

MinterEllison

6 June 2018

BY EMAIL

Mr Stephen Berriman
Director, Compliance
Victorian Commission for Gambling and Liquor Regulation
Level 3, 12 Shelley Street
RICHMOND VIC 3001

Dear Mr Berriman

Confidential : VCGLR China Investigation - detention of Crown group staff in China

1. We refer further to your letter dated 28 May 2018 and our preliminary response of 29 May 2018.
2. The purpose of this letter is to respond to matters raised in your letter other than paragraphs 22 and 23.

Background

3. Crown accepts that the Star and SKYCITY companies are not subject to regulatory oversight by the VCGLR, but they are subject to similar regulatory oversight in New South Wales, South Australia and New Zealand and could therefore be expected to be held to the same standards of conduct as Crown.
4. Although, as you say, none of their staff were detained, Crown understands that their staff were operating in China in essentially the same way as Crown staff and did not at any time prior to the detention of Crown staff withdraw their staff from China.
5. Why Crown staff were targeted for enforcement action in October 2016, rather than staff of Star or SKYCITY (or for that matter another foreign casino or junket operator with a presence in China), remains a matter of conjecture.

Relevant Chinese law

6. We note the translations sourced by the VCGLR. We observe that there is no authoritative translation issued by the Chinese legislators or courts.
7. We further observe, in passing, that the last paragraph of the interpretation quoted in paragraph 5 of your letter contemplates the relevant person obtaining a commission and/or introducer fee. There is no evidence that any Crown staff actually received any such commission or fee.
8. In paragraphs 6 and 7 of your letter, you appear to be suggesting that a programme on Chinese television is a reliable guide to the proper interpretation of Chinese law. We are not aware of any expert evidence to this effect, and it was contradicted by Michael Chen¹.
9. Mr Chen sought advice from the MINTZ Group in relation to the television programme on 12 October 2015 by incorporating a link to a website on which the programme could be viewed into

¹ Transcript of VCGLR interview with Michael Chen, Q429-430, pages 89-90.



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an email to MINTZ dated 14/15 October 2015. Crown has not found any responsive emails from the MINTZ Group other than the two you have identified dated 15 and 19 October 2015.

Crown's knowledge and belief

10. Mr Chen sought advice from Wilmer Hale on 14 June 2012, on 19 February 2013, and again on 22 May 2013. Crown cannot say more about Wilmer Hale's advice without risking a waiver of legal professional privilege in relation to it.

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

11. Crown does not accept, either as a matter of Australian law or practical reality, that a plea of guilt in a foreign jurisdiction is an admission of any particular facts or local law interpretation.
12. Jane Pan and Jason O'Connor said in their interviews that it was made very clear to them that, irrespective of the facts, pleading guilty would give them the best prospects of being released from detention at the earliest possible time².
13. The corollary of the reasoning in paragraph 10 of your letter is that Mr O'Connor should be taken to have admitted that he organised more than 10 Chinese citizens to engage in gambling activities and received a commission or introducer fee for doing so. As you know from his testimony, he emphatically denies these supposed facts.
14. We also observe that organising people to gamble is not an offence in Australia and such conduct is not inherently dishonest or reprehensible. In assessing the conduct of a person for legal or regulatory purposes in Australia, it is incumbent on the relevant court, tribunal or regulator to examine the actual conduct of the person and evaluate its significance in the relevant Australian legal/regulatory context.
15. Your letter seems to suggest that a guilty plea (in a foreign jurisdiction, with a very different legal system) raises some sort of presumption unless the plea was '...forced or entered into under coercion or threat'. With respect, we dispute the suggestion and ask that you refer us to any authority on which it is based.

February 2015 crackdown

16. Mr Chen sought advice from Wilmer Hale on 9 February 2015. Crown cannot say more about Wilmer Hale's advice without risking a waiver of legal professional privilege in relation to it.
17. Mr Chen also sought advice from the MINTZ Group and Crown has provided to the VCGLR the communications it has found in relation to that, the earliest of which is dated 13 March 2015 (headed 'Project Wager Update'). MINTZ's work at the time culminated in a report dated 25 March 2015 which summarised media coverage of the crackdown. As you have seen, the report contained a risk assessment and some operational recommendations, which were followed.

Detention of South Korean casino staff in June 2015

18. Mr Chen sought advice from Wilmer Hale on 22 June 2015. Again, Crown cannot say more about Wilmer Hale's advice without risking waiver of privilege.
19. Mr Chen spoke about his consultation with contacts in the industry at the time in his recent interview by the VCGLR in New York³.
20. Crown has not found any documents relating to Mr Chen's consultation with his contacts.
21. The detention of South Korean casino staff was discussed up the reporting line from Michael Chen to Jason O'Connor to Barry Felstead to Rowen Craigie. Each of them was questioned about it in their interviews⁴.

² Transcript of VCGLR interview with Pan Dan, Q387-388, page 57; Transcript of VCGLR interview with Jason O'Connor, Q405-406, page 96-97.

³ Transcript of VCGLR interview with Michael Chen, Q191, page 41.

⁴ Transcript of VCGLR interview with Michael Chen, Q29-35, pages 8 and 9; Transcript of VCGLR interview with Jason O'Connor, Q39-40, page 7; Transcript of VCGLR interview with Barry Felstead, Q12-15, page 4; Transcript of VCGLR interview with Rowan Craigie, Q13-15, page 3.

22. Although Mr Craige was a member of the Risk Management Committee of Crown Resorts, he did not consider that the matter warranted formal reporting to that committee.

Police interview of Benny Xiong in July 2015

23. Crown accepts that the VCGLR is not in a position to make any assessment of the advice provided by Wilmer Hale. Nor, however, does the VCGLR have any basis to doubt that advice was sought at times when it was prudent to do so.
24. Mr Chen was questioned in his VCGLR interview about his reasons for not elevating the content of the email from the MINTZ Group⁵. In essence, he did not consider the email took matters further and was comfortable, as was Mr Felstead, that the interview had no wider implications. Indeed the advices from MINTZ gave the clear impression that this was business as usual and, as Mr Chen indicated, it was assumed that this was more than likely related to an investigation into patrons of Crown.

Risk Management

25. Crown has provided to the VCGLR copies of all the relevant communications with the MINTZ Group. It maintains its claim to privilege in respect of its communications in the relevant period with Wilmer Hale. We refer further to paragraph 23 above.
26. The questions in paragraph 33 of our letter of 17 May 2018 were rhetorical. They did not arise in fact, because Crown did not at any time consider the withdrawal of staff from China to be a reasonable mitigation step.

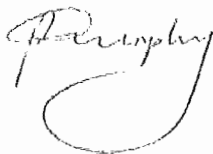
Hindsight

27. We reiterate that it is a challenging task to evaluate past conduct and decision-making without influence of the wisdom of hindsight.
28. None of the matters traversed above related specifically to Crown, other than the police interview of Benny Xiong in July 2015. All foreign casinos and junket operators with operations in China, including Star and SKYCITY, reached the same ultimate conclusion as Crown that, prior to October 2016, withdrawal of China-based staff was not warranted. 'Second guessing' Crown's position involves challenging the view taken by the whole industry, which would not be occurring but for the detention of Crown staff.

Next Steps

29. We note the observations in paragraphs 25 to 28 of your letter and Crown thanks you for your indications in relation to protected information in the context of the shareholder class action and the procedural fairness points.
25. Further to our letter of 29 May 2018, we are compiling further documents to be provided to you and expect to have a USB delivered to you later this week - hopefully tomorrow.
30. Crown would welcome the opportunity to discuss the above, or any other aspect of the investigation on which the VCGLR may require further input, with you, Mr Bryant, other VCGLR staff or Commissioners, if that would be of benefit to the VCGLR.

Yours faithfully
MinterEllison



Richard Murphy
Partner

⁵ Transcript of VCGLR interview with Michael Chen, Q399-403, pages 82-84.

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