

# MinterEllison

21 September 2018

## BY EMAIL AND DELIVERY

Mr Stephen Berriman  
 Victorian Commission for Gambling & Liquor Regulation  
 49 Elizabeth Street  
 RICHMOND VIC 3001

Dear Mr Berriman

### VCGLR China Investigation - detention of Crown Group Staff in China

Thank you for your letter dated 23 August 2018 and for your acknowledgement of receipt of the further documents provided on behalf of Crown on 7 and 8 June 2018.

On Crown's behalf, we have responded below to your requests for further information and documents under the headings set out in your letter.

Enclosed with the hard copy of this letter are four folders comprising:

- (a) Volume 1 – the documents produced in response to the numbered paragraphs of your letter and the class action documents referred to in section 3 below;
- (b) Volume 2 which contains the documents referred to in the revised Schedule A;
- (c) Volume 3 – documents previously redacted for confidentiality referred to in section 4 below, which are now redacted only for legal professional privilege; and
- (d) Volume 4 – the board minutes the VCGLR has sought following inspection, which are now redacted only for legal professional privilege

#### 1. Information prior to detention in October 2016

##### 1.1 External advice documentation between November 2015 to October 2016

Relevant communications which Crown has located to date have already been provided to the VCGLR in response to earlier notices and requests, other than communications to and from Wilmer Hale, in respect of which legal professional privilege is claimed.

##### 1.2 Chinese Authorities contact with Mr Jerry Xuan

Crown has been unable to locate any such documents.

##### 1.3 Governance over VIP International department

- (a) Crown's governance framework did not include any relevant executive management committees.

For some time there has been annual business planning meetings of executives and senior managers, generally in March/April of each year, to discuss the performance and



operations for each business unit, including the VIP department. Senior managers from the various business units, including the VIP department, presented their business plans to the broader executive team at those meetings. During the period from 1 June 2014 to 13 October 2016, those meetings were on 17 March 2015 and 22 April 2016.

There were also various other meetings of executives and others at which the performance and operations of the VIP department were discussed, but none of these meetings were of established executive management committees. They were styled as 'VIP Workstreams' and 'VIP Quarterly' meetings in calendar invites and the Crown executive invitees generally included a combination of Barry Felstead, Jason O'Connor, Michael Chen, Roland Theiler, Ishan Ratnam, Jacinta Maguire (nee Careri), Michael Whytcross and Trent Whitney. Mr Ken Barton was also invited on occasion.

There were also regular meetings of executives involved in the provision of credit and collection of debts for VIP customers, but again, there was no formal committee framework for these meetings. Moreover, as CEO, Mr Felstead had many ad hoc meetings and discussions with groups of executives and others to discuss general casino operations, including of the VIP department. Again, these meetings and discussions were outside the committees which formed part of Crown's governance framework.

Attendance at these various meetings was generally in person, other than for participants who were not in Melbourne, who participated by teleconference or, occasionally, by videoconference.

- (b) There were no committees as such per paragraph (a) above.
- (c) There were no committees as such per paragraph (a) above.
- (d) There were no committees as such per paragraph (a) above. The meetings of executives and others referred to in paragraph (a) above did not operate within a formal committee structure. They therefore had no charters. Nor did they have formal agendas or minutes of the kind a board or executive committee would normally produce.
- (e) Mr Chen had frequent telephone discussions with Mr O'Connor (often daily and generally around 2-3 times a week) and sporadic discussions with Mr Felstead at an average frequency of around one per fortnight. They also met in person when Mr O'Connor or Mr Felstead were in Hong Kong or the same overseas location as Mr Chen where staff and/or customer meetings occurred, or when Mr Chen was in Australia.
- (f) Management reports, including on the operations and performance of Crown's various departments, including VIP International, were made to each regular Crown Resorts Limited board meeting. All Crown Resorts Limited agendas, management reports and other board papers and board minutes have been inspected by the VCGLR in the course of the recent Sixth Review. Copies of many have also been produced to the VCGLR in the course of the China investigation. Further copies can be made available if required.
- (g) Management reports, including on the operations and performance of Crown's various departments, including VIP International, were made to each regular Crown Melbourne Limited board meeting. All Crown Melbourne Limited agendas, management reports and other board papers and board minutes have been inspected by the VCGLR in the course of the recent Sixth Review. Further copies can be made available if required.
- (h) Mr Chen did not generally provide written reports or papers to Mr O'Connor or Mr Felstead. He and others had input into the management reports on the performance of the VIP International department and into the VIP International business unit plan which was considered at the annual business planning meetings as described in paragraph (a) above.

#### 1.4 Targets

The documents and records which Crown has located to date are enclosed.

The documents include letters to staff in September 2012 and September 2014 regarding bonuses for FY12 and FY14 and targets for FY13 and FY15 respectively. Further, the documents included a spreadsheet which contains details of the FY18 targets.

The documents also include some presentations found by Crown on the 'G drive' of Mr O'Connor's computer. In the time available, Crown has not been able to ascertain whether these were final versions of presentations made in respect of the setting of VIP International targets.

#### 1.5 VIP International Staff Remuneration

- (a) The unredacted contracts are enclosed.
- (b) The records are enclosed. Tang Xiaoqing (Athena Tang) and Cai Xiaoyu (Fiona Cai) did not have written employment contracts. They were paid a salary in HK dollars through the local 'cash book'.
- (c) The records are enclosed.
- (d) Revised remuneration arrangements were introduced for FY13 and FY15 as indicated by the enclosed records. The revisions were authorised by Mr Felstead.

#### 1.6 Information for staff in China between 1 June 2012 and 13 October 2016

Crown has previously produced all such documents which it has located to date, including the 'reception' guidelines that were prepared in June 2012.

#### 1.7 Roadshows

- (a) We are instructed that diary invites from the calendars of Mr Felstead and Mr O'Connor indicate that 'roadshows' were conducted in North East Asia, including mainland China, during FY15 to FY17 on or about the dates set out below:

Dates of 'roadshows'
11-25 July 2015
11-22 August 2015
22-26 September 2015
20-31 October 2015
10-14 November 2015
1-12 December 2015
14-27 March 2016
May 2016
22-26 June 2016
August 2016
October 2016

On some of these roadshows, executives also spent time in jurisdictions other than mainland China (including Hong Kong). In China, the locations generally included Guangzhou, Shanghai, Beijing, Shantou, Chengdu and Wuhan. Crown does not have a summary report or the like detailing which particular locations were visited by each roadshow, but may be able to obtain further details of particular roadshows if required.

- (b) The roadshows did not involve 'presentations' as such. They were in the nature of customer goodwill visits. It is possible that a document with information about an upcoming event might have been provided to specific customers, but we are instructed that such materials were generally not printed or provided for the purposes of distribution on roadshows.

#### 1.8 Office in China

- (a) Crown did not establish, maintain or close any office in mainland China in the relevant period.
- (b) A small apartment in Guangzhou was leased as a convenient location for staff visiting that city to go to make calls and undertake tasks preparatory to, or as follow-up to, customer meetings, in preference to a hotel room, conference centre or other similar place. There was no Crown branding of the apartment. The lease was terminated after Crown introduced a prohibition on staff traveling to mainland China for business purposes associated with gaming.
- (c) There was some discussion in 2014 of opening an office in Shanghai as a convenient location for the coordination of the activities of some China-based staff, but the idea was shelved by early 2015 in the interests of maintaining a 'low profile' approach to China operations.

#### 1.9 Letters to Chinese authorities

- (a) Crown has already provided a copy of the letter confirming the employment of Mr Xiong Bin. Crown did not provide any other letter or any statement, declaration or other document for the purposes of provision to any agency in China.
- (b) The circumstances of the provision of the letter relating to Mr Xiong Bin are described in the documents and testimony already provided. No other such documents were created.
- (c) There are no further documents to produce.

#### 1.10 Risk documentation

- (a) Crown Melbourne's FY15 Risk Management Plan is enclosed.
- (b) Crown Resorts Limited's Risk Profiles for FY14 and FY15 are enclosed.

#### 1.11 Information regarding events in China to the Board, sub-committee or directors

The VCGLR inspected all Crown Resorts and Crown Melbourne board and sub-committee agendas, papers and minutes during the course of the Sixth Review. Further copies can be made available if required.

In addition, Crown has previously produced copies of relevant Crown Resorts board papers and board packs to the VCGLR.

Incidental communications with directors of Crown Resorts or Crown Melbourne may be uncovered in the course of document discovery in the class action, as outlined below. Several such communications have been identified to date. These are enclosed. If any further such communications are identified, they will be provided to the VCGLR as stated below.

## 2. Information relating to current Crown arrangements in China

### 2.1 Current personnel in China

- (a) Assuming that the reference to 'China' is to mainland China:
  - (i) one Crown Group staff member, Lily Wan, works from her home in Shanghai for the 'International Hotel Sales – Conferences and Events' business. Her duties and remuneration are set out in the enclosed contract dated 16 October 2017, position description and accompanying representations and warranties document. She is not engaged in any gaming-related activity;

(ii) Crown College International has also engaged approximately six local agents in Beijing, Shanghai and Chongqing to recruit overseas students to study hospitality and related activities (ie non-gaming activities) at Crown College in Melbourne. The agents are not involved in any gaming-related activity. They are engaged pursuant to an International Education Agent Agreement which, amongst other things, sets out the commissions payable. A sample copy of the agreement is enclosed.

(b) One employee of Crown College travelled to China to attend the Chengdu Educational Expo for around 10 days between 20 March 2018 to 1 April 2018. Further, 8 employees involved in Crown's Sydney construction/development project conducted factory inspections of stone and other building material suppliers in order to review the quality of their products and operations for up to 5 days during the periods 4 to 8 June 2018 and 1 to 3 August 2018. No staff have visited China to engage in any gaming-related activity.

(c) The documents referred to in paragraph (a) are enclosed.

## 2.2 Guidance to Crown personnel

(a) Crown has not given any guidance to staff, contractors or agents in relation to how to conduct gaming-related activities in China since August 2017, because Crown has not had anyone 'on the ground' or visiting mainland China since August 2017 in connection with its gaming business. The guidance provided to Ms Wan in relation to her role is set out in the documents referred to in paragraph 2.1(a) and the guidance to the employees referred to in paragraph 2.1(b) is set out in the enclosed documents.

(b) The documents are enclosed in response to paragraphs 2.1(a) and 2.2(a).

## 2.3 Crown staff marketing to mainland Chinese patrons

(a) No Crown staff have had, in the period from 1 January 2018 (and indeed from the time of the detentions in October 2016) duties which include marketing engagement with persons in China. Crown staff are not engaged in any gaming-related activity 'on the ground' in China.

Some Crown staff based in Australia or Hong Kong have mobile phone calls or messaging contact with Crown VIP customers whilst the customers are not in Australia or Hong Kong. Such calls or contact may occur whilst a customer is in mainland China, although the customer's location is often not known to the Crown staff member when the call or contact occurs. The matters discussed in such calls or contacts may include upcoming events, gaming-related content such as terms of play for a future visit to Australia or London or repayment of an outstanding gaming debt.

(b) Crown is unable to state the frequency or volume of any such calls or contact which the VCGLR may consider to comprise 'marketing activity/engagement' with customers in China. If the VCGLR would like Crown to survey relevant staff, we would like to discuss with you the questions to be asked.

(c) Crown continues to contract with junket operators licensed in Macau who organise trips to Australia for premium players, including mainland Chinese nationals. Moreover, as stated above, Crown staff deal directly with some VIP customers, including Chinese nationals, by mobile phone calls and electronic messaging.

The fundamental difference since October 2016 is that no one from Crown or on Crown's behalf is involved in any contact with any actual or prospective gaming customers 'on the ground' in mainland China.

## 2.4 Compliance officer

(a) Yes, a Compliance Officer is employed in the Hong Kong office.

(b) The role of the Compliance Officer is to keep staff in Hong Kong office informed of the laws, regulations, policies and guidelines with which they are required to comply in carrying out their duties for Crown. The Compliance Officer reports to the Manager - Program Compliance, who in turn reports to the Group General Manager - Regulatory and

Compliance. The frequency of reporting is at least monthly and is generally by telephone, either at ad hoc times or in regular monthly teleconferences with the Group General Manager - Regulatory and Compliance, Group General Manager - International Business Operations, and Senior Legal Counsel and Manager - Program Compliance.

- (c) The position description and the Compliance Officer's contract are enclosed. The contract is due to expire on 3 October 2018. A further contract and position description are currently being prepared, but have not yet been finalised.

## 2.5 External advisers

- (a) Crown has not sought external advice regarding gaming activities in mainland China since August 2017, because it has had no such activities.

Crown has sought legal advice regarding non-gaming activities in China and in relation to its international operations more generally, and MinterEllison has in turn obtained input from an international consultancy, Hakluyt, for the purpose of advising Crown.

Crown is not proposing to have anyone engaged in dealings with actual or prospective gaming customers 'on the ground' in mainland China for the foreseeable future.

- (b) Inapplicable.
- (c) Inapplicable.
- (d) Inapplicable.
- (e) Inapplicable.

## 2.6 Organisational structure

- (a) An organisational chart for the VIP international department is enclosed.
- (b) The organisational structure is as illustrated in the chart. Subject to what is said in paragraph 2.3(a) above in relation to mobile phone and electronic messaging contact with customers who may be in China when the call or contact occurs, no staff are engaged in gaming-related marketing to persons in China.
- (c) The only person directly involved in marketing hotel facilities 'on the ground' in China is Lily Wan, referred to in paragraph 2.3(a) above. Ms Wan reports to the Group Director of Sales, who is based in Melbourne. This sales role relates to the hotels side of Crown's business, not gaming operations.

## 2.7 Risk policy, framework and documentation

- (a) The fundamental change made since October 2016 is not to have any staff, contractors or agents engaged in gaming-related activities 'on the ground' on Crown's behalf in mainland China. Crown believes that this effectively eliminates the risk of any repeat of the detention of Crown staff in October 2016. This change has been approved by the Crown Resorts board.

In 2017, Crown restructured its VIP International operations in Asia by implementing a new operating model that rationalised operations so that they currently operate from a centralised office in Hong Kong. The prohibition on travel to mainland China was entrenched in this new model.

The adoption of the new model is noted in the minutes of the Crown Resorts Board meeting that occurred on 27 April 2017. Crown relied upon advice from Minter Ellison in respect of which privilege is claimed, and the board minutes have been redacted accordingly.

- (b) The model is described in a presentation titled VIP International – Operating Procedures June 2017 (revised June 2018). A copy of the presentation is enclosed. The minutes of 27 April 2017 have previously been produced to the VCGLR.

## 2.8 Current reporting of VIP international activities

- (a) The reporting lines in relation to VIP international business are as illustrated in the organisational chart enclosed in response to paragraph 2.6.
- (b) A copy of the August Crown Monthly Performance Report distributed to some members of executive management is enclosed, together with the CEO report that was included in the most recent board pack distributed to the Crown Resorts Board. Legal professional privilege is claimed in respect of the redacted sections.

## 2.9 Current performance

- (a) the current targets of the VIP International department for FY19 are as follows:

	Net Contribution Targets 2019
Melbourne Target	76.9m
Perth Target	8.1m
London / Far East (£1.4m @ .55)	2.6m
	87.6m

- (b) Spreadsheets showing the current targets of the international marketing division and its individual employees are enclosed in response to paragraph 1.4. (The spreadsheets and the targets are commercially sensitive and confidential.)
- (c) The targets were approved by the Crown Resorts board, on the recommendation of Mr Barry Felstead.
- (d) The targets are for the current financial year.

## 2.10 Prevention strategies

- (a) As indicated above, the fundamental strategic change to effectively eliminate the risk of Crown staff being detained in mainland China is not to have anyone involved in customer meetings or other gaming-related business activities 'on the ground' in mainland China.

## 2.11 Review

- (a) There are no such papers, reports or other documents. Crown has relied from the time of the detentions on legal advice on how best to respond to the detentions and related matters, including the class action instituted against Crown Resorts.
- (b) These documents have been produced in response to paragraph 2.7 above.

## 3. Previous notices requiring the provision of information

We note your reference to the comment contained in our letter of 17 May 2018 about the documents reviewed in the course of the VCGLR investigation as having constituted a minute proportion of the overall email and documentary records of Crown.

We reiterate that we meant a minute proportion of all the email and documentary records of Crown on all business matters, not just those relating to Crown's China operations. We were endeavouring to make the point that Crown's business operations are extensive, generating large volumes of internal and external communications, only a very small proportion of which concern aspects of Crown's international operations which are the subject of the VCGLR investigation. We apologise if our intended meaning was not conveyed clearly.

We further note your comments regarding the table set out in Schedule A to your letter. Attached is a further version of Schedule A to which Crown has added a fourth column to update or expand Crown's earlier responses.

As previously advised, with the assistance of external contractors and at substantial expense, Crown has established an external, litigation support database for the purposes of defending the class action. The database technology offers sophisticated search capability. A large quantity of electronic data has been loaded into the database, including data from back up media which required specialised restoration.

For the purposes of 'tranche 1' discovery in the class action, a subset of documents was reviewed earlier this year and further documents identified as responsive to VCGLR notices were produced.

A second dataset of approximately 105,000 documents (**T2 dataset**) is required to be reviewed for the purposes of 'tranche 2' discovery. The T2 dataset is drawn from internal sources considered likely to yield documents of potential relevance to the class action issues. The sources include the electronic mailboxes of the detained staff, some portable electronic devices used by some staff and the mailboxes of a number of current Crown staff. Enclosed is a copy of the class action orders and the affidavit to which they refer which identify the sources of documents comprising the T2 dataset.

Given the volume of documents in the T2 dataset, tranche 2 discovery may be made in stages. Moreover, the class action applicant has foreshadowed that a third tranche of discovery may be required. That may require restoration of further electronic records in backup media.

Any documents identified during the course of the T2 dataset review or any third tranche review which are found to be within the scope of VCGLR notices will be provided to the VCGLR promptly upon completion of the dataset review (or stage, if the tranches are provided in stages).

Whilst we cannot yet say how many additional documents will be identified in the course of this review, Crown does not expect them to significantly affect the matters relevant to the VCGLR's investigation or the extensive testimony of witnesses examined during the course of VCGLR's interviews.

**4. Redacted material**

Some documents previously supplied to the VCGLR were redacted to protect commercially sensitive content which was irrelevant to the matters the subject of the VCGLR's investigation. Some unredacted documents were inspected at Crown's premises and a subset of them were provided in unredacted form following inspection. Further unredacted copies of previously redacted documents are enclosed. The documents remain confidential and Crown expects that such documents will not be provided in response to any freedom of information request.

**5. Previous legal professional privileged claim made by Crown**

We have responded separately on this subject.

**6. Invitation to Crown to provide further information**

We will respond separately on this subject.

**7. Mr Xuan statement and information from MGM**

We will also respond separately on this subject.

**8. Investigation process**

We and Crown seek the opportunity to discuss with relevant VCGLR staff the next steps in relation to the VCGLR's investigation.

If you would to discuss any aspect of the above, please contact us or Mr Josh Preston of Crown.



Yours faithfully  
MinterEllison



Contact: Richard Murphy [REDACTED]  
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