either well known VIP room operators, such as Sun City and Neptune, or junket operators to provide them with high-value

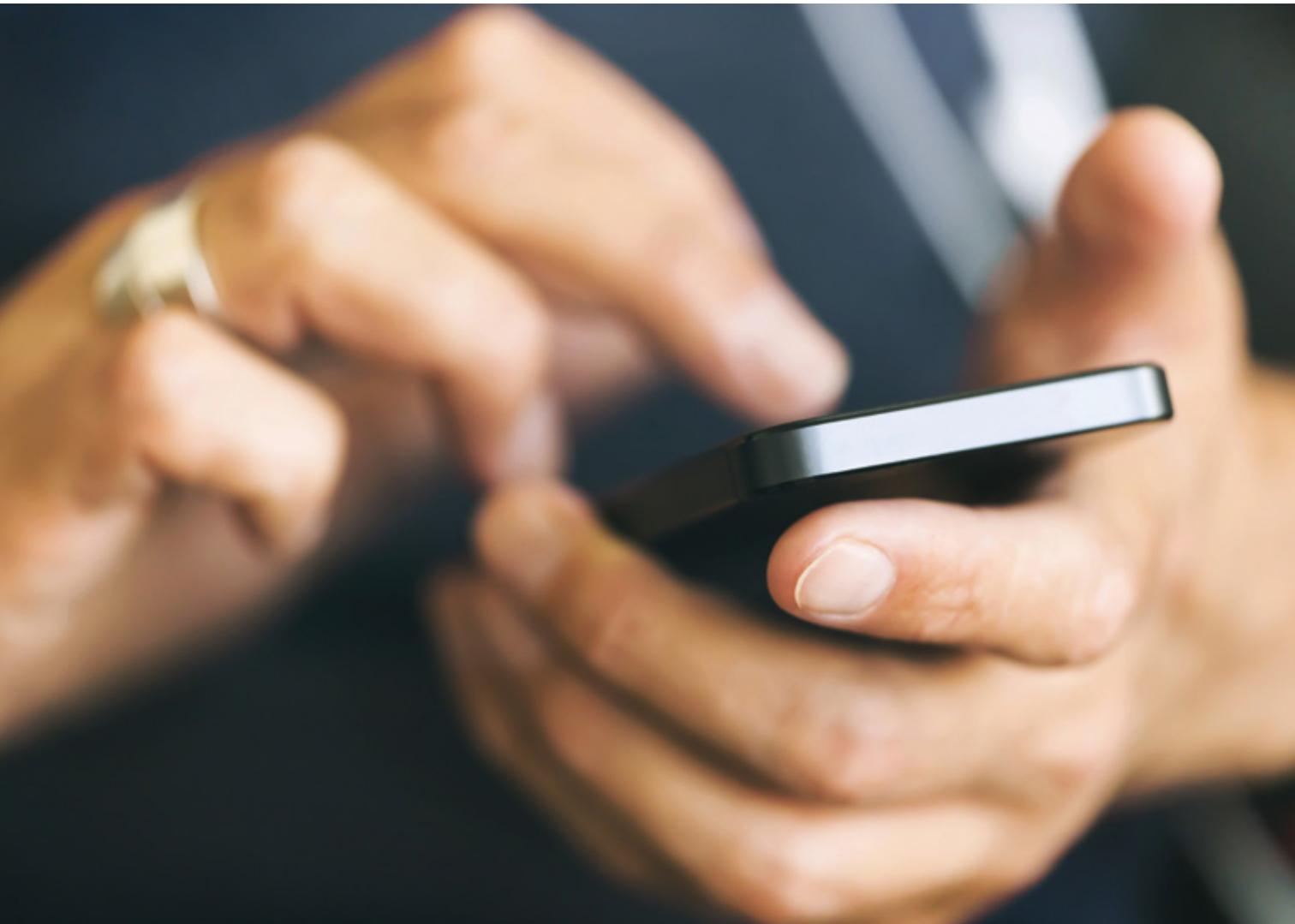
players. Casinos planned for Vietnam and operating in the Philippines, Cambodia and Laos and other countries are largely dependent on VIP play. Junket practices whereby the identity of the players and their source of funding remain anonymous seem to be at variance with AML controls in the United States. Moreover, the AML regulations require extensive record-keeping requirements and documentation of patron play and patron financial transactions with casinos. It is well known that junkets issue credit to their players primarily in China, while the actual gambling takes place someplace else – in this case Saipan. Proxy betting is illegal in Macau and China and seemingly at variance with US AML requirements.

Simultaneously, the crackdown on corruption in China is putting new pressures on VIP room operators, junkets and high-value Chinese players. In late 2012, Chinese President Xi Jinping initiated an anti-corruption campaign, which has been strict and more protracted than was anticipated by most observers. Its impact on the gaming industry, and Macau in particular, has been severe and wide-ranging. The principal aim of the crackdown on corruption was to prevent government corruption, the underreporting of income by wealthy Chinese businesspeople, and other types of illegal activity. Currency outflows in China have been long been tightly controlled and rapid economic growth has meant that increasingly wealthy Chinese citizens seek to move money out of China to invest primarily in property or other business ventures in overseas markets. Both Macau and Hong Kong have both been used as locales through which to transfer funds out of China to invest internationally.

The gaming sector became a key focus of the crackdown because of the proximity of Macau to the mainland, Macau's economic reliance on gaming, and the frequency and volume of transactions in the gaming sphere, which create conditions for the laundering of money. Moreover, Macau's historically weak regulatory environment led to it being fertile breeding ground for financial crime. In this context, recent regulatory changes in Macau have focused on controlling the amount of money that PRC

1. A federal district court decision in conjunction with Tinian Dynasty confirmed this statement.

2. The Tinian Dynasty paid the \$3 million fine but the FinCEN fine remains unpaid.



nationals can withdraw from ATMs and monitoring cash withdrawals with facial-recognition technology. Macau has also enacted tougher AML legislation, which focuses heavily on junket promoters.

In 2017, Beijing's efforts have shown no signs of slowing down. For example, in March 2017 Public Security Minister Guo Shengkun announced that the government intended to "seriously investigate and severely punish those companies and individuals involved in enticing and organizing Chinese tourists to gamble in overseas casinos." This threat did not ring hollow because it followed the detention in China of 13 South Korean employees of Grand Korea Leisure Co Ltd and Paradise Co Ltd, two Korean gaming companies, and subsequently of 18 Crown Resorts Ltd employees who were arrested on suspicion of marketing to Chinese gamblers and sentenced to 9 to 10 months in prison in June 2017 after they pleaded guilty to gambling-related charges. Moreover, direct marketing to Chinese VIPs, which has been carried out illegally in the past, appears to now be the focus of a more concerted effort of enforcement by the Chinese authorities. The long-term effects of these policies are uncertain.

Given the issues facing casinos like Best Sunshine in the CNMI, it is important to assess the risks of operating a casino in the CNMI employing the junket model used in Macau. The United States and indeed worldwide systems related to AML control for casinos utilize a risk-based system.

Preparing a risk assessment that is tied to the specific risks of the casino is the first step in developing proper AML controls. A risk assessment provides assistance in determining what areas are more prone to risk so mitigating controls can be put in place to prevent or deter money laundering and terrorist financing. Every casino should have its own risk assessment. While there are many factors that go into the risk assessment, the most relevant for a casino operating in the CNMI would be:

- Customer base
- Use of junkets
- Transparency by the junkets
- Know your customer issues
- Settling financial transactions overseas
- Beneficial ownership of the casino

Risk assessments are used by casinos when:

1. Developing a system of internal controls designed to use all information that the casino or its representatives gather to assure compliance;
2. Gathering of information in the course of business to know the customer, not the junket representative;
3. Implementing procedures to determine whether the conduct requires the filing of a Suspicious Transaction Report;
4. Independent and external auditing of the casino's systems;
5. Training;
6. Integrating and sharing of information within the casino, its marketing efforts and branch offices;
7. Evaluating the risk of certain countries that comprise the patron base of casino customer; and
8. Identifying politically exposed persons.

Applying these criteria to a casino operating under the

Asian junket model in the CNMI, there is little doubt that casino operations in the CNMI would be high risk. During the course of any IRS audits or reviews of casino operation, casinos are responsible for justifying and defending reliance on junkets and related financial transactions. Casino ownership in every jurisdiction makes a threshold determination as to whether they will comply with local laws or whether they will try to circumvent such laws. As always, they do so at their own peril should they make the wrong decision.

**\*About the author**

Fredric Gushin is Managing Director of the Spectrum Gaming Group, an independent research and professional services firm serving public- and private-sector clients worldwide. Fredric has been an Advisor to the Tinian Casino Control Commission, and was Assistant Attorney General and Assistant Director in the New Jersey Division of Gaming Enforcement for more than five years.

