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26 June 2018

Ms Catherine Myers
Chief Executive Officer
Victorian Commission for Gambling and Liquor Regulation
Level 3, 12 Shelley Street
RICHMOND VIC 3121

Dear Ms Myers

China Investigation

I refer to your letter dated 8 June 2018 and the enclosed draft summary report of Compliance Division staff in relation to the China Investigation.

Enclosed is Crown's response.

The response follows the form of the report and the sequencing of the subject matter in the report.

I also refer you to my letter dated 19 June 2018 and the propositions set out in paragraphs (a) to (j) of that letter and to the letters from MinterEllison to Compliance Division staff dated 17 May and 6 June 2018.

Crown's position is, in essence, that it had well qualified and experienced staff in the relevant key roles (principally Jason O'Connor and Michael Chen) and that advice was sought whenever it was prudent to do so from well qualified and well credentialed lawyers (Wilmer Hale) and government relations advisors (Mintz Group). If the integrity, credentials, experience or conduct of Crown executives or their advisors are to be criticised, or if Crown is to be criticised for relying on them, as a matter of fairness and balance, much more is required, perhaps including expert evidence as to China law, process and culture.

I await hearing further from you following the Commission's consideration of the enclosed response and Crown's related submissions.

Yours sincerely

John Alexander
Chairman

Draft response to the draft 'Crown China Investigation Summary Report' of the Compliance Division staff of the Victorian Commission for Gaming and Liquor Regulation (Report)

Purpose

1. The purpose of this document is to respond on behalf of Crown Melbourne Limited (**Crown**) to the Report.

Scope and process

2. Compliance Division staff of the VCGLR were charged with responsibility to investigate matters pertaining to the detention of 19 former Crown group staff in China in October 2016.

3. Crown takes issue with the staff purporting to make findings or reach conclusions on behalf of the VCGLR.

4. The Report purports to be a 'summary'. Crown accepts that this is appropriate to explain the basis for the recommendation to the VCGLR that the China episode does not affect Crown's suitability to hold its licence, and naturally Crown supports that recommendation.

5. However, to the extent that the summary Report contains purported findings and conclusions of VCGLR Compliance Division staff which are adverse to Crown, they are strongly disputed. If the VCGLR is urged to adopt them for any regulatory purpose or as the basis for any commentary to the Minister or the public, Crown is entitled to insist on procedural fairness requiring:

   (a) the Compliance Division staff to specify the relevant facts and legal analysis on which they rely in full, not in mere summary form;

   (b) the opportunity for Crown to fully examine the evidence upon which the VCGLR is invited to make findings;

   (c) the opportunity for Crown to bring forward such other evidence and make submissions as Crown considers appropriate in light of the proposed findings or commentary and the full context; and

   (d) the opportunity for any person about whom any criticism is to be made or implied or to be taken into account in relation to licensing of them as an individual (including Michael Chen who is a licensed person and who has personal representation in the US) to bring forward such other evidence and make submissions as they consider appropriate in light of the proposed criticism and the full context.

6. As the VCGLR is aware, the detentions and Crown's operations in China will be the subject of close examination in the class action taken against Crown Resorts Limited in the Federal Court. The relevant facts and evidence will be examined in detail and expert evidence will be led, including in relation to China law and practice. The discipline of this process should not be undermined by a 'summary' regulatory process by the VCGLR.

Marketing by other Casinos in China

7. Compliance Division staff apparently spoke with a senior executive of MGM Grand. Crown was not offered the opportunity to participate in the discussion.

8. The MGM executive evidently said that MGM uses independent contractors to perform its marketing in mainland China.

9. The executive was evidently not questioned as to why it is preferable to use independent contractors rather than direct staff, when the focus of China law is on the conduct of individuals. Why would independent contractors be thought to be at less risk of any enforcement action than direct staff?

10. The executive was evidently not asked about MGM's understanding of China law prior to the detention of Crown group staff. Compliance Division staff were well aware of Crown's understanding of the relevant Chinese law at the time which was, in essence, that it was only an offence to organise Chinese citizens to gamble at a foreign casino if groups of 10 or more such citizens were organised and the organiser personally received a commission or kick back for doing so.

11. Compliance Division staff have evidently not sought evidence from executives of other foreign casinos, Macau-licensed junket operators or the other Australian-licensed casinos, Star and SKYCITY. Their evidence could be of substantial value in understanding matters relevant to any assessment of Crown's operations.

Corporate Governance Risk Management Approach

12. Section 5.3 of the Report contains commentary on this subject. It criticises the level of reliance for risk assessment purposes on Michael Chen.

13. He was in fact the person best placed to gather information and expert input about local law and enforcement risks. He is a Harvard-educated, experienced executive who has lived and worked in China. He could reasonably be expected to know more about these matters than Australian-based executives. Further, he worked in the region for a US casino group before he joined Crown, so he was familiar with its risk management practices (and considered Crown's to be superior).

14. He was well remunerated, but in line with other senior sales staff in the region. He nevertheless disputed any suggestion that he was prepared to run any unnecessary risk of him or the staff for whom he was responsible being detained in return for financial reward. He was aware of the general risk of business people, local and internationals, being detained and/or the subject of enforcement action (executives of RIO in 2009 and GSK in 2013 being recent examples of internationals being targeted) and the lack of protections in the China legal system for the rights of individuals. He therefore sought to ensure both that Crown group staff operated within the law and on a 'low profile' basis.

15. Concern is expressed about Crown Resort Pte Ltd not having a formal risk register, but it was made clear that that company was an entity required for local regulatory purposes and that its administrative functions were performed by Crown itself. It is surprising and somewhat disappointing that Compliance Division staff have evidently ignored or misunderstood the evidence of interviewees and supporting documents demonstrating that the risk framework was administered by Crown. The requirement for there to be a risk register 'across all businesses' does not mean for each separate entity. The relevant business for which Crown managed the risk register is and was carried on by a number of entities of which Crown Resort Pte Ltd is one.

16. There is implied criticism of Michael Chen for not having seen the position description document (prepared by Crown in Australia). The better evidence of Michael Chen's role and responsibilities is his testimony and that of his three primary superiors, all of whom were interviewed.

17. There is a general comment that:

> *'Interviews and documents obtained during this investigation show that higher levels of Crown 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.'*

18. To properly respond to this comment, Crown needs to know the 'key events' and 'risk factors' which Compliance Division staff considered to clearly indicate an escalating risk environment. This is evidently a reference primarily to media reports.

19. The Report acknowledges Crown's mitigation strategies including obtaining legal and government relations/strategy/risk assessment advice from the Mintz group, but does not give due credence to them. It is again surprising and disappointing that the conclusions and recommendations of the Mintz group are not presented in a balanced way in the Report, rather than a few selective quotes.

20. Staff suggest that these strategies 'ultimately failed' because the detentions occurred. This begs several questions, including what more is its suggested that Crown should have done? Moreover, in principle, just because a risk materialises, that does not necessarily mean that risk mitigation steps have failed. Risks materialise all the time, notwithstanding that steps are taken to mitigate them.

21. This is one of several fundamental errors which pervade the Report. These comprise:

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(a) heavy reliance on an unforeseen consequence (here, the detentions) as the essential basis for concluding that it could or should have been prevented. The human error inherent in this approach is illustrated by the quote contained in MinterEllison's letter to the Compliance Division dated 17 May 2018 from Leo Tolstoy's War and Peace:

> *'But all these hints at foreseeing what actually did happen... are only conspicuous now because the event has justified them. If the event had not come to pass, these hints would have been forgotten, as thousands and millions of suggestions and supposition are now forgotten that were current at the period, but have been shown by time to be unfounded and so have been consigned to oblivion.'*

(b) assuming that the guilty pleas by the detainees constitute admissions for legal or regulatory purposes in Australia of matters of fact or law. This assumption is fundamentally wrong in law and if the VCGLR is to be urged by Compliance Division staff to accept it, Crown would seek the opportunity to make a detailed submission regarding the relevant law and case authority, both in Australia and the US (where the courts have gone so far as to say that they are not even bound by a statement expressly authorised by the Chinese Ministry of Commerce regarding the proper interpretation of Chinese law); and

(c) failing to identify any specific conduct of any of the detainees (prior to their detentions) which they knew or ought to have known was in breach of China law. (Crown accepts that this would not be required for the VCGLR to be satisfied that the China episode does not affect Crown's suitability to hold its licence, but it is essential if the VCGLR is to be urged to be making any adverse commentary.)

22. The point made in paragraph 21(c) is particularly important for ongoing regulatory processes. It is a logical corollary of Compliance Division staff's views that no foreign casinos or licensed junket operators should have staff in China if they and their colleagues are organising 10 or more people to gamble outside mainland China. Have staff sought comment from other gaming regulators interstate, in New Zealand, the US or elsewhere on this view? Other Australian and New Zealand regulated casinos are understood by Crown to have staff back in China operating in essentially the same was as Crown staff did prior to October 2016. How can this be regarded as consistent with Compliance Division staff's views?

Chinese Law

23. There is no authoritative English translation of Article 303.

24. Nor is there an authorised translation of the combined guidance statement of the Chinese Supreme Court and Procuratorate dated 14 May 2005.

25. Crown has put to the VCGLR the essence of its understanding of Article 303 prior to the detentions. The VCGLR has not to Crown's knowledge sought or obtained expert evidence on the law or how it was understood to operate.

26. The only indication prior to the detentions that the law might be differently interpreted which the investigation uncovered was a programme on Chinese television in October 2015. No evidence has been obtained as to the credibility of Chinese television programmes in interpreting Chinese law, other than the testimony of Michael Chen who said, in substance, that it had no credibility at all. In any event, Crown obtained advice from the Mintz group in connection with that programme and was informed that it should not alter Crown's understanding of the law.

27. Reference is made in the Report to Michael Chen seeking advice from Mintz, but it does not give a balanced account of Mintz's assessment, as above.

28. The Report also references a comment by police to one of the detainees (after he was detained) about the relevant law, which was evidently to the effect that it was an offence for the whole sales team to sign up more than ten customers in a 12 month period. That is clearly not what the law says and not as it was understood by Crown (or by the industry, commentators or foreign regulators) at the time.

29. The Report also references a translation of the charges against one of the detainees. That document is a self-serving summary of allegations against the detainees collectively. It does not speak to Crown's understanding of the law prior to the detentions.

30. The Report also references a witness statement of Jerry Xuan. He was interviewed by Compliance Division staff without Crown being offered the opportunity to participate. Mr Xuan was evidently not given the opportunity to obtain legal advice before the interview, notwithstanding that, to the Compliance Division staff's knowledge, he had personal legal obligations of confidentiality.

'Change of environment in China regarding gambling on 2015'

31. Section 7 of the Report addresses this subject. It refers to an annexed 'timeline' which has not been supplied to Crown.

32. This section quotes part of an internal Crown document as indicating that Crown was aware of 'an increased or escalated risk environment'.

33. The particular document concerned business planning, not physical risk to staff. The 'crackdown' referred to in the document was considered likely to stem the flow of money out of China for gambling, principally to Macau. The reference to 'high profile arrests and executions' was not to staff working for foreign casinos, but to VIP customers accused of corruption or violating foreign currency exchange restrictions. The 'crackdown' was thought likely at the time to divert some gambling business from Macau to foreign casinos, as was said then by Mr Craigie in publicly reported remarks and was repeated to Compliance Division staff in his interview.

34. Having obtained independent legal and other advice throughout the course of the 15 years or so in which it had been operating in mainland China, Crown did not consider that its staff were at risk as a result of the 'crackdown' reported in the local media in February 2015, because they were not thought to be breaching Article 303.

35. The Report asserts that there is evidence that the 'Chinese authorities actioned their position and intentions' through several steps. No such evidence has been made available to Crown for analysis. The Report speculates that Chinese police commenced their inquiries into Crown's activities in China in July 2015. Apart from the questioning of one sales staff in Beijing and one in Wuhan Province in July 2015, which are the subject of separate comments below, Crown is not aware of any evidence to support this and had no warning of any allegation that its staff might be considered to be breaching Article 303 until the detention occurred in October 2016.

36. In initial discussions, Compliance Division staff indicated that they had heard that the industry received warnings from Chinese authorities that they might be considered to be in breach of Article 303. Crown did not receive any such warning. Did Compliance Division staff obtain any evidence about any such warnings to other foreign casinos operating in China?

37. The Report accuses Michael Chen and Crown's risk assessment approach as affected by confirmation bias. With respect, the same can be said of the assessment of Compliance Division staff which does not even acknowledge the benefit of hindsight. This allegation posits that Mr Chen, a licensed person, put his personal gain above the safety and wellbeing of himself and the staff for whom he was responsible. That was not put to him in his interview and as a matter of fairness it should have been.

38. Section 7.1.1 of the Report refers to a Reuters article dated 6 February 2015 concerning the Chinese president having, in effect, warned foreign casinos that Chinese citizens would be gambling much less in China, neighbouring countries and the US.

39. Section 7.1.2 then recites some text from an email from Michael Chen to sales staff confirming that Crown was comfortable that the current work of staff was in compliance with Chinese laws. The Report describes the operating guidelines suggested in the email as 'incongruous', but as Michael Chen stated in his interview, they were prudent steps to avoid attracting adverse attention. 'Incongruity' can only fairly be judged with an understanding of China's political and legal system, in relation to which no expert input has been sought by Compliance Division staff.

40. Section 7.1.3 concerns the engagement of the Mintz group, but it fails to state the essence of Mintz's group conclusions, that Crown staff would not be at risk if they operated in accordance with Crown's protocols. The Report comments on there being only one email from Michael Chen to Jason O'Connor forwarding the Mintz Report, but on a fair reading of the Mintz Report it did not indicate that there were significant risk management issues on which decisions needed to be taken.

41. In Section 7.1.4, the Report criticises Mintz's advice about avoiding cell phone and text message communications as being 'naive or even reckless in the escalating environment'. This assumes that the staff knew that they were breaching Article 303. In fact they understood otherwise, but nevertheless were advised to 'keep a low profile', as a matter of prudence.

42. This reflects the general environment in China. If the VCGLR wants to evaluate the quality of Mintz's recommendations, it should seek appropriate expert advice from an experienced government relations/advisory group of similar stature to Mintz, and allow Crown the opportunity to obtain corresponding advice if it disputes the advice obtained by the VCGLR.

43. Section 7.1.5 quotes the 'final thoughts' of the Mintz group which, on a fair reading without the emphasis added by Compliance Division staff, does not suggest that anything should be done beyond strong adherence to Chinese law and company guidance on the conduct of marketing efforts. In other words, no significant changes were required because Crown staff understood they were adhering to Chinese law and not breaching Article 303.

44. Jason O'Connor did not recall seeing the final Mintz memo in his interview, but emails indicate that it was sent to him and allowance should be made for his memory being imperfect, having regard to the trauma of his detention. The selective quotes from his testimony do not give a fair account of the substance of what he said over the course of an extensive interview by Compliance Division staff (around 6 hours in total).

45. Further, it is unfair in the circumstances to criticise Jason O'Connor's recollection of the timeline in 2015, when he was interviewed in 2018, having regard to his 10 month detention in between those times. His recollection was that the more significant event was the detention of the South Korean casino staff and that advice was sought from Mintz (and Wilmer Hale) in relation to that. It is unsurprising that he did not recall the earlier Mintz assessment, given that it was to the effect that no changes of substance needed to be made to the operations of staff in China. It does not follow from this that there was 'over reliance' on Michael Chen or a 'direct hands-on awareness' of the substance of Mintz's assessment (that marketing could continue) in March 2015 would have made any difference.

46. Section 7.1.6 concerns the detention of South Korean casino staff in June 2016.

47. Crown obtained advice from the Mintz group and Wilmer Hale. It understood that their detention was a result of them engaging in activities other than general casino marketing. This understanding was clear from the uncontroverted and consistent evidence of the persons interviewed by VCGLR staff and the contemporaneous emails.

48. This understanding was evidently shared by the MGM executive to whom Compliance Division staff spoke. The MGM executive is said to have told staff that the South Korean casino staff were detained for operating in a significantly different manner to other casino staff.

49. It also reflected the general industry understanding. To Crown's knowledge, no regulator of any foreign casino or junket operator raised any issue concerning general casino marketing activities in China as a result of the South Korean detentions.

50. Section 7.1.7 of the Report refers to what appears to have been a brief visit by Chinese police to the home of 'Jerry' Xuan 'around July 2015'. The brief quote of his evidence about the visit does not suggest that it was anything other than an incorrect 'tip off' to police that Mr Xuan was organising gambling at his home, when he wasn't.

51. It is unsurprising that Michael Chen could not recall, more than 3 years later, any discussion of the police visit to Mr Xuan's home with Jason O'Connor. The matter was evidently not regarded as of any moment (and cannot be fairly evaluated with hindsight to be anything else).

52. If any reliance is to be placed on the police visit to Mr Xuan's home, Crown will need to arrange its own interview of Mr Xuan to ascertain, amongst other things, the timing of the visit. We reiterate that Crown was not offered the opportunity to participate in the interview of Mr Xuan.

53. Another employee, 'Benny' Xiong was questioned by local police in Wuhan Province on 9 July 2015, according to the email exchanges recited in the Report. The following sentence is quoted in the Report, but is not the subject of emphasis or comment:

'After I delivered certificate of employment to them on 10th July, they said everything is alright.'

54. In other words, it was understood at the time that the police were satisfied that Mr Xiong was not doing anything wrong because he was working locally for an Australian listed company which was authorised to operate a casino in Australia.

55. Crown disputes that this questioning 'was clearly an escalating risk factor regarding Crown's approach in China'. There was nothing in the interviews which suggested that the police considered Mr Xuan or Mr Xiong to be breaching Article 303.

56. Mintz's assessment at the time was not suggestive of the interviews having significance. If Compliance Division staff seek to 'second guess' this expert assessment at the time, it is incumbent on them to obtain expert advice from a similar government relations firm, based on the information available in July 2015. The business environment, culture, language and legal system are very different in China to the western world. Considerable caution is needed in looking at matters in China through a western lens.

57. Moreover, it remains a matter of speculation as to whether these interviews had anything to do with the detentions 15 months later. It appears to contradict what Mr Xuan evidently told Compliance Division staff about the focus of the prosecution, being conduct in the previous 12 months (not 15 months).

58. It is understandable that Jason O'Connor's recollection of the interview of Mr Xiong was vague at the time of his interview, given that the matter was not considered to be of significance at the time (and Mr O'Connor's detention in the meantime).

59. The Report says that Mr Chen 'downgraded the importance of the letter'. The significance of the letter is a matter of conjecture, fraught with the influence of hindsight. The letter itself says nothing of any moment.

60. Notwithstanding Mr Craigie's remarks in his interview, there is no basis for suggesting that he would have done anything differently if he had been told about the matter, including the reassurance by the police that everything was fine once they had the letter confirming Mr Xiong's employment.

61. As to the concerns of Compliance Division staff as set out in the Report:

- it is unsurprising that Jason O'Connor and Michael Chen could not recall many specific details, 3 years later. The matter was not considered to be significant at the time. It is only seen that way now with the benefit of hindsight;
- the same can be said of Barry Felsteads's recollection. Whilst it conflicts with Mr Xiong's brief record of what Officer Zhou said, the purpose of the police interview remains unclear;
- the matter was escalated as high as the Chief Executive Officer of Crown Melbourne. He evidently made the reasonable judgment at the time that the matter did not warrant elevation to the Chief Executive Officer of the ASX-listed parent entity;
- the substance of Mintz's advice was not contradictory. It was, as quoted, 'chances are good that there's no problem'. Whilst the gratuitous comment about an 'evidentiary pile' might appear to be curious to persons unfamiliar with China's governance and law enforcement, it was not grounds to question the substance of the advice; and
- the commentary about Mr Xiong's dealings with the police conflates several matters. If some adverse assessment of his conduct is to be made, he should be given the opportunity to defend himself.

62. Section 7.1.8 of the Report deals with the television program on 12 October 2015. It was broadcast in Mandarin.

63. Michael Chen saw the program, but he did not note the part highlighted in the translation obtained by Compliance Division staff. He referred a link to the program to Mintz and its responses were, in substance, that nothing of significance had changed.

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64. Of concern to Compliance Division staff is that Jason O'Connor, Barry Felstead and Rowen Craigie could not recall seeing the program. There would have been no point in them doing so – none of them speak Mandarin. No translation of the program was done because neither Michael Chen nor Mintz considered it at the time to be of any particular significance.

65. The comment that Michael Chen could be considered to have placed too much reliance on Mintz is, with respect, unfair hindsight. Who else's advice is it suggested that he should have relied on (bearing in mind that his own view was that there is nothing of significance in the program)?

Scope of Chinese Investigation

66. Compliance Division staff speculate in Section 8.1 about the detention of Crown staff not being in a 'policy or political vacuum' and the product of a 'highly considered exercise'. This is largely conjecture, but the important point is that none of it was known to Crown (or others in the industry) prior to the detentions in October 2016.

Provision of Documents and Cooperation

67. Crown has cooperated fully with the Compliance Division's inquiries. Crown facilitated the interview of Michael Chen in New York, notwithstanding that the VCGLR had no formal power to require him to be interviewed. Crown also met the significant costs associated with his US legal representation.

68. Crown has claimed legal professional privilege in relation to its communications with Wilmer Hale, as it is entitled to do, particularly in the light of the pending class action. Making the advice available to Compliance Division staff for review would likely waive the privilege in that action. All interviewees have referred to legal advice being obtained from Wilmer Hale and government relations advice being obtained from Mintz at relevant times during the course of 2015. The VCGLR is therefore bound to accept that such advice was sought, notwithstanding that it is not in a position to evaluate the Wilmer Hale advice.

69. Crown does not accept that it was 'tardy' in providing documents sought in the course of the investigation. This has been the subject of separate discussions between Crown staff and Compliance Division staff. Indeed, discussions were held between senior Crown and Compliance Division staff following the initial request for documents. Crown advised that the process of identifying, sourcing, collating and reviewing the documentation was a significant exercise, but undertook to expedite where possible. The Compliance Division staff expressed their concern regarding how long it was taking however accepted the position of Crown and thanked them for providing a commitment to expediting it. Crown proceeded accordingly.

70. Crown has responded to the concerns raised by Compliance Division staff in relation to the business plan presentations. Those documents were not prepared in the course of the annual risk management planning process.

71. Crown has completed production of documents in response to VCGLR requests.

72. Some documents recently produced were found only through a painstaking and expensive document retrieval process involving the restoration of backup tapes. This process is continuing for the purposes of the class action, and will not be completed for some months. If further documents responsive to the VCGLR's request are found in this process, they will be produced promptly.

Findings

73. Section 10 sets out the subjective views of Compliance Division staff. Crown fundamentally disagrees with most views expressed.

74. The commentary about Crown's corporate governance framework and risk assessment processes does not accord with the expert views of PricewaterhouseCoopers (**PwC**) as set out in their report to the VCGLR for the purposes of the Sixth Review. PwC spent nearly 5 full days at Crown reviewing the whole of the Crown risk framework and spent time discussing both the framework and specific incidents and how they were managed from a risk perspective with several executives and managers and also frontline staff. This was anything but a superficial and limited review.

75. The comment that Crown Resort Pte Ltd failed to have its own risk register mistakes the role of that company in the Crown group structure. Risks relevant to Crown's international VIP business were identified through the risk management framework and processes of the listed parent entity and the primary operating entities, particularly Crown Melbourne.

76. The commentary around aggregating the effect of 'various incidents' to suggest that the risk of enforcement action was not accurately assessed, escalated or mitigated is classic wisdom by hindsight, as referred to above. The only 'incidents' affecting Crown alone were the police questioning of two staff as discussed above, neither of which was considered to be of real significance, and both were more than 12 months before the detentions. The rest is media reporting, which was equally available to all of Crown's competitors operating in China and licensed junket operators. To Crown's knowledge, none of them made any different assessment to Crown about the compliance of their staff's marketing activities with local Chinese law.

77. Compliance Division staff suggest in Section 10.2 that Crown was over reliant on Michael Chen. They do not suggest where the line is to be drawn between reasonable reliance on a highly competent and experienced executive with familiarity with the environment, and 'over reliance'. Crown reiterates that external advice was obtained at all times that it was prudent to do so and the substance of that advice was conveyed to Michael Chen's superiors. To that extent Crown was reliant on the external advice, not just on Michael Chen's views.

78. The Report suggests that the structure of Michael Chen's remuneration clouded his view of events. It also accuses him of confirmation bias in his statements describing the environment in China. In fact the staff have no proper basis to challenge his descriptions and can equally be said to be influenced by confirmation bias based on the detentions having occurred. We reiterate that it is a flaw of logic to conclude that any risk which materialises must have been underestimated.

79. The Report also expresses the view that Michael Chen did not appropriately escalate 'key pieces of information'. These 'key pieces' are not identified with specificity, but the general subjects listed in the Report were elevated, with the exception of the interview of Mr Xuan which Michael Chen did not regard as of much significance. (He may well have discussed the matter with Jason O'Connor but neither recollect the discussion several years later).

80. The Report goes on to raise theoretical questions about how 'higher level' risk assessments might have been performed. This discussion overlooks the central proposition that people at all levels within Crown reasonably believed that staff in China were operating in accordance with local law and that the senior executives were aware that independent legal and other advice was being obtained when it was prudent to do so.

81. The reality is that independent advice was sought, both from Wilmer Hale and Mintz, and higher level executives in Australia would not have had any sound basis to reach any different conclusions than were reached.

82. There is further commentary in this section about the interview of Mr Xiong. For the reasons discussed above, much of this discussion is conjecture about the significance of the interview and does not grapple with the police assurance at the end of it that 'everything is alright'. Again, we stress that Crown believed that staff were operating in accordance with the law and there was no reason to think otherwise as a result of police questioning local staff, particularly when such questioning ended with an assurance that things were fine. Moreover, if the police had residual concerns about what Mr Xiong was doing in the course of his work for Crown at the time, presumably they would have returned to question him further. When they did not do so, it was reasonable to assume that they had no residual concerns.

83. Finally, Section 10.6 comments on the 'incongruity' of the mitigation strategy which was, to a significant degree, to mitigate the risk of Crown staff being caught up in an investigation relating to a customer. Further reference in this regard is made to paragraph 41 above.

84. The operating protocol to meet customers or prospective customers in small groups was to avoid any suggestion that staff were arranging groups of 10 or more citizens of China to travel to gamble. This protocol and Crown's operating model generally can only fairly be evaluated on the basis of expert evidence about the business and legal environment in China. Any such advice would necessarily deal with the reality that Western companies operating in China and their executives sometimes get targeted for enforcement action for political purposes, notwithstanding that they are operating in accordance with local law.

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Conclusion and Recommendation

85. Crown has not had gaming sales staff on the ground in China since the detentions and has no plans to have them there in the future, unless clarity can be obtained as to any future enforcement risk.