

MinterEllison

21 September 2018

BY EMAIL

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

We further refer to your letter dated 23 August 2018 and, specifically, to your invitation to Crown to provide further evidence and submissions and to comment on the statement of Mr Xuan and the information obtained from MGM.

This letter deals with those matters.

Further evidence and submissions

Crown's primary submission is that the whole episode of the detention and conviction of Crown Group staff does not warrant any regulatory action.

To briefly summarise the main points emerging from the testimony of witnesses interviewed by the VCGLR and the documentary evidence:

1. Crown did not receive any warning, official or otherwise, from Chinese authorities that the activities of its staff were considered to be potentially in breach of Article 303.
2. Crown reasonably believed at all times prior to the detentions that its staff were operating in a manner which did not breach Article 303.
3. Staff and contractors of other foreign casinos and junket operators conducted themselves, and continue to conduct themselves, in a manner similar to Crown staff without being accused of breaching Article 303. Why Crown staff were singled out for enforcement action remains a matter of speculation.
4. Crown employed appropriately qualified and experienced staff in relevant roles in connection with the international VIP business.
5. Senior executives in Australia, including Mr Jason O'Connor and Mr Barry Felstead, regularly visited staff in China and attended customer meetings with them. This gainsays any suggestion that the executives considered that there was any material risk of staff or executives being detained and prosecuted for alleged breaches of Article 303, particularly for the aggregated conduct of all staff. (Under Western Law, absent a specific statutory provision which makes one person criminally liable for the conduct of others, a defendant can only be successfully prosecuted for their own illegal acts. A group of 19 defendants could not be convicted for collective conduct in the way the 19 former Crown Group staff were convicted in China in June 2017 and, to Crown's knowledge, no regulator, commentator or industry participant anticipated that occurring.)

6. Crown sought external advice whenever it was prudent to do so from well qualified and well credentialed lawyers (Wilmer Hale) and government relations advisors (Mintz Group). The Mintz Group did not ascertain from its intelligence sources that Crown staff were at risk of detention or were considered by authorities to be breaching Article 303.
7. The convictions of the detainees should not be taken for legal or regulatory purposes in Australia to mean that they actually engaged in conduct in breach of Article 303. As Mr O'Connor and Ms Pan stated in their testimony to the VCGLR, they pleaded guilty to the charges under duress in order to minimise their period in detention.

In the circumstances, Crown respectfully submits that it is appropriate in all the circumstance for the VCGLR to close its investigation on the basis that no disciplinary or other action is warranted.

Crown understands that the VCGLR may wish to expressly reserve its position on reopening the investigation if further documents or evidence is uncovered in the course of the class action.

Crown is also cognisant of the VCGLR's interest in the risk of any similar occurrence in the future. As indicated in our detailed response to the other inquiries contained in your letter, Crown does not currently have any staff or contractors engaged in gaming-related activities 'on the ground' in mainland China and has no intention of doing so in the foreseeable future. Nevertheless, if at a future time it does contemplate any proposal for staff or contractors to undertake gaming-related work in China, it will consult with the VCGLR in relation to any such proposal.

If, contrary to Crown's submission, the VCGLR is minded to take some disciplinary action or make any findings or statement to the Minister or publicly which is critical of Crown and/or any (present or former) executive, Crown requires that procedural fairness be afforded by:

- (a) the relevant proposed finding/statement and the relevant facts and legal analysis on which it is based being set out in full, not in mere summary form;
- (b) the opportunity for Crown to fully examine the evidence upon which the proposed finding is based;
- (c) the opportunity for Crown to bring forward such other evidence, including expert evidence, as might be relevant to the proposed finding and to make such submissions as Crown considers relevant to the proposed finding; and
- (d) the opportunity for any other person about whom any criticism is to be made or implied to bring forward such other evidence and made submissions as they consider appropriate in the light of any such proposed criticism.

We reiterate that such procedural fairness is essential against the background that Crown is defending a substantial shareholder class action arising from the detentions. Any failure to afford such process fairness could cause significant prejudice to Crown and the shareholders of Crown Resorts Limited.

Crown would welcome the opportunity to meet with relevant VCGLR staff to discuss the above matters if that would be of assistance.

Statement of Mr Xuan

In relation to the statement of Mr Xuan, Crown's submissions are as follows:

1. The statement was taken without prior notice to Crown and evidently without first affording Mr Xuan the opportunity to obtain legal representation.
2. Mr Xuan is not authorised by Crown to reveal legal advice obtained by Crown. He ought not to have been asked to disclose communications potentially subject to Crown's legal professional privilege without affording Crown an opportunity to object.
3. The information in paragraph 25 about the police visit to Mr Xiong in Wuhan in July 2015 is evidentially hearsay. He should have been pressed to say who told him what about that visit.
4. The information in paragraph 26 strongly indicates that the context of the discussion between Chinese police and Mr Xuan was that he had been incorrectly accused of organising gambling to occur at this home. The police questioning evidently did not cover his role for Crown.

5. Any suggestion that the police interviews of Mr Xiong and Mr Xuan in or around July 2015 had any connection whatsoever with the detention of Crown Group staff more than 15 months later is speculation. There is nothing in Mr Xuan's statement to support any such connection.
6. Paragraph 39 of the statement sets out Mr Xuan's belief about the reason for the detentions, being that Crown was becoming 'too big' and the 'big fish' of which the Chinese government wanted to make an example. Mr Xuan does not state the basis of his belief. Crown believes that it is pure speculation.
7. Mr Xuan goes on in paragraph 40 to suggest that the detentions would not have occurred if Crown had bribed relevant Chinese officials, something which Crown would never countenance. Again, this suggestion appears to be pure speculation, which Crown believes has no objective foundation.
8. Crown maintains that no relevant finding can be based on the statement. If the VCGLR considers otherwise, Crown would wish to have the opportunity to further interview Mr Xuan and/or consider obtaining other relevant evidence.

Information from MGM

In response to the file note dated 15 May 2018, Crown's submissions are:

1. The information provided by the MGM executive is generally corroborative of the position of Crown as outlined above, the testimony of Crown's witnesses to the VCGLR and of aspects of Crown's earlier submissions.
2. The note says that MGM contractors were engaged in 'conservative marketing' in mainland China. Crown submits that such 'conservative marketing', which the MGM contractors are evidently continuing to do now, is likely to involve meetings and dealings with individuals or small groups of actual or prospective MGM customers in a manner akin to the work of Crown Group staff prior to the detentions in October 2016.
3. The Nevada Gaming Commission is said to require all casinos operating overseas to obtain legal advice and risk assessments. This suggests that all casinos licensed in Nevada, including MGM, obtained legal advice and risk assessments which indicated that their staff or contractors were not at significant risk of detention and prosecution for infringing Article 303. Otherwise, the Nevada regulator is unlikely to have permitted the casino contractors to continue to operate in China. In other words, the Nevada-licensed casinos and their regulator evidently had the same or similar understanding to Crown prior to October 2016 that 'conservative marketing' in China did not breach Article 303.
4. The note records that, after the detention of the South Korean casino staff in June 2015, MGM 'went to pains to check what they were doing....' and MGM was satisfied, as Crown was satisfied, that the South Korean staff had been operating in a significantly different manner.
5. The note also records that, like Crown, MGM made no substantial changes to its operations throughout the 'crackdown period', including the period following the detention of the South Korean casino staff.
6. The MGM executive is noted as recalling the 'crackdown' and confirming that the environment in China is unpredictable and rife with rumours, most of which turn out not to be true. These rumours are considered as part of MGM's risk management process, as they were at relevant times by Mintz for Crown. The MGM executives' perspective in this regard strongly supports the testimony of Michael Chen in his VCGLR interview concerning the unpredictability of the legal/political system in China.
7. The note records that MGM never received a warning or approach by Chinese officials. This contradicts any suggestion that the industry had been warned that 'conservative marketing' activities were considered by the authorities to breach Article 303.
8. The note refers to MGM's use of independent contractors as being a point of difference from Crown's structure. The relevance of that distinction is unclear. The focus of Article 303 is on the conduct of individuals and whether they personally receive commissions or 'kick backs'. It does not distinguish between employees and contractors.

9. Crown submits that the VCGLR can take considerable comfort from the discussion with the MGM executive as a further basis to conclude that no disciplinary action against Crown is warranted. Again, if the VCGLR considers otherwise, Crown would wish to have the opportunity to consider obtaining other evidence to support the main points made by the MGM executive.

Earlier submissions

Crown also relies upon the points made in our letters to you and Mr Bryant dated 17 May 2018 and 6 June 2018 and to Crown's draft response to the draft report of Compliance Division staff.

Crown would also like us to reiterate that its submissions and correspondence are not intended as criticism of any of the Compliance Division staff who have been involved in the investigation and who have conducted themselves at all times in a respectful and non-adversarial manner. Crown was particularly appreciative that, when Ms Pan and Mr O'Connor were interviewed, due consideration was given to the trauma they suffered in the course of their detentions.

Crown remains committed to cooperating with any further steps required to finalise the investigation, including in relation to keeping the VCGLR informed of developments in relation to the class action.

We and Crown await hearing further from you.

Yours faithfully
MinterEllison



Richard Murphy
Partner

Contact: Richard Murphy [REDACTED]

OUR REF: RDM 1089026