

## Las Vegas Sands Pays \$9 Million to Settle FCPA Allegations Relating to Over \$62 Million in Payments Made to China-Based Consultant

### 拉斯维加斯金沙集团支付 900 万美元就其向中国顾问支付超过六千二百多万美元的 FCPA 相关指控进行和解

April 2016  
2016 年 4 月

Anti-Corruption  
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On April 7, 2016, Las Vegas Sands Corp. (“LVSC”) agreed to pay \$9 million to settle allegations by the Securities and Exchange Commission (“SEC”) that LVSC, through its subsidiaries in China and Macao, violated the US Foreign Corrupt Practices Act (“FCPA”). The settlement resolves allegations that, from 2006 through at least 2011, LVSC and its subsidiaries violated the FCPA by failing to devise and maintain a system of internal accounting controls over its operations in China and Macao, resulting in more than \$62 million being transferred to a Chinese consultant (the “Consultant”) who claimed to be a former Chinese government official. Only in 2007, after LVSC had made several payments to the Consultant, did it conduct due diligence on the Consultant and three of his business units. However, LVSC failed to conduct due diligence on at least seven other of the Consultant’s businesses to which LVSC transferred funds. The payments made to the Consultant were made for a series of transactions ostensibly designed to bring more customers to LVSC’s Macao-based casino as well as to boost its image in China.

2016 年 4 月 7 日，拉斯维加斯金沙集团（“LVSC”）同意向证券交易委员会（“证交会”）支付 900 万美元以和解证交会的指控。证交会指控 LVSC 通过其中国与澳门的子公司，违反了美国反海外腐败法（“FCPA”）。该和解对自 2006 年起到至少包括 2011 年期间在内的一系列指控予以解决。相关指控涉及 LVSC 及其子公司因未能对其中国业务制订并维持内部会计控制制度而违反 FCPA 的规定，并由于缺乏前述之制度，以致其向一名据称为前中国政府官员的中国顾问（“顾问”）支付超过六千二百多万美元的费用。仅于 2007 年时，向该顾问支付数笔费用之后，LVSC 才对该顾问及其下属的三个业务部门进行尽职调查。然而，LVSC 却未就其所支费用的该顾问所属的其它七个以上的业务部门进行相关尽职调查。对该顾问的费用支付是通过一系列交易行为而得以实现，此类交易的目的在于为 LVSC 的澳门赌场带来更多客户并为该赌场在中国的形象进行宣传。

## Background and Alleged Misconduct 背景及被指控的不当行为

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LVSC is a Nevada-based company that owns and operates integrated resorts and casinos in Asia and the United States through a network of subsidiaries. LVSC issued and maintains a class of publicly traded securities on the New York Stock Exchange. The company operates in China through multiple subsidiaries, including Sands China Ltd. (“SCL”) which is incorporated in the Cayman Islands, Venetian Macao Ltd. (“VML”) which is an SCL subsidiary, and Venetian (Zhuhai Hengqin) Hotel Co. Ltd. (“VHQ”), Venetian (Zhuhai) Hotel Marketing Co. Ltd. (“VHM”), and Beijing Asia Travel Alliance Business Consulting Co., Ltd. (“BATA”), all three of which are LVSC subsidiaries established under Chinese law as wholly foreign-owned entities (“WFOEs”).

LVSC 是一家内华达州公司，其通过下属多家子公司在亚洲和美国拥有及运营一体化的度假村和赌场。LVSC 的一类证券在纽约证券交易所公开发售并交易。公司通过其多家子公司在中国从事运营活动，包括在开曼群岛设立的 Sands China Ltd. (“SCL”)、SCL 的子公司 Venetian Macao Ltd. (“VML”)，及威尼斯 (珠海横琴) 酒店有限公司 (“VHQ”)、威尼斯 (珠海) 酒店营销有限公司 (“VHM”)，以及北京亚洲旅行联盟商务咨询有限公司 (“BATA”)，其后三家公司均为 LVSC 根据中国的法律而成立的外商独资公司 (“外商独资公司”)。

The statements of facts in the SEC [Cease and Desist Order](#) alleged a series of transactions whereby LVSC, through its subsidiaries, provided approximately \$62 million in payments to the Consultant or to his affiliated companies. Many of these payments were inaccurately recorded in LVSC’s or its respective subsidiaries’ books and records. For example, the SEC alleged that:

证交会在其[停止令](#)的事实陈述部分对一系列交易进行指控，称 LVSC 通过此类交易让其子公司向顾问或其关联公司支付了约为六千二百万美元的费用。许多此等付款均未准确地记录在 LVSC 或其各自的子公司的帐簿与记录之中。例如，证交会指控称：

- In 2007, the LVSC President sought to purchase a Chinese basketball team in order to bolster its image in China and to bring more customers to its Macao casino. However, due to Chinese regulations forbidding a gaming company from owning a professional sports team, LVSC entered into an arrangement with an entity named Shenzhen Wei Li Xin established by the Consultant to purchase and own the team. The arrangement consisted of an LVSC subsidiary entering into a promissory note agreement with a separate entity associated with the Consultant (not Shenzhen Wei Li Xin). Subsequently, approximately \$6 million was transferred from VHQ to Shenzhen Wei Li Xin, even though neither entity was a party to the promissory agreement. In total, between March 2007 and January 2009, pursuant to a series of sponsorship and advertising contracts, approximately \$14.8 million was paid to the Consultant in connection with the basketball team. At least \$6.9 million of these funds were transferred without appropriate authorization or supporting documentation. 2007 年，LVSC 总裁期望通过购买一支中国篮球队对 LVSC 在中国的形象进行宣传并为其澳门赌场招揽更多的客户。然而，由于中国禁止娱乐业公司拥有职业篮球队，LVSC 与其顾问所设立的一家名为深圳威立信的公司实体签订协议，安排购买并拥有该支篮球队。根据此安排，LVSC 的一家子公司与另外一家与顾问有关联的独立实体（非深圳威立信）签署了本票协议。随后，尽管双方均非本票协议的一方，但大约有 600 万美元从 VHQ 处转账至深圳威立信。在 2007 年 3 月至 2009 年 1 月期间，通过一系列赞助和广告合同，累计大约为一千四百八十万美元因篮球队相关事宜被支付给了顾问。其中至少有 690 万美元在无适当授权或相关文件支持的情况下进行了支付。
- In 2006, the LVSC President sought to develop a non-gaming resort on Hengqin Island, a new resort district in China. As any such development would need the approval of various government entities,

the LVSC President sought out a Chinese partner in the belief that doing so would help LVSC obtain the relevant government approvals. The Consultant introduced a Chinese State-Owned Entity (“SOE”) to LVSC, whose chairman was believed to have particular influence in connection with Hengqin Island. LVSC and the SOE signed a letter of intent by which LVSC was to purchase a building in Beijing from the SOE and, in turn, the SOE agreed to help LVSC with its resort development in Hengqin. While the joint venture never came to fruition, the LVSC authorized the Consultant to purchase the Beijing building from the SOE.

2006 年，LVSC 的总裁计划在中国的一个新开发的度假区—横琴岛，开发一个非娱乐性的度假村。由于此类开发需获得多个不同的政府部门的批准，为此，LVSC 总裁找到一个中国合作伙伴，认为这样能够帮助 LVSC 获得相关的政府批准。该顾问向 LVSC 介绍了一家中国国有企业（“国企”），该国企的董事长被认为是对横琴岛具有特定的影响力。LVSC 和这家国企签署了一份意向书，依照该意向书的规定，LVSC 将从国企处购买其位于北京的一幢大厦，作为对价，国企则同意协助 LVSC 在横琴岛开发度假村。尽管拟定的合资计划最终并未得以实现，但 LVSC 授权顾问从该国企处购买了一幢其位于北京的大厦。

Between July 2007 and February 2008, approximately \$43 million was transferred to one of the Consultant’s entities for the purchase of the Beijing building. However, none of the payments was approved by an LVSC employee with sufficient authorization to approve the amounts paid. In addition, in August 2007, LVSC learned that the Consultant had not obtained title to the basement of the Beijing Building. Despite concerns that payments made to the Consultant to obtain title to the basement would go to foreign government officials, LVSC paid approximately \$3.6 million to an entity affiliated with the Consultant as a prepayment for a five-year lease of the basement.

于 2007 年 7 月至 2008 年 2 月期间，因购买位于北京的大厦，大约有四千三百万美元被转入至顾问所拥有的一家实体。但是，任何转账皆均未经 LVSC 所授权的具有相应财务权限的员工进行批准。此外，在 2007 年八月，LVSC 了解到该顾问未获得该大厦地下室的产权。尽管顾虑到支付费用给顾问以获取该地下室产权需经外国政府官员的批准，LVSC 向一家顾问的关联实体支付了大约 360 万美元，做为该地下室为期五年租约的订金。

In September 2008, LVSC canceled the contracts transferring the shares from the Consultant's entity that owned the real estate to LVSC and agreed to receive in exchange from the Consultant a promissory note for approximately \$43 million. In total LVSC transferred approximately \$61 million in connection with the real estate transaction and ultimately received approximately \$44 million in settlement from the Consultant.

2008 年 9 月，LVSC 撤销了与顾问相关联的拥有不动产的实体关于向其进行股份转让的协议，并同意因此从顾问处获得金额约四千三百万美元的期票。就该相关不动产的交易，LVSC 累计支付了约六千一百万美元，并最终从顾问获得了约四千四百万美元。

- In 2007, LVSC set up a high-speed ferry business to transport customers from China and Hong Kong to Macao. At the exhortation of its president, LVSC sought to contract with a recently formed ferry company (“New Ferry”) on the basis that it would be politically advantageous as New Ferry was partially owned by a Chinese state-owned company (“Old Ferry”). As part of its contract with LVSC, each year, New Ferry would submit a detailed budget to LVSC. A 2010 LVSC audit revealed that the budget’s line item for “Business Entertainment” was primarily being used to provide meals and entertainment for government officials.

2007 年，LVSC 开拓了一项从中国和香港向澳门运输顾客的高速轮渡业务。在其总裁的敦促下，LVSC 试图与一家新近成立的轮渡公司（“新轮渡”）签署合同，理由是由于新轮渡部分由一家中国国有企业（“旧轮渡”）所拥有，可带来一定的政治利益。作为其与 LVSC 的合同的一部分，每一年，新轮渡会向 LVSC 提交详细预算。而一份 2010 年的 LVSC 审计显示，预算的“商业招待”单列项目被主要用于向政府官员提供餐饮和招待。

- LVSC policies and procedures regarding purchasing at VML were not enforced. This allowed employees to use cash advances and expense reimbursements to circumvent these policies. For example, in October 2006, the LVSC President of Asian Development submitted a personal expense report for a forum arranged at the Great Hall of the People in Beijing for which he was reimbursed approximately \$86,000.  
LVSC 有关购买的政策和程序没有在 VML 得到执行。这使得员工利用现金预付和费用报销绕过了此类政策。例如，2006 年 10 月，LVSC 亚洲开发部总裁提交了一项个人费用报告，费用用于在北京的人民大会堂安排的一个讲座，该总裁因此报销了约 8 万 6 千美元的费用。

## Cooperation and Remedial Efforts 配合和补救措施

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The SEC Order notes that LVSC's remedial efforts played a part in the Commission's decision to accept LVSC's offer of settlement. These remedial efforts included LVSC's Audit Committee engaging outside counsel to conduct an internal investigation, providing significant cooperation with the Commission's investigation by sharing in real-time facts "that may not have been otherwise available to the Staff," and facilitating the interview of certain key foreign witnesses. In addition, LVSC hired a new general counsel and new heads of the internal audit and compliance functions; established a new Board of Directors Compliance Committee and increased the compliance and accounting budgets; updated the Code of Business Conduct, the Anti-Corruption Policy, the guidelines regarding comps (meal and hotel stays to casino customers) for government officials, and the SOE and expense policy. LVSC also developed and implemented enhanced anti-corruption training, an electronic procurement and contract management system and also enhanced its screening of both third parties and new hires and its contracting process.

证交会作出的决定表示，委员会在作出接受 LVSC 的和解要约的决定时会部分考虑 LVSC 所进行的补救努力。该类补救工作包括，LVSC 的审计委员会聘请外部顾问进行内部调查，充分配合委员会的调查，如分享“在其他条件下员工不会了解的”事实，以及为询问部分关键外国证人提供便利。此外，LVSC 聘请了新的总法律顾问和新的内部审计和合规职能的负责人；成立了一家新的董事会合规委员会以及增加了合规和会计预算；更新了企业行为准则、反腐败政策、政府官员招待（到赌场客户的餐饮和酒店住宿）指引，以及国企和费用政策。LVSC 还制订和执行了强化反腐败培训，电子采购和合同管理制度，并加强了其对第三方和新雇佣人员以及其合同流程的筛选。

## Consequences 相应的后果

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To settle the SEC's claims that LVSC and its subsidiaries violated the FCPA's internal controls, and books and records provisions, LVSC agreed to pay a civil penalty of \$9 million to the SEC. Although LVSC undertook the remediation efforts outlined above, the SEC determined that it was necessary to engage an independent consultant for a period of two years to ensure future compliance with the FCPA. 为和解证交会的指控，指控 LVSC 及其子公司违反 FCPA 的内部控制以及账簿和记录规定，LVSC 同意向证交会支付 900 万美元的民事罚金。尽管 LVSC 采取了上述补救努力，但证交会认为，LVSC 必须聘用一名为期二年的独立顾问以确保今后遵守 FCPA 的相关规定。

## Observations and Lessons Learned 观察结果及经验教训

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This settlement also reinforces lessons learned from other anti-corruption cases, including the need to: 该和解也强调从其他反腐败案件中所学到的，包括如下的必要经验教训：

- adopt robust controls -- including due diligence -- over the use of third parties in China (which continues to be an area of focus for both US and Chinese regulators), as while the use of third parties may have been LVSC's normal business practice, such use hampered its ability to properly document its transactions, especially where such third parties were not under its control and, at times refused to provide access to their own books and records;  
在中国使用第三方需施行强有力的控制措施---包括尽职调查（这将仍是美国和中国监管机构的重点监管领域），如 LVSC 在其可能正常的经营活动中雇佣第三方，而导致其无法正常对相关交易进行记录，并尤其会发生第三方不受其约束，且届时拒绝提供公司账目信息的情况；
- timely investigate and remediate reports or findings of improper activity, broadening the scope of an internal investigation as necessary if signs show more systemic misconduct;  
及时调查不当行为报告或发现并采取补救措施，如有迹象表明更多系统性不当行为，则需扩大内部调查范围；
- develop and implement effective internal controls designed to verify expense claims and ensure that reimbursed funds are used for appropriate purposes, including gifts, meals, entertainment, and travel; and  
制订及执行有效的内部控制措施，对费用申请进行核实，以及确保补偿的资金被用于适当目的，包括礼物、餐饮、招待和差旅；
- ensure that a company's compliance program extends to its foreign subsidiaries and joint ventures, with a focus on robust financial accounting controls, easy access by employees of foreign subsidiaries and joint ventures to company anti-corruption policies, requirements, and trainings, and the provision of on-the-ground compliance personnel for high-risk foreign jurisdictions.  
确保公司的合规制度延伸至其外国子公司与合资公司，特别是强有力的财务会计控制，确保外国子公司和合资公司的员工能容易地查看公司反腐败政策、要求和培训以及对高风险外国辖区提供当地合规人员。

The settlement also illustrates how regulators view historical conduct -- in this case dating back nearly a decade -- through the lens of present-day compliance expectations, rather than expectations at the time of the misconduct.

该和解还对监管机构如何对待历史行为进行解释 -- 在本案件中，监管机构追溯到近 10 年以前的行为 -- 并以当前的合规标准和预期来进行处理，而非采用不当行为发生时的标准对不法行为进行处理。

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