



Authors:

William H. Devaney

whdevaney@Venable.com
202.983.8204

Lindsay B. Meyer

lbmeyer@Venable.com
202.344.4829

Melissa Gomez

mgomez@Venable.com
202.344.4381

To learn how your business may be affected and how Venable may be of assistance, contact a member of our [Foreign Corrupt Practices Act and Anti-Corruption group](#):

Karl A. Racine

karacine@Venable.com
202.344.8322

Geoffrey R. Garinther

rgarinther@Venable.com
410.494.6212

Nancy R. Grunberg

nrgrunberg@Venable.com
202.344.4730

W. Warren Hamel

wwhamel@Venable.com
410.244.7563

Treasure R. Johnson

trjohnson@Venable.com
202.344.4418

George Kostolampros

gstolampros@Venable.com
202.344.8071

Doreen S. Martin

dsmartin@Venable.com
212.983.1179

Ashley W. Craig

awcraig@Venable.com
202.344.4351

D. E. Wilson, Jr.

dewilson@Venable.com
202.344.4819

Winifred M. Weitsen

wmweitsen@Venable.com
202.344.8224

Could the Hospitality Industry be the Latest to Fall Under the FCPA Microscope?

Las Vegas Sands announced it is under investigation

Last month, the Las Vegas Sands Corp. announced that it received a subpoena from the SEC and that the Department of Justice ("DOJ") opened an investigation regarding potential Foreign Corrupt Practices Act ("FCPA") violations surrounding its operations in Macau, China. The impetus for the investigation appears to have come from a wrongful termination suit brought by the former CEO of Sands China. That suit alleges, in part, that the former CEO was terminated for resisting the continued use of a particular Macau attorney, who is also a member of the local government, despite concerns that the retention posed serious FCPA risks, instructions to use improper "leverage" against government officials to obtain strata-title to a property in Macau, and refusing to pressure Sands' Chinese banks to use their influence with government officials to assist the company. And, this is at least the second time the FCPA has touched the hospitality industry. In 2007, York International, a global provider of heating, ventilation and air conditioning, paid \$22 million in penalties for a variety of unlawful payments, including payments made to secure construction contracts for luxury hotels in the United Arab Emirates.

Broadly, the FCPA prohibits paying, providing or offering anything of value, directly or indirectly via agents or other third parties, to a foreign government official for the purpose of assisting in obtaining or retaining business. In addition, the FCPA requires all companies publicly traded on U.S. exchanges to reflect accurately all payments in their books and records and to maintain adequate FCPA controls.

FCPA dangers for the hospitality industry

The hospitality industry is particularly susceptible to FCPA risk. Hospitality companies often operate in corruption prone areas, such as Asia, India, Latin America and the Caribbean. Furthermore, by the very nature of their business, hospitality companies must interact with the governments in these areas to obtain a panoply of licenses, permits, approvals and services. Given these frequent dealings with foreign government officials in some of the most difficult places to operate in the world, not to mention the recent enforcement activity against an industry member, it is conceivable that the hospitality industry could find itself following the pharmaceutical, defense, logistics and financial services industries as the latest group to face an industry-wide probe from DOJ and the SEC.

What can you do to protect your company?

- **FCPA Compliance Policy:** A comprehensive and rigorous FCPA compliance policy and program are essential to preventing and detecting unlawful conduct.
- **Global Implementation:** Corporate FCPA compliance programs must apply not only to the U.S. entity and its employees, but also to its non-U.S. subsidiaries, and agents, sales representatives, distributors, joint venture partners, or other business affiliates in any country in which the company is doing business.
- **Due Diligence Guidelines:** Devise specific FCPA due diligence guidelines for acquisitions and investments, as well as the use of agents in high risk areas. Use FCPA counsel or other experts in the FCPA, working under counsel to maintain the attorney-client privilege, who know what to look for in conducting FCPA due diligence.
- **Training:** FCPA training for employees as well as agents and other business partners around the world is critical.
- **Oversight:** The compliance efforts must be periodically audited to ensure that the company's anti-corruption measures are being used and that they are effective.

If you have any questions concerning the FCPA or how to protect your company against possible FCPA liability, please contact any of the attorneys on [Venable's Anti-Corruption team](#).

Michael D. Sherman
mdsherman@Venable.com
202.344.4558

Michael Schatzow
mschatzow@Venable.com
410.244.7592

Seth A. Rosenthal
sarosenthal@Venable.com
202.344.4741

David A. Kettel
dakettel@Venable.com
310.229.9662

Raymond V. Shepherd, III
rvshepherd@Venable.com
202.344.4745

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