



Victorian Commission for
Gambling and Liquor Regulation

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28 May 2018

Our ref:
Your ref: RDM 1076473

Mr Richard Murphy
Partner, MinterEllison
via email: [REDACTED]

Dear Mr Murphy

Re: VCGLR China Investigation - Detention of Crown group staff in China

1. Thank you for your letter dated 17 May 2018. I wish to respond to matters raised therein.

Background

2. At paragraph 2 of your letter, you indicate that Crown group staff have been operating in China for 20 years without any substantial changes in their mode of operation. This assertion will be considered as part of the VCGLR's report.
3. At paragraph four of letter, you refer to Crown's competitors in Australia (i.e. SKYCITY Entertainment Group and Star Entertainment Group) and allege they also had China based staff. I note that those entities are not subject to the regulatory oversight of the VCGLR. Further, we understand that none of the staff of those entities were detained in China.

Relevant Chinese Law

4. At paragraph 5, you reproduce Crown's understanding of Article 303 of the *Criminal Law of the People's Republic of China*. The translation sourced by the VCGLR is:

"whoever, for the purpose of reaping profits, assembles a crowd to engage in gambling, or makes an occupation of gambling will be sentenced to a fixed term imprisonment of not more than three years, criminal detention or public surveillance, in addition to a fine.

Whoever runs a gambling house will be sentenced to a fixed-term imprisonment of not more than three years, criminal detention or public surveillance, in addition to a fine; and in severe circumstances, a fixed-term imprisonment of not less than three years but not more than ten years, in addition to a fine."

5. In paragraph 5(b) you refer to the "official guideline", which we presume to be a reference to the Chinese Supreme Court and the People's Procuratorate jointly issuing an Interpretation for Trial of Criminal Cases concerning Gambling (the "2005 Interpretation"). According to the translation sourced by the VCGLR, it stated:

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"A person breaches the 2005 Interpretation and constitutes "assembling a crowd to engage in gambling" provided in Article 303 in the following circumstances:

Assembling more than three persons with intent to gamble, to engage in gambling and obtaining commission of a sum equal or more than RMB5,000.

Assembling more than three persons to engage in gambling and the aggregate gambling stake exceeds RMB50,000.

Assembling more than three persons to engage in gambling and the number of people involved in the gambling activities exceeding 20 persons.

Organising more than ten Chinese citizens to engage in gambling activities overseas and obtaining a commission and/or introducer fee in return.

6. On 12 October 2015, the Chinese National television news service published a report regarding organising gambling activities in China. Again, according to the translation sourced by the VCGLR, that report included information concerning what constitutes a prosecutable offence, specifically, organising 10 or more citizens to go overseas to gamble or in numerous occasions with an accumulated number of 10 people.
7. Accordingly, the VCGLR's understanding of the "10 person requirement" may differ to that of Crown. We also note that the charges issued by the Chinese authorities states (according to the translation sourced by the VCGLR):

"The defendants...have organised Chinese citizens in groups of more than 10 people for gambling in Crown Casino...their actions have violated Paragraph 1, Article 303 and Paragraph 1, Article 25 of the Criminal Law of the People's Republic of China"

8. At paragraph six of your letter, you refer to Mr Chen "prudently [seeking] advice" concerning the abovementioned Chinese television report on 12 October 2015 referred to above. We understand that the advice in this regard is contained in the emails dated 15 and 19 October 2015 from Mr Randy Phillips of the Mintz Group. If further or additional advice was provided by the Mintz Group in relation to this matter, we request you provide this advice to the VCGLR as soon as possible.

Crown's knowledge and belief

9. At paragraph eight of your letter, you refer to a due diligence process that allegedly occurred, including a reference to external advice in 2012/2013 when Mr O'Connor moved into the VIP role. Our records indicate that no documentary evidence referring to this process or the external advice has been received. Please provide a copy of the same. If this cannot be provided, it will necessarily affect the weight the Commission can afford Crown's assertions.

The detention, arrest, charging and conviction of Crown group staff

10. I understand that the argument contained in paragraphs nine to 15 of your letter is that the VCGLR should not rely on the guilty pleas entered by Crown staff in relation to the criminal charges laid in China. The VCGLR is aware that the Chinese legal system operates differently to that in Australia. However, the VCGLR has not been provided with any evidence that undermines the legality of the criminal charges, or suggests that the pleas of guilt were forced or entered into under coercion or threat. The Commission intends to have appropriate regard to the pleas of guilt and notes that, in the normal course of events, a plea of guilt is a formal admission of the facts and law constituting the offence charged.

February 2015 crackdown

11. In paragraph 17 of your letter, you refer to Mr Chen seeking legal advice from the Beijing firm Wilmer Hale (**Wilmer Hale**) and further non-legal advice from an intelligence firm, the Mintz Group. Our records indicate that the Commission does not have copies of the external advices received (unless you are referring to an initial Mintz Group risk assessment titled "Project Wager"). Please provide a copy of the same. If this cannot be provided, it will necessarily affect the weight the Commission can afford Crown's assertions.

Detention of South Korean casino staff in June 2015

12. In paragraph 20 of your letter, you refer to Mr Chen seeking advice from Wilmer Hale and that Mr Chen "consulted contacts in the industry". Our records indicate that Crown has not provided any advice it received from Wilmer Hale as it was allegedly subject to legal professional privilege and the Crown chose not to waive this privilege. Accordingly, it is difficult for the Commission to make any assessment of this advice having not received it.
13. In relation to Mr Chen allegedly consulting contacts in the industry, please provide copies of any requests or information in Crown's possession relating to this consultation process. If this is not able to be provided, it will necessarily affect the weight the Commission can afford Crown's assertions.
14. At paragraph 21 of your letter, you allege that events in June 2015 were "considered and discussed up the reporting line". The VCGLR has in its possession a letter dated 27 November 2017 from Mr Joshua Preston (Chief Legal Officer, Crown Resorts) which states that "the detention of South Korean casino staff in 2015 was not reported to, or the subject of reporting, to the Risk Management Committee". It is not clear what reporting line you refer to at paragraph 21. Please clarify the nature and extent of any reporting in any relevant reporting structures that was undertaken by Crown staff in relation to the detention of South Korean casino staff in June 2015.

Police Interview of Benny Xiong in July 2015

15. Again, paragraphs 27 and 28 of your letter refer to Mr Chen consulting Wilmer Hale in relation to that matter. As detailed above, Crown has exercised legal professional privilege in respect of advice received from Wilmer Hale. Accordingly, it is difficult for the Commission to make any assessment of this advice having not received it.
16. Further, paragraph 28 of your letter states that Mr Chen considered the advice from the Mintz Group not to be "of any real significance and not seen by others up the reporting line". We would appreciate if you provided to the Commission any information that Crown has in its possession which would explain why Mr Chen chose not to consider this issue to be of significance and why he decided not to report it further.

Risk Management

17. Thank you for your statements in paragraphs 29-32 regarding Crown's alleged risk framework and controls. These are matters that will be considered by the VCGLR in finalising its report.

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18. At paragraph 31 of your letter, you refer to legal and strategic/government relations advice obtained in February, June, July and October 2015 which was all that Crown "could reasonably do". Please provide copies of the same. Again, if this is not able to be provided, it will necessarily affect the weight that the Commission can afford Crown's assertions.
19. In paragraph 33, you refer to Crown Melbourne's obligation under clause 22.1(ra) of the Casino Agreement to purportedly justify Crown's continued engagement in China. With respect, neither Clause 22.1(ra) nor the Casino Agreement itself requires that Crown source patrons specifically from China or required it operate within China. The manner in which Crown complies with CI 22.1(ra) is a matter for Crown, but it would be expected that the sourcing of commission based players from other jurisdictions occurs in accordance with the applicable laws in those jurisdictions. I also note that CI 22.1(ra) itself provides an ability for Crown to terminate its obligations therein, which has not been utilised.

Alleged non-compliance with Commission notices

20. In paragraph 41, you state that the documents the VCGLR has received during its investigation constitute a "minute proportion of the overall email traffic and documentary records of Crown during the period under consideration".
21. This statement is concerning. As you would be aware, the VCGLR has issued Crown with multiple requests requiring the production of information as the VCGLR requires, under section 26 of the *Casino Control Act 1991 (the Act)*, section 10.5.9 of the *Gambling Regulation Act 2003* and the general power of investigation under section 32 of the *Victorian Commission for Gambling and Liquor Regulation Act 2011* (together, **notices**). Copies of notices issued by the VCGLR to Crown in connection with this matter can be supplied again, if required.
22. If there is further information in Crown's possession which meets the scope of these notices, but has not to date been provided to the VCGLR, I request Crown contact the Commission with urgency, and no later than the close of business on **29 May 2018**, and propose a process whereby Crown will provide any outstanding information to the Commission in a timely and complete fashion. VCGLR staff will be available to immediately receive or inspect any documents as is necessary.
23. Otherwise, I request that you confirm by close of business on **29 May 2018** that Crown has fully complied with all notices issued by the VCGLR, and further confirm that there is no remaining information or documents in Crown's possession which meets the scope of those notices that has not already been disclosed to the Commission. We also note Mr Joshua Preston's letter dated 23 May 2018 which, *inter alia*, states that Crown "has not, to date in the course of reviewing materials for the purposes of making a Tranche 1 Discovery, identified any additional documents that fall within the parameters of earlier requests made by the VCGLR".
24. The VCGLR reserves its right to take any appropriate action it considers reasonable regarding what may be a failure by Crown to comply with its notices. The VCGLR also relies and reserves its rights regarding the statement made in paragraph 41 of your letter.

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Further steps and procedural fairness

25. In paragraph 44, you point out that an interview with Mr Jerry Xuan occurred without prior notice to Crown. To the extent that this is a complaint regarding the VCGLR's investigatory process, the VCGLR notes that it is not required to notify Crown regarding individuals who are to be interviewed prior to doing so. To the extent that any information collected from Mr Xuan is relied upon, Crown will be provided an opportunity to respond, where reasonable and appropriate.
26. In relation to procedural fairness, the VCGLR intends to provide Crown with an opportunity to comment on the factual accuracy of the VCGLR's draft report as well as any other adverse material, again where reasonable and appropriate to do so.
27. Finally, regarding your concern that Crown's defence regarding a shareholder class action will be prejudiced by the VCGLR's findings, I note that section 10.1.31 of the *Gambling Regulation Act 2003* does not permit the VCGLR to produce to a court protected information in the performance of the VCGLR's functions under a gaming Act, absent Ministerial certification or Crown's consent.
28. It is not the VCGLR's intention to publish the final investigation report at this stage, save for relevant parts which will be reproduced as part of the VCGLR's 6th Casino Review Report. As you would be aware, Crown will be afforded an opportunity to respond to that material at the appropriate time.

Response

29. As outlined above, it would be appreciated if the VCGLR could receive a response to all the matters raised in this letter as soon as possible, and in relation to the matters listed at paragraphs 22 and 23, by the close of business **28 May 2018**.

Yours faithfully



Stephen Berriman
Director, Compliance