

Crown China Investigation Summary Report

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Victorian Commission for
Gambling and Liquor Regulation

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1 Executive Summary

The investigation found Crown's¹ corporate governance and risk assessment failed to identify and assess risks stemming from a change in the Chinese government's approach, in 2015 relating to Chinese citizens being enticed to gamble overseas.

The failings are interrelated. It is noted that each incident in isolation may not have necessitated a reassessment of risk. However, in combination, they led to an increase of risk to Crown's staff and operation in China that was not accurately assessed, escalated appropriately or successfully mitigated.

Specific failings included:

- An over-reliance on Crown's person in charge 'on the ground' for mainland China, Mr Michael CHEN (**CHEN**) who was based in Hong Kong. CHEN was in a highly financially incentivised position based in Hong Kong and was responsible for Crown's risk assessment and mitigation strategies within China.
- A lack of escalation of key incidents and risk factors that were either not communicated or escalated to higher levels fully and accurately. In particular, the arrests of South Korean casino employees, and media reports detailing the Chinese government's intentions to crackdown on gambling / overseas casinos. Also, Crown's own Chinese based staff being questioned by Chinese Police in relation to their activities for Crown which resulted in conflicting and vague accounts of Crown's China based sales staff by Chinese Police and the lack of escalation in what was a serious and compelling risk indicator.
- The risks "on the ground" (such as in China) did not feed into and accurately inform the higher level formal risk assessment process.
- A reliance on a 'low-key' marketing approach to avoid attention from the Chinese authorities. This approach is incongruous with Crown's strategy in China given its sales workforce and budget were large and growing, was well resourced, incentivised based on gambling turnover and needed the ability to relay gambling information to potential clients.

After the detentions, Crown withdrew all sales staff operating in the Chinese market, which has therefore addressed the risk of this situation arising again.

It is apparent Crown did not intend for their staff to be subjected to detention, prosecution and conviction, however the circumstances and outcome raise serious questions in relation to Crown's corporate governance and risk management approach, culture and how this impacts on Crown's suitability to hold a casino licence.

Crown's corporate governance and risk assessment policies, and actual practice were significantly tested during this situation. Accordingly, the outcome suggests they failed this test.

A timeline that details key Crown incidents, documents and relevant correspondence is Annexure 1 to this report as 'Crown China Timeline'.

A table that details significant risk incidents and responses of Crown staff and Executives is Annexure 2 to this report as 'Risk Incidents and Responses Table'.

2 Introduction

On 15 October 2016, media outlets reported Crown Resorts Limited (**CRL**) employees had been detained in mainland China on suspicion of contravening Chinese anti-gambling laws.

On 17 October 2016, CRL released a media statement stating:

'In relation to media reports on the weekend, Crown Resorts Limited believes that Crown's Executive Vice President VIP International, Jason O'Connor, is one of 18 Crown employees that have been detained by Chinese authorities.'

¹ For the purposes of this report, unless otherwise stated, 'Crown' refers to the generic group of Crown companies that form Crown Resorts Limited.

On 10 July 2017, CRL advised the Victorian Commission for Gambling and Liquor Regulation (**VCGLR**) that four of its licensed employees (**Casino Special Employees**) had been convicted by Shanghai Baoshan District Court of contraventions of the Criminal Law of the Peoples Republic of China. The detentions and subsequent convictions involved 18 Crown Casino linked individuals including Mr Jason O'CONNOR, Crowns Executive Vice President VIP International. Mr O'CONNOR was detained, charged and found guilty under Chinese law of crimes related to anti-gambling laws.

The VCGLR Compliance Division Investigation team launched an investigation into the activities of Crown Melbourne Limited (**CML**) and linked companies seeking to understand their overseas operations and any implications the breaches of Chinese law may have regarding the relevant individuals, the casino operator and any relevance to ongoing suitability under Victorian legislation.

On 10 July 2017, **CML** advised the VCGLR that its **Casino Special Employees** had been convicted by the Shanghai Baoshan District Court of contraventions of the Criminal Law of the Peoples Republic of China in relation to anti-gambling laws.

3 Document purpose

The purpose of this investigation and report is to provide findings and recommendations to the VCGLR concerning the conduct and practices of Crown, focussing on the circumstances surrounding the detentions and convictions of Crown employees operating on behalf of CML in China.

4 Scope

This report considered the operations of Crown employees operating in China from 2015 to 2017. It also considered the subsequent arrests and convictions of Crown employees and the impact, if any, regarding Victorian legislation and the ongoing suitability of those individuals and the Casino operator.

A core focus of the investigation was on the principles and practices employed to manage risk, including their documentation and practical application by Crown Group and subsidiary companies of their overseas practices.

The scope of the investigation was to:

- examine the circumstances surrounding the detentions and convictions
- examine the Crown Group's corporate governance relating to the circumstances that led to the arrests and convictions, and
- collect any information which could be relevant to the suitability of the Casino Special Employees who were convicted and continue to be employed with Crown noting that any action with respect to the suitability of individual casino special employees would need to follow the process set out in the Casino Control Act 1991 (**CC Act**).

5 Crown Group structure

The corporate structure of CRL is relatively complex, so this investigation has focused on those entities that have direct responsibility for corporate governance regarding the casino licence.

CRL is the parent company of **CML**. CRL is largely responsible for the setting of corporate strategy and has a significant influence on the governance structure of CML which is the holder and operator of the casino licence (the Licence).

Also of relevance in this investigation is Crown Resorts Pte Ltd (Hong Kong) albeit 'Hong Kong' does not appear on the corporate records. It is a Singaporean incorporated company that was the employer of the vast majority of those arrested in China.

The corporate structure for Crown Resorts Pte Ltd (Hong Kong) is described by Crown on the employment agreements of its overseas based sales staff as:

"The company is a subsidiary of Crown Melbourne Limited and is part of the Crown Limited group of companies."

Crown Resorts Pte Ltd was the employer of Crown's overseas employees and its directors included key Crown executives, Barry FELSTEAD and Rowen CRAIGIE. According to CRAIGIE, it was primarily used as a vehicle to employ CRL staff. It did not itself have a 'Risk Register' despite the 'CROWN RESORTS S LIMITED RISK MANAGEMENT POLICY (February 2008)' stating that:

“Crown will have Risk Registers in place across all Crown Businesses, including the Crown Resorts Limited head office (Head Office), which catalogue material risks to each business, both financial and non-financial.”

The approved corporate entities of the Licence holder are Crown Resorts Limited, Crown Entertainment Group Holdings Pty Ltd and Consolidated Press Holdings Pty Ltd.

5.1 Structure and purpose of business in Hong Kong and China

At the time of the arrests, Crown had at least sixteen sales staff, along with support staff, working in Hong Kong and China for Crown Resorts Pte Ltd (Hong Kong), promoting Crown Resorts (Crown Melbourne, Crown Perth and Crown Macau casinos) to potential clients from mainland China to come to Crown Resorts casinos to gamble. Sales employees were responsible for zones or regions within China.

The position purpose for Jerry XUAN, Director of International Sales Beijing at the time of his detention is indicative of the role Crown's sales staff performed in mainland China. Mr XUAN was *‘..responsible for establishing, developing and marketing the Crown VIP product.’* Key activities included, *‘Develop and execute sales plans to reach financial targets’* and *‘Develop pipeline of prospects and cultivate exiting database.’*

In short, VIP International is a department within Crown that is responsible for developing and maintaining relationships with existing and potential international customers. It includes marketing responsibilities, and a commercial team that looks at the performance of the business and is also responsible for Crown's London casino property, Aspinall's. Targets for VIP International were recommended by Crown management Executives, such as O'CONNOR and Michael CHEN, and approved and set by the Crown Resorts Board. Targets were based on gambling turnover with Executives, such as CHEN's performance bonus being based on profit and sales staff on turnover. According to CHEN, two thirds to three quarters of Crown VIP International customers went to Crown Melbourne and 75-80% of those were from the Chinese VIP market.

Significance of Crown's VIP program play

The significance of Crown's VIP Program Play is highlighted in the CRL Annual Reports. For example, its Annual Report (financial year ending 30 June 2015) CRL reported that

*“The removal of the super tax on VIP program play at Crown Melbourne has improved the international tax competitiveness of Crown's VIP business in Australia. **VIP program play turnover for the year was \$52.3 billion, up 41.0% on the previous year.** This is a pleasing result given the weakened global VIP sector during the year, which saw volume declines in many of the key gaming markets, including Macau and Singapore. Crown Melbourne has focused on significantly enhancing the overall experience for VIP customers from its service offering to unique event opportunities and the addition of four new private gaming salons. Deepening relationships with trusted international marketing agents has also allowed Crown Melbourne to build volumes from this important market segment.*

*Operating revenue for Crown Melbourne was reported as \$1,020,299,000 (main gaming floor) and **\$501,202,000 (VIP program play)**”.*

In the CRL and CML Financial Plans and Budget Financial Years 2016-2019 (dated 29 May 2015), in relation to VIP Business, it highlights the significance of this aspect to CRL's overall business stating:

“The International VIP gaming market is currently in a highly uncertain state, particularly in China and Macau. Accordingly, it is not prudent to expect record volumes in F15 to be repeated.

Despite this Crown will continue to promote a suite of flexible and compelling tiered offers in the VIP market (including a mix of rebate and commission based offers) targeting the junket and premium players markets along with a platform junket model whilst working on increasing the property junket presence and enhancing senior sales capability.

Growth in the premium direct business particularly from mainland China and South East Asia will be achieved with personalised incentives, offers and experiences (eg tournaments) and by the continued frequency of senior executive visits to Asia.

Leverage the newly acquired jets and the four additional VIP gaming salons completed during F15.

Further initiatives at formative stages of development include 'introduce a platform junket strategy' and 'investigate feasibility of remote betting.'

The International and Interstate Program Play contribution of \$111.1m (at theoretical) is down on F15 by \$33.8m (23.3%) with turnover declining to \$42.6b from \$50.6b in F15.

The record volumes achieved during F15 are not expected to reoccur due to the highly uncertain International VIP market particularly in China and Macau.

Crown will maintain a close watching brief on the market while continuing to drive / implement key strategies."

5.1.1 Crown's budget for China and Hong Kong

Crown's budget for China doubled between 2012 and 2016, with Crown Hong Kong's budget tripling during the same period.

Crown's combined budgets (including payroll, office costs, travel and entertainment and local travel) for their China and Hong Kong offices expanded from a total of-

- F/Y 2012 \$2,320,346 (China) and \$1,692,827 (Hong Kong) to
- F/Y 2016 \$4,470,808 (China) and \$5,161,718 (Hong Kong).

CHEN stated the increases in payroll over this period were due to the incentive composite for the sales staff:

'Yeah, and hitting the targets and beating the new procedures, the policies and culture.'

5.1.2 Marketing by other casinos in China

The investigation spoke with a Senior Executive at MGM Grand (**MGM**), who has worked extensively in the casino industry. The Senior Executive stated MGM use independent contractors (not their own staff) to perform their marketing in mainland China and base their recruitment of potential gamblers from their property in Macau. The Senior Executive also stated the Nevada Gaming Commission keeps a register of independent contractors and that all casinos are required to obtain and provide legal advice (from the jurisdiction) and risk assessments prior to operating in the jurisdiction.

MGM confirmed the environment in China is rife with rumours. Following the arrests of Korean casino staff in China, MGM considered the issue and concluded the Koreans were operating in a significantly different manner to the way it was operating. MGM continued to maintain a conservative approach after the crackdown in China and continue to operate in the same manner as they always had.

5.2 Key persons

5.2.1 Mr Rowen CRAIGIE

The Chief Executive Officer and Managing Director of CRL at the time of the arrests was Mr Rowen CRAIGIE (**CRAIGIE**). CRAIGIE is listed as an associate of the Licence holder and was also a Board member of CML. CRAIGIE was also listed in 2016 as a member of the CML Risk Management Committee in 2014, 2015 and 2016. On 28 February 2017, CRAIGIE stood down from his role as CEO and Managing Director. He was also a director of Crown Resorts Pte Ltd (Hong Kong) at the time of the arrests.

5.2.2 Mr Barry FELSTEAD

Crown's CEO Australian Resorts s (head of both Crown Melbourne and Crown Perth) at the time of the arrests and all other material times was Mr Barry FELSTEAD (FELSTEAD). FELSTEAD reported directly to CRAIGIE (until his resignation in February 2017) and was also director of Crown Resorts Pte Ltd (Hong Kong). O'CONNOR reported directly to him.

5.2.3 Mr Jason O'CONNOR

Mr Jason O'CONNOR (**O'CONNOR**) was employed as the Executive Vice President VIP International at the time of his detention in China. He commenced employment with CML on 1 February 2011 having previously been employed by other associated Crown entities since 1997. He was based in

Melbourne and was the most senior Crown employee detained and charged in China. O'CONNOR maintains his CSE licence. On 7 September 2017, three other Crown employees who were detained and convicted (Alfred GOMEZ, Jane PAN and Jerry XUAN) were made redundant.

5.2.4 Mr Michael CHEN

Of critical interest to the investigation is the role played by the then President of International Marketing, Mr Michael CHEN (**CHEN**). CHEN directly reported to O'CONNOR. He was described in open source media as the 'architect' and the driving force behind Crown's push into mainland China and that he was very ambitious in his strategy of marketing to Chinese VIPs. CHEN commenced employment with Crown in 2012 with his position location in Hong Kong. His previous casino experience was at Caesars in a strategic development role. He said he was brought in to

"professionalise the business, to bring in an outside point of view, new process, new skills, new training and a fresh look at the business. But I was responsible for the profitability of the business that's how I was measured."

Documents obtained from Crown show CHEN was also the conduit for correspondence with Mintz Group (**Mintz**), the overseas based provider of risk assessments for Crown's Chinese operation. CHEN was never arrested by Chinese authorities and he resigned from Crown in April 2017, and now resides in the USA.

5.3 Corporate Governance Risk Management approach

Crown's formal risk assessment 'policy' type governance documents consist of

- Corporate Governance Statement (as detailed in the Crown Resorts s Limited Annual Report),
- Crown Resorts s Limited Risk Management Policy,
- Crown Resorts s Limited Risk Management Committee Charter, and
- Crown Melbourne Limited Audit Committee Charter.

Whilst these policy documents on face value indicate a strong commitment to corporate governance in a risk management sense, the critical and fundamental test of any risk management framework is how it is applied in practice.

The relevant risk assessment processes included:

- Crown Resorts s Risk Management Committee
- Crown Melbourne Risk Management Plan
- Crown Resorts s Limited Risk Profile
- Internal Audit Plans
- VIP International Business Plans
- The engagement of Mintz Group (to provide risk assessment advice of the situation in China), and
- The engagement of Wilmer Hale (to provide legal advice regarding their operations in China)

In August 2017, Crown's made a PowerPoint presentation to the VCGLR that was *"provided in the course of or for the purposes of the deliberative process of the Commission"*. In part, it stated:

"The Crown group's risk management framework is overseen by the Board of the listed parent company, Crown Resorts s. One of the Crown Resorts s Board sub-committees is the Risk Management Committee.

The Risk Management Committee has adopted a formal charter that outlines its duties and responsibilities. One of them is the administration of the Crown group's formal Risk Management Policy.

The Policy sets out the process for the development and review of Risk Management Plans for each of Crown's controlled businesses. The purpose of each such plan is to identify material business risks and provide the framework for reporting, mitigating and monitoring such risks.

Crown's Risk Management Plans did not specifically identify the risk of staff being detained in a foreign country, essentially because detention is a consequence of other higher-level risks.

Such higher-level risks were identified, via:

- Material breaches of gaming and other relevant legislation/regulations;*
- Foreign political policy – including policy in foreign jurisdictions regarding the enforcement of local law; and*
- Legislative/regulatory changes – again including government policy on the enforcement of local law.*

In the implementation of the relevant Risk Management Plan, the risk of breaching the law in China, specifically Article 303, was recognised and, in accordance with the Plan, Crown sought appropriate advice to mitigate the risk, and acted in accordance with that advice."

Fundamental to Crown's governance regarding risk assessment in this matter was the strong reliance on 'staff on the ground' in China relaying information upwards to inform Crown's higher formal risk assessment processes.

According to key Crown Executives interviewed and documents obtained, the reliance for risk assessment was placed with CHEN, President of International Marketing, who was based in Hong Kong and responsible for the sales staff operating in China.

CHEN was in a highly financially incentivised role (for his last two years he achieved 180%, on average, of his salary in short term incentive bonuses) to motivate his sales team to attract Chinese gamblers to Australia. His direct superiors were O'CONNOR, and at times, FELSTEAD. If risk concerns were not escalated, and/or not escalated accurately by CHEN, risk management at the higher levels of CRL could not effectively occur.

When questioned, CHEN could not recall seeing his position description or having specific discussions with Crown Executives about performing a risk assessment role but he stated '*...as a business executive you always need to – you're always making decisions balancing opportunity and risk and trying to understand those things.*'

Of concern also, is that Crown Resorts Pte Ltd (Hong Kong) had no formal risk register and thus no formal mechanism to document risks identified, likelihood, consequence, controls, treatments and escalate them. CRL risk management policy suggests it should have a risk register.

CHEN's position description under '*Decision Making and Advice*', '*Decisions this role makes under guidance*' included – '*Resolution of challenging and complex issues that are legal or PR risks.*'

CHEN stated, "I'd never seen this so I was certainly not under the impression that I would be making decisions on legal or PR risks, but I would be an actor (active) in influencing and informing and being part of a collaborative decision on some of these things. So that's the way we operated." He stated collaboration was with Crown's legal department, O'CONNOR, FELSTEAD and CRAIGIE.

Interviews and documents obtained during this investigation show that higher levels of Crown's structure were not fully aware of certain key events and risk factors that clearly indicated an escalating risk environment from 2015 onwards in China. In particular, the approach of Chinese authorities regarding overseas casinos attempting to entice Chinese citizens to gamble overseas. Coupled with a lack of certain risk factors being escalated and/or accurately assessed, was a mitigation strategy that ultimately failed. In broad terms the mitigation strategies included:

- The reliance on Mintz to provide a risk assessment of the situation in China
- The reliance on legal advice from Wilmer Hale (solicitors in China), and
- Operating in what Crown described as 'low-key' manner in their dealings with potential Chinese clients.

Crown's VIP International F17 Strategic Business Plan Executive Review (undated) appears to be inconsistent with a purported low-key marketing approach, whereby it states:

'Despite the continuous bleak conditions in the market...

Given the crackdown in Macau and the potential shift of focus to massmarket, VIP gaming to some extent has found its way outside Macau

Some customers are choosing to gamble, but at locations other than Macau or Singapore

Crown is continuing to pursue business aggressively.'

When questioned, CHEN described 'aggressive' as "...aggressive means we're working hard. You can work hard in a low-key way, right. It means you're preparing. In my world in sales, the bad sales people don't prepare, right, they don't research the customer, understand the customer needs, do an account plan, so to me aggressiveness is preparation, is planning, having – using your day wisely."

6 Legislation

6.1 Victorian law regarding gambling

The CC Act requires that the casino operator to be a suitable person to hold the casino licence. Relevantly, Section 20(1)(d) of the CC Act states:

In this section—

"disciplinary action" means the cancellation or suspension of a casino licence, the issuing of a letter of censure, the variation of the terms of a casino licence or the imposition of a fine not exceeding \$1 000 000;

"grounds for disciplinary action" in relation to a casino licence means any of the following grounds—

(d) *the casino operator is, for specified reasons, considered to be no longer a suitable person to hold the licence.*

Section 32 of the Victorian Commission for Gambling and Liquor Regulation Act 2011 provides that for the purposes of performing its functions or duties under gambling legislation, the Commission may carry out investigations (including of a preliminary nature) which may include (but is not limited to) an investigation of any or all of the following:

- *A person who in the opinion of the Commission, a regulated person; and*
- *The conduct and practices of a relevant person.*

6.2 Chinese law regarding gambling

The Criminal Law of the People's Republic of China states;

Article 303, Clause 1, is that anyone who organises gambling parties or is engaged in gambling as one's main business for the purposes of making profits shall be sentenced to not more than three years of fixed-term imprisonment, detention, or surveillance and shall be jointly fined.

Article 25, Clause 1, is that a joint crime is an intentional crime committed by two or more persons jointly.

China Stipulates Judicial Interpretations on Gambling

Judicial interpretations regarding clause 303 were jointly issued by the Supreme People's Court and the Supreme People's Procuratorate as reported on 14 May 2005. It states:

"The Article 303 of the Criminal Law says that whoever, for the purpose of reaping profits, assembles a crowd to engage in gambling, opens a gambling house or makes an occupation of gambling is to be sentenced to not more than three years of fixed-term imprisonment, criminal detention or control, in addition to a fine."

The judicial interpretation specifies "assembling a crowd to engage in gambling" as the following: "assembling three or more persons to engage in gambling and reaping commission of 5,000 yuan or more; assembling three or more persons to engage in gambling and the gambling money accumulating to more than 50,000 yuan; or organizing more than 10 Chinese citizens to go overseas for gambling and asking commission."

6.2.1 Crown's legal advice regarding Chinese gambling law

In part of Crown's PowerPoint presentation to the VCGLR stated:

"Crown has obtained legal advice on Article 303 and a related court guideline which said an individual committed an offence against Article 303 if they;

Organised 10 or more Chinese citizens to engage in group gambling; and personally, receiving a 'referral fee' or similar kind of reward.

Crown instructed its staff to conduct themselves in China in a manner which it understood would not involve breaching article 303."

The VCGLR requested a copy of the legal advice Crown referred to. Crown have claimed, and continue to claim Legal Professional Privilege in relation to legal advice they obtained. Accordingly, this investigation cannot comment as to the validity or otherwise of that advice, nor whether Crown accepted, followed and implemented the recommendations of that advice.

This investigation revealed several examples suggesting the interpretation of Article 303 by the Chinese authorities is potentially different and broader than that as alleged by Crown in its presentation to the VCGLR. These examples include:

- a broadcast on Chinese National news in October 2015 (prior to the detentions),
- a witness statement from a Crown employee convicted in China, and
- a translation of the charges laid by the Chinese authorities.

The October 2015 News Report

On or about 12 October 2015, Chinese National television news service reported about organised gambling activities in China. A translation of a key pertinent point in the report regarding Chinese gambling law is translated as follows:

'We are highly concerned about foreign casinos and their infiltration and development of gambling activities in our country. In particular, we are determined to eliminate organised gambling activities in China by foreign casinos. It is legislated in China that an organization of more than 10 people going overseas for gambling activities, or in numerous occasions with an accumulated number of 10 people, constituted as a prosecutable offence'

On 14 October 2015, the report was highlighted by CHEN (Crown President of International Marketing) to Randy PHILLIPS of Mintz²) in an email to him dated 14 October 2015 stating:

'The attached report has shaken many of our team members and we need to have a responsible understanding of the environment has materially changed, if there are any new laws or whether there are new risks we should be managing for.'

As far as this investigation could discover, this news report was not translated by Crown itself.

The witness statement of Jerry XIAN

A statement was taken during this investigation from Jerry XIAN, Director of International Sales Beijing, who was detained and convicted by Chinese authorities. In part, he stated:

'When I was charged, the police said that we had broken Chinese law in relation to organising groups of over ten (10) person to gamble overseas. The Police said that this number was calculated over a year. Our case was referred to as case number: 19/10/2016. I believe that I would have signed up over ten (10) new customers over twelve (12) months. And the whole sales team would have signed up 20-30 over twelve (12) months.'

The translation of the charges laid by the Chinese authorities

In addition, one of the detained and convicted Crown employees, Ms Jane PAN, confirmed during interview she had in her possession copies of documents that detailed the Chinese authorities' prosecution against the Crown employees. In part, those documents state:

"Our procuratorate believes that the defendants Jason O'Connor, Alfreed Gomez, Wang Xun, Zhu Bin, Liu Yuanzheng, Wu Xuefen, Xuan Peng, Tao Yan, He Xi, Xiong Bin, Jia Qi, Pan Dan, Dai Bin, Chi Yang, Cao Zhiqiang, Lv Xiaolei, Jiang Lin, Cai Xiaoyu and Tang Xiaoqing, have organized Chinese citizens in groups of more than 10 people for gambling in Crown Casino and received remuneration from the customers gambling activities. Their actions have violated Paragraph 1 Article 303 and Paragraph 1 Article 25 of the Criminal Law of the People's Republic of China, the facts of the crime are clear, and the evidence is indeed sufficient"

² Providers of risk assessment advice to CHEN and Crown as detailed further throughout this report.

7 Change of Environment in China regarding gambling in 2015³

In early February 2015, the Chinese Government announced a crackdown on illegal gambling especially in relation to foreign casinos attempting to attract Chinese gamblers to go overseas to their casinos.

The illegal gambling crackdown followed earlier reports that the Chinese government was leading an anti-corruption drive in relation to the removal of illegal funds from China through Macau casinos. This anti-corruption drive is reported to have commenced in June 2014 and greatly affected revenues for casinos in Macau, including Melco Crown. CRL had a stake of 33.6% in Melco Crown at that time.

On at least three occasions⁴, CRL Executives commented on the circumstances in China and cast a positive light on Crown's business interests in attracting Chinese gamblers to Australia. Around this time, Crown also experienced significant growth in their profits from VIP International business to Australia.

In Crown's undated '*VIP International F16-F20 Strategic Business Plan Executive Review*', are some key statements relevant to the risk environment in China and/or changing risk environment in China. The Executive Summary includes:

"The prevailing feature of the current international market place is uncertainty" with the below dot points:

- 'Since the commencement of their term approximately 2 years ago, the Chinese central government has embarked on a sustained 'anti-corruption' campaign'.*
- 'Government is also trying to close down the uncontrolled outflow of currency, and the 'underground banking system' that supports it. This has also brought attention to the use of China Union Pay cards to access money overseas.'*

'The most recent development was an announcement that authorities are taking a stand against foreign casinos seeking to attract business out of China. This announcement was made about 1 month ago (and likely contributed to the softer than expected CNY period)'

'These policy statements have been underlined by a series of high profile arrests and executions.' (emphasis added)

These statements highlight that Crown, at the VIP International Business level, was aware of an increased or escalated risk environment. The statements indicate Chinese authorities broader position regarding foreign casinos, not only 'corruption' or 'currency violations' but also seeking to attract business. Further, these statements indicate the VIP Business level was also aware of a higher level of consequences, being arrests and executions.

There is also evidence following the Chinese government's announcements in February 2015, the Chinese authorities actioned their position and intentions through:

- The arrest of South Koreans casino operators in China in June 2015,
- Their commencement of enquiries into Crown's activities in China from at least July 2015 onwards, and
- A further announcement on Chinese National television on October 2015 regarding organising gambling activities in China that included what constitutes a prosecutable offence of organising 10 or more citizens to go overseas to gamble *or in numerous occasions with an accumulated number of 10 people.*

CHEN stated to investigators:

'...the Chinese government has a history of making symbolic statements that are meant to show the people that the government is serious about a certain direction. In practicality, usually these things were symbolic rather than real.'

It could be argued that CHEN and Crown's risk assessment approach contained a significant element of confirmation bias. Their overall lens appeared to be that the Chinese government's announcements

³ A timeline that details key Crown incidents, documents and relevant correspondence is Annexure 1 to this report as 'Crown China Timeline'.

⁴ CRAIGIE on 3 and 20 February 2015, and Harold MITCHELL on 22 January 2016

(and risk indicators) were symbolic. However, they were very real and applied to Crown and the way they operated in China.

7.1 Details of key incidents and risk indicators and Crown's mitigating strategies

7.1.1 6 February 2015 - Reuters article: 'China's President just declared war on global gambling'

A Reuters article dated 6 February 2015 stated:

'Chinese President Xi Jinping has officially declared war on the global gambling industry, warning foreign casinos that Chinese citizens will be gambling much less in China, neighbouring countries, and the US. "Some foreign countries see our nation as an enormous market, and we have investigated a series of cases," said Hua Jingfeng, a deputy bureau chief at the Ministry of Public Security.'

Interviews with O'CONNOR, FELSTEAD and CRAIGIE indicate that their position on this article was relating to cracking down on corruption and/or Chinese officials gambling. They did not consider it to apply to the broader casino industry.⁵ CHEN recalled, *'...general messages like that for again as long as I've been in the industry.'* However, he could not recall specifically having discussions with O'CONNOR or FELSTEAD or other Crown Executives at the time, but stated he would have discussed it and sought outside advice.

7.1.2 25 February 2015 – Email from Michael CHEN to 'Colleagues' (in Hong Kong Office)

On 25 February 2015, an email was sent from CHEN to his sales staff which advised staff in Crown's overseas operation of the advice received from Wilmer-Hales Beijing Office. This email was redacted when provided to the VCGLR. The email included:

"The well-being and security of our staff is of utmost importance. We have conferred with our advisers and we have confirmed that there is no change in the law. We are comfortable that our current work is in compliance with current laws in China. That said, this is clearly a sensitive time. It is: therefore, important that we exercise discretion and be sure not to bring undue attention to ourselves during this critical period. So some guidelines, for the next 2 months for activity inside China

- 1) *For any customer meeting inside China, please arrange for no more than 3 Crown representatives at any meeting*
- 2) *As before, please be reminded that we are NOT to be engaging in any activities where we are knowingly facilitating money laundering*
- 3) *We should not carry any promotional materials that contain gambling content. Any promotional materials regarding our Resorts s, Australian lifestyle, experiences and lucky draws etc are fine."*

As previously stated, Crown refused to provide the VCGLR with legal advice it received (asserting legal professional privilege). Accordingly, the investigation is unable to comment upon its validity or otherwise, and in particular whether CHEN's instructions correctly complied with and operationalised the advice he received.

CHEN's guidelines appear incongruous to what Crown's sales staff were employed to do in China, for example, attract or maintain customers to attend Australia to gamble from which they received commission. Crown sales staff needed to be aware of the rebate clients would receive based on their gambling turnover (and communicate them) as well as specific gambling events or tournaments. Crown staff either carried or had access to this material.

⁵ The Crown employees could recall seeing the specific article.

7.1.3 March 2015 - Crown engaged overseas-based 'Mintz Group' to conduct risk assessment specific to operating in China

In March 2015, Crown engaged the services of the Mintz Group (**Mintz**) to 'conduct a quick turnaround assessment of the current situation related to corruption investigations in Macau, and their potential effect on your company personnel in Mainland China, pursuant to your request and at your direction.'

Mintz claim to '... specialize in providing litigation, due-diligence, asset recovery, and internal investigative service to multi-national corporations, law firms, investment banks, financial institutions, international organisations and non-profits.'

Mintz's advice was provided in emails to CHEN and also in a risk assessment memo titled 'Project wager'.

From 25 February 2015 to 19 October 2015, email correspondence occurred between Randy PHILLIPS (Managing Partner Mintz) and CHEN advising of risks and possible mitigation strategies to deploy regarding activities in mainland China.

The investigation discovered only one email from CHEN (25 February 2015) to his 'colleagues' (although their details are not captured as per 7.1.2) and one email provided by Crown from CHEN to O'CONNOR dated 28 March 2015 which forwarded the 'Updated Memo Project' wager document that had been originally sent from PHILLIPS to CHEN. In short, documents obtained from Crown show CHEN was pivotal to the risk assessment and that emails to sales staff in China and evidence of escalation upwards to O'CONNOR and FELSTEAD were limited.

7.1.4 24 March 2015 - Final Memo Project Wager from Mintz

This risk assessment memo was emailed from PHILLIPS to CHEN and the memo included the comments:

".. this situation is one that is evolving, and likely picking up the pace affecting your industry. It may be worthwhile discussing a follow-on monitoring project on the PSB angle but defer to you if you'd find this worthwhile."

'There is clearly enhanced attention underway from relevant PRC authorities concerning foreign casino marketing activities in mainland China. The motivation is likely to be manifold, to include certainty aspects of the current anti-corruption campaign, as well as rent-seeking opportunity on the part of China to redistribute the pie in the coming reauthorization of business license.'

'The coming months likely will feature an increasing level of scrutiny by PSB and possibly other authorities directed at foreign casino marketing and other personnel in the mainland, though its likely to be uneven in its application by authorities similar to other areas of investigatory concern.'

'It is clear from this aspect of the risk assessment that the Chinese authorities have increased scrutiny on foreign casinos and how this may be enforced is likely to be 'uneven'.' (Emphasis added)

Previous Mintz advice on 16 March 2015 also included:

"It could be well advised to avoid cell phone and text message communications dealing with marketing efforts and limited overall use to the degree possible while in country. Concerning business cards, would limit that the known, specific customers, and avoid distributing to random individuals."

This mitigation approach by Crown, could be considered naive or even reckless in the escalating environment which was to adopt a 'low key' marketing approach, such as minimising phone usage. This approach could be considered evasive and invites the question of why Crown staff hid their activities in China particularly if they had advice that they did not contravene Chinese law. Mintz were clear the Chinese enforcement approach could be 'uneven' and would involve an 'increasing level of scrutiny'.

A comprehensive investigative approach would clearly discern what Crown staff in China were doing and the material obtained by this investigation certainly indicates that a time consuming, resource intensive and comprehensive investigation by the Chinese authorities in fact occurred as detailed at chapter 8 of this report.

7.1.5 26 March 2015 - Updated Project Wager Memo

The Project Wager Memo was updated after a request was sent from CHEN asking that the risk assessment component be 'beefed up'. The 'beefed up' component included keeping activities low key and sticking with their legal advice regarding restricting groups to ten or less. The 'Final thoughts' of the Memo included:

"It is likely that relevant Chinese authorities will pursue this crackdown with greater than average vigour. With that in mind, it would seem likely that provincial authorities tasked with putting together and carrying out a plan to more aggressively monitor foreign casino marketing activities will get their act together relatively quickly, and there will be a desire to show results within the coming 2-3 months. This does not mean that all marketing efforts should cease within this period – or even afterwards – just that each marketing effort should be considered with the above environment in mind, ensure strong adherence to Chinese law and company guidance on how your personnel are to conduct their marketing efforts in country, and maintain effective communication." (emphasis added)

The Memo was forwarded to O'CONNOR, who during his interview stated he couldn't recall seeing the risk assessment memo 'Project Wager' but could recall discussing the arrests of the South Koreans with CHEN, and hesitated it would have been CHEN's decision to engage Mintz and it was his responsibility.

O'CONNOR further stated he didn't know the exact chronology of things but, *'... my recollection is that we learned about the Koreans so decided we needed to go and get some fresh advice.'* He also could recall seeing the email from CHEN headed, 'Update on China Policy February 25, 2015', but he could recall discussing it with CHEN and that CHEN would keep him apprised of what was happening in China.

O'CONNOR confirmed that CHEN's position description did not include risk assessment or compliance as a 'Key Position Accountability'. However, O'CONNOR's position description details that 10% of his role as a Key Position Accountability as *'Development and implementation of policies and procedures that make compliance easy to understand and achieve it operationally'* with the *'Output and Measures'* detailed as *'Execute targeted strategies to create a culture of risk minimisation and management. Compliance reporting in line with regulatory obligations.'*

Of concern in relation to the 'Project Wager', is that O'CONNOR, CRAIGIE and FELSTEAD could not recall seeing it. Emails obtained indicate it was forwarded to O'CONNOR but not CRAIGIE or FELSTEAD. CRAIGIE and FELSTEAD differ in their views as to whether it should have been escalated. CRAIGIE's view was he should have been informed of what risks the VIP Business faced. In any event, the memo and the risks it details, were not articulated or directly referenced in any higher-level Crown risk and/or planning documents.

In addition, O'CONNOR appeared confused at interview regarding the timeline of events, referring to the arrest of Korean sales staff in China as a catalyst for seeking the external advice from Mintz. The media reported the South Korean arrests from 19 June 2015 onwards and CHEN's engagement with Mintz occurred prior to this from February 2015 onwards with the Project Wager memo referenced and provided on March 2015. This indicates an over-reliance on CHEN and/or a lack of direct hands-on awareness of the situation and Mintz's assessment regarding China.

7.1.6 20 June 2015 – South Korean Casino Operators hit by arrests in China

From 19 June 2015 news media commenced reporting on the arrests of 14 South Korean citizens in China for allegedly marketing to Chinese gamblers. One article stated in part:

"The South Koreans were arrested on Wednesday and face charges of luring Chinese citizens to casinos and violating foreign currency laws, the Yonhap Newsagency reported yesterday, citing a South Korean Embassy official it did not name.

Paradise lost contact with six employees who were on a business trip to China and is locating them, said a company official, adding that the staff were not casino marketers.

Paradise, South Korea's largest operator of casinos catering to foreigners, was increasing gambling space to take advantage of the boom in Chinese visitors, just as China started a crackdown on promoters working for foreign casinos."

On 22 June 2015, another related article headed, 'Korean Casinos plunge after report china arrests promoters,' was published.

The Macau Daily Times reported the same story largely as detailed above on 22 June 2015. The article also reported that Chinese authorities were focussing on casino operators from neighbouring countries that had set up offices to attract and recruit Chinese citizens to gamble abroad.

Emails show CHEN immediately contacted Mintz to urgently help verify the story and understand any implications. Mintz responded, *'This is likely part of the program we knew was in the works.'* CHEN responded, *'Yes. But key question is why them if they were undertaking normal activity like we do. Or can we verify those folks were doing something untoward.'*

In short, Mintz's response stated the South Korean's were extremely aggressive in the way they approached their business in China which included taking cash in and out of the country. Mintz stated, *'Given the above I'm convinced this was an isolated case though pursued in the environment we know is present which is more careful monitoring of activities and not allowing activities to become too high profile.'*

Crown Executives were keen to highlight that it was their perception the Koreans were considerably more aggressive in the Chinese marketplace, overt in their activities and also engaged in foreign currency transactions. CHEN stated he recalled discussing the incident with O'CONNOR but had no input in the incident not being escalated to a higher level at Crown, regarding risk. O'CONNOR said he can't recall the South Koreans arrest being escalated to higher level risk planning because *'...it is consistent with our view of what happened at the time where we sought advice, we sought the facts, and we determined that they were detained because they were stupid, to be crude about it. They were very stupid, and we were not and would not do what they were doing.'*

7.1.7 Crown employees in Chian questioned by Chinese Police

The investigation revealed at least two Crown Chinese sales staff were questioned by Chinese Police prior to their detentions in October 2016.

Peng 'Jerry' XUAN

Peng 'Jerry' XUAN provided a statement to the VCGLR stating that around July 2015 he was spoken to at his home in Beijing by the Chinese Police. XUAN stated: *"The Police told me that someone had told them I was organising gambling at my home. When I denied this, the Police said that maybe the information was made up. They didn't actually ask me what I did or if I worked for Crown. CHEN told me and others not to worry and just to continue on with our jobs. CHEN made all announcements to staff when issues like this happened and advised how I and the other staff were to handle it."*

CHEN stated he would have reported the questioning of XUAN to O'CONNOR internally, but he could not recall doing so. CHEN stated he recalled XUAN saying he was asked by the Police what he did for work, but CHEN could not recall XUAN's response to them. CHEN further stated he would expect his staff to be truthful with the Chinese authorities, *'but I don't think anyone would offer up that they're promoting gambling.'*

Bin 'Benny' XIONG

Email obtained from Crown show that another Crown sales staff member, Bin 'Benny' XIONG (XIONG) was questioned by local Police in Wuhan on 9 July 2015.

XIONG was asked to provide a written account of his questioning by the Chinese police which Crown translated as follows:

- 1) *What's your job? Answer: Applying visa for clients*
- 2) *What documents you normally request for visa application? Answer: Passports, Household registration, ID cards, certificate of employment, bank statements.*
- 3) *Which company you work for? Answer: Crown Resorts s*
- 4) *Do you have an office? Answer: No, company is in HK*
- 5) *Where you work then without an office? Answer: Just work at home, visa applications are not hard to do.*
- 6) *How you expand your business without an office? Answer: No need for expanding, we charge less fee and normally get referrals.*
- 7) *Have your company got Casinos in Australia? Answer: Yes*
- 8) *Is it legal? Answer: Yes, they are listed company in Australia*
- 9) *Do you know have your clients gambled over there? Answer: I don't know*

'After above conversation, they asked me to get a certificate of employment and bring to them before 12:00 pm the next day. I asked them can I know who informed them about any issue about my work. Officer ZHOU replied they cannot tell me who informed them, but the issue is that I have organised people to gamble in Australia. After I delivered certificate of employment to them on 10 July, they said everything is alright.'

On 10 July 2015, CHEN emailed Jan WILLIAMSON (Senior Legal Counsel, CML) regarding having the translation conducted stating:

"Hi Jan, This is Benny's documentation of the interview for our records. We can have someone in Melbourne (maybe Bing translate?) We don't want it spread too widely so as not to alarm anyone."

On 10 July 2015, CHEN also emailed Mintz and sought advice regarding the incident. He said:

"We had another staff member in Wuhan visited by local police on a tipoff that he was organising tours for gambling. He was brought to the local police station for interviews and released. He was requested to furnish a letter from the company proving that he worked for Crown. Please do let me know if you hear any new changes in policy, approach etc."

On 10 July 2015, Mintz responded that:

"It's normal for them to ask for this, and you need to comply, just saying one unintended and unavoidable consequence of this is that it could be used by PSB in the future should they wish to point to a variety of marketing activities, and

Thanks for the update of the employee in Wuhan. Looks like it was handled well without incident though we must also consider the effect of contributing to an evidentiary pile that PSB could decide to draw upon in the future. Chances are good that there's no problem here but just something to keep in mind. Will definitely let you know if we here of any changes to policy and approach."

Emails were also exchanged between WILLIAMSON and FELSTEAD regarding the letter being provided. The emails contained Legal Advice (Crown maintain legal professional advice relating to this advice) and FELSTEAD authorising the letter which stated:

"To whom it may concern,

This is to confirm that Mr Xiong Bin (passport no. PRC ID no: G2314563/420102197410150318) is an employee of Crown Resorts Pte Ltd (Hong Kong) which is a subsidiary of Crown Melbourne Limited (ABN 46 006973 262) and is part of Crown Resorts s Limited (ABN 39 125 709 953) group of companies ("Crown Resorts s") Crown Resorts s is one of the leading hotel, Resorts and entertainment companies and is listed on the Australian Stock Exchange."

The questioning of XIONG and XUAN was clearly an escalating risk factor regarding Crown's approach in China.

During the interview, O'CONNOR was vague in his recollection of the above incident answering, *'I can't remember who that was, what city that was, and the specifics of what he was asked to do,'* and that in hindsight he should have been made aware of it. It should be noted O'CONNOR was copied into the email translation of XIONG's account.

FELSTEAD told interviewers that he believed the questioning of XIONG was in the context of the Chinese police being interested in a Chinese gambling patron and not Crown casino. This understanding is **not** supported by the documents obtained, which clearly refer to the Chinese police telling XIONG that the *'issue is that I have organised people to gamble in Australia'* as per the translation of XIONG's account. However, FELSTEAD was not copied into this email.

CHEN stated in his interview he couldn't recall relaying or discussing the 'evidentiary pile' reference from Mintz with O'CONNOR or any other Crown executives.

CHEN also downgraded the importance of the letter Crown provided stating it was *'pretty innocuous letter'* and *'...again, our customers are all big movers and shakers and we knew, you know, in a corruption crackdown the rich are the target and so we had no idea whether— you know, we couldn't know whether it was Crown related or not Crown related.'*

At interview, CRAIGIE stated he was not aware of the letter or incident. He stated it should have been escalated to his level and probably above because it involved a Police investigation which was *'very different to a newspaper article.'*

From a risk management approach, there are several concerns regarding this incident and Crown's handling of the matter:

- Crown executives (O'CONNOR and CHEN) could not recall many specific details about what appears to be a significant event,
- FELSTEAD's understanding conflicts with the evidence in that he considered the police interviews focussed on a Chinese gambler which was not the case,
- The letter and Police questioning indicate that its enquiries were Crown related and not related to a Chinese gambler,
- It was not escalated further - CRAIGIE was not aware and it did not inform higher-level risk assessment processes or procedures, and
- The advice from Mintz itself could be considered contradictory, warning of an 'evidentiary pile' against Crown but that '*chances are good that there's no problem*'. In any event Crown, did not appear to question or test that advice.

The employee XIONG was not forthright in his dealings with the Chinese police. His position description is far broader than 'applying for visa's for clients'. His position description summary includes 'Various strategies are to be developed and implemented to accommodate the diverse cultures identified and complementary to their expectations of gaming and entertainment to encourage long term loyalty and growth.' His key performance indicators clearly relate to gambling turnover and for XIONG to claim he did not know if his clients gamble in Australia is plainly false and CHEN's concern regarding not alarming anyone could be perceived as lacking transparency concerning what is occurring in China now and the escalated risk environment.

7.1.8 12 October 2015 - Organising Chinese citizens to gamble overseas – Chinese National News Report

On or about 12 October 2015, Chinese National television news service reported about organised gambling activities in China. The investigation translated the report and some key details are reproduced below.

On 14 October 2015, the report was highlighted by CHEN to Mintz in an email that stated:

"The attached report has shaken many of our team members and we need to have a responsible understanding of (sic) the environment has materially changed, if there are any new laws or whether there are new risks we should be managing for."

A translation of the report reads as below:

"On June 17, 2015, the Ministry of Public Security again directed unified operations in four provinces and municipalities of Beijing, Hebei, Shanghai and Jiangsu to capture 13 Korea casino managers, 34 Chinese agents, 5 South Koreans Casino network in China to lure Chinese citizens out of gambling crime network was destroyed. Why are these casinos set their target in China?"

Since the beginning of last year, the profitability of the Chinese market has been the best. With fast economic development, China has more wealthy people than before. Many people have started traveling abroad. Chinese people prefer to gamble as a leisure activity and they tend to spend a lot of time on that. This is the reason why foreign casinos have all set China as their main target and have taken various measures to win over Chinese customers. Some South Korean casinos are even more dedicated to China. Sending casino managers directly to China to attract gamblers. Lure Chinese citizens out of the country for gambling purpose with free travels etc.

*We are highly concerned about foreign casinos and their infiltration and development of gambling activities in our country. **In particular, we are determined to eliminate organised gambling activities in China by foreign casinos. It is legislated in China that an organization of more than 10 people going overseas for gambling activities, or in numerous occasions with an accumulated number of 10 people, constituted as a prosecutable offense.** As early as 2013, the Ministry of Public Security successfully handed over the project 801 to the public security authorities in Hebei Province, destroying a casino criminal gang in Jeju Island, South Korea, and sentenced four South Korean casino managers who came to China to organise Chinese citizen for gambling in South Korea. The casino*

affected was forced to go out of business after a sudden drop in Chinese guests. After the project 801, the overseas casino was somewhat less active in China and the criminal groups became more vigilant. They will frequently rotate their employees on a regular basis.

The Ministry of Public Security in China launched the chain-breaking action against gambling activities since this year. The key point is to study the regularity and gather intelligence of the gambling activities, to cut off the personnel chain and capital chain infiltrated by overseas casinos. It also aimed to combat the settlement network of illegal gambling funds."

On 15 October 2015, Mintz responded to CHEN:

"..all seems to be pointing to a dedicated effort against these Korean targets rather than broad based effort. Though the backdrop remains as we've identified earlier that there is interest in monitoring all foreign casino marketing in the mainland. ...as of now your team should not feel overly concerned."

On 19 October 2015, Mintz also advised CHEN:

"..the key results of our enquiries with about 8 separate sources these past 5 days. All point to recent arrests being very much pointed at the Korean entity in question, and not part of a broader crackdown underway. Your team should be in good shape for its activities this week, though the same ground rules are suggested as we discussed earlier."

Of concern regarding the news report is that O'CONNOR, FELSTEAD and CRAIGIE could not recall seeing it. No translation of it appears to have been made by Crown and it was not escalated within Crown's risk framework. However, CHEN can remember the report and recalled that his sales staff were concerned but could not recall the specific reference in the news report relating to 10 going overseas for gambling activities or the reference to gambling on numerous occasions with an accumulated number of 10 constituted as a prosecutable offence. CHEN could be considered to have placed too great a reliance on Mintz whose advice does not appear to have been subjected to further questioning, validation or escalated consideration.

8 Crown Employees Arrested

8.1 Scope of Chinese Investigation

The scope of the Chinese investigation is based on the documents obtained from Crown and interviews with O'CONNOR and PAN which indicate this was not an isolated case nor conducted in a policy or political vacuum. This premise is based on the public warnings given, the arrest of Korean casino staff and apparent length of the Chinese investigation into Crown (from at least the commencement through questioning of their sales staff in July 2015). The high-profile outcome of conducting an investigation against an operator such as Crown would indicate this was a highly-considered exercise.

Documents obtained from Crown sales employee Jane PAN (provided to her from the Chinese authorities and subsequently translated), indicate the Chinese authorities' investigation was protracted, comprehensive and resource intensive.

The documents detail the specific roles of the charged employees including sales targets, commissions, and performance indicators. The documents reference over 70 witnesses who were *'contacted and promoted by the defendants to gamble in Crown casino.'* The translated documents refer to several attachments including *'17 volumes of reconnaissance dossiers, 6 volumes of audit records, 24 CDs, 1 portable disk.'*

The documents also reference a computer forensic examination report and emails and text messages of the defendants *'...proved that the team members of the Crown Melbourne Resorts in China according to the internal organizational structure, arranging and requesting confirmation in areas like staff recruitment, gambler's itinerary, credit limit, debt processing or new gambler engagement etc.* Further references were made to visa information and *'..the itinerary obtained by the Shanghai Public Security Bureau proved Jason's schedule in China, including meeting the gamblers and potential customers, and chasing the gambling debts etc'* and *'the seizure record and seizure list provided by Shanghai Public Security Bureau proved the phones, laptops, iPads, records, portable disks, USDs, and bank cards etc. seized from the above 19 defendants.'*

9 Crown's provision of material and cooperation with VCGLR

9.1 Legal Professional Privilege

Throughout the course of the investigation Crown refused to provide the VCGLR with legal advice it received relating to its Chinese operations, asserting Legal Professional Privilege (**LPP**) regarding the advice from Wilmer Hale lawyers. Accordingly, material has been redacted by Crown that it considered was not relevant to the request or demands made by the VCGLR but was sensitive to other aspects of Crown's business. Crown have offered investigators the opportunity to view such material and this was accepted. No issues were identified regarding the redacted material forming part of the request or demand.

9.2 Timeliness of responses to requests for material

The VCGLR first requested information from Crown regarding this matter on 19 July 2017, following the conviction of the Crown employees on 10 July 2017. Initial requests were made to Crown, followed by formal demands from 4 January 2018 onwards.

On 25 September and 5 October 2017, the VCGLR Compliance Investigators requested Crown provide a range of 'risk' type material including:

- Risk management plans,
- Wilmer Hale and Mintz advice received regarding China,
- Instructions to Crown staff in China, and
- Minutes from relevant board meetings regarding China.

This material was finally provided by Crown on 27 November 2017. Whilst no timeline or authority was stipulated within the request, it would appear Crown were tardy in providing the material. Relevantly, most of this material would have been required to inform Crown's presentation to the VCGLR in August 2017.

Non-production of Crown risk related materials

On 2 February 2018, a demand was issued to CML in accordance with powers appointed under Part 4 of the Victorian Commission for Gambling and Liquor Regulation Act 2011 and pursuant to section 26(1) of the CC Act for material including:

"Any other records which contain information regarding any identification, assessment or treatment of risks conducted by Crown Melbourne Limited and/or Crown Resorts s Limited and/or Crown Resorts s Pty Ltd (Hong Kong) regarding operations within mainland China from 1 January 2015 to the present, excepting any records or documents which have already been provided to the Commission."

On 16 February 2018, a response was received from Crown:

"We have been unable to locate any documents that contain information about CrownResorts s, Crown Melbourne or Crown Singapore's identification of risks attaching to the operations being conducted by their employees in China save for:

- Documents that have previously been provided to the VCGLR and
- Documents that record legal advice that is subject to legal professional privilege which Crown does not intend to waive.

For the sake of completeness, we otherwise note that Crown is in the process of restoring a number of back up tapes, which may contain materials that are required to be discovered in the Class Action that has been commenced against Crown in connection with the China detentions. The technological aspect of this restoration process will take considerable period of time (months)

It is possible that, in the course of reviewing further materials (as back up tapes are restored), that Crown may identify further documents that fall within the scope of the Notice (and/or earlier notices issued by the VCGLR under s26 of the Act. If this is the case, we will let the VCGLR know, and can supply a copy of the identified documents."

At interviews with Crown Executives (O'CONNOR and CRAIGIE) in mid-March, it became clear risk issues specific to the VIP International Business would have been documented during the 2015-16 annual risk management planning processes.⁶

During the interviews inspectors requested a copy of the relevant VIP planning documents and they were provided on 27 March 2018. After analysis of the provided documents it is clear to investigators that the documents provided after the interview process discussed risks concerning its operations in mainland China. For example, the document 'F16-F20 Strategic Business Plan Executive Review VIP International' states: "The most recent development was an announcement that authorities are taking a stand against foreign casinos seeking to attract business out of China. This announcement was made about 1 month ago, (and likely contributed to the softer than expected CNY period) and 'these policy statements have been underlined by a series of high profile arrests and executions."

Of concern is that these documents which contained risk were **not** provided in response to the VCGLR's 2 February 2018 demand. As investigators only discovered their existence at interview and requested them specifically at that time, their contents were not put to the witnesses at interview. Further, if investigators had not realised their existence, they may never have been disclosed.

Crown argued that they considered the VIP International Strategic Business Plan presentations '*...not documents which record or relate to any risk assessment 'conducted' by Crown in relation to its mainland China operations. The presentations do not address risks or challenges in Crown's operations in mainland China.*' Crown Melbourne remains firmly of the view that '*the Presentations are not responsive to the Request.*'

This may be a matter for further consideration by the Commission including what action should be taken in response.

Incomplete search for documents

The VCGLR has issued a wide variety of request for documents during the investigation.

On 29 May 2018, Crown advised the VCGLR that '*primarily for the purpose of discovery of documents in their class action*' they have restored material from back up tapes and have identified a small number of documents which may fall within notices. Crown anticipate being able to provide these to the VCGLR by the end of the week ending 1 June 2018.

The above matters suggest that Crown did not undertake a thorough and diligent search for documents matching the terms of the VCGLR's notices until the discovery process required by the Federal Court. Crown ought have conducted a thorough and diligent search for documents earlier. This aspect is ongoing and will require a further detailed report however it is considered prudent to bring to the attention of the Commission at this stage.

10 Findings

10.1 Corporate Governance and Risk Assessment.

Crown's corporate governance framework and risk assessment processes failed to identify, assess and appreciate the risks stemming from a change in the Chinese governments' approach to their citizens being enticed to gamble overseas. Crown Resorts Pte Ltd (Hong Kong), failed to have a risk register despite CRL policy requiring one be established. Appropriate formal risk management procedures at this level may have enabled appropriate identification and treatment of the risk of employee detention before it eventuated.

In 2015, various incidents occurred that may have required reassessment of various risks. While each incident viewed in isolation may not have necessitated a reassessment of risk in combination, however, they collectively suggested an increasing risk that was not accurately assessed, escalated appropriately or successfully mitigated.

⁶ The CML's F16 Risk Management Plan November 2015 states under *Risk Title 'Foreign Political Policy'* with a risk definition of: *The impact on Crown Melbourne's performance from political actions in a country from which a significant volume of international business is derived (e.g Chinese Central Government policy restricting one or more of currency movement, real estate development, international travel of politicians and dignitaries)* and be treated with the 'Controls' of '*Annual strategic planning and business planning processes including monitoring and review of Premium Gaming strategy.*'

10.2 Over-reliance on Michael CHEN

One of Crown's failings can be attributed to the over-reliance on CHEN to provide accurate and timely risk assessments 'on the ground' in China. This is coupled with his direct supervisor, O'CONNOR, relying on CHEN's advice and O'CONNOR either not enquiring, or not being made aware, of key escalating risk factors.

It is also noted that Crown engaged CHEN in a highly financially incentivised position and a view could be put that his analysis of information events in China may have been clouded by the nature of this incentive. At interview CHEN often referred to the Chinese environment as being "full of rumours" and the Chinese government "making symbolic statements". It could be considered there was an element of confirmation bias that Crown would not be targeted and risk factors were not real based on CHEN's (and Mintz's) assessment which turned out to be incorrect.

10.3 Lack of escalation of key risk factors

In addition to CHEN being relied upon in his role as manager and conduit for risk assessment advice, are examples whereby critical risk information was not escalated to the relevant Crown boards, risk and/or audit committees and/or executive level. Had this information been escalated, formal risk assessments could have occurred and changes to the operations in China may have been made. Key pieces of information that were not communicated or escalated to higher levels included

- The arrests of South Korean casino employees,
- Mintz risk assessment reports and updates,
- Open source media reports detailing the Chinese governments intentions regarding gambling (not only a corruption crackdown), and
- Most critically, Crown's own staff being questioned by Chinese authorities and asked to provide a letter showing they worked for Crown.

10.4 Higher-level risk assessments not fully or accurately informed

Crown's formal risk assessment processes, as detailed in the CRL's Risk Management Policy, states that Risk Registers are in place across all Crown Businesses, including the Crown Resorts s Limited head office (Head Office), which catalogue material risks to each business, both financial and non-financial.

The risk assessment pertinent to China was conducted at the VIP International Business level but without the independence and discipline of a formalised risk assessment process. VIP International Business planning documents clearly focus on business financial risks and ways to improve profitability without referencing directly to the non-financial risks and possible mitigation strategies.

It could be argued that this level was most appropriate to address the risks because of intrinsic knowledge of the risks 'on the ground', however, it also lacked impartiality and independence. As discussed above, the person who led this risk process was a significantly incentivised manager with no formal risk assessment training nor having risk assessment reflected in his performance agreement as a Key Position Accountability. The higher-level risk plans were too removed from what should have been an accurately assessed *initial* risk source level (VIP International Business) to then accurately inform the higher-level risk assessment approach. This may have been addressed if Crown have of had a Risk Register in place for Crown Resorts Pte Ltd (Hong Kong).

10.5 Conflicting accounts regarding the questioning of Crown employees

As concluded above, a critical event was the questioning by Chinese authorities of Crown's employees and Crown furnishing a letter in response. This event demonstrates another failing of good corporate governance and risk assessment. Conflicting accounts by interviewees as to the reasons behind the Chinese police questioning have been given. FELSTEAD maintained it was relayed to him in the context of investigation of an unknown Chinese citizen and **not** in relation to Crown being involved in enticing Chinese citizens to gamble overseas. This contention was not supported by the documents obtained or other recollections. This may be a reason it was not escalated to Crown Resorts s CEO at the time, who said he would have expected to be appraised of a situation involving Crown staff being questioned by police. Regardless, if the lack of escalation was due to a misunderstanding of the Chinese Police motives, it is indicative of a risk assessment and/or escalation process that was

critically flawed. The questioning of Crown's staff was real and cannot be classed as a rumour or a Chinese government 'statement'.

10.6 Risk mitigation failings, reliance on low-key marketing

A key risk mitigation strategy reinforced by Mintz and Crown executives was for Chinese based sales staff to perform their duties in a 'low-key manner' and avoid unnecessary attention. This approach included:

- not carrying gambling promotional material,
- meeting in small groups,
- not approaching potential customers, they had not been introduced to, and
- dealing with only repeat or existing clients.

This strategy was problematic when faced with a large well-resourced investigative capability that was clearly given the mandate to investigate overseas casino operators operating in China. CHEN acknowledged this at interview. It could also be argued that this approach suggests that Crown's China based operation were more concerned about detection by authorities rather than in compliance with Chinese law.

It could be considered incongruous to argue Crown was operating in 'low-key' manner when its sales workforce and budget was large and growing, well-resourced, incentivised based on gambling turnover, and needed the ability to relay gambling information to potential clients. A reason Crown's budget increase was due to CHEN increasing performance based compensation to sales staff.

The size and importance of the VIP International Business, and particularly the Chinese market, could not be considered low-key, as clearly outlined in its own business planning documents which refer to pursuing business 'aggressively'.

11 Conclusion

Crown have now withdrawn from China in the way they operated and this scenario will not occur in that jurisdiction again based on their current operations.

At interview, FELSTEAD was asked what steps Crown had taken to ensure this doesn't happen again. In response, he stated, "Well we're not in China for a start."

When questioned about Crown's overall risk governance, FELSTEAD stated

"We've taken advices on all our jurisdictions now. We've taken legal advices on all our jurisdictions and what's been - what I've been led, certainly what's been passed on is that we have made some significant structural changes in the way we operate our overseas businesses now, which by the way hasn't been followed by the properties, so you know they've obviously got a different view of the world. We've taken an incredibly cautious view, as you would, when you get 19 staff locked up. So we don't visit China in any shape or form anymore."

When questioned about a review of their risk assessment processes FELSTEAD stated, "Like I said we do that on a - that's done on a regular basis in a whole bunch of areas, so you know we've obviously done some very, very specific work around any risk involved in dealing with our overseas entities and we've made changes there. But the China one was not so much as a result of the risk component, it was as a result of, you know, we've had people arrested, we aren't going to go back in China. So that's - and we actually have got advices post that to say what we're actually doing is probably the prudent thing to do."

It is concerning that Crown would consider the events in China were not a result of a failing risk 'component' or assessment. The financial incentive for their operations within China were considerable while the non-financial risks were not given the same primacy and attention.

12 Recommendations

12.1 Report be forwarded to the VCGLR

It is recommended that this report be forwarded to the VCGLR for its consideration.

12.2 Consideration of Crown's responses to the VCGLR

As per paragraph 9.3 of the Report, Crown's responses to VCGLR requests and demands are of concern.

By letter dated 17 May 2018, Crown outlined the overall position of Crown Melbourne Limited in relation to the matter and this was responded to by the Director of Compliance on 28 May 2018.

Crown stated:

"The documents you have reviewed in the course of your investigation constitute a minute proportion of the overall email traffic and documentary records of Crown during the period under consideration (and of the many media reports seen daily by senior Crown management in this period), such that viewing them in isolation may give a misleading impression about the context and significance of past events and the reporting of them."

The VCGLR wrote to Crown seeking clarification and answers regarding *any* further materials Crown may have in its possession that have not been provided under requests by the Commission. No additional information has been received or identified to date. It is recommended the Commission consider the reasonableness of Crown's responses to these requests and demands to the Commission. This aspect is on-going and will require a further detailed report however it is considered prudent to bring this matter to the attention of the Commission at this stage.

12.3 Whether to tighten controls regarding Crown's VIP international operations

It is acknowledged that Crown have changed their operating model for their VIP International Business in that they no longer have their own employees operate in mainland China, however, it is recommended that safeguards be considered if Crown decide to change their means of operating in that environment.

The safeguards utilised by MGM Grand, being the use of external contractors and legal and risk assessment reporting requirements to the relevant authorities, would be considered prudent and a possible template.