



The Path to Collecting Casino Debts in Brazil

By Anthony Cabot and Antonio Celso Neves

While the Brazilian economy has hit a rough patch, its potential and Brazilians' affinity for travel to the United States should not be underestimated. The last statistics are from 2014 when Brazil provided more travellers than any other country outside of North America except the United Kingdom and Japan. Since 2009, Brazilian tourism to the US recorded an increase of 153.6%. According to the US Travel Association, this will continue to rise to almost 3.5 million tourists by 2020. Moreover, the average expenditure for each of the 2.3 million Brazil tourists in 2013 was a healthy \$5,831.

Las Vegas, in particular, has been keen to welcome Brazilian tourists because Las Vegas has strong brand appeal in Brazil, and Brazilian tourists spend twice as much, on average, as visitors from Anglo countries. Indeed, Las Vegas is among the top five destinations for Brazilian tourists to the United States along with Orlando, New York, Miami, and Los Angeles. The appeal of Las Vegas and other gambling meccas may have much to do with the prohibition against casino gaming in Brazil. The Brazilian Civil

Code provides that gambling is an illegal activity, except the federal and state lotteries operated by the state itself or by public bodies. What happens in Las Vegas (or the casinos in South Florida or elsewhere), however, does not always stay there. In many instances, Brazilians gamble on credit, and the US casinos must seek enforcement of these gambling debts from the patrons after they have returned to Brazil.

Federal law determines the enforcement of gambling debts in Brazil, which has adopted federalism as state form. Brazil has twenty-six member states and a federal district. They are inseparable entities that have their political autonomy limited by the Federal Constitution of Brazil. The Union is an autonomous federal entity in relation to the member states and exercises the sovereignty attributions of the Brazilian State. The Federal Constitution, enacted by the Constitutional Assembly in 1988, provides that the Union is solely responsible for legislating on matters of general interest. In such concern, the Brazilian Federal Constitution reserves, in its Article 22, the exclusive authority to legislate on civil and commercial law. As such, a single Civil Code and Civil Procedure Code govern all member states. Moreover, the state and federal court aims for a standard interpretation of the federal law, under the Superior Court of Justice's strict legal control and Federal Supreme Court's

constitutional control.

The initial impediment to enforcing gaming debt against Brazilian residents is Article 814 of the Brazilian Civil Code which establishes, as a general rule, that the debts related to gambling or betting are not payable. Therefore, the obligations arising from illegal gambling activities performed in the domestic territory are not civilly enforceable, being characterized only as natural obligations. Article 814 itself, in Section 2, however, creates an exception to the impossibility of collecting gambling debts when the gambling and betting are legally permitted. This is consistent with Article 9 of the Law of Introduction to the Brazilian Legal Rules, which provides that laws of the country in which obligations are established shall apply to their qualification and governance. The result is that the obligations resulting from gambling legally undertaken in a regulated jurisdiction can be collected in a Brazil court. Effectively, Brazil adopted the principle of *locus regit actum* (the site regulates the act).

The Article 5 preamble and clause XXXV of the Federal Constitution provide that “all are equal before the law, without distinction of any kind, ensuring to the Brazilians and foreigners residing in the country the inviolable right to life, liberty, equality, safety and property, as follows (...) XXXV - the law does not exclude from the appreciation of the Judiciary Branch, injury or threat to law”. The case law of the Federal Supreme Court established the understanding that foreigners residing abroad also enjoy the same rights recognized by the Brazilians. In such concern, Article 12 of the Law of Introduction to the Rules of the Brazilian Laws provides that the Brazilian Court has jurisdiction when the defendant’s domicile is Brazil or the obligation has to be complied with in Brazil. The Civil Procedure Code also provides, in its Article 88, that the Brazilian Court authority has jurisdiction when the defendant, whatever its nationality, is domiciled in Brazil.

Thus, except for the rule of impossibility of collecting debts originating from gambling, by a court narrow-track, the Brazilian Courts may decide on the collection of gambling debts in Brazilian Courts, applying a foreign law, either

from Uruguay, Argentina, US State of Nevada, England or any country where the practice of gambling is a lawful and regulated activity. Should a casino attempt to register a foreign judgment obtained in Nevada against a Brazilian resident, the casino must follow certain formation, fact-finding and other criteria as established by the Supreme Court of Brazil. Moreover, Brazilian counsel produce a civilly effective document to attach to the proceeding that establishes Brazilian jurisdiction to recover the pursued debt. The list of procedural court arrangements and formalities shall also be observed, both before and concurrent to the lawsuit, so that the lawsuit is not dismissed before obtaining judicial protection. In this regard, the casinos are wise to contact Brazilian counsel even before initiating a law suit in their home countries to make sure that the parties to the action, the claims alleged and the relief sought is consistent with maximizing the probability of successfully enforcing the gaming debt in Brazil ♣

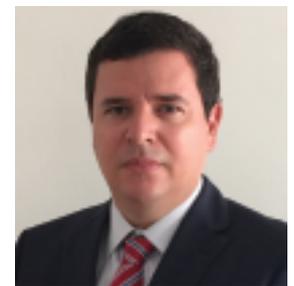


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