**LEGAL OPINION**
**IN RESPECT OF THE GOOD STANDING OF MR CALVIN E. AYRE**

We act as public international law counsel to Mr Calvin E. Ayre. We have been asked to deliver this opinion to Mr Ayre in an effort to assist banks and other financial institutions with Know Your Customer ("KYC") procedures, politically exposed person ("PEP") screening, enhanced due diligence processes, fraud prevention, and other identity authentication, background screening and risk-prevention practices in respect of Mr Ayre. This opinion is confined to matters of public international law as at the date of this opinion. Accordingly, we express no opinion with regard to any other system of law. We assume no obligation to notify you of any further changes in law, which may affect the opinions expressed herein, or otherwise to update this opinion in any respect.

## CONCLUSIONS

The United States' decision to criminalise Mr Ayre's business conduct (*i.e.*, operating an online gaming company pursuant to a lawful licence) and subsequently enforce certain United States' federal and state laws against Mr Ayre was in contravention of the United States' international law obligations. Public international law demands the non-recognition of acts of States found to be in contravention of international law. Ergo, banks and financial institutions should not recognise the criminal investigation, prosecution, and sentence (including the plea agreement of July 2017) of Mr Ayre. By adopting this position, banks and other financial institutions would not be in breach of their compliance obligations in engaging Mr Ayre as a client, to the extent that any adverse inference is drawn in respect of the United States' proceedings detailed in the Appendix below; instead, such banks and institutions would be recognising the correct legal position and thereby acting lawfully.

## DUTY OF NON-RECOGNITION

1. The effect in another State of a foreign law which constitutes an international wrong should be assessed by public international law.[1] Under public international law, States must not recognise the unlawful act of another State (*i.e.*, violations of international law obligations). This flows from the basic principle of international law, *ex injuria non oritur jus* ("unjust acts cannot create law").

[1] F.A. Mann, "The Consequences of an International Wrong in International and National Law", 48 *British Year Book of International Law* (1976-1977), 1.

2. Writing in 1954, Dr F.A. Mann, one of the great international lawyers, expressed the following clear view:

> "*[I]f a State commits an international wrong and the court of another State, the forum, refuses recognition to that wrong, the latter does what international law expects it to do and what it must do in order not to become an accessory to the delinquency.*"[2]

3. While Dr Mann's views were expressed in the context of a domestic court, the principle is clear: international law demands the non-recognition of acts of the United States found to be in contravention of its international law obligations. To put it another way, as matter of public international law, banks and financial institutions, instead of recognising the unlawful conduct of the United States in its treatment of Mr Ayre, ought to disregard the criminal investigation, prosecution, and sentence (including the plea agreement of July 2017) of Mr Ayre. The plea agreement was reluctantly accepted by Mr Ayre as a means to an end, namely to bring to an end the years of pressure and attack he had suffered at the hands of the most powerful sovereign State in the world, the United States. Set against the scope of the attack originally launched against him and his associates, the plea involved a *de minimis* penalty for Mr Ayre and in truth constituted a fig-leaf to cover the embarrassment of the United States in its failed attack on Mr Ayre. The attack on Mr Ayre was made by the United States without proper regard to the clearly illegal nature of the attacks (for which see the history of the WTO dispute between the United States and Antigua and Barbuda detailed in the Appendix below). In this context, the United States cannot lawfully rely on its own illegal acts, and what flowed from those illegal acts (including the plea agreement), as a means to curtail the rights and actions of Mr Ayre. As a matter of public international law, therefore, the plea agreement, along with everything else flowing from the unlawful actions launched against Mr Ayre, is a legal nullity.

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[2] F.A. Mann, "International Delinquencies Before Municipal Courts", 70 *L.Q.R.* (1954), 181.

# APPENDIX
# CHRONOLOGY OF FACTS AND LEGAL ANALYSIS

## FACTUAL BACKGROUND

1. In February 2012, a Grand Jury for the District of Maryland charged Bodog Entertainment Group S.A. ("Bodog"), d/b/a/ Bodog.com, and Mr Ayre, Mr James Philip, Mr David Ferguson and Mr Derrick Maloney (the "Defendants") with: (i) conducting an illegal sports gambling business in violation of the Prohibition of Illegal Gambling Business, 18 U.S.C. §1955 (the "Illegal Gambling Business Act"); and (ii) conspiring to commit money laundering in violation of 18 U.S.C. §1956 (collectively, "the Charges").[3] The Defendants were accused of conducting an illegal gambling business involving online sports betting.[4]

2. As a result of the Charges, the United States also took forfeiture action against the Defendants. More specifically, approximately US$66 million of player funds held by accounts belonging to Bodog's payment processors were seized.[5] In addition, the www.bodog.com domain was subject to seizure and forfeiture.

3. In October 2014, due to a lack of prosecution activity in respect of the Charges, the United States administratively closed the case against the Defendants. On 7 April 2017, defendants Mr Philip, Mr Ferguson, and Mr Maloney were dismissed with prejudice from the case.[6] In early July 2017, the United States agreed to transfer the www.bodog.com domain name to Mr Ayre in exchange for US$100,000.[7] On 13 July 2017, the United States filed a new indictment against Mr Ayre, charging him with the misdemeanour of Accessory After the Fact (18 U.S.C. §3) to Transmission of Wagering Information (18 U.S.C. §1084) (the "Wire Act").[8] Pursuant to a plea agreement, Mr Ayre pled guilty and was sentenced to one year of unsupervised

[3] The indictment was returned on 22 February 2012 and unsealed on 28 February 2012.
[4] *United States v. Ayre*, No. 1:17-cr-00372-CCB, Doc.1-2. For a summary, *see* The United States Department of Justice Press Release, *Bodog And Four Canadian Individuals Indicted for Conducting Internet Gambling Business Generating Over $100 Million in Sports Gambling Winnings*, 28 February 2012, available at: https://www.justice.gov/archive/usao/md/news/2012/BodogandFourCanadiansIndictedforConductingInternetGamblingBusinessGeneratingover100Million.html.
[5] *United States v. Ayre*, No. 1:17-cr-00372-CCB, Doc. 9: 5 & Exhibit 1.
[6] *United States v. Ayre*, No. 1:12-cr-00087-CCB, Docs. 18 & 19.
[7] *United States v. Ayre*, No. 1:17-cr-00372-CCB, Doc. 9: 6.
[8] *United States v. Ayre*, No. 1:17-cr-00372-CCB, Doc. 1.

probation and a US$500,000 fine.[9] Despite the plea agreement's lack of compliance with public international law (this will be elaborated upon below), Mr Ayre entered into a plea agreement in an effort to return to normalcy, professionally and personally. In addition, Mr Ayre, who had never made any claim to the approximately US$66 million previously seized and forfeited, agreed not to make any such claim in the future.

## LAW AND ANALYSIS

4. As will be detailed below, the criminal investigation and prosecution of Mr Ayre (including the sentence flowing from the plea agreement and the seizure of US$66 million of player funds) constituted a breach of the United States' international law obligations.

### Findings of the WTO Panel

5. In the early 2000s, Antigua and Barbuda ("Antigua") had brought a complaint before a World Trade Organization ("WTO") panel (the "Panel") concerning certain United States' federal and state measures that restrict suppliers located outside the United States from supplying remotely gambling and betting services to consumers within the United States. Antigua claimed that such restrictions resulted in a "total prohibition" on the cross-border supply of gambling and betting services from Antigua in violation of the obligations of the United States under the General Agreement on Trade in Services (the "GATS").

6. On 10 November 2004, the Panel found that the United States' measures violated Article XVI (Market Access) of the GATS, which prohibits Members, unless otherwise specified in their Schedule, from maintaining or adopting any of the market access restrictions listed in Article XVI:2 (Market Access).[10]

7. The Panel agreed with Antigua that: (i) the United States' Schedule under the GATS includes specific commitments on gambling and betting services under sub-sector 10.D ("Other recreational services (except sporting)"); and (ii) by maintaining certain

[9] *United States v. Ayre*, No. 1:17-cr-00372-CCB, Doc. 7.

[10] Panel Report, *United States – Measures Affecting the Cross-Border Supply of Gambling and Betting Services ("US – Gambling")*, WT/DS285/R, circulated on 10 November 2004. Although the Panel rejected Antigua's claim with regard to Article VI (Domestic Regulation) of the GATS, it exercised judicial economy and did not examine Antigua's arguments with regard to Articles XI (Payments and Transfers) and XVII (National Treatment) of the GATS (see paras. 6.426, 6.437, 6.442 and 7.2).

federal and state laws, the United States had failed to accord services and service suppliers of Antigua treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in the United States' Schedule, contrary to Article XVI:1 and 2 (Market Access) of the GATS. In particular, and most relevantly, the Panel found that the Illegal Gambling Business Act (when read together with the relevant state laws) and the Wire Act violated Article XVI (Market Access) of the GATS.[11]

**Findings of the WTO Appellate Body**

8. The Panel's findings were substantially appealed by the United States. The Appellate Body upheld the Panel's findings with regard to both the extent of the United States' specific commitments in gambling and betting services, and the United States' violation of Article XVI (Market Access) of the GATS.[12]

9. Accordingly, the Appellate Body recommended that the WTO Dispute Settlement Body (the "DSB")[13] request the United States to bring its measures into conformity with its obligations under the GATS.[14]

**Subsequent developments**

10. At the DSB meeting of 19 May 2005, the United States stated its intention to implement the DSB's recommendations and indicated that it would need a reasonable period of time to do so.[15] The precise period of time for the United States to implement those recommendations was ultimately determined by an arbitrator appointed by the WTO Director-General, such that a deadline of 3 April 2006 was imposed.[16]

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[11] The other Federal measure that was found to violate Article XVI (Market Access) of the GATS was the Interstate or Foreign Travel or Transportation in Aid of Racketeering Enterprises, 18 U.S.C. §1952 (the "Travel Act") (when read together with relevant state laws). As to the state measures in violation of Article XVI of the GATS, the Panel found violations in respect of the following: §14:90.3 of the Louisiana Rev. Stat. Ann.; §17A of chapter 271 of Massachusetts Ann. Laws; §22-25A-8 of the South Dakota Codified Laws; and §76-10-1102(b) of the Utah Code.

[12] Appellate Body Report, *US – Gambling*, WT/DS285/AB/R, circulated on 7 April 2005, para. 373.

[13] The DSB has authority to establish dispute settlement panels, refer matters to arbitration, adopt panel, Appellate Body and arbitration reports, maintain surveillance over the implementation of recommendations and rulings contained in such reports, and authorise suspension of concessions in the event of non-compliance with those recommendations and rulings.

[14] Appellate Body Report, *US – Gambling*, para. 374.

[15] WTO DSB, *Minutes of Meeting Held in the Centre William Rappard on 19 May 2005*, WT/DSB/M/189, 17 June 2005, para. 47.

[16] Arbitration under Article 21.3(c) of the Understanding on Rules and Procedures Governing the Settlement of Disputes, *US – Gambling*, WT/DS285/13, 19 August 2005, para. 68.

11. The dispute between the United States and Antigua continued beyond that date, resulting in Antigua requesting that the DSB establish a new panel in order to seek steps to require the United States to comply with the WTO's previous findings.[17] On 16 August 2006, with the agreement of the DSB,[18] a panel (the "Compliance Panel") was composed.[19]

12. On 30 March 2007, the Article 21.5 panel report was circulated to WTO Members (the "Compliance Panel Report"). The Compliance Panel Report concluded that the United States had failed to comply with the recommendations and rulings of the DSB.[20]

13. On 21 June 2007, Antigua requested authorisation from the DSB, pursuant to Article 22.2 of the DSU, to suspend the application of concessions and related obligations of Antigua under the GATS and the Agreement on Trade-Related Aspects of Intellectual Property Rights (the "TRIPS Agreement") to the United States.[21] On 21 December 2007, the decision by the arbitrator was circulated to the WTO Members. The arbitrator determined that the annual level of nullification or impairment of benefits accruing to Antigua is US$21 million.[22]

14. At the DSB meeting on 28 January 2013, Antigua requested the DSB to authorise the suspension of concessions and obligations to the United States in respect of certain intellectual property rights under the TRIPS Agreement.[23] Pursuant to the request by Antigua under Article 22.7 of the DSU,[24] the DSB agreed to grant authorisation to

[17] Recourse to Article 21.5 of the DSU by Antigua and Barbuda, Request for the Establishment of a Panel, *US – Gambling*, WT/DS285/18, 7 July 2006.
[18] WTO DSB, *Minutes of Meeting Held in the Centre William Rappard on 19 July 2006*, WT/DSB/M/217, 12 September 2006, para. 71: the DSB agreed to refer the matter raised by Antigua in document WT/DS285/18 and decided that the panel would have standard terms of reference.
[19] Recourse to Article 21.5 of the DSU by Antigua and Barbuda, Constitution of the Panel, Note by the Secretariat, *US – Gambling*, WT/DS285/19, 16 August 2006.
[20] Recourse to Article 21.5 of the DSU by Antigua and Barbuda, Report of the Panel, *US – Gambling*, WT/DS285/RW, 30 March 2007, para. 71.
[21] Recourse by Antigua and Barbuda to Article 22.2 of the DSU, *US – Gambling*, WT/DS285/22, 22 June 2007.
[22] Recourse to Arbitration by the United States under Article 22.6 of the DSU, Decision by the Arbitrator, *US – Gambling*, WT/DS285/ARB, 21 December 2007, para. 6.1.
[23] WTO DSB, *Minutes of Meeting Held in the Centre William Rappard on 28 January 2013*, WT/DSB/M/328, 22 March 2013, para. 6.2.
[24] Recourse by Antigua and Barbuda to Article 22.7 of the DSU, *US – Gambling*, WT/DS285/25, 13 December 2012.

suspend the application to the United States of concessions or other obligations consistent with the Decision by the Arbitrator in document WT/DS285/ARB.[25]

15. It is noteworthy that on 4 May 2007, after circulation of the Compliance Panel Report[26] but before its adoption, the United States announced that it would withdraw the commitments it had made on gambling and betting services under sub-sector 10.D of its Schedule to the GATS.[27] Under Article XXI (Modification of Schedules), a Member may withdraw specific commitments, but must negotiate with "affected Members" over "compensation" for the withdrawn commitments.[28]

16. In response to the United States' announcement, Antigua requested compensation. On 28 January 2008, in furtherance of this request, Antigua requested arbitration with the United States pursuant to Article XXI:3(a) (Modification of Schedules) of the GATS in relation to the amount of compensation. As at the date of this opinion, the United States and Antigua have not agreed on the amount of compensation.

17. In light of the foregoing, it is clear that the United States' criminalisation of Mr Ayre's business conduct (operating an online gaming company pursuant to a lawful licence) and subsequent enforcement of the law against Mr Ayre was in contravention of the United States' international law obligations.[29] Both the WTO Panel Report of 10 November 2004 and the WTO Appellate Body Report of 7 April 2005 conclusively found that the Illegal Gambling Business Act (when read together with the relevant state laws) and the Wire Act violated Article XVI (Market Access) of the GATS. Yet, despite these unambiguous findings, the United States proceeded to act in violation of its treaty obligations. First, in February 2012, the United States initiated criminal proceedings against Mr Ayre for conducting an illegal sports gambling business in violation of the Illegal Gambling Business Act. Second, in July 2017, the United States entered into a plea agreement with Mr Ayre pursuant to which Mr Ayre pled guilty to a misdemeanour offence under the Wire Act. In short, the United States enforced

[25] WTO DSB, *Minutes of Meeting Held in the Centre William Rappard on 28 January 2013*, WT/DSB/M/328, 22 March 2013, para. 6.12.
[26] Recourse to Article 21.5 of the DSU by Antigua and Barbuda, Report of the Panel, *US – Gambling*, WT/DS285/RW, 30 March 2007.
[27] Press Release, Office of the United States Trade Representative, *Statement of Deputy United States Trade Representative John K. Veroneau Regarding United States Actions Under GATS Article XXI*, 4 May 2007.
[28] While technically permitted by the GATS, the United States withdrawal of its commitments on gambling and betting services in the face of an adverse dispute settlement ruling can reasonably be described as acting in bad faith.
[29] This analysis extends to Mr Ayre's sentence of one year of unsupervised probation and a US$500,000 fine, pursuant to a plea agreement, and the United States seizure of approximately US$66 million of player funds.

certain laws against Mr Ayre which a competent international adjudicative body had found to be in violation of the United States' international law obligations.

18. In 2011, the Antigua Minister of Finance aptly summarised the United States' actions in the following way:

> "*I am concerned that at this point in time, United States authorities continue to prosecute non-domestic suppliers of remote gaming services in clear contravention of international law. I am not aware of any other situation where a member of the World Trade Organization has subjected persons to criminal prosecution under circumstances where the WTO has expressly ruled that to do so is in breach of international law.*"[30]

## SUBSEQUENT DEVELOPMENTS

19. On 4 August 2017, the Government of Antigua, through the Office of the Prime Minister, appointed Mr Ayre as a Special Economic Envoy with responsibility for, *inter alia*, initiating negotiations with Antiguan authorities and businesses focused upon internet gaming and bitcoin, and advising the Prime Minister of Antigua on the potential for economic cooperation and commerce between Antigua and other sovereign States where internet gaming and bitcoins are lawful. As a result of this appointment, the Government of Antigua requested that all high-level courtesies be granted to Mr Ayre while he carries out his duties.

[30] Antigua Observer, "Lovell concerned as US goes after online gambling operators", 21 April 2011, available at: https://antiguaobserver.com/lovell-concerned-as-us-goes-after-online-gambling-operators/.