Global Gaming Compliance

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INTRODUCTION

Compliance programs have been present in the U.S. business environment since the cold war. In the past few years, however, the adoption of compliance programs has been proliferating at a much more rapid pace. The implementation of compliance programs is having a profound effect on those companies that are engaged in international commerce—and the gaming industry is no exception.

This article will examine the challenges and difficulties regarding compliance issues that confront gaming regulators, gaming companies, and those associated with the industry.

HISTORICAL BACKGROUND

Regulation of the gaming industry by the various gaming jurisdictions, while presumably trying to strive for and ultimately accomplish the same goal, varies widely in how the regulatory oversight is implemented. For many years, Nevada was the sole jurisdiction in the United States to have casino gaming as we know it today. Regulation of gaming in Nevada has continued to evolve and adapt over the decades in order to keep up with the demands of an industry that continues to challenge the regulatory infrastructure.

The emergence of new gaming jurisdictions worldwide has placed added burdens not only on gaming regulators but also on gaming companies. As an example, it is now commonplace to see regulated casinos in Eastern Europe and Russia. Competition is intense in this industry, yet many gaming companies respect that there must be a balance between commerce and compliance.

The second major event in the United States occurred on May 26, 1978, when the first legal gaming casino was opened in New Jersey; thereafter, other jurisdictions in the United States have continued to pass legislation and introduce casino style gaming. These new gaming jurisdictions adopted their own set of gaming regulations and statutes, some looking to Nevada in order to learn from the decades of mistakes and successes. Those jurisdictions looking to Nevada came to understand the only reason gaming in Nevada survived was because the regulatory infrastructure continued

1 Corporate compliance systems have been a necessity since the cold war era. Corporations that export commodities and technical data have had to establish elaborate corporate compliance systems to comply with the ever changing regime of export controls. The laws and regulations requiring corporate compliance systems are so numerous that one can only give a few examples. See for example, Export Administration Act of 1979, 50 U.S.C. as amended in 1985, and the corresponding Export Control regulations, 15 C.F.R. Ch. VII; 50 App. U.S.C.A. §§ 2403, War and National Defense Export Regulations, Pub 1972, Sept 1979, 93 Stat 503. The U.S. Foreign Corrupt Practices Act, 15 U.S.C. § 78dd-2, also calls for a similar corporate compliance system.
to change and adapt to the challenges of the industry.

Still, other jurisdictions opted to internally develop their own regulatory models or looked to jurisdictions other than Nevada for guidance. The result is that today’s gaming industry consists of a full spectrum of regulatory oversight, ranging from excellent to practically nonexistent.

Generally speaking, the application format varies from jurisdiction to jurisdiction, but the underlying theme is the same; there must be a gaming license or finding of suitability application process and a recognition that those applying for entry into the gaming industry will either be allowed or not allowed to participate in the gaming industry.

Both gaming regulators and companies understand which gaming jurisdictions set the trend for the rest of the gaming industry. If a gaming company desires to become a long term, respected player in the gaming industry, passage through certain gaming jurisdictions is mandatory. Thus, domestic gaming companies and especially foreign multinational gaming companies new to the industry need to study and understand the precarious position they put themselves in when they apply for gaming approvals in well established jurisdictions.

Gaming companies that wish to enter the prestigious, well regulated gaming markets today should understand that reckless behavior and lack of respect for the regulatory process will destroy their future in the gaming industry. A “denial” from a well respected jurisdiction will have a devastating effect on the profitability and long-term viability of a gaming applicant.

The gaming approval process varies from a very intense, thorough, costly review of the gaming applicant to a less onerous approval that consists of the applicant completing a simple form and paying high application fees—in essence a rubber stamp approval once the check has cleared the bank. The variances of the regulatory oversight or lack thereof, are alarming and discouraging, but discussion of this disparity is not the central theme of this article.

It is important to understand that the growth of gaming has outpaced quality regulatory oversight and those jurisdictions with adequate resources and a commitment to excellence in this industry continue to evolve and adapt to an ever changing, challenging, and demanding environment. Those jurisdictions that do not have the commitment to excellence have knowingly or unknowingly created a double standard in an industry that can ill afford the public perception that its regulatory oversight is anything but of the highest integrity.

Hopefully, the double standard that now exists will some day give way to a more level playing field. If not, public scandals in the gaming industry are sure to arise and such negative publicity may result in a slowdown of the growth and potential of this dynamic industry.

**REVIEW OF THE LICENSING PROCESS**

In practice, Nevada is one of the only licensing jurisdictions that will grant a gaming license or finding of suitability for an unrestricted period of time. For example, if the Nevada Gaming Commission issues a non-restricted gaming license, without any limitation, the licensee is entitled to maintain that license so long as it remains in good standing with the regulators and maintains the license for the specific purpose for which it was issued. It is not necessary to file renewal applications on a periodic basis so long as the license is maintained in good standing.

This is in contrast to most other gaming jurisdictions that require renewal applications and fees based on a defined statutory or regulatory time table. For example, in California, the Tribal-State Gaming Compact requires renewals every two years for gaming resource suppliers. Gaming resource suppliers must file renewal applications and submit renewal fees with each applicable Tribal Gaming Commission. In Mississippi, state law requires gaming manufacturers to file applications and submit renewal fees at least every three years; approvals can range from one month to three years. In Illinois, the Illinois Gaming Board

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2 See CA Model Tribal-State Gaming Compact Sec. 6.5.2 (September 10, 1999).
3 See MGC Reg. IIA § 3(b) & (c) (Feb. 19, 2003).
also has discretion as to the duration of the license, ranging from one to four years.4

What is unclear in the renewal process is the extent to which some of the gaming jurisdictions conduct an updated investigation. This begs the question whether the motive for the renewal requirement is to conduct updated investigations to ensure that the licensee is in compliance with all applicable statutory and regulatory requirements, or to merely place the updated applications on the shelf to collect dust and to collect the renewal fees. With budget deficits, lack of resources and commitment to maintaining the integrity of the gaming industry, I fear it is the latter in some jurisdictions.

INTRODUCTION TO GAMING COMPLIANCE

If Nevada grants its licenses or findings of suitability for an unrestricted period of time, one may ask the question: "How does Nevada continue to monitor and oversee the activities of its gaming licensees?" Was it a mistake to create a system, wherein once a non-restricted license was granted, a calendared renewal process was not possible? The argument can be made this system is flawed because of the lack of a renewal mechanism. However, the rebuttal to this argument may be found in the introduction of the regulatory gaming compliance system in Nevada. One of the first companies in Nevada to have a compliance system was Carma, a publicly-traded corporation headquartered in Calgary, Alberta, Canada, which was approved on or about October 1984.

The regulatory gaming compliance system became more clearly defined and shaped in 1987, when Mr. Ginji Yasuda, a Japanese national, appeared before the Nevada Gaming Control Board. Mr. Yasuda and the company he controlled, Ginji Corporation, were seeking a recommendation for approval from the Nevada Gaming Control Board to acquire the Aladdin Hotel and Casino in Las Vegas. The Nevada Gaming Control Board recommended approval for a limited license, but also formally required that a compliance committee be formed. Then Board Member Mike Rumbolz placed numerous conditions on the license including a requirement that a compliance committee be formed and that the compliance committee be made up of at least three individuals, one of whom was required to be independent of Ginji Corporation with a background and knowledge of Nevada gaming laws.

The imposition of the compliance committee requirement was intended to increase the Nevada Gaming Control Board’s comfort level in granting Mr. Yasuda a limited gaming license. The investigative staff of the Nevada Gaming Control Board was constantly being challenged by the special nature of international investigations. Lack of cooperation from law enforcement agencies regarding "regulatory investigations," and other factors such as differences in culture, customs, legal and accounting systems, tax reporting, and language barriers were all substantial obstacles for gaming regulatory investigators when conducting international investigations.

On March 28, 1991 the Nevada Gaming Commission formally adopted a regulation that allowed the Commission to require implementation of a compliance review and reporting system.5 This merely formalized what was already being required, through conditions on the licenses of many licensees in Nevada.

The gaming compliance scheme was introduced to meet the continued challenges and demands of the gaming industry. With a compliance structure in place, the gaming regulators in Nevada are able to monitor the daily activities of many gaming licensees. It affords the gaming regulators an opportunity to review the compliance files maintained by gaming licensees whenever they wish. With the globalization of gaming today and the fast pace by which many gaming companies operate, the gaming regulators are better able to review files on a real time basis. Instead of a snapshot at intervals of one, three, or six years, there is continuous oversight. While the strict requirements imposed on gaming licensees through a gaming compliance program are costly and time consuming to the licensee, in a strict sense, it is a self-policing plan that al-

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5 NGC Reg. 5.045.
lows the gaming licensee in many ways to become transparent.

The term gaming compliance is a great "buzz" word, but one wonders how many gaming regulators and gaming attorneys understand the complexities of such an undertaking; especially for those global gaming companies that wish to enter or maintain their licenses in gaming markets such as Nevada, where a compliance program will become a requirement. Those companies with a dedicated staff dedicated to compliance overview understand the issues but others have to make the necessary commitment.

Are jurisdictions like Nevada running so far ahead of other gaming jurisdictions as far as regulatory oversight that due to the disparities, there will come a time when the price of access to the Nevada market will no longer be worth the ticket? Or, in order to prevent this from happening, should other gaming jurisdictions start to step up and help create a more level regulatory playing field? While expensive to the licensee, ongoing regulatory oversight through a compliance plan is a necessary and effective tool for the gaming industry. Why then are some regulatory jurisdictions reluctant to adopt this idea and implement it?

OVERVIEW OF A GAMING COMPLIANCE PROGRAM

A gaming compliance plan first needs to be explored and examined in order to understand the challenges facing global gaming companies. The type of compliance plan that will be examined is for manufacturers, vendors, and suppliers of gaming equipment. The following type of plan was chosen for review because most gaming licensees involved in the global gaming business fall into this category. There are several manufacturers, suppliers, and vendors of gaming equipment making sales to hundreds of gaming jurisdictions around the world.

Each licensee required to have a compliance plan will have a compliance officer. The compliance officer will conduct due diligence investigations, maintain open lines of communication with the gaming regulators and meet the ongoing regulatory demands of the regulators. The compliance officer will submit reports to and communicate with the compliance committee.

The objectives of the compliance committee will be to assist the licensee in avoiding associations with non-reputable entities, identify areas of concern that might adversely effect the good reputation of the licensee, and provide additional oversight of the licensee's compliance with the laws and regulations of gaming jurisdictions. Normally, the Board of Directors will oversee the compliance committee. Reports generated by the compliance committee through the compliance officer are submitted to the Board of Directors.

Additionally, it is a self-reporting system wherein the licensee will immediately report to the gaming regulators if a violation of the compliance plan has occurred. In situations such as this the licensee might add an internal policy to eliminate such violations in the future.

The compliance committee is normally comprised of the Chief Executive Officer, the President, and at least one outside person experienced in the gaming regulatory process and familiar with the laws governing gaming activities. The Gaming Compliance Committee is comprised of between three and five members.

The compliance committee usually will meet at least quarterly to review reports and information provided to it by the compliance officer. Copies of the minutes of the compliance committee meetings, after ratification by the committee, along with the reports, are submitted within a short period of time to the Board of Directors, or an equivalent body designated by the compliance plan to receive such reports. At the same time, minutes and any reports are submitted to the Chairman of the gaming regulatory body.

The reports to the compliance committee and minutes of the meetings will contain the necessary details in order to permit the committee to formulate an opinion on the matter. It will be able to reasonably rely on reports generated by a governmental agency such as the Securities and Exchange Commission, a financial institution that falls under state and federal regulation, or information generated from a respected gaming authority, and will not re-
quire independent investigation of such information.

The reports to the compliance committee will normally discuss the following matters:

- Sales/leases of gaming equipment to all geographic areas. The report will include the name of purchaser/lessor, jurisdiction where shipped to, copy of gaming license of purchaser and end user, if purchaser is not the end user, and when advisable an opinion from legal counsel of the purchaser as to the legality of gaming in the jurisdiction. The compliance officer shall at all times maintain a current list of those jurisdictions permitting importation of gaming devices and will ensure strict compliance with this list.

- Material transactions which can be defined as commercial transactions involving unsuitable persons, long term business relationships such as partnerships or joint ventures, and acquisitions or disposition of assets that meet a certain threshold, depending on the overall impact on the business of the licensee. The report will contain details on:
  1. The directors, officers, and major shareholders;
  2. Geographic areas involved;
  3. Company’s reasons for the transaction;
  4. Specific laws which permit the business operation; and
  5. Compensation to brokers and/or payment of any finder’s fee.

- Transactions with suppliers of goods and services to demonstrate business is not being transacted with unsuitable persons and to avoid unsuitable situations. An unsuitable situation would involve transactions with an unsuitable person, violation of the regulations and statutes of a gaming authority, or non-compliance with the terms of the compliance plan. The compliance plan will set a threshold for aggregate annual purchases and when the compliance officer anticipates thresholds will be met, a due diligence review of the licensee’s vendor will commence. The goal is to capture the top percentage of suppliers of goods and services and at the same time not unduly burden the licensee with a review of all transactions. However, the compliance officer has the flexibility to look at any suppliers if he or she is able to determine the licensee is conducting business with or will conduct business with an unsuitable person. The results of any investigation are reported to the compliance committee for review.

Please note the thresholds for suppliers to non-gaming subsidiaries will be higher. The gaming industry is beginning to see more applications from companies with diverse non-gaming product lines. The challenge this creates for those companies is discussed in more detail in later sections of this review.

- The compliance officer will ensure all prospective officers, directors, and key employees are not unsuitable persons. Each individual will be required to complete a questionnaire which will assist the compliance officer in conducting a due diligence investigation. The results of such investigation are reported to the compliance committee for review.

- The compliance officer will ensure prospective distributors are not unsuitable persons. The distributor will be required to submit a copy of its gaming license or the equivalent, the name of the casino where the gaming device is being shipped, a copy of the casino license, and sometimes an opinion from legal counsel of the distributor as to the legality of the transactions. Receipt of this information will also be mandated outside of the compliance plan through a distributor’s agreement.

Such provisions of the distributor’s agreement spell out very clearly that the distributor is to conduct business in a licensed, recognized gaming jurisdiction and any end users of the gaming products are to be gaming licensees in that gaming

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6 An unsuitable person is a person who has been denied a gaming license or has had a license revoked, or a person unqualified to be associated with a gaming enterprise as determined by a Gaming Authority.
jurisdiction. Failure to comply with the terms of the distributor’s agreement is normally cause for termination of the agreement, to the extent termination is permissible under the laws of the respective jurisdiction.

Prior to entry into a contractual relationship with the distributor, the distributor will be required to complete a due diligence questionnaire that will assist the compliance officer in conducting a due diligence investigation. The results of such investigation are reported to the compliance committee for review. For a global gaming company, the due diligence review is critical because in some jurisdictions outside of the United States, a distributor’s agreement is very difficult to terminate because of the protection afforded distributors under the laws of the jurisdiction.

- Material financings will be reviewed by the compliance officer with special focus on the source of funds and any third party who will receive compensation from the financing transaction. Material financing means any debt or equity financing which exceeds a certain threshold amount as determined by the gaming regulatory body. The threshold amount is determined by the size of the licensee; large public company versus small private company. The compliance officer will prepare a report to the compliance committee and the Board of Directors regarding material financings.

The compliance committee will prepare and submit to the Chairman or the equivalent of the Gaming Regulatory Body an annual report summarizing its activities and decisions. The annual report which discusses the activities of the preceding year is normally submitted to the gaming regulators within 60 days after the end of the calendar year.

All investigative files, not to be confused with the compliance minutes and reports, generated by the compliance officer and the compliance committee are maintained by the compliance officer at the licensee’s premises on a confidential basis. Only members of the compliance committee, appointed executives of the licensee, gaming regulatory authorities, and courts of competent jurisdiction have access to the investigative files.

It is especially important for global gaming companies to inform and educate those entities with which they are, or will be, conducting business that a compliance plan is in place and they might fall under its review. While the term “compliance plan” is becoming a common term in the United States, not only as it relates to gaming but also other industries, it may not be as commonplace in other areas of the world.

Those foreign entities that do not understand the complex regulatory requirements of a gaming jurisdiction like Nevada not only must be informed and educated, but also must receive assurances that any sensitive information will be kept confidential, subject to the aforementioned disclosures only. As will be noted in the next section, disclosure of sensitive and/or confidential information by individuals and entities located outside of North America is met more often with suspicion and resistance. This might be due to language barriers, or lack of understanding of laws, culture, and customs, and poses a very difficult challenge for global gaming companies that want to remain in compliance.

**CHALLENGES TO MEETING COMPLIANCE PLAN REQUIREMENTS**

This section will provide a realistic view on the challenges and the difficulties encountered by those gaming companies operating on a global basis. The following discussion will range from challenges faced by small domestic companies and contrasted with challenges encountered by global gaming companies.

*Start up U.S.-based company with domestic gaming sales only*

The challenge with implementing a compliance plan under this scenario is attracting a qualified, experienced compliance officer and an outside compliance member with experience necessary to sit on the compliance committee. As a start up company, the issue of setting aside
funding for a compliance officer and outside compliance member also can be problematic.

An advantage of the start-up company is that the concern of having to go back and review prior transactions and business relationships is not applicable. As a domestic based company, a qualified compliance officer will have access to public information including transcripts from gaming regulatory meetings and where information might not seem readily available, for a qualified compliance officer the market is always efficient.

Additionally, the challenge of understanding North American gaming jurisdictions is not overwhelming. For instance, any sale of gaming machines to gray or black market areas in North America is simply not excusable. Public information on gaming jurisdictions is readily accessible. The major black market area in the western United States for many years was the tribal gaming market in California. Licensees in Nevada and other major gaming jurisdictions would not make sales to tribes in California out of fear of losing their privileged gaming licenses.

Hence, most gaming companies that sold gaming devices to non-compacted tribes in California during that period were not licensees in Nevada or other well established gaming jurisdictions. To date, many of these companies and key persons have been reluctant to apply for gaming licenses in Nevada and other major well established gaming jurisdictions for fear of a "denial" for their past transgressions in the California market.

Existing U.S. multinational company with global gaming sales

Ongoing educational compliance programs are just one of the efforts that large U.S.-based companies operating in literally hundreds of gaming jurisdictions make in order to continue to remain compliant. With new gaming jurisdictions opening up all over the world, including Eastern Europe and Russia, it is necessary to hire qualified employees and to train these employees on compliance matters.

Those employees who operate in the sales and marketing areas often have their compensation tied to the amount of revenue they bring to company's bottom line; thus, they logically are taught and motivated to make sales. However, the salesperson's profit motive may well be in direct conflict with the requirements for strict adherence to compliance issues.

For example, suppose time is of the essence and a big sale is pending in an Eastern block country. The distributor (not end user) is not willing to complete due diligence forms and submit documents which demonstrate the distributor is licensed to carry on the business activities; does the company lose the sale?

Or, the distributor submitted information, but it is not properly researched because of language differences. Suppose a company name is disclosed to the compliance officer and the due diligence is conducted, only later to find out that the wrong name was researched because a small language subtlety was not recognized by the person conducting the investigation. Either of these scenarios is problematic to the company—a lost sale or a compliance issue that could result in disciplinary action.

Another area that has historically been problematic is the illegal process of shipping gaming machines into foreign jurisdictions in order to evade customs duties at the port of entry. Falsifying invoices to show a lower value of the shipped product and payments outside of the invoice are very common practices outside of the United States. Potential sales are lost by gaming companies that refuse to engage in such practices. This practice is so prevalent outside of the United States that it often creates a competitive advantage for the many companies not under the scrutiny of a compliance plan or subject to a strict probity licensing review that are willing to engage in predatory behavior. This area of review has become automatic for well established gaming regulatory jurisdictions.

Comprehensive educational programs that are set up by the proactive compliance officer

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7 The terms gray and black market are general industry terms. Gray markets are jurisdictions where gaming devices exist, are not legal or illegal according to the laws of that jurisdiction, and are not regulated by a gaming regulatory body. Black markets are jurisdictions where the operation of gaming devices is illegal according to the laws of that jurisdiction.
will help ensure compliance from all employees. The sales and marketing department will learn quickly that the practice of making sales that contradict the terms of the compliance plan will not be tolerated and the gratification derived from such sales will be very short lived.

The ongoing maintenance of overseeing sales in gaming jurisdictions around the world is staggering. The process is costly and manpower intensive. Understanding the gaming regulatory laws of each respective jurisdiction is not always easy. For example, trying to understand the law in Belgium for many years was difficult. Gaming machines were in locations all over the country and the government levied taxes on those machines. Yet there was no gaming regulatory structure in place to oversee the gaming operations. Was this a gray market?

The ability to obtain real time information on international distributors and end users is difficult. Many licensed gaming jurisdictions around the world are focused on technical machine compliance, but probe investigations are not the norm. Often, gaming vendors in foreign jurisdictions are not familiar with such requests for sensitive information. How does the gaming licensee acquire information on gaming vendors when it is not forthcoming? Credit checks are often a place to start, but in Japan and Russia for example, and many other countries, this is not possible. It is always possible to hire a private investigative firm or a local lawyer in the jurisdictions, but when time is of the essence this is not always practical. Additionally this can become a very costly and time consuming procedure and frequently not worth the sale at the end of the day.

Can the compliance officer always rely on the fact that gaming machines are being shipped to licensed jurisdictions? The gaming industry in Russia is booming. Casinos in Russia are licensed by the government, but movement by Nevada licensees into Russia has been cautious and slow.

There are no easy answers and for the compliance officer it is a combination of hard work, creativity, experience, knowledge, luck, and often results in looking at situations on a case-by-case basis.

Existing foreign multinational company which begins worldwide gaming operations as a new segment/division of its business

The biggest challenge under this scenario is to educate employees on the importance of the compliance plan and how to effectively implement the plan. Compliance classes should be given to management and all employees, not only to those employees who will be directly involved in carrying out the compliance plan. Care should be taken to ensure that management and employees of subsidiary companies are also involved in such classes.

The second biggest challenge is the re-evaluation of existing business relationships. A compliance plan will mandate a complete overview of the entire business enterprise and is not limited to reviewing only gaming operations of the business enterprise.

From an internal point of view, when the compliance officer begins a review of executives of the non-gaming segments of the business, there will be resistance ranging from large egos to those individuals who actually have something to hide. Further, when the compliance officer begins the review of outside, existing, non-gaming relationships and requires, based on thresholds amounts as outlined in the compliance plan, due diligence forms be completed, there will also be the resistance. This can be especially challenging if this process strains existing business relationships and jeopardizes future sales. For the manager whose job is measured on product turnover, the compliance officer can quickly become a very unpopular person.

Most often those non-gaming entities/individuals required to complete due diligence forms simply do not understand how a gaming jurisdiction like Nevada can suddenly mandate that the compliance officer of the gaming licensee collect litigation summaries and criminal history information on them; what can be very troubling is the reality that refusing to comply with such requests can lead to dis-
missal from the company or termination of the business relationship, which can lead to potential litigation issues.

Not only can there be language, culture, customs, and legal barriers but the perception exists that the laws of Nevada cannot and do not have jurisdiction over them. Responses received back from vendors (who have never heard of Nevada) who were asked to complete due diligence forms are often polite, yet very firm refusals to comply with such requests. The underlying reason is a lack of understanding of the purpose for such a request. This may be overcome by taking the time to explain the issues in a manner that can be understood; the U.S. sledge hammer approach is usually the least effective.

What happens when the due diligence questionnaire is completed, or partially completed? The information needs to be independently verified. If the entity or individual is located in North America, some or most all of the information can be verified through public sources or informal networks. However, when the information needs to be independently verified by the compliance officer in international jurisdictions difficulties can arise. Not only might there be language, culture, and customs barriers but, as important, there might be laws that strictly prohibit access to this information. Attempts to gather such information would put the compliance officer, or a private firm hired by the compliance officer, in violation of such laws in the foreign jurisdiction.

Often, gaming regulators will have difficulty acquiring criminal histories or criminal intelligence information in foreign jurisdictions even though they have peace officer status in their respective jurisdictions. The reason is that many domestic and foreign law enforcement agencies and Interpol do not officially recognize and acknowledge “regulatory investigations.” These law enforcement agencies are prohibited by law from sharing confidential personal data unless a “criminal investigation” is being conducted by a governmental body. Which raises an important point: If gaming regulators cannot access the information, should the licensee be held accountable for accessing the same information?

The gaming regulators in Nevada have historically taken the view that the licensee should use its best efforts in carrying out its compliance review. If there is any public information available the licensee is expected to access this information; after all the market is always efficient.

What does the gaming licensee do when a business relationship is placed in jeopardy by the compliance plan and maintaining that business relationship is crucial to the survival of the non-gaming segment of the business enterprise? Those companies that have multiple business segments must proactively determine the viability of seeking licensure in gaming jurisdictions that require strict adherence to a gaming compliance plan. This may become a barrier to entry that cannot be overcome.

As discussed in the compliance review section of this report, the compliance plan will set certain thresholds for due diligence review. Nothing in the prior sections stated that only the gaming operations are subject to a compliance review. The main difference between review of non-gaming segments and gaming segments is the thresholds amounts for non-gaming segments are higher. The reason is that the gaming segments are of more interest to gaming regulators because of the cash-intensive nature of the gaming industry and therefore the level of scrutiny is greater.

Once a proactive determination is made based on a thorough review of the applicant’s operations and a compliance officer and outside member are brought on board, the challenges discussed under this section are difficult but not impossible to overcome.

The other challenge to an existing business operation that adds a gaming segment is changing the corporate culture to one of complete acceptance of the requirements of the compliance plan. After all, if this plan creates a transparency of the company, does this not foster long term goodwill and lend credibility to the company?

Existing foreign based multinational gaming company that desires to enter the U.S. market

A company with existing gaming operations in international jurisdictions must first proactively determine if entry into a gaming market like Nevada that is compliance driven is feasible. From a cash flow and business survival
point of view, a decision will have to be made as to whether it is economically feasible to terminate existing relationships and therefore decrease sales revenue of the company.

As already discussed, the multinational with non-gaming segments can expect, as part of the licensing investigation, a review of existing non-gaming operations by gaming regulators. The level of review will not focus on each transaction, but will instead look at the company more from a macro point of view.

However, the level of scrutiny for the foreign based gaming company will take on a micro point of view. The fact there are existing gaming sales will trigger a high level of review and it can be expected that each transaction will be closely reviewed. Review of distributors, end users of the products, vendors supplying parts, shipping records, and copies of casino licenses where the gaming devices have been shipped will all be scrutinized in the investigative process.

A decision should be made early on to impose a voluntary compliance plan and set up a compliance committee. In order to successfully pass through the strict licensing process it will be necessary to create a due diligence review for the gaming regulators to follow. The transition can be a painful process, but nothing less will be acceptable to the gaming regulators.

A very methodical process of recreating the past is essential and should include:

- Tracking each machine sale to include shipping records and bank documents;
- Obtaining copies of all casino licenses where machines were sold;
- Obtaining information on all existing distributors of gaming devices; and
- Obtaining information on the gaming regulatory oversight in each jurisdiction where gaming devices were sold.

In moving forward, the applicant must be diligent in following the compliance plan requirements and instill this in its employees as part of the corporate culture. It must become second nature, in moving forward, to require due diligence forms, distributor contracts, casino licenses, and information on new gaming jurisdictions.

This type of gaming company is in a tough situation because sales have already been made and going back to vendors and distributors and requesting information can be difficult. Unlike the existing gaming company with a compliance program in place where, as part of the sales transaction, information is (or should be) requested and received prior to the sale, the gaming company with no compliance plan or overview in place has already made the sale without the review process. In this situation, acquiring information on prior transactions is essential and the thought of possibly having to sever longstanding, profitable relationships becomes a reality.

Recurring mistakes such as not following through on the requirements of the voluntary compliance plan will be dealt with harshly by gaming jurisdictions like Nevada. For example, once an application is filed in Nevada and a voluntary compliance plan is put in place, the company is expected to start conducting itself like a licensee even though it has not been issued a license.

An educational program should be immediately put in place that will review the strict requirements of a compliance driven jurisdiction like Nevada. For a gaming company with existing sales in international jurisdictions, time is of the essence to come into complete compliance. The tolerance levels for gaming mishaps prior to the filing of an application might be tolerated but the tolerance levels after that point become very low. At a point in time "a stumble will become a fall."

A foreign gaming company is at another disadvantage because of language barriers. Compliance plans, due diligence forms, and other documentation will have to be translated so employees can understand what is required of them and minor adjustments made to terminology to ensure that a person reading the information fully grasps what is being requested or mandated. Only at that point in time can employees being to understand the complexities of what is expected of them. The possibilities of misunderstanding and miscommunication are obviously at a much higher level in this situation.

The gaming market in Australia is an exception to the aforementioned discussion. The Australian gaming market is highly regulated,
both from a probity licensing viewpoint and machine testing standards. The licensing investigations are similar to those of well-established gaming jurisdictions in North America, with law enforcement officers and accountants conducting investigations and traveling to plants and offices of the gaming applicant.

The New South Wales gaming machine market is one of the largest in the world and Sydney is home to a large, modern casino. Victoria has one of the largest casinos in the world located in Melbourne, Queensland has casinos up and down its coast, and there are casinos located in South Australia, the Northern Territory, and Tasmania. Virtually every jurisdiction in Australia has gaming with a gaming regulatory body in place. Queensland is focusing its efforts on gaming compliance and requiring gaming companies to become more transparent.

The initial challenges facing a gaming company under this section are the most difficult. The decision to move forward in a highly regulated gaming jurisdiction should come only after an analysis that the application will be successful.

CONCLUSION

The gaming industry is growing so quickly that it is difficult to find experienced regulators in each respective jurisdiction. History tells us the demands and challenges in the gaming industry will continue to grow. Effective, real time, oversight is mandatory and the compliance system appears to meet many of the challenges facing regulators today.

There are huge regulatory gaps today and reliance on just a few dedicated jurisdictions will have to change, and I believe will change over time. Market forces will not allow a few jurisdictions to keep the rest of the industry afloat. There might come a time when reputable gaming jurisdictions will not allow its licensees to conduct business in gaming jurisdictions that have disregarded the integrity of the gaming industry.

While there are many barriers to effective regulatory oversight, the idea of a sovereign nation or state should not be used as an excuse for lack of an efficient, predictable system. The world tells us today that when sovereign nations are not able to effectively police themselves or become a danger to other sovereign nations, some action needs to be taken. If sovereign nations want to assume the responsibilities of gaming regulatory oversight, those duties should be taken very seriously. Ensuring transparency in an industry of this type helps ensure sovereign nations and states are not harboring infectious criminal conduct, either intentionally or unintentionally.

Finally, while transparency is desirable and essential in the gaming industry, does the burden of the gaming laws and regulations in some way violate the commerce clause and the due process clause of the Constitution? Do the laws and regulations pose restrictions on international trade that violate the commerce clause and are inconsistent with the ideas promulgated and enforced by the World Trade Organization?9

There is no argument the gaming industry is very unique and harbors a checkered past. It is a given that strict regulatory oversight of the industry is mandatory. Yet, who would have ever imagined the gaming world as we see it today? Companies from Eastern Europe and Russia are now looking for approvals in gaming jurisdictions like Nevada. The gaming industry is being called upon to provide global gaming regulatory oversight and to do it in a manner that stays within the confines and restrictions of international trade.