



Victorian Commission for
Gambling and Liquor Regulation

2 December 2019

Our ref: CF/16/788-1

Mr Richard Murphy
Partner, MinterEllison
Level 23, Rialto Towers
525 Collins St
Melbourne VIC 3001

Dear Mr Murphy

Section 26 Notice - Request for information

I refer to your letter of 16 October 2019 ("your letter") which, among other things, provided information from your clients in response to a notice dated 9 October 2019 ("earlier notice").

In accordance with section 26 of the *Casino Control Act 1991*, and in furtherance of the Commission's functions outlined in section 9 of the *Victorian Commission for Gambling and Liquor Regulation Act 2011* and section 141 of the *Casino Control Act 1991*, I, as a delegate of the Victorian Commission for Gambling and Liquor Regulation ("VCGLR"), require your clients (Crown Melbourne Ltd and Crown Resorts Ltd (together "Crown")) to provide the following information and records to the VCGLR.

A. As to the obligations of confidentiality referred to in your letter:

1. in respect of each of the 17 former staff referred to in the earlier notice ("former staff") provide:
 - a. copies of all documents said to give rise to the duties of confidentiality referred to in your letter, including each staff member's:
 - i. employment contract;¹ and
 - ii. any finalisation, separation or settlement deed;
 - b. to the extent that any deed or other document upon which the asserted duty of confidentiality purports to rely also purports to prevent former staff from disclosing any discussions or negotiations leading to that deed² or other document:
 - i. the details of those discussions or negotiations;
 - ii. the names and contact details of any person who conducted those discussions or negotiations on behalf of Crown;
 - iii. whether those negotiations were conducted orally or in writing;
 - iv. the dates and locations of any meetings that were conducted for the purpose of such discussions or negotiations;

¹ Noting that the ruling of Murphy J in *Zantran Pty Limited v Crown Resorts Limited* [2019] FCA 641 at [45] suggests that Tang Xiaoqing (also known as Anthea Tang) and Cao Xiaoyu (also known as Fiona Cai) may not have been employed pursuant to written employment contracts.

² That is, in a similar manner to clause 8.1(b) of the "Separation Deed" relevant to Michael Chen that was described in the affidavit of Mr Glen Ward, made 7 November 2018 for the purpose of the application that gave rise to the ruling of Murphy J in *Zantran Pty Limited v Crown Resorts Limited* [2019] FCA 641 [52].

- v. copies of any emails, letters or other communications evidencing the discussions or negotiations which led to any deed or other document;
 - c. the quantum and date of any payment made to any of the former staff:
 - i. in consideration of any finalisation, separation or settlement deed;
 - ii. by reason, of either the cessation of their employment with Crown or their arrest and detention in China in or about October 2016;
 - d. the details of any other source of the confidentiality that is asserted in your letter, including whether those asserted sources arise in equity or at law.
2. in respect of Jason O'Connor, Michael Chen, Pan Dan (also known as Jane Pan) and Rowen Craigie (and to the extent that the information or records have not previously been produced to the VCGLR) provide:
- a. copies of all documents said to give rise to any asserted duties of confidentiality they might have, including:
 - i. their employment contracts; and
 - ii. any finalisation, separation or settlement deed;
 - b. to the extent that any finalisation, separation or settlement deed might purport to prohibit Ms Pan, as well as Messrs O'Connor, Chen or Craigie from disclosing any discussions or negotiations leading to that deed:³
 - i. the details of those discussions or negotiations;
 - ii. the names and contact details of any person who conducted those discussions or negotiations on behalf of Crown;
 - iii. whether those negotiations were conducted orally or in writing;
 - iv. the dates and locations of any meetings that were conducted for the purpose of such discussions or negotiations;
 - v. copies of any emails, letters or other communications evidencing the discussions or negotiations which led to any deed or deeds;
 - c. the quantum and date of any payment made:
 - i. in consideration of any finalisation, separation or settlement deed;
 - ii. to Ms Pan or Mr O'Connor by reason of their arrest and detention in China in or about October 2016.
 - d. the details of any other source of an obligation of confidentiality that Crown seeks to assert in respect of Ms Pan as well as Messrs O'Connor, Chen and Craigie, including whether that source arises in equity or at law.
3. in respect of Barry Felstead, (and to the extent that the information or records have not previously been produced to the VCGLR) provide:
- a. copies of all documents said to give rise any obligation of confidentiality Mr Felstead is said to owe Crown, including his employment contract;
 - b. provide the details of any other source of an obligation of confidentiality that Crown seeks to assert in respect of Mr Felstead, including whether those obligations arise in equity or at law.

³ Ibid.

B. As to the claims of legal professional privilege referred to in your letter:

1. in respect of each of the former staff as well as Michael Chen, Jason O'Connor and Jane Pan, provide the details of:
 - a. when and how each was provided with information over which a claim of legal professional privilege ("LPP") is made by Crown; and
 - b. in respect of any information that was provided to the former staff, Ms Pan, or Messrs Chen or O'Connor, and is recorded, evidenced or contained in a document:
 - i. the names of all authors and recipients of the document (including the recipient of copies) together with their position and their employer at the relevant time;
 - ii. the date of the document;
 - iii. the type of document e.g., email, letter, memorandum of advice or report;
 - iv. whether the document (original or copies) exists in electronic or hard copy form;
 - v. the category of LPP claimed (advice privilege or litigation privilege) and the basis upon which that privilege is claimed;
 - vi. the name of all persons who claim the right to assert the privilege, including any third parties on whose behalf the privilege claim is made;
 - vii. the address of the premises where the document (if it exists only in hard copy) is kept; and
 - viii. whether privilege is claimed over the whole or part of the document;
 - ix. in the event that the privilege claimed is limited to only part of a document, an appropriately redacted or masked version of the document should be produced to the VCGLR;

In the case of a claim of LPP on behalf of another party in respect of any document, also provide the following details:

- x. the identity of the asserted privilege holder;
 - xi. the last known contact details of the asserted privilege holder;
 - xii. an explanation of the circumstances by which the document came to be within Crown's possession or control.
- c. in respect of any LPP information that was provided to any of the former staff as well as Ms Pan, or Messrs Chen or O'Connor, by way of oral communication:
 - i. the names of all parties who communicated the information or to whom the information has been communicated, together with their positions and employer at the time relevant time;
 - ii. the date of the communication or communications;
 - iii. the medium by which the communication or communications occurred (e.g., by telephone, video conference or by in-person meeting) and the names of all persons who were parties to each communication or communications;
 - iv. the category of LPP claimed (advice privilege or litigation privilege) and the basis on which the privilege is claimed.
 - d. in respect of any claims of LPP relating to legal advice given by the lawyer known as Kenneth Zhou and/or the law firm known as WilmerHale:
 - i. when and how Mr Zhou and/or WilmerHale was retained;

- ii. the name of the person or entity who retained Mr Zhou and/or WilmerHale;
- iii. a copy or copies of any letters of engagement or other documents which evidence the retainer of Mr Zhou and/or WilmerHale;
- iv. to the extent that Mr Zhou and/or WilmerHale gave advice in writing, the details of:
 - 1. the dates on which that advice was given;
 - 2. how the advice was given (for example, by way of a formal written memorandum, email or letter);
 - 3. by whom the advice was sought and to whom the advice was given;
- v. to the extent that Mr Zhou and/or WilmerHale gave advice orally, the details of:
 - 1. the dates on which that advice was given;
 - 2. how the advice was given (for example, by telephone or video conference);
 - 3. whether the advice was given by Mr Zhou and, if not, the name or names of the lawyers who gave the advice;
 - 4. by whom the advice was sought and to whom the advice was given.

C. As to any other asserted basis for the request that your client be involved in interviews with former staff:

- 1. in respect of the statement in your letter that:

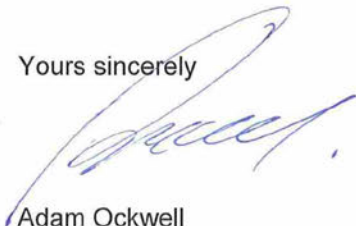
*“...Crown is prepared to waive these obligations of confidentiality to the extent necessary for [the former staff] to respond to the VCGLR’s inquiries of them...providing that Crown is involved in all discussions with them. This is necessary, **inter alia**, to protect Crown’s claim to legal professional privilege...”* [emphasis added]

provide details of the reasons (other than protection of the asserted legal professional privilege) why Crown considers it necessary to attend any discussions with the former staff.

Crown is required to provide this information by **5pm** on **16 December 2019**.

Please contact me on [REDACTED] if you have any queries.

Yours sincerely



Adam Ockwell
Director, Compliance

Cc: Joshua Preston, Chief Legal Officer, Crown Resorts Ltd