

Does the House Always Win?

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Key Take: *These multi-amenity integrated resorts can be especially popular destinations for American guests in search of international travel experiences. Owners and operators of foreign integrated resorts should be mindful of the unique legal issues they may face when dealing with American guests. Implementation of one specific, short, and relatively simple contractual provision can help operators alleviate significant friction, reduce costs, and promote efficiency when disputes arise.*

Whether due to a certain pop star's record-breaking international tour, the Olympics, or simply pent-up travel energy following COVID-19, summer 2024 seems to have been restorative for the travel industry worldwide. With this resurgence of demand for global hospitality comes the return of the same issues the industry has always faced, but has perhaps forgotten, in its post-pandemic recovery efforts. In the case of Americans traveling abroad, foreign hotels – particularly those operating casinos – are wise to be aware of certain legal issues that can arise and the way U.S. courts treat those issues. When welcoming American guests to a resort and

casino, there are several matters an owner and/or operator should consider in advance to best protect the business if and when disputes occur.

Americans have a reputation for being litigious and the U.S. system differs in many ways from the rest of the world. In the United States, contingency fee agreements are commonplace, particularly in cases involving individual consumers. Further, plaintiffs need not post bond in order to institute a lawsuit. In addition, unless expressly authorized by statute or contract, the “loser pays” model is not adopted in the United States, making it expensive to defend a lawsuit regardless of merit. In anticipation of guests traveling from the United States, companies operating integrated resorts outside the United States are well advised to include certain provisions known as venue selection clauses in their guest terms and conditions, to support efficient and effective litigation if and when it arises.

Collection of Casino Debts

Many casinos allow certain players to take out markers and to accordingly play on credit. When an American guest incurs a casino debt in a foreign hotel, a primary legal hurdle can be the enforcement of that debt in the United States. Generally, U.S. courts do not automatically recognize foreign judgments. The foreign hotel or casino must first obtain a judgment in its own country and then seek enforcement in a U.S. court under the principles of full faith and credit, comity, and reciprocity. U.S. courts will examine whether the foreign judgment meets certain criteria, such as being final, conclusive, and enforceable in the jurisdiction where it was issued, and whether the proceedings meet U.S. due process standards.

This is a lengthy and complicated process that can be made much simpler by requiring guests playing on markers to agree to certain jurisdiction and venue clauses for collection efforts to enforce those markers. As part of the agreement a guest signs to

take out the marker, integrated resorts would be wise to identify a U.S. state where markers and casino debts are recognized and enforceable, and to include enforceable and exclusive venue selection and governing law provisions that also mandate the guest's agreement to the identified jurisdiction for such collection cases.

Several cases have set precedent in the area of foreign casino debt collection. For instance, in *Hilton International Co. v. Arace*, a Connecticut court recognized a Puerto Rican judgment for a gambling debt, illustrating that foreign casino debts can be enforceable in the U.S. However, the specifics of each case can vary significantly based on the details of the underlying contractual agreement as well as depending on the jurisdictions involved; and the timeline for debt collection in this manner can often be longer and the process more costly. An alternative option would be direct collection in the United States. Cases such as *Paradise Enterprises Limited v. Sapir*, wherein a New Jersey appellate court reversed dismissal of a case brought to enforce a casino debt because it was brought in the venue contractually agreed upon, support this manner of pursuing collection.

Guest Claims

Venue selection clauses specify the particular court system and location in which any disputes arising from a guest's stay are to be resolved. A properly noticed mandatory and exclusive venue selection clause can require a single jurisdiction where guest claims are to be litigated. This practice will help ensure predictability, consistency in the law, and minimization of defense costs and legal fees.

Venue selection clauses are generally enforceable in the United States, but a U.S. court may sometimes refuse to enforce such a clause if it deems it unreasonable or if enforcing it would contravene public policy. Integrated resorts are wise to ensure that they not only identify a jurisdiction that

supports the policy behind venue selection clauses, but that they also present the clause to guests in a manner that provides reasonable notice and with an opportunity to reject the clause with impunity if guests so desire not to agree to that particular provision of the hotel stay agreement.

U.S. federal courts recognize such venue or forum selection clauses, and will enforce valid, mandatory clauses under a modified *forum non conveniens* analysis. State courts will also enforce such clauses, typically based on strict contractual principles and improper venue analysis, without regard to weighing of additional factors. Cases such as *Doe v. Marriott* in the Fifth Circuit and *Feggstad v. Kerzner International* in the Eleventh Circuit demonstrate the utility of such a clause, requiring the suit be dismissed in favor of the foreign forum designated in the clause.

Conclusion

Tourism exported from the United States is a business necessity for many foreign integrated resorts. Operators already require assent to certain terms and conditions when welcoming their guests to enjoy the amenities of a property and casino play. Inclusion of an additional venue selection clause can prove valuable when legal issues arise with guests.