

# Crown China Investigation – Analysis of new material

TRIM ID: CD/20/7861  
Date: 22 May 2020  
Version: 0.1



Victorian Commission for  
Gambling and Liquor Regulation

## Contents

<b>1</b>	<b>Document purpose</b> .....	<b>3</b>
<b>2</b>	<b>Background</b> .....	<b>3</b>
<b>3</b>	<b>Executive Summary</b> .....	<b>3</b>
3.1	New Information derived from the Class Action Witness Statements and Crown documents.....	4
3.1.1	Summary of key issues identified by the Working Group.....	4
<b>4</b>	<b>More detailed analysis</b> .....	<b>5</b>
4.1	Chronological summary of key incidents involving the provision of legal and/or risk advice from WilmerHale and/or Mintz.....	6
4.1.1	5 June 2012 - First engagement of WilmerHale (Flow chart 1).....	6
4.1.2	22 November 2012 - Macau Junket Operators are arrested (Flow chart 2).....	6
4.1.3	19 February 2013 - First receipt of written legal advice (Flow chart 3).....	7
4.1.4	26 March 2013 – Some Crown staff in China are withdrawn due to arrest of Crown customer (Flow chart 4).....	8
4.1.5	19 May 2013 - CHEN receives information that a crown junket operator was questioned by authorities and that the laws concerning gambling trips had changed (Flow chart 5).....	9
4.1.6	6 March 2014 – O’CONNOR receives information that Chinese authorities were going to arrest ‘anti-corruption people and anything to do with gambling or moving money out of the country (Flow chart 6).....	9
4.1.7	7-10 February 2015 – Announcement by Chinese government crackdown on foreign casinos activities in China seeking to attract Chinese citizens to go abroad to gamble (Flow Chart 7).....	11
4.1.8	20 February to 24 March 2015 – Crown consider not travelling to China and commence engagement of Mintz (Flow chart 8).....	14
4.1.9	19 June to 12 August 2015 – Korean casino staff arrested in China and escalation of same to CRL Board and questioning of Crown staff in China by police (Flow chart 9).....	17
4.1.10	12 October 2015 – Chinese state media CCTV News ‘Focus Report – Overseas casinos Building Networks in China (flow chart 10).....	26
<b>5</b>	<b>Summary of relevance of Class Action Witness Statements</b> .....	<b>34</b>
5.1	Witness statement of Rowena DANZIGER dated 17 December 2019.....	34
5.2	Witness statement of Geoff DIXON dated 20 December 2019.....	35
5.3	Witness statement of Drew STUART dated 17 December 2019.....	36
5.4	Witness statement of Michael JOHNSTON dated 17 December 2019.....	37
5.5	Witness statement of Michael CHEN dated 12 December 2019.....	39
5.6	Witness statement of Rowen CRAIGIE dated 17 December 2019.....	40
5.7	Witness statement of Jason O’CONNOR dated 17 December 2019.....	42
5.8	Witness statement of Jane PAN dated 17 December 2019.....	45
5.9	Witness statement of Barry FELSTEAD.....	46
<b>6</b>	<b>Summary of relevance of Expert Report of Margaret LEWIS</b> .....	<b>48</b>
6.1	Background.....	48
6.1.1	The questions addressed in the Report and the Addendum Report.....	48
6.1.2	Comments regarding the Report Summary (pages 4 to 7, points 10 to 23).....	49
6.1.3	Comments regarding specific questions in Report.....	50
<b>7</b>	<b>Changes recommended to existing Crown China Draft Report</b> .....	<b>56</b>
<b>8</b>	<b>Recommendations</b> .....	<b>60</b>

## 1 Document purpose

The purpose of this document is to provide an update to the Crown Steering Committee (the **Committee**) regarding the new information provided by Crown and assessed by the China working group. Further, to agree in principle with the recommended course of action, subject to Counsel's views and advice.

## 2 Background

On 11 March 2020, in response to a section 26 Casino Control Act 1991 notice issued on 27 February 2020, Crown Melbourne Limited (**Crown**) provided a further tranche of documents previously unseen by the VCGLR, in light of Crown's decision to partially waive legal professional privilege (**LPP**). In summary, these documents were:

- a. A detailed annexure attaching 53 documents totalling 558 pages. This Annexure detailed the status of Crown's redaction claims and brief particulars including as to why privilege was maintained or varied.
  - i. Crown waived LPP over 25 documents and provided them in full to VCGLR.
  - ii. Crown maintained LPP over 13 documents and generally related to the legal advice obtained by Michael Chen (**CHEN**) on behalf of Crown from Kenneth Zhou (**ZHOU**) of WilmerHale<sup>1</sup> in a number of matters regarding the detention of Crown's China staff, however, this advice was sought and obtained shortly after the detentions between 14 and 21 October 2016.<sup>2</sup>
- b. Crown maintained LPP regarding matters considered irrelevant to the Crown China investigation. These include documents detailing confidential settlements to third party suppliers, market sensitive pricing information not in the public domain and charges laid against Taiwanese employees of Melco Crown Entertainment (**MCE**) for alleged breaches of Taiwanese law.
- c. Witness statements filed by Crown in the class action (**Class Action Witness Statements**), noting that they contain LPP material but Crown has waived LPP. There are witness statements from nine Crown executives, board members and staff (totalling 89 pages) and a witness statement and expert report from Professor Margaret Lewis<sup>3</sup> was also provided (88 pages). Collectively, the annexures to all of the Class Action Witness Statements run for 2,864 pages.

As the Committee will be aware, the current Crown China Investigation draft report dated 29 May 2019 (the **Draft Report**) does not discuss legal advice sought/received by Crown regarding this matter as, at the time it was drafted, Crown did not waive LPP regarding this information.

## 3 Executive Summary

This report comprises of three main parts:

- Details of new information derived from the Class Action Witness Statements and documents disclosed since 11 March 2020;
- Analysis of the relevance of the information contained in these documents; and
- Changes recommended to existing the Draft Report as a result of the above.

### 3.1 New Information derived from the Class Action Witness Statements and Crown documents

#### 3.1.1 Summary of key issues identified by the Working Group

<sup>1</sup> ZHOU was the Partner of WilmerHale's Beijing office.

<sup>2</sup> Counsel for the VCGLR has advised that this information of less relevance to the VCGLR's investigation as it presumably related to the Chinese criminal process after the arrests were made, whereas the VCGLR's investigation focusses on the events leading up to the arrest and detention of Crown employees.

<sup>3</sup> Professor Lewis is a professor of law at Seton Hall University, New Jersey, whose research focusses on law in China and Taiwan.

## Legal Advice

1. Original legal advice from WilmerHale was provided verbally to CHEN and summarized by him.
2. When written legal advice was received, key aspects seem to either have been misunderstood or not considered by key staff (e.g. CHEN) or not escalated to key staff, for example
  - a. parts of the advice regarding 'kickback/referral fees' or 'profiting', in circumstances where Crown staff were remunerated based on gambling turnover; and
  - b. WilmerHale, on February 2015 advised not to "engage in activities...directly facilitating gambling offshore" yet CHEN emails his staff on 9 February 2015 to "keep pushing" and announced there is "no cap to [staff] bonuses" (based on gambling turnover).
3. Various staff have different understandings of what the law in China was.
 

For example: Barry Felstead (**FELSTEAD**) appears to have considered that it was unlawful to meet with groups of 10 or more and promote gambling and it was unlawful for staff to receive a commission from a customer. Jason O'Connor (**O'CONNOR**) appears to have thought that it was unlawful to organise groups of 10 or more to travel outside of China to gamble and, in relation to that group, receive a commission from those customers.
4. The different understandings may have arisen due to the fact that the advice was initially verbal and then summarized by CHEN and summaries or clear instructions to staff were not made available (excepting very general instructions like remaining "low key").
5. Further, there is a lack of clarity regarding what instructions Crown provided WilmerHale regarding its activities and operations in China. This is critical as Crown staff later ask for further advice regarding the legality of its operations in China, but it is not clear what WilmerHale's instructions regarding those activities and operations were.
6. It is noted that Professor Lewis considers the interpretation of Article 303 "by individual lawyers or by non-official sources should be viewed with caution." Professor Lewis argues that the "best place to ground an analysis of the criminal law is in the government's pronouncements."<sup>4</sup>

## VIP Focus Group

1. There appears to have been a focus group established by Crown (**VIP Focus Group**) (also known as the "VIP Working Group" or "VIP Work Stream Meetings") which met from at least February 2015 onwards. Key executives attended this, including Michael Johnston (**JOHNSTON**) a Director of Crown Resorts Limited (referred to as **Crown Resorts** or **CRL**).
2. We have not seen a terms of reference/charter for what the VIP Focus Group was designed to do. Different views existed:
  - a. CHEN considers it was designed to "identify any priorities to share with the Crown Board"
  - b. JOHNSTON considered it was an informal group that met irregularly to "grow the VIP business" and "assist if possible on issues as they arose"
  - c. O'CONNOR says the purpose was to deal with "issues or risks in the VIP international business generally"
3. The VCGLR does not have minutes or documents regarding the deliberation of this group, and it is unclear what was specifically discussed by the VIP Focus Group and whether the VIP Focus Group reported their deliberations further. It appears that it dealt with debt recovery [see below at 4.1.7.a] but is unknown what other issues the group discussed.

## The Korean Arrests – mischaracterisation and reporting

1. WilmerHale provide an extensive summary about what is known by them regarding the arrest of the South Korean casino staff<sup>5</sup>
2. Arguably, there were some similarities between Crown's operations and that of the South Korean operators – both were attempting to source Chinese nationals to gamble in their casinos and had staff "on the ground" working in China.
3. However, Crown management appeared to focus on the differences (stating variously that the Koreans, unlike Crown, were involved in "currency movements", were "aggressive", were

<sup>4</sup> Professor Lewis' Expert Report, para 4.4 and Crown document CWN 540 001 0024

<sup>5</sup> CROWN document CWN 502 050 2956 and CHEN's Statement para 94.

"contravening currency laws" and "bringing cash in and out of China" and "carrying bags of cash out of China in a manner that was illegal" and "transporting large sums of cash from customers in China"<sup>6</sup>

4. Whilst a Director of CRL alleged this matter was escalated to the Board, if correct, this was not documented or minuted in board meetings<sup>7</sup>. August 2015 Interview of Crown Staff (Benny Xiong)
1. None of the Class Action Witness Statements refer to this incident.
  2. Despite WilmerHale drafting a letter for Crown to reply to the Chinese Police in July 2015, and that emails indicate that Crown's in-house lawyers were involved, it does not appear this incident was escalated to the board at all and Crown maintains LPP regarding the advice received by its in-house lawyers.

#### Request for "fresh" legal advice

1. JOHNSTON allegedly asks CHEN and FELSTEAD around this time to obtain "fresh legal advice" after being advised of the arrest of South Korean casino staff.<sup>8</sup> CHEN says he does, but goes back to the same source (WilmerHale).<sup>9</sup>
2. This could have been an opportunity to either seek a second opinion, or alternatively, ask WilmerHale to reconsider the entire matter afresh and in light of the circumstances at that time.
3. It is noted that Professor Lewis considers while "PRC [People's Republic of China] lawyers have a wealth of information and experience", ultimately, they "do not speak for the PRC government and therefore "their interpretations are not authoritative." Professor Lewis argues that "efforts to understand the PRC government's definition of gambling crimes should be grounded in the text of laws, regulations, notices, interpretations, and other official guidance." Moreover, Professor Lewis argues "it is often difficult to find a firm basis upon which to assert what is a widely accepted view."<sup>10</sup>
4. In light of the above, it does cast doubt on whether or not additional legal advice would have assisted in these circumstances.

#### Misunderstanding the risk involved

1. Crown management did not appear to ever specifically identify the risk of their staff being detained or being accused of engaging in illegal activity. The Risk Register did not consider operational risks of Crown staff in China. It identified "Foreign Political Policy" as a risk but this was more an economic risk, rather than a compliance one.
2. O'CONNOR saw the risk as their staff being questioned about activities of any VIP customers, rather than Crown's own actions, and he considered that risk was not worthy of escalation.<sup>11</sup>

## 4 More detailed analysis

The following first six matters are considered 'new' in that they either contain information or issues that were not available to the Working Group or the Commission previously and are considered material in light of the report. Other incidents detailed already in the report are expanded upon based on new information contained in the statements and their attachments and the WilmerHale advice.

### 4.1 Chronological summary of key incidents involving the provision of legal and/or risk advice from WilmerHale and/or Mintz.

#### 4.1.1 5 June 2012 - First engagement of WilmerHale (Flow chart 1)

On or about 5 June 2012, CHEN appeared to first engaged WilmerHale verbally on behalf of Crown to provide legal advice as he heard general rumours of a government crackdown. CHEN wanted to obtain legal advice to ensure that Crown's team in China was operating lawfully and also wanted to have an

<sup>6</sup> CHEN's statement para 97; FELSTEAD's statement para 37; O'CONNOR's statement para 95

<sup>7</sup> JOHNSTON's statement para 27; FELSTEAD's Statement para 45; Documents CWN 519 001 6896 and CWN 519 001 7232

<sup>8</sup> JOHNSTON's statement, para 24.

<sup>9</sup> See CHEN's statement, para 92 and Crown document CWN 502 050 2956

<sup>10</sup> Professor Lewis' Expert Report, para 3.4.2 and Crown document CWN 540 001 0021

<sup>11</sup> O'CONNOR's statement para 123.

action plan in place in the event that Crown staff were approached by authorities for questioning. WilmerHale's advice was provided verbally to CHEN via telephone. CHEN then emailed WilmerHale to summarize his understanding of their advice. This was subsequently relayed to three members of CHEN's staff in a two-hour conference call involving WilmerHale. It does not appear that WilmerHale's legal advice was provided in writing at this time.

In summary, WilmerHale's verbal legal advice (as summarised by CHEN) was allegedly that:

- a. It is not illegal to be selling offshore gaming within China. There are laws that prohibit the marketing of gaming onshore (for more than 10 people);
- b. That said, because gaming is a sensitive topic, their recommendation was to be cautious and avoid openly marketing;
- c. They have lots of advice on the rights of the staff if asked for questioning and how one might respond. They shared the "tricks" that the authorities may use to "shade"<sup>12</sup> the interview in a direction or intimidate an interviewee; and
- d. They dispensed with rumours about people being detained overnight, and taken away for 6 months, etc.

On 14 June 2012, CHEN e-mails his 'takeaways' from WilmerHale to O'CONNOR including:

*'Wilmer Hale said that it is not illegal to be selling offshore gaming within China. There are laws that prohibit the marketing of gaming onshore (for more than 10 people). That said, because gaming is a sensitive topic, their recommendation was still to be cautious and avoid openly marketing'<sup>13</sup>*

#### Comments/Analysis

- a. The legal advice regarding the '10 or more people', and what activity it relates to, or CHEN's understanding/summary of it, is not clear.
- b. The Legal advice was not in writing from WilmerHale to Crown (or CHEN) at this stage.
- c. CHEN e-mails his understanding of the legal advice back to WilmerHale that the risk of prosecution is low if employees are personally not profiting from movement of money.
- d. The advice was relayed to only three China based staff and it is unclear what, if anything, was relayed from them to other China based staff.

#### 4.1.2 22 November 2012 - Macau Junket Operators are arrested (Flow chart 2)

On 22 November 2012, CHEN sent an email to Debra Tegoni (**TEGONI**) (Crown's Legal Counsel) regarding the recent arrest and detention of Macau junket operators. He noted in his email that the advice from WilmerHale was that our activities in China were entirely legal but that it was necessary to provide guidance on what staff should do in the event they got the proverbial 'knock on the door' from authorities.

CHEN states that at this point in time, and up until the arrest of the Korean casino staff in June 2015, it was his understanding, *'based upon media reports and my discussions with my informal networks, that the Chinese government was focusing on gambling customers rather than operators (due, in part, to the government's apparent focus on anti-corruption measures).'*

On 22 November 2012, CHEN sent an email to a number of Crown staff in China where he attached 'reception guidelines' provided by WilmerHale and he *'...assured the staff that we had a strong team in place (including our external counsel, WilmerHale) to assist should they be approached by any government body.'*

#### Comments/Analysis

- a. CHEN tells TEGONI that WilmerHale have advised that what Crown are doing is an entirely legal activity in China however there is no evidence of what was relayed to WilmerHale as to the nature and scope of Crown's activities in China.
- b. There is no evidence of any legal advice being provided in writing at this stage.
- c. There is no evidence that TEGONI sought any clarification regarding this matter.

<sup>12</sup> Possibly, "shape"?

<sup>13</sup> CHEN's statement para 40 and Crown document CWN 514 059 7986.

- d. CHEN states it was **not unusual** for staff of foreign companies to be asked to cooperate in government investigations however O'CONNOR states *'I saw the risk that sales staff might be questioned by local authorities about customer activities as a risk of low likelihood with two tiers of consequential risk on materialisation of that risk'*<sup>14</sup>. CHEN and O'CONNOR's comments reflect a different understanding of potential risks faced by Crown staff in China especially given CHEN's role 'on the ground' in China and O'CONNOR as his direct report in charge of VIP International.
- e. There is no evidence of the escalation of this issue beyond O'CONNOR at this stage.

#### 4.1.3 19 February 2013 - First receipt of written legal advice (Flow chart 3)

On 19 February 2013, CHEN sought further advice from WilmerHale regarding the legality of marketing an overseas casino business in China. CHEN was sent an email from WilmerHale that summarized the legislation in relation to organizing group gambling.<sup>15</sup> This was forwarded to other Crown staff and escalated to O'CONNOR with TEGONI being copied in. The reason for this request for advice is not stated.

CHEN states that the summary provided by WilmerHale confirmed his view that Crown was not contravening the law because:

- (a) it was not organizing a gathering of 10 or more citizens for overseas gambling; and
- (b) Crown staff did not receive kickbacks or referral fees.

The advice states:

*'As such, to constitute an offence of organizing group gambling (聚众赌博) in connection with organizing overseas gambling, two elements must be shown at the same time*

*(a) organize/gather 10 or more PRC citizens for overseas gambling; and*

*(b) the organizer benefits from such activities by receiving a kick back or a referral fee.*

*In other words, the organizer conducts such activities for purpose of make a profit for himself.'*

CHEN also states<sup>16</sup> that in 2013 he had a discussion with a partner of WilmerHale (possibly ZHOU) as to what constitutes a "commission" in Chinese law. He said he told the WilmerHale partner *"that the remuneration and incentive structure of staff operating in China included a base salary plus a bonus derived from performance thresholds for the VIP group covering all regions (including those outside of China) and performance thresholds for the VIP group in the region (including China)"*. He states that he was told that Crown's compensation structure would **not** qualify as a commission for the purposes of Chinese law.

#### Comments/Analysis

- a. There is no written advice regarding any definition as to what constitutes a **'...kick-back or referral fee.'** The statement in ZHOU's email, namely *"in other words the organizer conducts such activities for the purpose of making a profit for himself"* does not appear to have been addressed or considered, excepting CHEN's recollection of his discussion with someone at WilmerHale regarding commissions.
- b. It is noted that Professor Lewis does extensively address what a "kickback or referral fee" means in her expert report. Professor Lewis argues there is a "lack of clear guidance regarding what the terms mean in the context of gambling crimes, there is no use of 'referral fee' in the PRC Criminal Law itself and 'kickback' is closely associated with bribery crimes." Professor Lewis explains that examples from other contexts indicate that "both a 'kickback' and a 'referral fee' are obtained from an outside entity as compared with being a transfer of funds between two people within the same organisation." Professor Lewis also explains that "any kickback or referral fee would presumably be a thing of value and, thus, this element is a more specific

<sup>14</sup> O'CONNOR's statement para 77.

<sup>15</sup> Crown document CWN 514 071 6286

<sup>16</sup> CHEN's statement para 50.

form of the 'for the purpose of profit' requirement that applies to the entire first paragraph of Article 303."

#### 4.1.4 28 March 2013 – Some Crown staff in China are withdrawn due to arrest of Crown customer (Flow chart 4)

In March 2013, CHEN became aware of a Crown customer being detained in China. Due to the risk of Crown staff being exposed to questioning by Chinese authorities, it was decided to temporarily withdraw those staff members from China. CHEN saw the risk of them being exposed to questioning as to put at risk other customers and Crown as they might disclose confidential information.

On 23 March 2013, CHEN emailed O'CONNOR and FELSTEAD and amongst other things stated

*'We received definitive advice that the activities that we undertake in China do NOT violate any criminal laws.'*

CHEN also reinforces the risks faced in China by their staff:

*'This is one thing that it is important to understand when it comes to the China team. They are living in constant fear of getting tapped on the shoulder. In a country where due process is inconsistently applied, it is a risky place to be for all of our team. This overall feeling is not uncommon.'*

In his witness statement, O'CONNOR states he can't recall receiving and reading the above email from CHEN and that from mid-2012 to October 2016 based on emails and conversations with CHEN it was his understanding that it was illegal to organise for groups of 10 or more to travel outside of China to gamble and in relation to that group to accept a kickback or commission from that group.

In his witness statement, FELSTEAD does not comment in relation to the above email from CHEN. He states that he first became aware of CHEN obtaining legal advice from WilmerHale no later than March 2013 and that he gained his understanding of the legal restrictions in China based on conversations with O'CONNOR and CHEN and legal advice from WilmerHale. He states he understood these legal restrictions to be:

*'It was unlawful to meet with groups of 10 or more Chinese gamblers for the purposes of promoting gambling. It was unlawful for staff to receive a commission payment from a player.'*

#### Comments/Analysis

- a. FELSTEAD and O'CONNOR's understanding of the law in China is based on CHEN's advice and what they received from WilmerHale but both O'CONNOR and FELSTEAD appear to have had differences of understanding.
- b. FELSTEAD appears to have considered that it was unlawful:
  - i. to **meet** with groups of 10 or more and promote gambling and
  - ii. it was unlawful for staff to receive a commission from **a player**.
- c. O'CONNOR appears to have thought that it was unlawful:
  - i. to **organise** groups of 10 or more to travel outside of China to gamble and
  - ii. to receive a commission from that **group**.

#### 4.1.5 19 May 2013 - CHEN receives information that a crown junket operator was questioned by authorities and that the laws concerning gambling trips had changed (Flow chart 5)

On 19 May 2013 CHEN emailed WilmerHale and advised that one of the junket operators that Crown utilises had called him today and told him he was detained by authorities and that:

*'He reported that over 100 "agents"/junkets had been detained for questioning. He also claimed that the government had revised the laws governing the organization of gambling trips and that one no longer needed to be receiving a commission in order to be in violation of the rule prohibiting the organization of gambling for more than 10 people.'*



*I was wondering if you could verify whether such law has indeed been changed or verify that it has not?*

**WilmerHale responded:**

*'We checked and the law remains unchanged. We also checked recent judicial interpretation and there was no new judicial interpretation in this regard.'*

**CHEN forwarded the following to certain Crown staff based in China and FELSTEAD and O'CONNOR:**

*'Our law firm has confirmed that there has been no change in the laws governing the organization of groups for gambling. The former advice remains unchanged.'*

#### **Comments/Analysis**

- a. There is no evidence that Crown followed up as to why the junket operator was questioned and if this had any specific relevance to Crown's operations in China.

#### **4.1.6 6 March 2014 – O'CONNOR receives information that Chinese authorities were going to arrest 'anti-corruption people and anything to do with gambling or moving money out of the country (Flow chart 6)**

On 6 March 2014 O'CONNOR received a text message from Veng Anh (**ANH**) VP International Sales that reads:

*'Hi boss, I am not at work yet boss but just a call from Xu with inside information from China, strictly silent. From April to May, China government will begin to arrest a lot anti-corruption people and anything to do with gambling or moving money out of country. Warn us not to enter China at this time and should remove all our staffs out of the country for 1month, that is his advice. Please inform Michael and Alfred to let his staffs to be alert.'*

O'CONNOR states that he did not interpret this to mean that the Chinese government was targeting casinos or casino staff.<sup>17</sup> He also states that CHEN heard this from another source connected to XU. ANH also advises that the source works for the Chinese government, is very accurate and it will have a big impact on our business.<sup>18</sup>

On 6 March 2014, following the text message exchange with ANH, O'CONNOR sent an email with the subject line 'China debts' to Roland Theiler (**THEILER**), Senior Vice President of International Business for Crown Melbourne, copied to CHEN. O'CONNOR states that THEILER works in the VIP International business unit and oversees credit assessment and issuance of credit as well as debt recovery for Crown Melbourne and Crown Perth.

The focus of O'CONNOR's email was;

*'We have heard from a couple of sources that the central government in China is about to 'crack down' on corruption with a particular focus on casino links. We should triple our efforts to get outstanding debts paid ASAP. Can you identify those debts that may be at risk if this rumour is true and we can focus the team on collecting?'*

THEILER responded with a list of 20 Chinese gamblers and their debts and CHEN responded to O'CONNOR with:

*"Spoke to 6 inch. He doesn't think there will be anything major. There will be some small examples made but he doesn't think it's anything major."*

On 6 March 2014, CHEN emailed WilmerHale to request advice on behalf of Crown:

*'The reason I am writing is that we have recently received a tip from a well-placed government family that the Chinese government is about to escalate their campaign against corruption starting in April targeting gambling. Have you heard any rumblings*

<sup>17</sup> O'CONNOR's statement, para 82.

<sup>18</sup> Crown document CWN 514 091 8126.

*of this and if so, could you advise what risk that may put my staff in and what precautions we ought to be taking?'*

WilmerHale's response includes:

*'...we also noted that CDC [The Chinese Community Party's Central Disciplinary Committee] has recently re-emphasized the importance of enforcing two CDC's earlier decrees (attached) both of which mentioned gambling as a form of corruption. Based on the above, it is possible that government launch another campaign against corruption after the closing of the two sessions this month. April to June is perhaps a sensitive period in particular.'*

No specific legal advice is provided and WilmerHale advises CHEN to avoid marketing to senior government officials or leaders of state-owned enterprises.<sup>19</sup> CHEN forwards the advice of WilmerHale to Alfreed Gomez (**GOMEZ**) (a senior China based Crown employee) and stated *'for your eyes'*. CHEN states *'I believe that I told the Crown team in China to be careful when dealing with government officials.'*

#### Comments/Analysis

- a. The original information to O'CONNOR is that the Chinese authorities may arrest a lot of people regarding corruption, anything to do with gambling or moving money out of the country.
- b. However, O'CONNOR does not appear interpret this to mean they are targeting casinos or casino staff despite the warning in ANH's text message to move all China based staff out of the country for one month. O'CONNOR does not relay the full text message exchange but focused on the credit risk to Crown.
- c. CHEN's request for advice from WilmerHale appears to be operational, practical risk mitigation advice rather than a request for legal advice.
- d. WilmerHale appears to provide practical advice regarding: avoiding marketing to Chinese Govt. connected officials plus 2 CDC earlier decrees both of which mentioned gambling as a form of corruption. It is not clear what their decrees are and if they were considered/analysed/escalated by Crown.
- e. CHEN forwarded the WilmerHale advice to GOMEZ but there is no evidence whether other China based Crown staff were made aware of the initial information that O'CONNOR received or the WilmerHale advice.
- f. CHEN speaks to '6-inch' – we do not know who '6-inch' is and therefore whether CHEN's reliance on 6-inch's opinion (that it will not be "anything major") is reasonable to rely on.
- g. O'CONNOR text response 'let's hope he's right' similarly does not appear to reflect a considered analysis of the situation.
- h. The advice from WilmerHale appears to have been escalated to FELSTEAD but we do not have evidence that it went beyond him.

#### 4.1.7 7-10 February 2015 – Announcement by Chinese government crackdown on foreign casinos activities in China seeking to attract Chinese citizens to go abroad to gamble (Flow Chart 7)

This is detailed within the draft Commission report,<sup>20</sup> excepting the provision of the correspondence between WilmerHale and Crown as detailed below.

In addition, the witness statement of JOHNSTON details his understanding of events at this time and this is also detailed below for its relevance of the escalation of this significant event.

On 9 February 2015, CHEN sought advice from WilmerHale emailing and stating:

*'I don't know if you have seen the recent news suggesting that the Chinese government will start targeting foreign casinos trying to attract Chinese gamblers.'*

<sup>19</sup> Crown document CWN 502 061 0283 *"We suggest that during this period, more robust internal control be put in place, e.g., our staff when conducting marketing activities should do necessary background check on relevant individuals to avoid marketing to senior government officials or leadership of leading State-owned enterprises."*

<sup>20</sup> See Para 222-226 Draft Report.

Here is a recent article: <http://www.bloomberg.com/news/articles/2015-02-06/china-to-clamp-down-on-foreign-casinos-wooing-Chinese-gamblers>. We have a very nervous China staff seeking guidance on whether this should change any of their protocols and procedures. We are also in the midst of a major recruiting effort which this impacts. I would like some advice from Wilmer as to what you all know about this initiative and advice as to how it should or should not impact us. Obviously, I'd like to be able to calm the nerves of both staff and prospective candidates.'

Wilmer Hale responded stating:

*This appears to echo Chinese government's recent efforts to tighten controls on Chinese individuals gambling in Macau which was highlighted by President Xi's visit to Macau in December 2014.*

*We have also conducted some researches on recent enforcement cases relating to closure of foreign casino's representative offices in China but found very little information.*

*There were a number of cases in the past where foreign casino's rep offices in China were closed and employees were detained. These cases not only involved facilitating gambling, but also typically involved money laundering, i.e., employees of rep offices directly involved in money laundering activities to help their customers transfer money offshore.*

*Based on the above, I would think that the following points are important:*

- *Foreign resort/hotel's rep offices and employees in China are protected under law so long as the rep offices/employees' activities are not in violation of law. Introducing hotel/resort facilities to potential customers itself should not be any problem because this is what the rep offices are supposed and licensed to do (liaison and marketing).*
- *Employees should certainly not be involved in any money laundering activities. Employees should also avoid dealing with government officials to the extent they can because of the ongoing anti-corruption campaign.*
- *Given the highlighted government efforts to crack down on rep offices with core business to facilitate Chinese individuals gambling abroad, the company's rep offices/employees in China should focus its business on introducing the hotel/resort and facilities, rather than engaged in any activities which may be viewed as directly facilitating Chinese individuals gambling offshore.*

CHEN then asks WilmerHale in an email:

*Can you confirm that there has been no change in laws that would alter your prior advice regarding our activities in China?*

*As you may recall, the prior understanding of the law was that organizing groups of 10 or more for gambling while receiving a commission was clearly illegal. Since none of our staff receive commission, we were in compliance with that law. Wilmer also previously advised as you have below that the staff should not be involved in money laundering activities and should certainly not receive any commission for the movement of money. To the best of our understanding, our staff also does not engage in any of these activities.*

WilmerHale responded:

*'There is no recent change to law.'*

CHEN then asks:

*'How about if staff assists or refers with remittance of money'*

WilmerHale responded:

*'If staff knows about a third party engaged in money laundering activities and still moves money on their behalf, it will be problematic under law. If staff knows that certain arrangements to remit the money is not in compliance with law, and still assists the customer to do so, it will also be problematic.'*

*Given the current enforcement environment, it will be prudent for staff not to be involved in the money-moving activities because it can be easily interpreted as an effort to facilitate overseas gambling.'*

### Comments/Analysis

There is a lack of clarity regarding what instructions Crown provided WilmerHale regarding its activities and operations in China. On 9 February 2015 CHEN tells WilmerHale "we have a very nervous China staff seeking guidance on whether this should change any of their protocols or behaviours", however CHEN doesn't elaborate what the protocols or behaviours are. This is critical as Crown staff later ask for further advice regarding the legality of its operations in China, but it is not clear what WilmerHale's instructions regarding those activities and operations were.

#### a. Relevance of Witness Statement of Michael JOHNSTON

JOHNSTON, non-executive director of Crown since July 2007 and also the finance director of Consolidated Press Holdings Pty Ltd, states:

*'I became aware of reports that the Chinese authorities might be focusing attention on foreign casinos through a VIP focus group meeting in or about February or March 2015. I cannot recall precisely when that VIP focus group meeting occurred, but it predated the South Korean arrests in June 2015.'*

*In response, I asked Michael Chen and Barry Felstead whether they were sure that Crown's operations in China were in accordance with the law. They assured me that they were, and that the focus of the Chinese authorities was on some operators that were abusing China's currency transfer restrictions.'*

*I was a member of a VIP focus group which met a number of times before the Relevant Period and on about four occasions during the Relevant Period. The idea behind this group was to focus attention on growing the VIP business and to assist if possible on issues arising. Crown had a number of groups of this kind that focused on growing or important areas of Crown's business: there was a focus group in relation to the development of a Crown property in Sydney, for example, and another in relation to Crown's gaming machine business.'*

*The VIP focus group was not a formal committee and met irregularly. Attendance at the group varied. People who attended during the Relevant Period included Barry Felstead, Jason O'Connor, Roland Theiler and Michael Chen, who would typically attend by phone. Rowen Craigie may have attended once during the Relevant Period.'*

*The VIP focus group was not specifically focused on China. To the extent that it considered mainland China, a significant portion of the discussions related to how (if at all) debts owed by mainland Chinese patrons might be recouped and the credit policy appropriate for such customers.'*

Whereas, CHEN considered that the VIP focus group was a conduit to the Crown Board and states:

*I cannot now recall the dates, I also attended (usually by telephone) a VIP focus group meeting which discussed VIP strategy generally, including opportunities for growth and **identified any priorities to share with the Crown board**. This meeting typically occurred every month or so, and was attended by Jason O'Connor, Barry Felstead, Roland Theiler, Mike Johnston – Director of Crown, Ken Barton – Chief Financial Officer of Crown and Mr*

Brad Kady (a director of Consolidated Press Holdings Limited)<sup>21</sup>

b. Escalation of issue to Board member via VIP Focus Group

JOHNSTON was part of the VIP focus group. He was therefore aware that there was an announcement of crackdown on foreign casinos. There is no evidence that this announcement was raised and discussed at Board level (despite JOHNSTON being a board member) or the subject of discussion in Crown's formal risk management processes. There is no evidence of any minutes or agenda of the VIP Focus Group.

Only CHEN in his statement references the alleged purpose of the VIP Focus Group, being "opportunities for growth and identify any priorities to share with the Crown Board."<sup>22</sup>

Collectively, this could be construed as indicative of a poor governance system in place whereby it is unknown if members of the VIP Focus Group share an understanding of its collective purpose, in addition to the lack of documented accountability for the group.

c. Previously redacted LPP material

It should also be noted that on 7 February 2015 in an email FELSTEAD refers to the article headed '*China to crackdown on foreign casinos seeking Chinese gamblers*' as a challenge to you both (CHEN and O'CONNOR).

CHEN seeks advice from WilmerHale on 9 February 2015 stating he would like to calm the nerves of staff and candidates and advice how the announcement of the Chinese Governments may impact Crown – arguably, this is not strictly legal advice.

WilmerHale's advice is to focus on marketing the resort/hotel facilities and not to be viewed as directly facilitating Chinese individuals to gamble offshore.

It does not appear that this advice was heeded, as on 9 February 2015 CHEN opens his email to all the VIP International staff by telling them to '*keep pushing and no cap to bonuses.*'

CHEN also emails the VIP International staff on 9 February (the day **before** he actually asks ZHOU on 10 February to confirm if there has been any change in law) and states that he have been given advice from outside Counsel that the activities that we currently undertake (that is the promotion of overseas gambling and tourism) are indeed legal in China.

Despite these email chains and associated documents, O'CONNOR can't recall<sup>23</sup> the news of the announcement by the Chinese government being a crackdown on foreign casinos and he can't recall discussing this. This seems incongruous to the actual emails and the importance of the announcement and the possible effect on Crown's business that O'CONNOR himself refers to.

d. Different interpretations held regarding legal advice

There are slight differences in CHEN, FELSTEAD, O'CONNOR and Jane Pan's (PAN) (International Sales Manager Shenzhen and Zhuhai) understanding of the Chinese gambling law at this time. All these understandings stemmed from CHEN as the originating source according to PAN, O'CONNOR and FELSTEAD. FELSTEAD also references that he gained some understanding from the advice of WilmerHale in emails he received from CHEN.

In short, CHEN's view is that it was not illegal facilitating Chinese nationals gambling offshore<sup>24</sup> if Crown was not organising 10 or more people AND Crown staff were not receiving a commission ('commission' was verbal legal advice from WilmerHale that it did NOT include a commission as being a part of staff remuneration 'bonuses' for facilitating gamblers to go overseas to gamble.

FELSTEAD appears to have considered that it was unlawful to meet with groups of 10 or more and promote gambling and it was unlawful for staff to receive a commission from a player.

<sup>21</sup> CHEN's statement para 17.

<sup>22</sup> CHEN's statement para 17 "*I also attended (usually by telephone) a VIP Focus Group meeting which discussed VIP strategy generally, including opportunities for growth and identified any priorities to share with the Crown board.*"

<sup>23</sup> Both at interview and O'CONNOR's statement para 86-87.

<sup>24</sup> CHEN's statement para 81.

O'CONNOR's view again differs, in that he appears to have thought that it was unlawful to organise groups of 10 or more to travel outside of China to gamble and to receive a commission from that group.

PAN differs in that her view is that CHEN said words to us to the effect that it was only illegal if we organised a group of 10 or more gamblers to attend a foreign casino together on the same trip, and if we received a commission from clients for doing so.

Crown's response to some of the issues raised in this timeframe include:

*'Around this time, Crown planned to open their own offices in China. CHEN was supportive of this. WilmerHale advised them not to have any gaming material in those offices. FELSTEAD considered this impractical if they were "non gaming offices". The proposal did not proceed.'*<sup>25</sup>

#### 4.1.8 20 February to 24 March 2015 – Crown consider not travelling to China and commence engagement of Mintz (Flow chart 8)

On 20 February 2015, O'CONNOR sent an email to CHEN asking:

*'Are you (we) comfortable with folks travelling through PRC at the moment.*

*I recall that about this time, mid-February to early March 2015, VIP International was planning its March roadshow and I did have some hesitation about executives of Crown, and in particular Alfreed Gomez, travelling through China. My hesitation stemmed from the detention on or about 29 April 2014, of a Chinese VIP customer of Crown, Chen Ji Hong also known as Michael Chen and referred to as 'MC1' or 'CJH' within VIP International, on suspicion of bank fraud. Barry, Michael and I had been scheduled to meet with Chen Ji Hong on the day he was detained. I knew Alfreed had been in phone contact with Chen Ji Hong and that the authorities, likely having access to all of Chen Ji Hong's records, may wish to question Alfreed about his communications and dealings with Chen Ji Hong. I was concerned for Alfreed's welfare should he be questioned as well as the possibility that he, or Michael Chen or other executives higher up in the VIP International reporting structure, could be questioned about other Chinese VIP customers, potentially exposing those customers and affecting both their welfare and Crown's future VIP revenue.'*<sup>26</sup>

On 20 February 2015 CHEN responded:

*'Yes'.*

On 24 February 2015, CHEN emailed WilmerHale and stated:

*'The climate has gotten quite destabilized. We have competitors that have pulled their entire teams out of China. Could you please advise whether you think our executives should be avoiding entering China and whether we should be pulling staff out?'*

CHEN makes no reference in his email or statement to O'CONNOR's concerns regarding GOMEZ and the Chinese gambler. He states that his reference to:

*'Crown's competitors pulling staff out of China reflected a rumour I had heard rather than any concrete awareness on my part. I do recall that, at one point, there was a rumour about Marina Bay Sands pulling their staff out but, when we looked into it, all they had done was to turn their staff in China into consultants'*

On 25 February 2015 WilmerHale responded:

*'I agree that it seems prudent to limit travels of senior executives to Mainland China at this point given that the regulatory environment is being tightened up and the picture is not entirely clear. I am not sure whether it has come to the point that you have to pull the entire team out of China. One option is that you could have some key employees tentatively work outside China (e.g. Hong Kong).'*

<sup>25</sup> Email from FELSTEAD to CHEN on 10 Feb 2015 (Crown document CWN 502 016 8751)

<sup>26</sup> O'CONNOR's statement para 92.

CHEN responded:

*Interesting. I was prepared to go into China but your advice is causing me to have second thoughts.*

No more advice is sought from WilmerHale at this stage and CHEN shortly after engages with Mintz.

On 4 March 2015 O'CONNOR again expressed his concern to CHEN regarding travelling:

*I really think we should reconsider going into PRC. Remember, Alfreed will have phone calls etc with CJH.'*

CHEN responded:

*'Who is CJH? I am getting further advice from ex-CIA.'*

CHEN then commenced his engagement with Mintz as he states to:

*'...conduct a risk assessment of the current situation in relation to corruption investigations in Macau and their potential effect on Crowns staff in China. I wanted to get advice on behalf of Crown as to whether Crown should be pulling its staff out of China and whether Crown executives should avoid entering China.'*

On 13 March 2015, CHEN conducts a team call with the China based Crown staff and prepared a written note of 'Key Messages' from Wilmer Hale and Mintz. He 'cuts and pastes' from WilmerHale advice of 9 February 2015 the following:

*'From our lawyers:'*

*Foreign resort/hotel's rep offices and employees in China are protected under law so long as the rep offices/employees' activities are not in violation of law. Introducing hotel/resort facilities to potential customers itself should not be any problem because this is what the rep offices are supposed and licensed to do (liaison and marketing).*

*Employees should certainly not be involved in any money laundering activities. Employees should also avoid dealing with government officials to the extent they can because of the ongoing anti-corruption campaign.*

*Given the highlighted government efforts to crack down on rep offices with core business to facilitate Chinese individuals gambling abroad, the company's rep offices/employees in China should focus its business on introducing the hotel/resort and facilities, rather than engaged in any activities which may be viewed as directly facilitating Chinese individuals gambling offshore.*

*There is no recent change to law.'*

CHEN does **NOT** have in his note of key messages the WilmerHale advice regarding limited senior travel to China or the option of operating out of Hong Kong.

CHEN is provided with 'Project Wager' memorandum from Mintz on 13 March 2015. The first paragraph states:

*'It would be risky to send marketing staff to mainland China at the moment as "everything in Macau is very sensitive," according to the journalist. In making this judgment, the source cited a Ministry of Public Security official's comments last month that China would fight attempts by foreign casinos to lure Chinese citizens overseas.'*

However, CHEN chooses **NOT** to include this statement in his written note of 'Key Messages' for his staff, but does include other parts of the advice from Mintz which indicate the risk of marketing in China is not as great. For example:

*'According to sources working in the Public Security Bureau (PSB) system in China, most provincial levels of PSB have intelligence units that routinely monitor people who*

*engage in the gambling business. PSB has a network of informants, including casino representatives from overseas, and are routinely developing new contacts that could provide valuable information to help their cases. PSB is especially interested in developing sources who could access information relating to cases with significant amounts, such as anti-money laundering cases.*

CHEN is concerned enough regarding travelling to China at this time that he emailed O'CONNOR on 23 March 2015 and said:

*'Subject Detention In the event that I am detained in China during any payroll period please note that I am providing Crown with instructions to divide my paycheck into 3 payments. This is simply for the abundance of caution.'*

#### Comments/Analysis

- a. Chen chooses not to seek any further legal advice beyond WilmerHale's advice of 25 February 2015.
- b. There is no evidence that CHEN relays to staff or to O'CONNOR and/or FELSTEAD the advice of WilmerHale on 25 February 2015 regarding limiting senior travel or have staff working out of Hong Kong.
- c. CHEN then seeks a new source of advice from Mintz Group shortly after this advice from WilmerHale.
- d. When CHEN briefs his staff on 13 March 2015 his briefing notes show that he cuts and pastes from earlier WilmerHale advice of 25 February but he does not include certain advice from Mintz (in particular, the first paragraph) that states it's risky to send marketing staff to China at the moment.
- e. O'CONNOR raises the detention of Chen Ji Hong aka MCI aka CJH as a reason not to travel on 20 February 2015. He states that CJH was detained on 29 April 2014. This was 10 months before he raised it as an issue. If the detention of CJH was such a risk how come CHEN did not know who he was or why wasn't it raised earlier?
- f. Neither CHEN nor FELSTEAD make any statement re 'CJH'. O'CONNOR at interview and in his witness statement reiterated that he thought at this time that China was undertaking a crackdown on corruption rather than a crackdown on foreign casino operators.
- g. It should have been apparent to key staff and Crown management that there was an escalated risk environment given the advice of Mintz, WilmerHale (to limit senior executive travel) and CHEN's own suspicion he may be detained. Note that we do not have evidence that CHEN escalated the WilmerHale advice of 25 February 2015 regarding limiting travel of senior executives.
- h. Despite presumably agreeing to commission the Mintz report after a request from O'CONNOR there is no evidence that FELSTEAD requested and/or received a copy of it despite its importance to Crown's operations in China.

#### 4.1.9 19 June to 12 August 2015 – Korean casino staff arrested in China and escalation of same to CRL Board and questioning of Crown staff in China by police (Flow chart 9)

This section focusses on the new information that is pertinent to this matter including:

- the statements of JOHNSTON and FELSTEAD that show the Korean arrests were escalated to CRL Board level on 12 August 2015. It also details the previously redacted WilmerHale advice and its context; and
- The questioning of Crown employees in China on 9 July 2015 by Chinese authorities and the fact that this incident was never escalated beyond FELSTEAD.

On 19 June 2015, CHEN states he first read that staff working for Korean casinos in China had been arrested.

On 19 and 20 June 2015, CHEN sought advice from Mintz and advised FELSTEAD, O'CONNOR and the VIP international sales team that he was doing so.



On 22 June 2015 CHEN asked WilmerHale:

*I was wondering if you had any details as to the background behind the recent arrests of Crown casino marketing staff. My contacts have confirmed with the PSB that the 14 marketers were indeed detained. The real question for us relates to what the basis was for the detention and did it involve activity beyond what we normally would do. Do you and your contacts have any insight into this? I have a nervous team, so I would really appreciate any prompt information.'*

References to possible 'money laundering' or 'foreign currency violations' issues are highlighted in yellow to show that while these issues were a concern as to how the Koreans were alleged to have operated, there were also other issues and similarities to Crowns operations.

On 23 June 2015, WilmerHale responded to CHEN:

*We have done some background check. At this point, there is limited information on the arrest. We know about the following:*

- *The employees were arrested last Wednesday.*
- *The potential charges include luring Chinese to gamble in Korean casinos and violation of Chinese foreign currency policies.*
- *The 14 Korean employees were not based in China, rather they have travelled to China to conduct marketing activities. They worked with local Chinese travel agencies to attract Chinese gamblers to gamble in Korea.*
- *Paradise and GKL are the two top foreigners-only casinos in Korea, and many of their players are from China.*

*We would think that this should be read in the following context:*

- *The general background is still Chinese government's continued crackdown on corruption in recent years.*
- *Chinese government's anti-corruption enforcement in recent years has been focusing on Macau and thus drawing players from Macau. Chinese gamblers have started to travel more frequently to neighbouring countries/regions such as South Korea, Malaysia, and Vietnam and others. South Korea has been one of the most popular destinations for Chinese tourists in recent years including Chinese VIP gamblers. Many new entertainment/casino projects are being constructed. For instance, Hong Kong-based Chow Tai Fook Enterprises has announced early this year its plan to invest billions of dollars in casino projects in Incheon, South Korea, and Vietnam. The above has clearly caught the attention from Chinese government.*
- *The two Korean casinos Paradise and GKL have been penalized by Korean law enforcement agencies in the past for violation of currency policies. The reported misconducts involved receiving RMB and other foreign currency in their respective offices in China and other foreign countries and then giving gamble chips to foreign gamblers when they arrived at the casinos in Korea. This is a violation of both Korean and Chinese currency regulations. These make the two casinos easy targets for Chinese government enforcement actions based on reasons that they have violated Chinese foreign currency control policies.*
- *In addition, Paradise and GKL are the top two foreigners-only casinos in Korea with a major portion of their players from China. Combined with their historical compliance records in terms of violation of currency policies, it is not a surprise that Chinese government picked them as the enforcement targets.*
- *Finally, because of MERS, Chinese government has been discouraging Chinese tourists to travel to Korea recently. Sending people to China to*

actively soliciting tourists to Korea at this point itself does not seem to be wise.

On 24 June 2015 CHEN received advice from Mintz that includes:

*The arrest last week in Beijing is well known among Korean junkets. Most of Korean based junkets don't feel surprised though as they know prompting gambling in China is illegal. They have field people in China, but they don't do the most critical and potentially incriminating works, for example, facilitating the cash and debts. They fly people in from Korea for those tasks. Despite the arrest, a few Korean junkets said business for Jeju casinos is still fine.*

*MERS has significant impact to casinos in Seoul, but not much to Jeju. One of the Seoul based junkets advised that it's likely the arrested Koreans are "working too hard" due to the economic impact of MERS. This source also revealed that there is a rumour in the market that the Chinese government previously requested Korean government to launch collaborated investigations into junket operations in Korea because of the significant increase in the number of outbound Chinese to Korea for gambling, but the request was declined by the Korean government. The source commented the arrest could be retaliation by the Chinese government.*

*A different junket contact based in Jeju advised that the arrest in Beijing is probably due to over-aggressive loan issues, and it's probably triggered by informants, complaints or debt collection.*

*He did however manage to ascertain that the group was trying to lure and assist Chinese gamblers to go to Korea to play at their two 'foreigner only' casinos in Korea. It also seems that they were assisting with the transfer of funds and that seems to be when the trouble arose. Apparently, local Chinese from a travel agency were also arrested. The opinion in Macau is that this group of Korean Casino Marketers were not familiar with the laws in China about foreign exchange control and were ignorant, or perhaps indifferent, regarding the current Central Government's policy on combating Anti-Money Laundering; certainly, they would appear to be significantly less well briefed on these topics than equivalent Macau operators. In short, they were not vigilant enough and they were caught at a particularly sensitive time as regards this sort of thing. The source also commented that strangely the word "junket" was never used in news articles related to this arrest, but junkets are significant to Korean casinos, have been growing in the recent two years, and only targeting foreigners especially Chinese.*

CHEN states that he believes he communicated the substance of the advice he received from Mintz and WilmerHale to the China staff attending an All-Hands meeting in Singapore on 23 and 24 June 2015.<sup>27</sup> There is no evidence to support what was said at the all staff meeting other than the statement of PAN, a Crown China based sales employee who attended. In short, her statement states that CHEN said what we were doing was different to the Koreans and what we were doing was legal.

On 24 June 2015 Rowen CRAIGIE was copied into an email from Rob Rankin (**RANKIN**), who was chairman of Crown, and CRAIGIE became aware of the arrests in China of employees of South Korean casino operators.<sup>28</sup> The email contained a news alert about those arrests. CRAIGIE forwarded that email to FELSTEAD who responded:

*'Thanks Rowen, we got this information last week. We have been doing this for a while now, all staff in the region are trained around what to do and what not to do. We also seek regular updates from relevant third parties on what the current political climate dictates. Word is that there have been long term issues with the Korean properties around currency movements and compliance which has upset the Chinese authorities.'*

CRAIGIE then forwarded FELSTEAD's response to RANKIN.

FELSTEAD states that:

<sup>27</sup> CHEN's statement para 96.

<sup>28</sup> CRAIGIE statement para 28.

*Shortly after the Korean Arrests, Mr Chen told me that the South Koreans had been warned about their conduct by Chinese officials. I assumed that if Crown was doing something that the Chinese authorities had thought was not acceptable, Crown would be warned by officials in the same way that the South Korean casino had been.<sup>29</sup>*

There is nothing in CHEN's statement in relation to him telling FELSTEAD of a 'warning' the Koreans received. The advice received from Mintz and WilmerHale at this time does not state that the Koreans received any 'warning prior' to being arrested.

On 28 June 2015 CHEN received further information from Mintz which he forwarded to O'CONNOR, FELSTEAD and Ishan Ratnam (**RATNAM**)<sup>30</sup>:

*My Beijing PSB contact finally reverted back and commented that these Koreans were extremely aggressive in the way that they approached the business compared to many others operating in the same sector especially about bringing cash in and out of China. The core issue of the case is about the cash that they were taking out of China for their new clients, and it eventually got them arrested. The source said the inbound cash is also significant and it's used for substantial client entertainment etc These Koreans have been contravening Chinese currency laws for some time and it's a relatively isolated case (other junkets are also being monitored though as we've covered before). The source declined to provide more info about the time period of the issues, and the range of money involved.*

*Given the above I'm convinced this was an isolated case though pursued in the environment we know is present which is more careful monitoring of activities and not allowing activities to become too high profile...*

On 28 June 2015 FELSTEAD forwarded the above email to TEGONI, Executive General Manager, Legal & Regulatory Services (Crown Melbourne), and Michael Neilson (**NEILSON**), then the General Counsel & Company Secretary, copying CRAGIE, JOHNSTON and Ken Barton (**BARTON**), Chief Financial Officer, and states as follows:

*We discussed the Korean Arrests at a meeting with (to the best of my recollection) Mr Johnston where either I (again to the best of recollection) or Mr Chen relayed the advice which Mr Chen had passed on to me following the Korean Arrests.*

FELSTEAD references the paragraph in which he states that CHEN told him the Koreans received a 'warning' from the Chinese authorities something he (or CHEN) relayed to JOHNSTON.

*I attended a board meeting shortly after the Korean Arrests (either the 6 July 2015 or 12 August 2015) where Mr Johnston told the board of Crown about the Korean Arrests. I do not recall Mr Johnston saying anything to the board which was inconsistent with the advice I had received and which I relayed at the meeting with Mr Johnston referred at paragraph 44 above.*

JOHNSTON states:

*Michael (and also Barry) informed me that the South Koreans had gone beyond what was acceptable in China and had done things that the rest of the industry had not been doing (essentially, that they had been engaged in money laundering and that there were suggestions they had been involved in prostitution).<sup>31</sup>*

In the available evidence up to this date there is no reference in the advice from Mintz or WilmerHale that the Koreans were allegedly involved in prostitution.

On 6 July 2015, the next CRL Board meeting was held on 6 July 2015 however the minutes reflect only one 'Special Business' item on the Minutes relating to the Queens Wharf Brisbane project and do not refer to the arrest of the South Korean casino staff. JOHNSTON was an apology at this board meeting.

<sup>29</sup> FELSTEAD statement para 41.

<sup>30</sup> Ishan Ratnam is Vice President, VIP Gaming Services (see O'CONNOR's statement para 18)

<sup>31</sup> JOHNSTON's statement para 25.

### Questioning of Crown employees in China by Chinese Police on 9 July 2015

Note that none of the Class Action Witness Statements provided by Crown refer to this incident. Crown have provided previously redacted LPP material from WilmerHale regarding advice provided. For context the incident is detailed below with the vast majority of communication occurring on 10 July 2015.

On 9 July 2015, WilmerHale emailed CHEN and stated:

*I just spoke with Xiong Bin. He said that the interview was straightforward. The police department asked him what he does, and he said that he is an employee of Crown Hotel and assist Chinese tourist who are interested to go to Australia and visit the hotel in preparing visa application materials. The police department said that somebody has reported that he organizes overseas gambling tours, and he said that he had no knowledge about it. He believes that police department was persuaded by his explanation because he has a good record. Based on the above I would think that the letter should be very simple and straightforward.'*

WilmerHale then provide a draft letter for use.

On 9 July 2015, CHEN emailed Jan Williamson (**WILLIAMSON**) and cc'd in O'CONNOR stating:

*'Our staff in Wuhan, Benny XIONG, was invited by local police late this afternoon to come in for an interview. He was told by police that a tipster reported that he was organising going tours. Benny denied it and said he worked for Crown Resorts and assisted in organising leisure trips for customers. After two hours he was released. The police requested that Crown furnish a letter prior to 12pm tomorrow corroborating his statement.'*

The remainder of the email is redacted.<sup>32</sup>

The next day, O'CONNOR forwarded this email to FELSTEAD stating:

*'Further to last note.'*

On 10 July 2015, WILLIAMSON emails WilmerHale and states:

*'Further to below can you confirm asap that the letter is to be from Crown Resorts Limited the ASX listed company?'*

On the same day, WilmerHale respond:

*'The letter should be from his direct employing entity.'*

On 10 July 2015, WILLIAMSON emails FELSTEAD and states:

*'Barry, As discussed can u authorise Tim Spearman to sign on behalf of crown resorts pte ltd thanks Jan.'*

On 10 July 2015, FELSTEAD replies:

*'Fine by me thanks Jan'*

On 10 July 2015, CHEN emailed Mintz and asked:

*'We had another (my italics) staff member in Wuhan visited by local police on a tipoff the pat he was organising tours for gambling. He was brought to the police station for interviews and released. He was requested to furnish a letter from the company proving that he worked for Crown. Please do let me know if you hear any new changes in policy, approach, etc.'*

Mintz responded on the same day:

*'Thanks for the update of the employee in Wuhan. Looks like it was handled well without incident, though we must also consider the effect of contributing to an*

<sup>32</sup> Crown maintain LPP in relation to their in-house legal advice.

*evidentiary pile that PSB could decide to draw upon in the future. Chances are good that there's no problem here but just something to keep in mind. Will definitely let you know if we hear of any changes to policy and approach.*

On 10 July 2015, CHEN asked Mintz:

*'Are you suggesting that we should not comply with the letter request?'*

On the same day Mintz responded:

*'It's normal for them to ask for this, and you need to comply, just saying that one unintended and unavoidable consequence of this is that it could be used by PSB in the future should they wish to point to a variety of marketing activities.'*

On 10 July 2015 CHEN sent Bin XIONG the following:

*Please see the letter attached*

*The original is being couriered to you in China. Please try to send us your notes from the meeting including the identification of the officers involved*

On 10 July 2015 O'CONNOR emailed CHEN and asked:

*Can you please sketch together a summary of what other casinos are doing in relation to their sales staff in China? Baz has asked in response to the news about Benny.*

*Here's what I think (although some pieces may be dated)*

*MBS Some are still in China*

*Sky City Staff are still in China, but are told to be very cautious.*

*Echo Staff were recalled to HK some months ago.*

*Perhaps we can call around relevant contacts to update / refresh our intelligence. Let me now how you want to handle this.*

On 10 July 2015 CHEN sent an email to WILLIAMSON

*This is Benny's documentation of the interview for our records*

*We can have someone in Melbourne (maybe Bing translate). We don't want it spread too widely so as not to alarm anyone.*

On 13 July 2015 CHEN responded to O'CONNOR:

*'Looking like everyone is marketing. Will confirm later.'*

On 15 July 2015 WILLIAMSON was provided with an in-house translation of Bin XIONG's account of his questioning by Chinese police. The translation states:

*I received phone call from XinGouqiao Police station (Qingshan District, Wuhan) at 17:00 on 9th July 2015. They asked me to visit them for investigation. I arrived the police station at 17:30 and met with detective Fang Hui and police officer Zhou Yingping. They asked the following questions:*

1. *Where you live?*

*Answer:* [REDACTED]

2. *Who you live with?*

*Answer: My wife and father in law*

3. *What's your job?*

*Answer: Applying visa for clients*

4. *What documents you normally request for visa application?*

*Answer: Passports, localised registration, ID cards, certificate of employment, bank statements.*

5. *Which company you work for?*

*Answer: Crown Resorts*

6. *Do you have an office?*

*Answer: No, company is in HK*

7. *Where you work then without an office?*

*Answer: Just work at home, visa applications are not hard to do.*

8. *How you expand your business without an office?*

*Answer: No need for expanding, we charge less fee and normally get referrals.*

9. *Have your company got Casinos in Australia?*

*Answer: Yes*

10. *Is it legal?*

*Answer: Yes, they are listed company in Australia*

11. *Do you know have your clients gambled over there?*

*Answer: I don't know*

*After above conversation, they asked me to get a certificate of employment and bring to them before 12:00 pm the next day. I asked them can I know who informed them about any issue about my work. Officer ZHOU replied they cannot tell me who informed them, but the issue is that I have organised people to gamble in Australia. After I delivered certificate of employment to them on 10th July, they said everything is alright.*

There is nothing further in the Crown material provided that indicates what was then done with this information.

#### **Comments/Analysis**

##### **a. A focus on alleged differences between casino marketers**

The request for information and interpretation of the responses focussed on the difference between Crown and the Koreans, highlighting alleged money laundering and foreign currency violations but not the similar risks faced by casinos marketing in China at this time. This is especially so with the advice from WilmerHale that was previously redacted.

When CHEN became aware of the Korean arrests he sought advice from Mintz on 19 June 2015 and he asks the key question is:

*'why them if they were undertaking normal activity like we do. Or can we verify those folks were doing something untoward.'<sup>33</sup>*

<sup>33</sup> Crown document CWN 502 032 1639

On 22 June 2015, he sought advice from Wilmer Hale, regarding details as to the background and did it involve activities beyond what we (Crown) normally do. CHEN notified O'CONNOR, RATNAM and FELSTEAD and said:

*...one would hope that this action was related to the folks doing things they should not have been doing.'*

WilmerHale's advice is that there is limited advice but that the potential charges include luring Chinese to gamble in Korean casinos **AND** (my emphasis) violation of Chinese foreign currency policies. It goes on the state that it should be read in the context of; that the government crackdown on corruption continues, and because the Chinese government's focus on Macau meant that gamblers have subsequently travelled to neighbouring regions /countries. With new casino projects in this area it clearly caught the attention of the Chinese government. The relevant Korean casinos had come to notice before for currency violations in Korea and China and this made them an easy target. In addition, the two casinos are the largest top two foreigners only casinos in Korea with a major part of their players from China – it is not a surprise that the Chinese government picked them as enforcement targets.

Mintz advice is similar to Wilmer Hale in that it states most Korean based junkets aren't surprised (of the arrests) because they know promoting gambling in China is illegal. The people the Koreans have in the field don't do the most incriminating works e.g. facilitating the cash and debts and the actual marketing people rarely visit China. One source said the Koreans were working 'too hard' due to MERS and this maybe is retaliation because the Korean government wouldn't do collaborative investigations with the Chinese government. One Senior Industry source said the Koreans casino marketers were ignorant or perhaps indifferent to the Chinese policy on anti-money laundering and were not vigilant enough in this sensitive time and were growing in the recent two years only targeting foreigners especially Chinese.

On 28 June 2015 CHEN received further advice from Mintz that the Koreans were extremely aggressive in how they approached the business especially in bringing cash out of the country and they were convinced this was an isolated case but then says for careful monitoring of activities and not allowing activities to become too high profile. CHEN forwards this to FELSTEAD, O'CONNOR and RATNAM.<sup>34</sup> FELSTEAD also forwards on to certain board members.<sup>35</sup> This reinforces the view that the Koreans were 'outliers' in the industry and doesn't necessarily take into account the similarities of the casino marketers in the environment as detailed in the WilmerHale advice of 23 June 2015

In short, CHEN from the outset appears to focus his request for advice on the perceived or hopeful differences between how the Koreans and Crown operated and focussed on the alleged issues of currency breaches but not other issues of similarity between the Korean operations and Crown's operations that would make Crown a potential target i.e. staff in China marketing overseas casinos in China luring gamblers from Macau to overseas destinations.

- b. No evidence to support any 'warning' being given to the Koreans or allegations regarding prostitution

#### ***The 'warning' given to the Koreans***

*FELSTEAD states that shortly after the Korean Arrests, Mr Chen told me that the South Koreans had been warned about their conduct by Chinese officials. I assumed that if Crown was doing something that the Chinese authorities had thought was not acceptable, Crown would be warned by officials in the same way that the South Korean casinos had been.*

In relation to receiving a warning:

- There is nothing in CHEN's statement (or other evidence we have considered) in relation to him telling FELSTEAD of any 'warning' the Koreans received;
- The advice received from Mintz and WilmerHale at this time does not include any reference to the Koreans receiving any 'warning' prior to being arrested.

<sup>34</sup> CHEN's statement para 97.

<sup>35</sup> Namely, TEGONI, NEILSON, CRAIGIE, JOHNSTON, BARTON (see Crown document CWN 539 079 4183)

FELSTEAD and / or CHEN presumably told JOHNSTON of the 'warning' based on FELSTEAD's statement. This may have had consequently comforted Crown executives and Board members in that they too would be 'warned' by the Chinese authorities if they intended to take enforcement action against them. It is not clear where this information regarding the possibility of receiving of a 'warning' came from.

### ***Prostitution allegations***

JOHNSTON states:

*'Michael (and also Barry) informed me that the South Koreans had gone beyond what was acceptable in China and had done things that the rest of the industry had not been doing (essentially, that they had been engaged in money laundering and that there were suggestions they had been involved in prostitution).'*

In the available evidence up to this date there is no reference in the advice from Mintz or WilmerHale that the Koreans were allegedly involved in prostitution. CHEN does not make reference to this either.

This suggestion clearly portrays the Koreans as being involved in activity outside the realm of how Crown would expect their operations to be conducted and emotively suggest the Koreans were acting in a different manner.

c. Fresh legal advice was requested but not obtained

JOHNSTON states he asked<sup>36</sup> FELSTEAD and CHEN *to obtain fresh legal advice in light of what happened to the Koreans.*<sup>37</sup> This does not appear to have happened but rather he was advised by FELSTEAD that Crown was acting in accordance with accepted practice in China.

d. CHEN relayed advice that focussed primarily on the alleged money laundering issues

On 23 or 24 June 2015 CHEN told the Crown sales staff at a meeting<sup>38</sup> that what we were doing was legal, don't market to groups of 10 or more and don't be involved in money laundering.

CHEN also allegedly stated at this meeting that "what we were doing was different to the South Koreans, and what we were doing was legal. He said we were receiving our pay from Crown and no commission from clients, we were not marketing to groups of 10 or more and we were not participating in money laundering".<sup>39</sup>

There is no evidence what, if any, other risk issues and factors as advised by Mintz and WilmerHale were relayed by CHEN to the staff.

e. Board members and executives focussed on alleged differences and did not appear to pay enough attention to the similar risks they faced

On 24 June 2015 BARTON sent an email to RANKIN with an article headed:

*China sets no marketing tone with Koreans arrested in China last week for alleged marketing to Chinese gamblers. The Chinese government has been vocal for some time warning casinos in neighbouring countries not to market to Chinese citizens. The Chinese government will pursue foreign currency law charges against the Korean marketing employees.*

The purported charges are in relation to breaches of foreign currency laws but the rest of the article (as set out above) highlights the risks of marketing to Chinese citizens to gamble overseas as Crown was doing.

Board member (RANKIN) states Crown should be on 'high alert', stating:

*'We should be on high alert for this type of regulatory activity and training of new in-country staff should be reviewed and extensive.'*

<sup>36</sup> JOHNSTON states that he "cannot recall the precise time",

<sup>37</sup> JOHNSTON's statement para 25.

<sup>38</sup> On 23/24 June 2015, see CHEN's statement para 96.

<sup>39</sup> PAN's statement para 48.



The 'high alert' did not transfer to the formal risk process and I am unsure what, if any, training review was conducted.

Further, the 'high alert' as detailed above was not sufficient to alert Crown executives FELSTEAD, O'CONNOR or CHEN to escalate the issue regarding Crown's own China based staff being questioned by police shortly after the Korean arrests.

- f. Escalation to the board of the South Korean arrests, and non-escalation regarding the questioning of Crown employees by Chinese authorities.

#### **South Korean Arrests**

JOHNSTON, a Crown Board member, says in his statement the arrest of the Korean casino marketers in June 2015 was relayed to the CRL Board in July or August 2015.

FELSTEAD states he was at this Board meeting and what JOHNSTON said was consistent with what he had been advised.

Despite JOHNSTON and FELSTEAD recalling that the Board was advised of the arrests of the South Korean casino staff in July or August 2015, the minutes for both the July and August 2015 board meetings do not refer to this.

We assume they are referring to the 12 August board meeting (as FELSTEAD was an invitee and JOHNSTON was present – FELSTEAD was not invited to the July board meeting and JOHNSTON was an apology). Regardless, the minutes for both meetings are silent on the Korean arrests.

#### **Questioning of Crown employees by Chinese Police**

Crown staff were questioned by Chinese police on 9 July 2015. This was a lost opportunity in August 2015 for FELSTEAD to advise JOHNSTON and the Board that their staff had been questioned by Chinese Police.

The questioning of Crown employees is considered in detail in the Draft Report and for the purposes of this memo, we would only state that the conclusions of the report are only strengthened by the previously redacted WilmerHale advice.

The importance of this event is reinforced in its timing (weeks after the Korean arrests) and of the opportunity lost for it to be escalated to the Board and/or formal risk management processes, and an opportunity for the Board to reconsider risks to its staff in China.

The previously redacted advice and involvement of WilmerHale also reinforces several issues including that Crown employees lied to Chinese authorities as to their actual roles in China and that Crown executives and internal legal officers and legal advisors in China were aware of this.

#### **4.1.10 12 October 2015 – Chinese state media CCTV News 'Focus Report – Overseas casinos Building Networks in China (flow chart 10)**

On 14 October 2015, CHEN emailed WilmerHale and Mintz the same request with a link to a news report that has subsequently been translated in the course of the Commission investigation. The report was from CCTV news and was called 'Focus Report – Overseas casinos Building Networks in China' (CCTV Report).

CHEN states:

*'I do not recall any new information in the report, but I felt that it was significant that news of the arrests had been reported by the Chinese state media.'*

*Have you seen the CCTV report below? Could please advise us what your firm is hearing about the current state of affairs with regards to the activities we are undertaking in China? The attached report has shaken many of our team members and we need to have a responsible understanding of the environment has materially changed, if there are any new laws, or whether there are new risks we should be managing for.*

The CCTV Report opens with and then includes:

Hello everyone, welcome to Focus Report. Gambling is a much-hated bad habit. Not only the gambler will lose everything sooner or later, but also the stability of the family and the community will be disrupted. Therefore our law prohibits gambling and businesses associated with gambling, turning a casino into a criminal offence. However, overseas casinos are targeting at the gamblers in China. They even extend their bait into China. Well, if someone takes the bait, what will happen as a result?

Consul General told us that since 2010 when Jeju Island became a visa-exempted destination for up to 30 days for Chinese tourists, it has become very popular with Chinese tourists. The number of visitors increased significantly over the three-year period after 2012. There are 8 casinos on Jeju Island particularly catering for foreign visitors; 80% of gamblers come from Mainland China. Those contacted consulate office for help in regards to gambling related issues that caused safety concerns reported an average disputed gambling debt amount exceeding RMB1 million. Actually, the situation where large numbers of Chinese citizens travelled to Korea to gamble has already caught the attention of the Chinese public security authorities early on.

Peng Zhang, Head of Operations, Security Department, Ministry of Public Security:

'We are closely watching overseas casinos penetrating Mainland China, with a particular interest in those who are organizing tour groups for Chinese citizens to gamble overseas and those Chinese nationals who are operating overseas casinos, specific gambling floors or even tables under a lease arrangement to specifically cater for Chinese visitors. We're determined to crack down on these.'

Our law clearly provides that in the case of organizing 10 people or more to gamble overseas, or the number of organized gambling trips representing 10 people/times, or gambling capital or commission reaching a certain amount, the public security authorities should investigate for alleged gambling offence. As early as 2013, the Ministry of Public Security directed Hebei public security authority to conduct 801 Operation, destroying a local criminal gang acting on behalf of a casino in Jeju Island. Four Korean managers were arrested, sentenced and deported. The casino ceased to operate due to a sharp decrease in the numbers of Chinese visitors.

Peng Zhang, Head of Operations, Security Department, Ministry of Public Security:

'801 Operation suppressed the local activities of overseas casinos to a certain degree. However, overseas criminal syndicates smart up. They frequently change their representatives holding foreign passports in China. This is something new in recently years.'

Allured by huge profits, many Korean casinos just can't stop and their representatives in China have learnt to operate their business in a more covert, but more proactive way. Number of Chinese visitors making their way to Korea to gamble keeps rising.

Xin Zhang, Chinese Consul General in Jeju Island:

Jinfeng Hua, Deputy Director, Security Department, Ministry of Public Security:

'This information tells us that it's a serious problem and it's potentially getting worse. We believe that organizing Chinese nationals to gamble in casinos in neighbouring countries has caused serious harm, disrupted the stability in local areas, and impacted on economic activities due to capital outflows. Therefore Chinese police takes organized overseas gambling trips very seriously and have to crack down on this and prevent it from becoming a kind of norm.'

On 17 June 2015, as a result of careful investigation and planning, the Ministry of Public Security directed Beijing, Hebei, Shanghai and Jiangsu public security authorities to conduct joint operations. 13 Korea managers and 34 Chinese representative and key members were arrested. Korean networks for organizing Chinese nationals to gamble overseas were destroyed. But why did all these casinos cast their eyes on China?

An, suspect, Central China representative of a Korean casino:

*'Chinese market has been the most profitable one for two years. China's economy is developing. There are more rich people around in good economies. Many people visit foreign countries for pleasure. Chinese people quite enjoy gambling, for extended periods.'*

*So China is an attractive market. Casinos in neighbouring countries all focus on China and attract Chinese customers by all means. Korean casinos spared no efforts in doing this. They took the risk and sent their managers to China to develop their client base on a rampant scale. They offered free travel and allured Chinese visitor to casinos.*

*'Free' is a favourite word used by Korean casinos to recruit Chinese gamblers. Firstly, free air tickets, free accommodation and free sightseeing; and next, free sex service for VIP clients. This agreement from a Korean casino lists all sorts of services available, for example, buying chips worth of 100,000 will give you a free professional massage session; buying chips worth of 200,000 will give you a service provided by Korean third-tier stars or models; buying chips worth of 500,000 will give you a 24-hour escort service for 3 days and 2 nights provided by Korean third-tier stars or models. In reality the so-called free services were all paid for by gamblers' money.*

*Once inside the casino, the casino used various means to make clients to introduce and recruit new clients. Korean casinos divided the China market into several big regions and appointed representatives for these big regions. Regional representatives wouldn't go out there in person recruiting gamblers; instead they recruited Chinese nationals as agents and key members to round up customers for casinos.*

An, suspect, Central China representative of a Korean casino:

*But how to mobilize gamblers to recruit more customers for the casinos? Tempting commissions or kick-backs! This agreement from a Korean casino says that a bonus of 1.6% of the chip value will be awarded to anyone who introduces new customers to the casino. The more money a gambler loses, the more kick-backs the middleman will receive. If a gambler loses 1,000,000, the middleman can get 200,000, plus a bonus of 3 million Korean WON. One becomes two and two becomes eight. It's getting bigger and bigger like a snowball. So numbers of gamblers increased significantly within a short period of time.*

*These Korean casinos set up a personal profile for each gambler; details were collected by the regional manager and reported back to head office.*

Kim, Chief Representative of a Korean casino in Beijing:

*'How did you learn about customers' information? How did you get it?'*

*'When we met and had dinner together, I would ask about their profession. When we became familiar with each other, I could obtain this information and report it back to the company.'*

*If overseas gambling can be arranged under the name of travelling, then what's the way to transfer millions of gambling money out of China? Police found that Beijing Straits Travel Agency served as a key link in the transfer of gambling capital for Korean casinos.*

Peng Zhang, Head of Operations, Security Department, Ministry of Public Security:

*'By using Chinese nationals' identification documents, they set up a number of bank accounts for transferring gambling capital and settled the accounts for fake cross-border trade deals.'*

*Beijing Straits Travel Agency accepted the gambling capital from Chinese gamblers and through net-banking transferred the gambling capital to a bridging account, which*

*distributed the funds to various underground money exchanges; and then through the black market money was transferred to the underground money exchanges based in Korea, which transferred the funds to Korean casinos. They formed a common interest group through this illegal flow of money transfers.*

*Chinese police conducted a joint operation this June and seized gambling related funds of more than RMB30 million. Five Korean casinos all called back their representatives in China after their recruitment chain and capital chain in China were broken. That's the footage taken two months later. The VIP lounge used to be a very busy area, but now it seems deserted by patrons.*

*An, suspect, Central China representative of a Korean casino: 'We knew in China it's against the law.' 'You clearly knew Chinese government doesn't allow its nationals to gamble, but why did you still come here?'*

*'I heard about this thing (being caught) happening to other companies. But nothing happened to our company so far; nothing happened to me. So possibly I didn't realize how serious it could be. It seems that Chinese government is cracking down on organized gambling activities, not only in Korea, but also in other countries all over the world. Now it happened. The company also realized that we couldn't do this. I reckon it will stop for years to come. Nobody would come to do what we used to do.'*

*Jinfeng Hua, Deputy Director, Security Department, Ministry of Public Security*

*'Since this year, Ministry of Public Security took a series of 'chain-cutting' actions against gambling. We placed emphasis on identifying patterns and features of overseas organized gambling, collecting relevant information and cutting the recruitment chain and capital chain that overseas casinos organized in China. We're also cracking down on the settlement network for illegal fund transfer.'*

*Gambling ruins a family. That's common sense. We should remember this even if we are travelling overseas. Those overseas casinos that specifically cater for Chinese customers are ripping off their money. They offer entrapment only, not the kind of luck we normally think of; otherwise how could they recover the investment they've made? Those casinos should understand that they will certainly pay for it if they break the law in China. Chinese government will never tolerate this kind of criminal activity. Chinese nationals are encouraged to make a report if they have any information about this organized crime. Severe punishment will be given for any participation in this organized crime. Thank you for watching Focus Report tonight. See you next time.*

On 15 October 2015 CHEN e-mails MINTZ again as follows:

*'We have a marketing road show in China that kicks off next Monday so any material insight would be helpful this week'.*

On 15 October 2015 Mintz replied:

*'We've made a number of key inquiries with knowledgeable sources, and all seems to be pointing to a dedicated effort against these Korean targets rather than a broad-based effort, though the backdrop remains as we were identified earlier that there is interest in monitoring all foreign casino marketing in mainland. We'll have more for you tomorrow but as of now, your team should not feel overly concerned.*

On 15 October 2015 WilmerHale responds to CHEN's email dated 14 October 2015.

*In a nutshell.*

*The Chinese law has not changed, "organising overseas gambling" (defined as organising 10 or more Chinese nationals to gamble overseas and receive a commission or introduction fee) remains a criminal offence under the Chinese criminal law.*

*The Chinese govt. has strengthened its enforcement of law in recent years as part of its campaign to crack down on corruption*

After Macau, it appears that the govt. is now focusing on casino's in neighbouring countries which has attracted a large number of Chinese nationals such as Koreans

*Continuing efforts cases against Korean casinos activities. There are a few common grounds:*

- *The Korean casinos have sent a large number of Korean national employees to China to market the casinos, and have an extensive marketing network in China.*
- *The businesses of the Korean casinos involved in these cases heavily rely on Chinese gamblers.*
- *The marketing efforts are clearly gambling. The marketing materials seized by the police show that the casinos offer free hotel, free air tickets, other free entertainment services to Chinese nationals so long as they gamble at the casinos. These are the evidence used by the police department to prove that the marketing activities are illegal and the Korean casinos representatives have been organising overseas gambling.*
- *In addition, there XX illegal money laundering and foreign exchange evasion activities. The Korean casinos and their representatives appear to work closely with some Chinese domestic travel agencies to receive money from Chinese gamblers. The money is then wired to underground money laundering organisations in China and eventually wired to Korean casinos.*

CHEN then asked WilmerHale:

*'should we proceed with business as usual per prior advice, or is there a need to take different precautions than what we have done previously?'*

On 15 October 2015, WilmerHale responded to CHEN:

*'Under the current environment, it appears important that our marketing (and marketing materials) does not expressly promote the casino business. It is also important to ensure that our employees (in their individual or in capacity as your employees) do not get involved in any activities which may potentially raise money-laundering or foreign exchange evasion issues.'*

On 15 October 2015 CHEN e-mailed the VIP International offices:

*I wanted to let everyone know that we have seen the recent CCTV news story on the detainment of Korean casino markets. We have engaged our advisors inside China to investigate the situation, to talk to the Public Security Bureau and to advise us of any changes to China law and or policy. While we are waiting for the results, please continue to take sensible safeguards and precautions. For now, please continue to;*

- 1) Keep meetings with guests to small groups with no more than 3-4 Crown staff in any one meeting.*
- 2) avoid any overt sales and marketing activities.*

*We should have more specific guidance before the end of the week.*

PAN in her statement recalls CHEN's e-mail of 15 October 2015:

*'...his message was consistent with the message that he had given us at the earlier "All Hands Meeting" and that what Crown was doing in China was legal. I understood that CHEN's request that we 'avoid any overt sales and marketing activity' was a request that we should focus on promoting the lifestyle benefits of the Australian resorts and we should try, where possible, to avoid talking about commissions or gambling with clients. These had been our instructions since about June or July 2015.'*

On 20 October 2015 O'CONNOR e-mails CHEN 'FYI' and short news clip headed 'South Korean Casino Employees Arrested in China'.<sup>40</sup>

CHEN e-mails O'CONNOR, FELSTEAD and RATNAM headed 'South Korean employees Arrested in China'. E-mail stated CHEN has received reports back from WilmerHale and Mintz:

*This case does not appear that this was a targeted effort against the Korean casinos - not part of a broad-based effort against foreign casinos. They were targeted because of their overt efforts in both promotion (ha,bling, specific collateral) of gambling and movement of money. There is also heightened sensitivity around neighbouring casinos to China. MINTZ has advised that our team should not be concerned beyond the need to take normal precautions as per our standard protocol. We have also sought advice from WilmerHale who have advised that there has been no change to the law or promotion of gambling. Their advice was to refrain from activities that may be seen to be aiding and abetting illegal money movements.*

On 20 October 2015 O'CONNOR e-mailed CHEN:

*'Thanks MC. Please gauge the mood of the team in China during your current travels and let me know if you sense any heightened concerns.'*

CHEN responded to O'CONNOR and CC'ed FELSTEAD and RATNAM:

*'There are definitely heightened concerns but I will have a conference this week to address.'*

On 20 October 2015 CHEN has team call with VIP International where he states he verbally relays the substance of the advice from Mintz and WilmerHale that:

*a) this was a targeted effort against the Korean casinos and not part of a broad-based effort against foreign casinos.*

*b) the reason the Korean casinos were targeted is because of their overt effort in both promotion of gambling and movement of money.*

*d) there was heightened sensitivity around neighbouring casinos to China.*

*e) MINTZ view was that the team should not be concerned beyond the need to take normal precautions as per standard protocols and that MINTZ would continue to monitor the situation carefully and would advise us if anything changed, and;*

*f) WilmerHale advised there has been no change to the law on promotion of gambling*

### Comments/Analysis

#### 1. Broader messaging in CCTV Report than just Korean casinos marketing in China

In short, the internal Crown emails and advice of Mintz and WilmerHale focusses on the arrest of Korea casino marketers in June 2015. The CCTV report however relays broader messaging that was equally applicable to Crown's operations in China. These include:

*02:38 Peng Zhang, Head of Operations, Security Department, Ministry of Public Security:*

*We are closely watching overseas casinos penetrating Mainland China, with a particular interest in those who are organizing tour groups for Chinese citizens to gamble overseas and those Chinese nationals who are operating overseas casinos, specific gambling floors or even tables under a lease arrangement to specifically cater for Chinese visitors. We're determined to crack down on these.'*

*Our law clearly provides that in the case of organizing 10 people or more to gamble overseas, or the number of organized gambling trips representing 10 people/times, or gambling capital or commission reaching a certain amount, the public security authorities should investigate for alleged gambling offence.*

03:35 Peng Zhang, Head of Operations, Security Department, Ministry of Public Security:

‘Our Operation supervised the local activities of overseas casinos to a certain degree. However, overseas criminal syndicates smart up. They frequently change their representatives holding foreign passports in China. This is something new in recently years.’ Allured by huge profits, many Korean casinos just can't stop and their representatives in China have learnt to operate their business in a more covert, but more proactive way. Number of Chinese visitors making their way to Korea to gamble keeps rising.

So China is an attractive market. Casinos in neighbouring countries all focus on China and attract Chinese customers by all means. Korean casinos spared no efforts in doing this. They took the risk and sent their managers to China to develop their client base on a rampant scale. They offered free travel and allured Chinese visitor to casinos

08:10 Feng Han, Deputy Director, Haixing County Bureau of Public Security, Hebei Province:

‘The business model for Korean casinos is that their commission profit is guaranteed, irrespective of gamblers' performance in the casino. Not to mention about the scenario where gamblers' lose money in casino, even if they win money, the casino still earns a profit between 5% and 50%. So under this business model, win or lose, as long as Chinese visitors go there, money will keep rolling into the casino.’

Korean casinos divided the China market into several big regions and appointed representatives for these big regions. Regional representatives wouldn't go out there in person recruiting gamblers; instead they recruited Chinese nationals as agents and key members to round up customers for casinos.

But how to mobilize gamblers to recruit more customers for the casinos? Tempting commissions or kick-backs! This agreement from a Korean casino says that a bonus of 1.6% of the chip value will be awarded to anyone who introduces new customers to the casino. The more money a gambler loses, the more kick-backs the middleman will receive. If a gambler loses 1,000,000, the middleman can get 200,000, plus a bonus of 3 million Korean WON

These Korean casinos set up a personal profile for each gambler, details were collected by the regional manager and reported back to head office. Kim, Chief Representative of a Korean casino in Beijing:

‘How did you learn about customers' information? How did you get it?’ ‘When we met and had dinner together, I would ask about their profession. When we became familiar with each other, could obtain this information and report it back to the company.’ ‘If overseas gambling can be arranged under the name of travelling, then what's the way to transfer millions of gambling money out of China? Police found that Beijing Straits Travel Agency served as a key link in the transfer of gambling capital for Korean casinos.

An, suspect, Central China representative of a Korean casino: ‘We knew in China it's against the law.’ ‘You clearly knew Chinese government doesn't allow its nationals to gamble, but why did you still come here?’

‘I heard about this thing (being caught) happening to other companies. But nothing happened to our company so far; nothing happened to me. So possibly I didn't realize how serious it could be. It seems that Chinese government is cracking down on organized gambling activities, not only in Korea, but also in other countries all over the world. Now it happened. The company also realized that we couldn't do this. I reckon it will stop for years to come. Nobody would come to do what we used to do.’

Jinfeng Hua, Deputy Director, Security Department, Ministry of Public Security

*Since this year, Ministry of Public Security took a series of 'chain-cutting' actions against gambling. We placed emphasis on identifying patterns and features of overseas organized gambling, collecting relevant information and cutting the recruitment chain and capital chain that overseas casinos organized in China. We're also cracking down on the settlement network for illegal fund transfer.'*

*Gambling ruins a family. That's common sense. We should remember this even if we are travelling overseas. Those overseas casinos that specifically cater for Chinese customers are ripping off their money. They offer entrapment only, not the kind of luck we normally think of; otherwise how could they recover the investment they've made? Those casinos should understand that they will certainly pay for it if they break the law in China. Chinese government will never tolerate this kind of criminal activity. Chinese nationals are encouraged to make a report if they have any information about this organized crime. Severe punishment will be given for any participation in this organized crime. Thank you for watching Focus Report tonight. See you next time.*

## 2. CCTV Report '10 or more rule'

WilmerHale state tha

*'The Chinese law has not changed regarding 'organising overseas gambling' as defined as organising 10 or more Chinese nationals to gamble overseas and receive a commission.'*

The CCTV Report states:

*03:00 Our law clearly provides that in the case of organizing 10 people or more to gamble overseas, or the number of organized gambling trips representing 10 people/times, or gambling capital or commission reaching a certain amount, the public security authorities should investigate for alleged gambling offence.*

On its face, both of these definitions fit what Crown was doing in China at this time and prior to their arrests. The CCTV Report does not narrow the offence to the organising of 10 persons to one trip or marketing to a group of 10 or more.

## 3. CCTV Report 'Commissions'

The CCTV Report refers to commissions:

*'Tempting commissions or kick-backs! This agreement from a Korean casino says that a bonus of 1.6% of the chip value will be awarded to anyone who introduces new customers to the casino.'*

No written advice was ever received from WilmerHale by CHEN as to the definition of a commission. It would appear that the CCTV Report's comments<sup>41</sup> are reflective of Crown's bonus system for employees to receive bonuses based on gamblers' turnovers.

## 4. Commonality of Korean and Crown operations in China

WilmerHale point out the common grounds of Crown's operations to the Korean's casino's activities including:

- Their extensive marketing networks.
- Their heavy reliance on Chinese gamblers.
- The offer of free services eg flights, hotel rooms, entertainment as long as the Chinese nationals gamble at the casinos.

<sup>41</sup> At 08:52 minutes in CCTV Report.



The WilmerHale advice also raises the issues of the Koreans being involved in illegal money laundering and foreign exchange activities but it is not the sole thrust of their advice to CHEN.

#### 5. Mintz advice narrow interpretation of CCTV Report

CHEN asks WilmerHale and Mintz for operational advice about whether they should proceed with business as usual. The WilmerHale response is to proceed but that marketing materials should not expressly promote the casino business and to not get involved in activity that could be raising money laundering or foreign exchange issues. The Mintz advice briefly states this seems to be pointing to a dedicated effort against the Koreans which is then tempered with 'there is interest in monitoring all foreign casinos marketing in the mainland' but 'your team should not be overly concerned.'

With respect to the Mintz's advice, it should be noted that the CCTV Report was partly covering previous law enforcement efforts against the Koreans that culminated in their arrests in June 2015. It is not surprising that this would appear as a dedicated effort against them at that time which it clearly was at that time. In addition, the CCTV Report appeared four months after the Korean arrests (in October 2015) and should surely raise questions as to what purpose the CCTV Report would now serve if it was only intended to relate to the Koreans?. As a substantial part of the CCTV Report could be seen as applying equally Crown's operations (as pointed out by WilmerHale), the likelihood of it being seen as a warning to Crown and others is not adequately considered.

#### 6. Relaying of WilmerHale and Mintz advice by CHEN to staff and executives

CHEN only relays the distilled advice from WilmerHale to staff in email to 'only meet in small groups and not be overt in marketing'. His verbal advice to staff on 20 October 2015 was the combined advice of WilmerHale and Mintz. The first two points focussing on this being a targeted effort against the Korean's and that while there was a 'heightened sensitivity' around neighbouring casinos Crown should not be overly concerned if they took normal precautions and were not too 'overt'. This does not take into account the broader messaging of the CCTV Report not just being about the Koreans but also the similarities of operations between Crown and the Koreans as detailed in the initial WilmerHale advice.

On 20 October 2015, CHEN escalates to FELSTEAD, O'CONNOR and RATNAM, the advice from WilmerHale and Mintz in an email which is very similar to his email on 20 October 2015 to the Crown staff in China, in that he does not set out the similarities between the South Korean and Crown operations, and focusses on the differences.

He does not escalate the email from WilmerHale of 15 October 2015 that sets out the similarities of the Korean's and Crown's activities.

#### 7. Failure of Crown to translate and fully appreciate the CCTV Report

It is worth noting that at interview neither O'CONNOR, FELSTEAD or CRAIGIE can recall seeing the CCTV Report. There is no evidence that CHEN escalated any details of the existence of the CCTV Report or what it contains. There is no evidence it was translated into English by CROWN. The CCTV Report is critical information in what it relays to the public and gambling industry. This includes its reporting of the '10 or more rule' and 'commissions'. Crown's understanding of the elements of the gambling laws in China eg the '10 or more rule' and 'commissions' stemmed from earlier WilmerHale advice.

This earlier understanding became the key foundation of Crown's position that it was in compliance with the gambling laws in China at this time. Whilst WilmerHale advised that the law had not changed on 15 October 2015, the CCTV Report was broader in its explanation of it in such a way as to encapsulate Crown's activities (as WilmerHale advised at this time). This was never escalated by CHEN.

#### 8. Failure of CCTV Report and related advice to be escalated to Board level

It is also worth noting that FELSTEAD allegedly briefed the Board on 12 August 2015 regarding the Korean arrests in June 2015. The CCTV Report came out on 12 October 2015. On 20 October FELSTEAD was made aware of further media reports regarding the South Korean casino staff when he was cc'ed into an email chain including O'CONNOR and CHEN. This is less than two months after he briefed the Board.

Crown management did not appear to focus on the CCTV report, nor consider the additional information in it that may be relevant to its operations, nor escalate that matter further.

## 5 Summary of relevance of Class Action Witness Statements

### 5.1 Witness statement of Rowena DANZIGER dated 17 December 2019

Rowena Danziger (**DANZIGER**) was not interviewed during the course of the VCGLR investigation.

DANZIGER was a non-executive director of CRL from July 2007 to October 2017. I was a non-executive director of Crown Melbourne Ltd (Crown Melbourne) from October 2003 to October 2017.

Main takeaways from her statement is that the Board were not appraised of the risks posed to Crown's staff in China (i.e. of being arrested/detained) and left it to operational areas to report upwards.

CRAIGIE was considered the operational conduit – as he "was on the Risk Management Committee (**RMC**) as a conduit to management and the operational side of the business".<sup>42</sup> The Board, based on DANZIGER's statement, did not proactively seek out clarification or appraisal of operational risks.

#### Paragraph 7 and 8

Does not recall any briefings or board discussion to the effect that foreign casinos were to be targeted in China.

#### Paragraphs 12 and 13

Had a conversation with NEILSON in which he said that Crown had received advice that there were particular reasons why South Korea were targeted. Never suggested to her that Crown were in breach of Chinese law or operating in such a way as to make them a target of Chinese authorities

#### Comment/ Analysis

In her roles on the RMC and various Boards no indication that she ever sought further information or clarification re South Korea arrests. There was no statement provided by or from NEILSON. DANZIGER unsure regarding where discussions took place and with whom regarding South Korean arrests (excepting the above conversation with NEILSON).

#### Paragraph 18

CRAIGIE was on the RMC as a conduit to management and operational side of business

#### Comment/ Analysis

CRAIGIE was not aware<sup>43</sup> of the questioning of Crown staff in China and this is very important in the context of this statement by DANZIGER. This view of DANZIGER places an onus on him to know what is happening and report upwards regarding same.

#### Paragraph 21

CRL Risks – 30 April 2015 Report Against Material High Risks:<sup>44</sup>

*Under International Competition*

*There have been no major developments in the reporting period.*

*As noted per Volatility of Premium Gaming above, the international Premium Gaming market is highly competitive with new (and projected) entrants in Asia presenting compelling and convenient local options for Asian VIP patrons, and Echo increasing domestic competition.*

*In response, the proactive promotion of Crown Melbourne's world class VIP experience remains a management focus including:*

<sup>42</sup> DANZIGER's statement para 18.

<sup>43</sup> DANZIGER's statement para 21 and Crown document CWN 210 001 0460.

<sup>44</sup> Ibid.

*Responding to increasing competition by developing more flexible and appealing incentive programs for junkets and individual players;*

*Increasing marketing and sales penetration by building the size and strength of the internationally based sales team network;*

*Increasing the amount of senior executive time in market to build awareness and strengthen relationships amongst key customers; and*

*Continued delivery of an outstanding service experience*

#### Comment/ Analysis

The risk was framed as a commercial risk with the response regarding volatility to be addressed through proactive promotion.

#### **Paragraph 26**

*'trust was reposed in the operational side of the business to identify and escalate risks as necessary'*

#### Comment/ Analysis

We query whether the Board took reasonable steps to ensure that they were fully appraised of issues and risks.

## **5.2 Witness statement of Geoff DIXON dated 20 December 2019**

Was a non-executive director of Crown from 2007 to November 2019 including during the period 6 February 2015 to 16 October 2016.

Main takeaways from his statement is that very limited risks/issues were escalated to Board level or Risk Management Committee level regarding Crowns operations in China. At no stage did the Board ever request a full briefing, nor did they request legal advice re Crowns operations in China.

#### **Paragraph 8**

States he was told on several occasions that Crown had legal advice that its operations in China were legal but can't recall if he was told this during Board or RMC meetings or otherwise. Did not see the advice, was not aware of its detail only that it had been obtained and was to the effect that Crowns operations were legal.

#### Comment/ Analysis

No documentary evidence to support the above statement.

#### **Paragraph 9**

DIXON states he has spent a fair bit of time in China and thought it was a manageable level of risk. Strong belief that the China operations were being run in a proper way:

*I have spent quite a bit of time in China over the last 15 to 20 years. During the Relevant Period, I believed that there was some risk in operating in China because of the opaque nature of the society and the relationship between business and government, which is different from the position in the West. However, I thought it was a manageable level of risk. My strong belief was that the China operations were being run in a proper way.*

#### Comment/ Analysis

There is no information that indicates what DIXON had previously done in China. Not sure what details he knew of Crowns operation in China to hold such an opinion.

#### **Paragraph 10**

He never thought that FELSTEAD was putting himself in harm's way with respect to travelling to, and working in, China.

Comment/ Analysis

Not sure what details he knew as to the full extent of Crown's China operations and issues that had occurred in China (eg questioning of Crown staff by the police) and this may have altered his opinion. Also CHEN in advice to FELSTEAD on 27 June 2016 where he stated that 'I have taken on the risks of being prosecuted in China',<sup>45</sup> highlights the risks Crown staff and executives faced when travelling to China and finally CHEN himself dividing his paycheck in the event that he is detained in China)

**Paragraph 18-19**

Regarding board meetings, does not recall any suggestions in Board meetings or papers that Crown employees were in breach of Chinese law.

Comment/ Analysis

The RMC and the Board never had a full briefing as to what Crown staff did in China nor a full briefing regarding the legal advice obtained by CHEN. If the RMC, and particularly the Board, were appraised of the situation (i.e. of Crown employees being questioned/detained by Chinese Police) it may have provided them an opportunity to consider the risk of possible arrest/detention of their staff and make changes to their operations in China accordingly.

**5.3 Witness statement of Drew STUART dated 17 December 2019**

Drew Stuart (**STUART**) was formerly the General Manager, Risk & Assurance at Crown Melbourne Ltd (Crown Melbourne), a wholly owned subsidiary of Crown and held that role during the period 6 February 2015 to 16 October 2016.

**General Comment**

STUART's statement and attached risk documents generally confirms what is detailed in the existing Draft Report – in that there was inadequate escalation of incident/issues to the RMC, and additional material that we have received has indicated even more examples (e.g. for example, in 2012 where Macau junket operators are arrested and in 2013 when Crown withdrew its two staff members in China).

**Paragraph 7–9**

As General Manager, Risk & Assurance Crown Melbourne, he was responsible for Crown's formal risk management process. Reported to TEGONI (General Counsel Crown Melbourne) and also to FELSTEAD, CEO of Crown Resorts.

**Paragraph 13 and 14**

Focus of discussions that fed into the annual risk assessment were the '*...departmental risk registers and the departmental risk profiles*'. The example provided is the June 2013 Gaming Operations risk register which included the table games, gaming machines and VIP gaming departments. The VIP related risks detailed are (5) Premium Gaming Business Bad Debts (6) Loss of Premium Gaming business (to competitors) and (4) Volatility of Premium Gaming (in relation to fluctuations in theoretical win and loss rates)

Comment/ Analysis

In 2012 CHEN sought legal and operational advice from WilmerHale after he was aware of two significant issues (1) Macau Junket staff being arrested and (2) Pulling two of their own Crown China staff out of China because of potential reputational risk to Crown's business if they talked to Chinese authorities about their customers and word of this got out. These issues could be considered to have warranted escalation to an independent risk committee for assessment thru the 'formal' risk process. The Gaming Operations risk register does consider the operational risks or compliance risks associated with the Crown staff in China at this stage.

**Paragraph 16–18**

STUART describes the process of meeting with managers and senior staff from each department and provides a table that is used by the Risk & Assurance team and the departments explaining Crown

<sup>45</sup> Crown document CWN 514 028 5458 and see also para 168 of Draft Report.

Melbourne's risk consequences and likelihood parameters. O'CONNOR was typically involved from VIP International.

#### Comment/ Analysis

Using this template as an example we are unsure why the 2012 VIP International risks as identified by CHEN (when he seeks legal advice) were not escalated and included.

#### **Paragraph 30**

STUART highlights the example of O'CONNOR raising at a meeting the risk to be included in the Corporate Risk Profile of "foreign political policy". The example is detailed in an email from O'CONNOR that if the Chinese government decide to clamp down on currency movement '...our international business will suffer', or if they decide to curb lending for real estate development or decide to restrict international travel of politicians and dignitaries. This was then included in the Corporate Risk Profile.

#### Comment/ Analysis

Based on the ongoing risks considered at operational level by VIP international (that included seeking Legal and expert Operational risk advice in 2012 -2015) that 'Foreign Political Policy' risk could have been considered encompass other things such as the arrest of other casino operatives in China, Government policy announcements regarding foreign casinos in China, and the questioning of China based Crown staff by Chinese authorities. However, it was primarily focussed on possible impacts to revenue.

It is unclear whether the above issues were raised by O'CONNOR or other VIP International executives/managers through the executive team meetings or as part of the 'risk' process for formal escalation. Based on what we know to date only the South Koreans arrests was escalated to the Board level.

### **5.4 Witness statement of Michael JOHNSTON dated 17 December 2019**

JOHNSTON has been a non-executive director of Crown since July 2007 and is also the finance director of Consolidated Press Holdings Pty Ltd.

JOHNSTON states that he was part of a VIP Focus Group which was not a formal committee and met irregularly. He states that he placed his faith placed in CHEN, O'CONNER and FELSTEAD to deal with risk at operational level. He states that the issue of the South Korean arrests were escalated to CRL board but he has limited recollection of this matter. He does not refer in his statement to the questioning of Crown staff by Chinese Police – and the evidence to date indicates that this was not escalated to him or the Board.

On 28 June 2015 FELSTEAD forwarded an email to JOHNSTON (amongst other Crown executives) that contained advice from Mintz that included:

*Given the above I'm convinced this was an isolated case though pursued in the environment we know is present which is more careful monitoring of activities and not allowing activities to become too high profile...*

It is unknown if JOHNSTON relayed this advice (especially regarding not becoming too high profile) at Board level regarding the Korean arrests.

#### **Paragraph 9**

JOHNSTON was a member of VIP Focus Group met about 4 times between 6 February 2015 and 16 October 2016 and had hoc telephone meetings. Purpose of the group was to grow the VIP business and to 'assist if possible on issues as they arose.'

#### Comment/ Analysis

Not sure what he means by "assist if possible on issues as they arose" because no examples of issues are given. There is no indication that the issues and the outcomes of the discussions were documented.

**Paragraph 11**

The VIP Focus Group was not specifically focussed on China but a significant portion of discussions related to how debt owed by mainland Chinese might be recovered.

Comment/ Analysis

Apart from debt issues, it is unclear what other issues the VIP Focus Group discussed. We know they discussed "growing the business" but it is unclear whether they would have considered risks to Crown, both financial and non-financial. It is unclear what JOHNSTON relayed to other Executives or major shareholders regarding the VIP Focus Group discussions.

**Paragraph 20**

JOHNSTON was informed (verbally) there was a mixture of legal and government relations advice.

*'I myself did not read the detail of its effect was conveyed to me by management (principally Barry and Chen and reinforced by Craigie) effect of advice was that Crown was operating within the law and accepted practices in China'.*

Comment/ Analysis

JOHNSTON did not read the detail of the advice – relied on his managers

**Paragraph 22**

After reports of foreign casinos being targeted (prior to the Korean arrests) he asked CHEN and FELSTEAD if their China operations were in accordance with the law. He was told that the focus of the Chinese authorities was on some operators that were abusing China's currency transfer restrictions.

Comment/ Analysis

The reports at the time were of concern enough and broad enough (not just related to some operators allegedly abusing currency transfer restrictions) that Crown considered not opening offices in China (and they decided not to) or travelling through mainland China for a period. Also, CHEN instructed Crown to divide his pay in case he was detained by Chinese authorities. Arguably, as discussed above, CHEN and FELSTEAD overly focussed on the differences between the operations of the South Korean casinos and Crown.

**Paragraph 24**

After the Korean arrests JOHNSTON asked FELSTEAD and CHEN to obtain fresh legal advice. CHEN told him he had obtained fresh legal and government advice that Crown was operating in accordance with accepted practice in China

Comment/ Analysis

By fresh legal advice it is unsure if he meant from another legal source. CHEN sought legal advice only from WilmerHale. It is unclear whether this was provided back to JOHNSTON.

**Paragraph 25**

CHEN and FELSTEAD told JOHNSTON that Koreans had gone beyond what the rest of the industry were doing; essentially engaged in money laundering and prostitution

**Paragraph 26**

FELSTEAD copied JOHNSTON into an email on 26 June 2015, that included statements that the South Koreans were extremely aggressive in the way they approached the business compared to many others operating in the same sector especially about bring cash in and out of China. The attached referenced document from Mintz also said to be more careful monitoring of activities and not allowing activities to become too high profile.

Comment/ Analysis

Accepting that the Koreans were allegedly involved in money laundering (a difference) – it be argued that Crown operated in a similar manner to the South Korean casino staff in many respects - with their marketing including roadshows through China, the number of staff on the ground in China and

reporting of success regarding China in their Annual Reporting despite advice not to become too 'high profile'

#### **Paragraph 27**

JOHNSTON states he mentioned the South Koreans to the board and that advice had been taken in relation to their arrests and the advice confirmed that Crown's operating procedures in mainland China remained appropriate. It was his understanding that Crown's operations were not at all out of sync with Crown competitors

#### Comment/ Analysis

It is unclear if the Board was told that Mintz had advised that their activities should not become too "high profile". If the Board was advised it is unknown how they responded, if at all. It is unclear how JOHNSTON knew what Crown's competitors were doing in China in comparison to Crown.

#### **Paragraph 28**

Was never briefed or any other indication that staff of Crown were at material risk of being detained.

#### Comment/ Analysis

JOHNSTON's statement does not mention the questioning of Crown's employees by Police in China and it is unknown if he was briefed on this by FELSTEAD, CHEN or O'CONNOR. If so, this may have changed his view and the material risk of being detained. If he was briefed about the incident, the question is, did he escalate it to the Board level and if not why?

FELSTEAD stated at interview that he didn't think it was the sort of thing that needed to be escalated so it may have remained at his level and JOHNSTON not advised of same. I think it is worth clarifying with Crown regarding this incident and its escalation or otherwise.

### **5.5 Witness statement of Michael CHEN dated 12 December 2019**

In February 2012, CHEN began working at Crown Limited as President of International Marketing. In this role, He was responsible for managing a team of staff in China and South-East Asia. His role involved developing the overall business strategy for the region, overseeing product development and marketing and managing the performance of the team, including by implementing performance metrics and systems. He was based in Hong Kong, but regularly travelled to mainland China.

CHEN was interviewed by the VCGLR as part of this investigation on 10 May 2018.

CHEN's statement has been analysed and, where relevant, his statement and relevant documents are referred to throughout this memo. This is predominately in relation to incidents that involved the seeking of and provision of advice from WilmerHale. In addition, where matters have been escalated or advice relayed it is considered within each specific incident at points 4.1.1 to 4.1.10

#### Comment/ Analysis

Summary analysis regarding CHEN's statement is as follows:

CHEN was responsible for sourcing the legal advice and risk management type advice from WilmerHale and Mintz respectively. This does not appear to have gone through any tendering type process nor did Crown management appear to be involved or provide guidance to CHEN in sourcing this advice.

It is unclear how closely Crown followed the WilmerHale's advice on each occasion as is detailed in each incident summary – for example, failing to limit senior executive travel to China as advised on 25 February 2015.

Legal advice was initially provided verbally to CHEN and then summarised and distributed by him. At later times, it was provided in writing albeit only via email. O'CONNOR and FELSTEAD's understanding of the Chinese law originated from CHEN but there are slight differences based on their respective statements (as discussed above).

Legal advice from WilmerHale regarding Crown's operations in China was, at times, simply that there had been no recent changes to the relevant law.

CHEN's statement provides the best insight regarding WilmerHale's interpretation of Article 303, and therefore CHEN's and Crown's understanding of it.

The first **written** legal advice from WilmerHale was provided on 19 February 2013 and is headed 'Privileged and Confidential Attorney Work Product'.

There is no written legal advice regarding what is a 'commission' under Article 303. CHEN recalls receiving verbal legal advice but not whom it was from.

There does not appear to be any documented material outlining exactly how Crown operated in China that was provided to WilmerHale when seeking the legal advice.

CHEN had a connection with WilmerHale having used them previously while working with a previous employee.

CHEN has a personal relationship through his brother being a personal friend of Randy Phillip's at Mintz.

CHEN states he also used an informal network to gather information about the industry or government, however, we query whether this is an appropriate risk mitigation strategy and we have little details about this network.

CHEN's statement does not refer to the questioning of a China based staff member (XIONG) by Chinese police on 9 July 2015 and the provision on Crown letterhead of a letter regarding XIONG's employment with Crown. CHEN engaged WilmerHale in relation to this incident at the time. No further statements or materials have been provided regarding this critical incident by CHEN or FELSTEAD OR CRAIGIE.

## 5.6 Witness statement of Rowen CRAIGIE dated 17 December 2019

CRAIGIE was the Chief Executive Officer and Managing Director of Crown Resorts from 2007 to 2017.

He was a director of Crown Melbourne Ltd from 2002 to 2017, its Chief Executive Officer from 2002 to 2007, its Chief Operating Officer from 2000 to 2002, and the Executive General Manager of its Gaming Machines Department from 1996 to 2000. He was a director of Crown Resort Pte Ltd, a Singaporean subsidiary, from 2011 to 2019.

CRAIGIE was interviewed by the VCGLR as part of this investigation on 14 March 2018.

A recurring issue from the statements provided by Crown is the lack of reference to Crown staff who were questioned by Chinese authorities shortly after the Korean staff were arrested. CRAIGIE acknowledged at interview that this matter (Crown staff being questioned by Police) should have been escalated to him and above.

### Paragraph 13

At no time during the Relevant Period<sup>46</sup>, or prior to it, was the risk of:

*"Crown employees being charged, arrested, detained, prosecuted or convicted by Chinese authorities" for "commission of crimes in contravention of Chinese laws in relation to gambling" (or for any other reason) identified as a material risk through the formal risk-management process.*

### Comment/ Analysis

I note that CRAIGIE doesn't include in his statement any details about Crown staff being questioned by Chinese Police – which occurred soon after the Korean arrests were reported. CRAIGIE considers this incident escalated to him and above (at interview with VCGLR).

### Paragraph 14

*As I said above, the other, significant side of risk management at Crown during the Relevant Period was the addressing of risk at the operational level. Naturally, a material risk that arose in the course of day-to-day operation could not await the next RMC or Board meeting. The ability to respond flexibly at the operational level was necessary. The reporting structures in place across the various Crown businesses were the mechanism by which such risks were to be identified and addressed as appropriate.*

<sup>46</sup> "Relevant Period" is 6 February 2015 to 14 October 2016 (i.e. the relevant period for the purpose of the class action proceeding).



Comment/ Analysis

Whilst it is understandable that risks have to be dealt with as they occur operationally, strategically they also have to be considered and escalated to the appropriate level if they affect the wider business including reputational interests of Crown and its staff, compliance with foreign laws and the safety of its staff.

**Paragraph 19**

*I believed they would exercise appropriate judgement in that regard. Further, having known Barry and Jason for about two decades, and knowing that they had families, I expected that they would come to me if they had a concern about travelling to or working within China. Neither of them ever came to me with any such concern during the Relevant Period (or at any time prior to it).*

Comment/ Analysis

Someone willing to place themselves at individual risk is considerably different to recognising the wider organisational risks and risks to its staff.

It is also noted that CHEN stated to FELSTEAD that he believed he was placing himself at risk by operating in China. He stated in an email to FELSTEAD on 27/6/16 with O'CONNOR cc'ed in that *'...he had taken on the risks of being prosecuted in China...'* (Document – CWN 514.028.5458 refers) and he also took steps on 23/3/15 in an email to O'CONNOR in the 'unlikely event' of his detainment to ensure his pay was distributed appropriately (CWN5140081148).

**Paragraph 28-29**

Email chain including the chairman of Crown (**RANKIN**) and FELSTEAD at the time after the arrests of the South Korean casino operators in June 2015, who said:

*'We should be on high alert for this type of regulatory action in China. Specifically, the training of new in country sales staff should be reviewed and extensive'*

CRAIGIE goes on to say that:

*'they had in place training for staff in relation to what not to do...'*

Comment/ Analysis

It is not clear what RANKIN's *'high alert'* for this type of *'regulatory action'* exactly means or how it was relayed operationally. It could be construed as meaning Crown should formally consider their risk rating and approach to risk in operating in China through their formal risk management processes and committees. When Crown's own staff were questioned shortly after this in July 2015 I would have thought that this should have also been treated as a *'high alert'* incident and escalated appropriately as CRAIGIE previously said during his record of interview.

## 5.7 Witness statement of Jason O'CONNOR dated 17 December 2019

Resorts Limited from 2011 until about 13 October 2016. He was appointed to his current role of Director – Innovation and Strategy for Crown in February 2019.

O'CONNOR was interviewed by the VCGLR as part of this investigation on 8 March 2018.

O'CONNOR's statement has been analysed and where relevant his statement and relevant documents are referred to throughout this memo. This is predominately in relation to incidents that involved the seeking and provision of advice from WilmerHale and the escalation of this from CHEN to O'CONNOR and/or FELSTEAD.

O'CONNOR like FELSTEAD and CHEN does not mention the July 2015 questioning of Crown staff in China in his statement'.

**Paragraph 18**

*VIP Focus Group meetings were semi regular, once a week and were conducted in person or via phone conference. CHEN, RATNAM, FELSTEAD and occasionally JOHNSTON were a part of these*

meetings. Purpose was to discuss operational matters and **'...issues or risks in the VIP international business generally.** A substantial portion of those meetings concerned issues in relation to customers from, or business issues relevant to mainland China

#### Comment/ Analysis

Only CHEN specifically references the VIP Focus Group as being used, inter alia, to identify **'any priorities to share with the Crown Board.'** This indicates a different understanding of what the VIP Focus Group was a conduit for. Evidence to date does not reveal any minutes, agendas or reports from the VIP Focus Group.

#### **Paragraph 63-64**

*The casino industry is very competitive and it was important for Crown to monitor and understand what its competitors were doing in terms of marketing and the incentives on offer to customers. I talked to my counterparts at competitor properties and to other people in the industry on a regular basis, and there would be some informal exchange of information, including on staffing, dealing with customers, credit position and debt recovery. When travelling overseas for my role I also made a point of meeting up with so many of my counterparts as were available, to share a coffee and to update each other on what was happening in the industry. I would also regularly receive updates from Michael, including on intelligence provided by customers to sales team staff or to Michael himself.*

*At all times, up to 13 October 2016, I was comfortable, based on my discussions with my counterparts at competitor properties and with Michael Chen and others, that Crown was not an outlier in any material respect in the way that it engaged with customers in China.*

#### Comment/ Analysis

O'CONNOR does not provide any examples of who he talked with, when or the exact nature of these conversations.

#### **Paragraph 74**

*I understood from what Michael and others, including Alfred, had told me, that Michael had told the in-market China sales team staff not to overtly market or promote the casino and gaming aspect of Crown's business and he also counselled them to only talk to or deal with small groups of customers. Marketing materials prepared by Crown and provided to sales staff in China promoted the properties and upcoming cultural or sporting events at the properties, for example Chinese New Year, the Spring Racing Carnival and Australian Open Tennis.*

#### Comment/ Analysis

Crown made promotional material that was both gaming and non-gaming. Some of the gaming material brochures (300) for China based staff were sent to Hong Kong for pick up by China based staff rather than being posted into China. CHEN's focus on sales and sales staff not 'service' type staff in mainland China, would seem incongruous to this message of not overtly marketing or promoting the casino

#### **Para 75**

O'CONNOR states that staff in China did not engage in *'above the line'* advertising of the Crown properties or events or gaming and that they were cautious

#### Comment/ Analysis

Not exactly sure what *'above the line'* refers to and how O'CONNOR was so sure of the 'caution' being shown.

#### **Paragraph 76**

O'CONNOR states that he understood that international competitors had sales teams in China and had a very low tolerance for risk and were 'all anchored in a similar casino regulatory regime.'

Comment/ Analysis

We note that US casino regulations in Nevada actually appear to be a lot stricter, not sure exactly what O'CONNOR's knowledge of the regulatory regimes are, or if he knew the size, scope and actual operations of the overseas sales teams.

**Paragraph 77**

Key risk as O'CONNOR saw it was sales staff being held for questioning by local authorities about the activities of certain customers. He saw it as a risk of low likelihood with two tiers of consequential risk on materialisation of that risk. One: - the personal risk to the staff and to the customers if the authorities found VIP international information and Two - if this became public knowledge Crown could suffer reputational risk.

Comment/ Analysis

CHEN in his statement indicates that the risk of being questioned by local authorities is not of 'low likelihood' but 'not unusual' CHEN states:

*On 22 November 2012, I sent an email to Debra Tegoni regarding the recent arrest and detention of Macau junket operators (CWN.514.068.1015). I noted in my email that the advice from WilmerHale was that our activities in China were entirely legal but that it was necessary to provide guidance on what staff should do in the event they got the proverbial 'knock on the door' from authorities. I said that it was not unusual for staff of foreign companies to be asked to cooperate in government investigations.*

Comment/ Analysis

Not unusual would seem a greater occurrence than a low likelihood.

In relation to O'CONNOR's explanation of the two tiers of consequential risk. I would state that this significantly escalates or at least changes the risk when Crown employees were questioned in July 2015 in relation to their activities and a letter be provided that they work for Crown. The thrust of the questioning of Crown staff by Chinese authorities was what Crown did – not any focus on a Chinese customer. O'CONNOR is vague on his recollection of that event at interview (the questioning of Crown staff by Chinese Police) and does not mention it in his statement. We understand, however, that O'CONNOR knew of the questioning.<sup>47</sup>

If a formal and more independent risk analysis process was engaged at this time it may have identified the differences in CHEN and O'CONNORs view regarding the risk likelihood of being questioned AND more importantly the change that the risk should encompass the risk to Crown as the Chinese authorities intimated they were interested in Crown's activities – not just Chinese customers.

**Paragraph 89**

O'CONNOR can't recall if he saw email from CHEN to VIP International offices regarding "we have engaged one of the world's best law firms and political consultants to provide us advice on this matter"<sup>48</sup>; O'CONNOR unsure of he was on the VIP International email distribution list in February 2015.

Comment/ Analysis

It is concerning that O'CONNOR possibly not on email distribution list for an area he is responsible for especially in context of CHEN advising that they have engaged legal and political consultants because of a Chinese government announcement.

**Paragraph 95**

O'CONNOR states that he can't recall seeing or reading the Mintz memorandum.

Comment/ Analysis

It is concerning that the role that CHEN reported to did not take the time to read a memo that detailed the risk to Crown and its staff in mainland China at the time. The memo was not escalated for

<sup>47</sup> See email dated 9 July 2015 from CHEN to WILLIAMSON (with a CC to O'CONNOR) (Crown document CWN 514 035 2262)

<sup>48</sup> "matter" being the 6 February announcement.

consideration in Crown's 'formal' risk processes. This is even despite an upcoming 'road trip' being planned around this time and the consideration of investing in Crown offices in mainland China.

### Paragraph 123

*I discussed potential operational risks to the VIP business unit on a regular basis with Barry Felstead and key senior people within my team, including Michael Chen. While I did recognise the potential risk that Crown executives travelling to China and sales staff in China might be questioned by local police about the activities of a Chinese VIP customer, I did not consider the likelihood of that risk occurring and the consequences if it did occur to be so material and so potentially damaging to the business unit and to Crown Melbourne and Crown Perth, that it ought to be included as a specific risk in the Corporate Risk Profile. I considered that this potential risk was being monitored, managed and assessed appropriately at the operational level by Michael Chen. Michael was in close contact with our external advisors and would seek refreshed advice from WilmerHale, Mintz Group and other sources when he, usually in consultation with me, deemed it necessary. I placed a lot of reliance on Michael and the advice that he passed on to me. I understood from my discussions with Michael that if an issue or risk was identified by sales staff concerning a VIP customer or government policy, they would escalate it to Michael and Michael, if he believed it was warranted, would raise it with me. In addition, Roland Theiler would alert me to any credit, debt or currency related risks, and the operations team would flag any operational issues with me.*

### Comment/ Analysis

In discussing the Crown risk process as it pertains to VIP International O'CONNOR is in a role that should or could decide to escalate (or not) matters to the formal risk process of Crown. Note that O'CONNOR considers the risk is that their staff might be questioned by local police about Chinese customers, but **not** questioned or being investigated about Crown's own activities and whether they are legal, which is ultimately the risk event which occurred.

If O'CONNOR was fully aware that Crown staff were questioned in July 2015 regarding what they were doing in China and the questioning was **not** related to a Chinese customer, then the risk may have been more fully considered and escalated. At this point, Crown ought to have realised that the risk pertained to Crown's own operations and not a customer. O'CONNOR does not mention this incident in his statement.

At interview, he said in relation to the July 2015 questioning, "Do you think it's the sort of thing, in hindsight, you should have been made aware of?" "A: 'Yes.'" – note it appears O'CONNOR was actually aware of this issue, but denied being aware of it at interview.

## 5.8 Witness statement of Jane PAN dated 17 December 2019

PAN was employed by Crown Resort Pte Ltd (a subsidiary of Crown Melbourne) and based in mainland China from approximately 8 March 2013 until she was made redundant on approximately 7 September 2017. During the period, PAN was employed by Crown in mainland China, she held the position of International Sales Manager for Shenzhen and Zhuhai.

PAN was not advised of any of her colleagues being questioned by Chinese authorities. PAN refers to a limited number of documents from CHEN regarding any legal or operational risk advice regarding their operations in China and these are summarised below:

9 February 2015 from CHEN to VIP International<sup>49</sup>:

*In addition to these steps, I wanted to remind everyone to take normal precautions. It is important to be reminded that we have been given advice from outside counsel the activities that we currently undertake (that is the promotion of overseas gambling and tourism) are indeed legal in China. What is clearly illegal under China law per our outside counsel, is the organizing of gambling group of 10 or more people AND the receipt of commissions for that work. Since everyone here is an employee of Crown and NOT receiving commissions, we are not in violation of any known laws.*

<sup>49</sup> Crown document CWN.502.016.9047

RECEPTION PROCEDURES IN CASE OF A GOVERNMENT INVESTIGATION IN CHINA<sup>50</sup>  
 – no actual legal or operational advice

20 June 2015 - CHEN to VIP International regarding the Korean arrests<sup>51</sup> –

*'So far, we can confirm from our sources in the Public Security Bureau inside China that the detentions did indeed occur. What we don't know yet is the cause of the detention. As we have discussed before, our normal activities should not cause any issues. It may well be that these Korean sales staff were engaged in activities that went beyond their normal duties.'*

15 October 2015 - CHEN to VIP International regarding the October 2015 CCTV news story including the arrest of the Koreans in June 2015<sup>52</sup> –

*We have engaged our advisers inside China to investigate the situation, to talk to the Public Security Bureau and to advise us of any changes to China law and or policy. While we are waiting for the results, please continue to take sensible safeguards and precautions.*

*For now, please continue to 1) keep meetings with guests to small groups with no more than 3-4 Crown staff in any one meeting 2) avoid any overt sales and marketing activity.*

**Paragraph 17(e.)**

Refers to inviting patrons to attend 'special events' including Jingle Bells, the Golden Ball or Lucky Chase.

Comment/ Analysis

These are gambling related or linked events.

**Paragraph 37**

Describes PAN's knowledge of other casinos international sales staff in China and that she:

*'... understood that each of these resorts had sales staff on the ground in mainland China ...who were meeting with Chinese patrons to encourage to them to visit their resorts to gamble.'*

**Paragraph 40–42**

PAN's understanding, based on what CHEN told her, was that what she was doing was legal because

- or
- (a) *I never arranged for large groups of gamblers (and certainly not groups of 10 more gamblers) to travel to Crown together on a single trip; and*
  - (b) *I did not receive commissions from the clients for gambling.*

PAN also refers to the email CHEN sent to staff that included the below paragraph:

*In addition to these steps, I wanted to remind everyone to take normal precautions. It is important to be reminded that we have been given advice from outside counsel the activities that we currently undertake (that is the promotion of overseas gambling and tourism) are indeed legal in China. What is clearly illegal under China law according to our outside counsel, is the organizing of gambling group of 10 or more people and the receipt of commissions for that work. Since everyone here is an employee of Crown and not receiving commissions, we are not in violation of any known laws*

Comment/ Analysis

<sup>50</sup> Crown document CWN.502.016.9048 and CWN.501.003.5874

<sup>51</sup> Crown document CWN.502.032.1515

<sup>52</sup> Crown document CWN.502.047.2388

<sup>53</sup> Statement to the VCGLR dated 6 February 2018. Note Jerry XUAN was the "Director of International Sales Beijing"

It is interesting to note that Jerry XUAN's statement to the VCGLR<sup>53</sup> makes no reference to Commissions as referenced by PAN. His recollection of Chinese Law was that "*you must not promote gambling to groups of more than ten people*" which again indicates he held a different interpretation than other staff.

## 5.9 Witness statement of Barry FELSTEAD

FELSTEAD has been a director of Crown Melbourne Limited (Crown Melbourne) since 8 November 2013. He has been a director of Crown Perth since 26 April 2007.

In his role as Chief Executive Officer – Crown Perth, he took over responsibility for the VIP International business for Crown in March 2013. This responsibility remained with him when he became Chief Executive Officer – Australian Resorts in August 2013 to the current date, including during the period 6 February 2015 to 14 October 2016 (Relevant Period). In this role, his portfolio of responsibility included overarching responsibility for the resort facilities at Crown Melbourne and Crown Perth, including hotels, retail, food and beverage, local gaming (both machines and table gaming), premium gaming and VIP International. He reported to Mr Rowen Craigie, then the Chief Executive Officer of Crown.

FELSTEAD was interviewed by the VCGLR as part of this investigation on 28 March 2018.

### Paragraph 7

During the Relevant Period most of his time he was focussed on areas of responsibility relating to the domestic business of Crown

#### Comment/ Analysis

This could be considered to place more reliance on CHEN (and O'CONNOR) in relation to assessing risk with regard Crown's operations in China. Contrary to this is FELSTEAD's involvement in key incidents such as the provision of a Crown letter in his signature for a Crown employee questioned in China in July 2015.

### Paragraph 15

FELSTEAD was part of the VIP Focus Group and (g) We typically discussed VIP business coming from China (including Macau) at some length at each of these meetings.

#### Comment/ Analysis

Again, there is no documentation for the VIP Focus Group. FELSTEAD does not specify whether the VIP Focus Group reports to or informs the Board.

### Paragraph 21

FELSTEAD relied heavily on CHEN regarding legal restrictions and risks associated with Chinese operations.

#### Comment/ Analysis

Reinforces view that over-reliance placed on CHEN whose primary role was to drive the business.

### Paragraph 21

FELSTEAD observed that CHEN enthusiastically assumed responsibility for obtaining the advice (legal or otherwise)

### Paragraph 27

FELSTEAD endorsed obtaining the Mintz report but does not appear to have asked for a copy of it or read same.

#### Comment/ Analysis

Indicative of the strong reliance on CHEN.

<sup>53</sup> Statement to the VCGLR dated 6 February 2018. Note Jerry XUAN was the "Director of International Sales Beijing"

**Paragraph 31**

FELSTEAD also relied on GOMEZ who was a Senior Executive with VIP International.

No statement from, or interview conducted with GOMEZ to corroborate this. Also, no documents provided indication that GOMEZ provided any risk advice.

**Paragraph 31**

Took comfort that staff in China attuned to and likely to understand the political and legal landscape working in China

Crown staff often raised their concerns and it was relayed to them that what they were doing was legal and to maintain being 'low key'.

**Paragraph 35**

*I did not hold the view that:*

- (a) *Crown's operations in mainland China were in breach of Chinese law;*
- (b) *Crown's operations in mainland China possessed characteristics that would make it a subject of the announced crackdown; or*
- (c) *there was a risk that Crown employees would be charged, arrested, detained, prosecuted or convicted by Chinese authorities for commission of crimes in contravention of Chinese laws in relation to gambling.*

Comment/ Analysis

FELSTEAD's view (above) does not appear to contain any information regarding the questioning of Crown employees by Chinese Police on 9 July 2015, which he was clearly aware of. FELSTEAD could have escalated this matter or reconsidered his view.

**Paragraph 41**

*Shortly after the Korean Arrests, Mr Chen told me that the South Koreans had been warned about their conduct by Chinese officials. I assumed that if Crown was doing something that the Chinese authorities had thought was not acceptable, Crown would be warned by officials in the same way that the South Korean casinos had been.*

Comment/ Analysis

There is nothing in CHEN's statement to corroborate a specific "warning" to the Koreans at this time or in the documents from WilmerHale or Mintz at this time. There is an email chain on 24 June 2015 that FELSTEAD was part of that includes the following news article

*China Sets No-Marketing Tone with South Korean Casinos.*

*Fourteen marketing employees from South Korean casino companies Paradise Co. And Grand Korea Leisure were arrested in China last week for allegedly marketing to Chinese gamblers. The Chinese gov't has been vocal for some time, warning casinos in neighbouring countries not to market to Chinese citizens. The Chinese gov't will pursue foreign currency law charges against the South Korean marketing employees.*

This is the closest reference that can be identified to a direct warning to Korean casinos and this generically refers to 'neighbouring countries'.

**Paragraph 45**

Board meeting where Korean arrests were discussed

Comment/ Analysis

We believe the relevant Board meeting was in August 2015. Yet the Board was not advised of the Police questioning of its employees in China (only one month prior, on 9 July 2015) nor the additional risk to Crown and its staff that this event posed.

## 6 Summary of relevance of Expert Report of Margaret LEWIS

### 6.1 Submissions

The Expert Report of Margaret Lewis (**LEWIS**) (the **Report**) consists of 49 pages and a 3-page addendum to the Report. In addition, there is a seven-page bibliography and her 9-page resume.

Page 1 and part of page 2 of the Report detail the qualifications of the witness. These are extensive and include 'two decades of experience studying the PRC legal system and nearly 15 years focussed on criminal justice.' She is a professor of Law at Seton Hall University in the USA.

She was asked to answer four questions as set out in a letter from Minter Ellison and her responses include comments and matters referred to, and opinions expressed in, the Expert Report of Professor Godwin (**GODWIN**). She has been asked other questions including addressing the PRC Ministry of Public Security press conference of 6 February 2015 and addressing matters on the PRC Criminal Procedure Law.

The Report includes a three-page summary of LEWIS' opinions.

#### 6.1.1 The questions addressed in the Report and the Addendum Report

##### **PART I: Substantive Law**

1. Provide a description of the legal system of the PRC (Chinese law) (*pages 7 to 10*).
2. Explain the manner in which Chinese law is promulgated, interpreted, applied and enforced (*pages 11 to 13*)
3. In respect of Articles 303 and 25, provide:
  - a. your opinion on the English translation provided in the Godwin Report;
  - b. an explanation of how those provisions are interpreted, applied and enforced under Chinese law, with a focus on the first paragraph of Article 303 as it applied in the Relevant Period; and
  - c. any other relevant observations or opinions about the provisions, including whether there are any other Chinese laws that relate to gambling and, if so, an explanation of those laws and their interpretation. (*pages 13 to 16*)
4. In respect of the Interpretation, provide:
  - a. your opinion on the English translation provided in the Godwin Report;
  - b. an explanation of how that Interpretation is understood, applied, and enforced under Chinese law, with a focus on how the Interpretation relates to the first paragraph of Article 303 as it applied in the Relevant Period; and
  - c. any other relevant observations or opinions about the Interpretation (*pages 17 to 32*)
5. The PRC Ministry of Public Security held a press conference on 6 February 2015 that addressed gambling crimes. Please explain the content of the transcript of the press conference and context of that press conference (*pages 33 to 41*)

##### **PART II: Procedural Law**

1. Please provide a brief structural overview of criminal process in the PRC with a focus on the period 2015 to June 2017. (*Pages 41 to 42*)
2. Please provide a brief structural overview of the relationship among the police, prosecutors and courts in the PRC with a focus on the period 2015 to June 2017. (*pages 42 to 28*)
3. Please explain the burden of proof in a criminal case in the PRC with a focus on the period 2015 to June 2017. (*pages 48 to 49*)

##### **The Addendum Report**

1. Please provide a summary of the critical elements of Article 303 when the conduct at issue involves people going outside of mainland China to gamble.

##### Comment/ Analysis



The above Procedural Law questions and responses we do not consider require detailed breakdown or analysis for the purposes of the VCGLR's report. It is accepted that the criminal process including the burden of proof in PRC is significantly different to the Western criminal process with regard comments made in the Report such as:

*Courts seldom reject or reverse evidence prepared by the police or the procuratorate in criminal proceedings*

*There is a conviction rate of over 99% once a suspect is formally charged*

*Once the police set in motion a criminal investigation, they have both extensive powers to conduct that investigation and significant influence over the eventual outcome of the case.*

*'...PRC authorities continue to use coercive practices against criminal suspects.*

*The pressure on suspects to confess is encapsulated in the longstanding policy of "leniency for those who confess and severity for those who resist"*

*It is questionable whether the current legislated standard of proof indeed rises to the level of "beyond a reasonable doubt" as understood in the United States and other legal systems which use that phrasing.*

## 6.1.2 Comments regarding the Report Summary (pages 4 to 7, points 10 to 23)

### Relevant key points from the summary of the Report

Chinese law has a proscriptive approach, that is written in a high level and abstract manner which makes it difficult to interpret. This is compounded by a lack of transparency. There are significant challenges for those outside of the government to predict how the law will be one, interpreted and two, enforced.

The relevant government bodies provide some guidance on laws in the form of interpretations, regulations, notices and opinions.

Article 303 of the PRC Criminal law is the primary source for the criminalization of gambling but it is not clear what specific activities fall within its scope.

Key terms that do **not** have official PRC guidance to clarify include:

- **'organize'** (although the focus is on simultaneous organization, not simultaneous gambling),
- **'one time'** in the context of organizing to gamble at 'one time'
- **'kickback' and 'referral fee'** do not have clear definitions although 'kickback' is generally used in bribery matters and referral fees from other legal contexts indicate that kickbacks and referral fees are obtained from an outside entity.

The Report disagrees with, or thinks the Goodwin report requires further information on, the following key points:

- The degree in which normative legal documents can be read in an expansive purposive manner because of the lack of official guidance regarding legal interpretation.
- The entire legal system is under the Party's leadership and not a rule of law framework that is above the party.
- There is uncertainty regarding the content and enforcement of Article 303 and even extensive research does not necessarily provide clarity.
- The Goodwin report places too much emphasis on individual lawyers.
- **'Warnings'** from the government in the form of public statements do not **'require'** the agencies (police) to act. Action varies across sectors and over time.

The Ministry of Public Security (MPS) press conference held on 6 February 2015 addressed more than gambling including:

- Illegal crimes involving prostitution/pornography and gambling

- Illegal crimes of the production and sale of counterfeit and shoddy products as well as environmental pollution
- ~~Illegal crimes involving guns and explosives~~

The remarks on gambling were largely directed at the intersection of gambling and illegal activities involving sex and the comments did not clarify the extent to which the MPS efforts were focussed on gambling alone.

Comments in the MPS press conference regarding '*many of our neighbouring countries have casinos*' would be referencing the countries generally surrounding the PRC's land and sea borders.

### 6.1.3 Comments regarding specific questions in Report

#### PART I: Substantive Law

##### 1. Provide a description of the legal system of the PRC (Chinese law) (pages 7 to 10)

The below are salient points from the Report not explicitly referred to, or detailed, in the summary

The lack of a rich body of case law with precedential force frequently creates **grey areas** as to how that purpose plays out in specific context.

#### Comment/ Analysis

This highlights the difficulties faced by Crown operating in this environment and relying of 'definitive' legal advice when it would appear impossible to achieve this. This comment suggests that a more conservative approach should have been adopted by Crown when operating in "grey areas".

##### 2. Explain the manner in which Chinese law is promulgated, interpreted applied and enforced (pages 11 to 13)

There is a need to have due regard to any comments and statements issued by authorities in respect of the interpretation, application and enforcement of the law however there is variance in how much these public displays are show versus substance. Three examples are provided including:

- The fourteenth special campaign against online infringement and piracy
- The MPS Introduction of the Special Campaign Striking at Crimes of Trafficking Children and Women
- Various Government agencies jointly issuing rules on excluding illegally obtained evidence

The Report then details how these statements were not, in short, actioned.

#### Comment/ Analysis

The difference in Crown's situation is that the Chinese authorities took definitive action against Korean casino operators in June 2015 and this was reported on again in a CCTV broadcast in October 2015. This was after the 6 February 2015 announcement. The Korean arrests or CCTV broadcast are not addressed in the Report. It was also "actioned" in the Chinese Police interviewing Crown employees on 9 July 2015.

##### 3. In respect of Articles 303 and 25, provide:

(a) your opinion on the English translation provided in the Godwin Report;

(b) an explanation of how those provisions are interpreted, applied and enforced under Chinese law, with a focus on the first paragraph of Article 303 as it applied in the Relevant Period; and

(c) any other relevant observations or opinions about the provisions, including whether there are any other Chinese laws that relate to gambling and, if so, an explanation of those laws and their interpretation. (pages 13 to 16)

There is no universally accepted English translation of the entire PRC Criminal Law and also many terms do not have definitive translations for example '*gathering a crowd*' can be translated as '*gather*', or '*assemble*' a '*crowd*' or '*group*'.

The Godwin report cites a PRC lawyer as providing a definition of 'gathering a crowd to gamble' that is widely accepted within the legal community.

This expert report argues that PRC lawyers (there are 300,000) do not speak for the government and hence their interpretations are not authoritative:

*'3.6.2. In short, by 2008, the MPS, SPP, and SPC had all focused on the verb organize' ("组织 zuzhi) in their most authoritative official guidance when explaining what activities connected with PRC citizens going abroad to gamble reach the level of being criminal under Article 303. The 2008 SPP/MPS Regulations, like the 2005 SPC/SPP Interpretation, fail to elucidate what "organize" means in this context.*

#### Comment/ Analysis

Once again, this highlights the difficulties in obtaining definitive legal advice for what Crown was doing in China and suggests a cautious approach should have been taken by Crown.

#### 4. In respect of the Interpretation, provide:

(a) your opinion on the English translation provided in the Godwin Report:

(b) an explanation of how that Interpretation is understood, applied, and enforced under Chinese law, with a focus on how the Interpretation relates to the first paragraph of Article 303 as it applied in the Relevant Period; and

(c) any other relevant observations or opinions about the Interpretation (pages 17 to 32)

The Godwin report provides an accurate translation of the 2005 PPC/SPP Interpretation. The most relevant provision for foreign casino operators is likely to be Article 1(4)

*organizing 10 or more PRC citizens to go abroad to gamble, from which kickbacks or referral fees are collected" constitutes "gathering a crowd to gamble" under Article 303*

Comments by individual lawyers or by non-official sources should be viewed with caution. Even legal analysts with strong credentials can be wrong.

*As a result, the best place to ground an analysis of the criminal law is in the government's pronouncements.*

#### Comment/ Analysis

This highlights that from a risk management perspective it is best to place emphasis on whatever government announcements or statements are made, rather than over reliance on legal advice that is unlikely to ever be definitive in this environment. Crown heard and saw various "government pronouncements" but failed to escalate those matters appropriately or reconsider its approach in light of them.

Specifically, with respect to Article 1(4) of the 2005 SPC/SPP Interpretation, the 2005 Criminal Division Interpretation clarifies that this Article is directed mainly at travel agencies, tour guides, and "agency organizations" ("代理机构" daili jigou) established within China by casinos outside China.

It then specifics several points to which attention should be paid (see also Godwin Report Page 23, Paragraph 1.4.3):

*(1) "First, the number of persons organized is not calculated on an aggregate basis; it is necessary that 10 or more PRC citizens are organized at one time to go abroad to gamble";<sup>43</sup>*

*(2) "The word 'border [or 'boundary']' refers to 'national borders'; this provision is also applicable to organizing PRC citizens to go to Hong Kong, Macau, and Taiwan areas to gamble";<sup>44</sup>*

*(3) "Third, there must be evidence to prove that the actor has organized the PRC citizens to engage in gambling, and not for tourism";<sup>45</sup> and*

(4) "Fourth, the actor must have obtained a kickback [sometimes translated as 'rebate' or referral fee [sometimes translated as 'introduction fee'] and, as for how much in the way of fees are obtained, there is no limit"<sup>46</sup>

In relation to point one – the focus is on simultaneous organization, not simultaneous gambling. There is no clarification as to what 'organise' means nor at 'one time' means.

'Kickbacks' are referred to in the PRC Criminal Law all involving 'crimes of bribery'

There is no use of 'referral fee' in the PRC Criminal law itself.

Examples from other contexts indicate that both a 'kickback' and a 'referral fee' are obtained from an outside entity as compared with being a transfer of funds between two people within the same organization.

The Report attempts to determine what other official guidance is available from the 2005 SPC /SPP interpretation until the start of the relevant period.

The Report states that extensive research was unable to turn up reference cases involving going outside China to engage in gambling activities.

The Report identifies one case, albeit this was published in 2018, (the opinion was dated 2017), was not marked as having special reference or guiding force and occurred after the detention of the Crown employees.

#### Comment/ Analysis

Note case occurred after Crown employees detained and probably has little relevance for Draft Report.

The '2017 Jiangxi case' involved several defendants being accused of organising PRC citizens to go to Macau to gamble along with other gambling activities including 'providing gambling chips' and transferring funds to a designated bank account.

One defendant argued that they did not organise 10 or more persons on a single occasion to go abroad to gamble. The court referenced a MPS Legal Affairs Bureau dated 15 March 2011 'How to Understand 'Organising 10 or more of our Country's Citizens to Go Abroad to Gamble'

The Court stated:

*'...although defendant Liu Zhiyong did not organize 10 or more persons on a single occasion to go abroad to gamble, the total number reached 10 or more, and his conduct constituted a gambling crime. Therefore, this court does not accept the defense's opinion.'*

The Report states that the case; -

- has no precedential effect
- the case mentions the 2011 SPC response but does not reprint its contents and standard search methods did not turn up the response
- finding the 2011 SPC Response shows the disconnect between actors within the government as compared with information released to the public
- indicates that it shows that six years after the issuance of the 2005 SPC/SPP Interpretation the government body responsible for investigating gambling crimes still did not understand what the SPC and SPP meant by 'organise 10 or more persons on a single occasion to go abroad to gamble'

The experts search of the PRC court databases make it impossible to say with certainty what would have been available if someone had searched during the relevant period.

The Report discusses how media reports can assist in tracking down relevant cases. The Report then details the Pudong Times article regarding the 2019 Pudong Case. The case is indicative of when there is a government issuance (from the CPP Central Committee and State Council's) for example 'Notice on Launching a Special Struggle to Sweep Black, Eliminate Evil'. It was noteworthy for illustrating the emphasis on cracking down on gambling activities that have a nexus with 'black societies' meaning organised crime.

The article in the Pudong Times also details three cases of examples of the courts role in implementing the national campaign, 'Sweep Black, Eliminate Evil'

An important conclusion drawn after the three examples is that:

*Simply put, if the PRC government wants to make clear its intention to strike at certain gambling activities, it has repeatedly demonstrated its willingness and ability to formulate and announce specific campaigns. As for the 2019 Pudong Case, it should be read in the context of the "Sweep Black, Eliminate Evil" campaign that was officially launched in January 2018.*

#### Comment/ Analysis

This reinforces the critical need to pay attention to any government announcements. If it is accepted that the actual police or government response is uneven at times it is worth noting that they do respond - as with the widely reported arrests of the South Korean casino operators in June 2015.

On 8 June 2008, the MPS and MPS issued regulations relevant to gambling crimes that largely track the 2005 SPC/SPP interpretation. Scrutiny of the MPS website located a response to a question and answer from February 2014. The question asked was:

*"I've seen recently in the media that the public security organs are severely cracking down on prostitution/pornography, gambling, and drugs: I'd like to ask, what situations are gathering a crowd to gamble?"*

*The MPS webmaster replied to this question, "Hello! According to Article 1 of the Interpretation on Several Questions Concerning the Specific Application of Law in Criminal Gambling Cases i.e. the 2005 SPC/SPP Interpretation] if undertaken for the purpose of profit, any of the situations below will constitute 'gathering a crowd to gamble' as provided in Article 303 of the Criminal Law... (4) organizing 10 or more PRC citizens to go abroad to gamble, from which kickbacks or referral fees are collected"*

This underscores that as of February 2014 the 2005 SPC/SPP Interpretation was the key normative document for understanding gathering a crowd to gamble.

5. The PRC Ministry of Public Security held a press conference on 6 February 2015 that addressed gambling crimes. Please explain the content of the transcript of the press conference and context of that press conference. (pages 33 to 41)

A transcript of the 6 February 2015 Ministry of Public Security (MPS) Press Conference is available on the PRC governments website. The Spokesperson stated that the press conference was to report on the key work of the nationwide public security organs since 2014. The MPS Director then stated that the MPS have been working on:

- *"illegal crimes involving 'yellow' [prostitution/pornography], involving gambling*
- *"illegal crimes of the production and sale of counterfeit and shoddy products, toxic and harmful foods and drugs, and environmental pollution that seriously endanger people's welfare"*
- *"illegal crimes involving guns and explosives that seriously endanger public safety"; and "other prominent public security problems."*

The Report then details how the opening remarks:

*'were directed at the intersection of gambling and illegal activities involving sex: they did not specify to what extent the MPS was focussed on prostitution /pornography alone and/or gambling alone.'*

The Report then details how a series of questions and answers (possibly staged) evoked the following explanation as to how 'yellow gambling' (ie linked to prostitution/pornography) cannot be solved at once and listed four focal points:

- activities in “suburban and rural areas”, especially around the time of Chinese New Year.
- *some online gambling had been banned some time ago but still organize prostitution activities.*
- *the harm of online gambling and organizing Chinese citizens to go abroad to gamble is more prominent. Nowadays, the form of gambling has undergone big changes: online gambling is convenient and concealed, and online gambling is currently a type of prominent crime that is being cracked down upon. Some foreign countries view our country as a big market, and a string of cases have already been investigated. Many of our neighbouring countries have casinos: they have established in China some offices [literally “working organs”] to attract and solicit Chinese citizens to go outside the borders to gamble: this is also a focal point of the crackdown.”*
- *another focal point is corrupt officials who neglect their duties and act as “protective umbrellas”<sup>134</sup> for gambling operations, as seen in an illustrative case in Dongguan City, Guangzhou Province, that involved gambling and prostitution.*

#### Comment/ Analysis

As detailed in the VCGLR Report (pages 47 to 48) the media reporting of this Press Conference focussed on the above paragraph in yellow at the time. Crown executives in VIP International forwarded an article headed ‘China to crackdown on foreign casinos seeking Chinese gamblers’. Another article at the time reported ‘Chinese President Xi Jinping as officially declared war on the global gambling industry, warning foreign casinos that Chinese citizens will be gambling much less in China, neighbouring countries, and the US...

Whilst I appreciate the Reports detail and context of the MPS announcement the media reporting and focus was very reasonably directly applicable to Crown’s operations in China.

In addition, media reporting around 20 June 2015 referenced the MPS announcement when Korean casino employees were arrested. ‘Korean casinos plunge after report China arrests promoters’ Macau Times.

*Chinese authorities are focusing on casino operators from neighboring countries that have set up offices “to attract and recruit Chinese citizens” to gamble abroad, a Ministry of Public Security official said in February. The clampdown came amid Beijing’s campaign against corruption that’s prompted high-stakes gamblers to avoid Macau.*

This indicates that the MPS announcement was focussed on foreign casinos attracting Chinese gamblers and was acted upon by authorities and reported as such. Crown was also aware of the relevant media reporting.

The Report then details several pages of supporting examples regarding the proposition that the translation of ‘neighbouring’ (casinos) can be ‘surrounding’ or ‘periphery and conveys a strong sense of proximity.

The Report details a reported 29 December 2014 article titled “The Ministry of Public Security Announces 20 Major Cases of Striking at Yellow Gambling in 2014’ three of which did not appear to involve prostitution / pornography but all shared an involvement in internet gambling. They all mentioned ‘multinational’ gambling and one stated:

*‘destroying the organizational network in China of a casino outside China and successfully capturing that casino’s gambling website’s broker’*

The Report then summarizes the issues regarding PRC citizens going abroad to gamble at the 2015 MPS Press Conference as:

*In summary, the comments on PRC citizens going abroad to gamble at the 2015 MPS Press Conference were made during a larger discussion regarding “yellow gambling” without specifying to what extent the MPS was also focused on prostitution/ pornography alone and/or gambling alone. The remarks during the question-and answer portion of the press conference mentioned “neighbouring” countries without*

clarification, which suggests the most logical understanding would be the countries generally surrounding the PRC's land and sea borders. The "yellow gambling" discussion was part of a broader press conference that also addressed food safety, space exploration, and environmental pollution. Searches conducted following guidance from the MPS outside of the 2015 MPS Press Conference did not uncover any notices of new, named, official campaigns targeting PRC citizens going abroad to gamble.

### The Addendum Report

1. Please provide a summary of the critical elements of Article 303 when the conduct at issue involves people going outside of mainland China to gamble.

There is no official or universally accepted translation of the PRC Criminal Law, and many terms within Article 303 do not have definitive translations.

Article 303 can be broken down into three main types of activities: (1) gathering a crowd to gamble, (2) undertaking gambling as a business, and (3) opening a gambling establishment (Part D, Page 4, Paragraph 14). Activities (1) and (2) are contained within the first paragraph and therefore are subject to the requirement that the purpose be for profit.

The PRC government has made clear that the first type of activity (i.e., "gathering a crowd to gamble" can encompass certain conduct that involves people going outside of mainland China to gamble. Specifically, the 2005 SPC/SPP Interpretation provides that "organizing 10 or more PRC citizens to go abroad to gamble, from which kickbacks or referral fees are collected" constitutes "gathering a crowd to gamble" under Article 303 1.5. The 2005 Criminal Division Interpretation provides another layer of explanation regarding the meaning of "gathering a crowd to gamble" under Article 303

The critical elements of Article 303 when the conduct at issue involves people going outside of mainland China to gamble are as follows:

- i. that there were 10 or more people involved
- ii. that those 10 people were all PRC citizens
- iii. that the destination of those people was abroad (including Hong Kong, Macau, and Taiwan)
- iv. that those people were organized
- v. that this organizing occurred at one time (i.e., the requirement is simultaneous organization, not simultaneous gambling)
- vi. that the purpose of this organizing was for the people to engage in gambling while abroad and not for tourism
- vii. that the person who did the organizing obtained a kickback or referral fee

The report states that:

*The number of people, the nationality of those people, and their destination (elements i to iii above) are generally straightforward matters.*

*There is uncertainty, however, regarding the rest of the elements. As detailed in the 9 December 2019 Report, there is a lack of clarity in PRC law as to what conduct satisfies "organize"*

*Likewise, the 2005 Criminal Division Interpretation uses the phrase at "one time" but does not provide clarification as to what this means.*

*There is also a dearth of official guidance as to what type of evidence is needed to prove that the intended activity was gambling and not tourism.*

*Finally, the PRC government has not explained what "kickback" and referral fee mean in this context. Nonetheless, examples from other contexts indicate that both a "kickback" and a "referral fee" are obtained from an outside entity as compared with being a transfer of funds between two people within the same organization. Moreover, any kickback or referral fee would presumably be a thing of value and, thus, this element is a more specific form of the "for the purpose of profit" requirement that applies to the entire first paragraph of Article 303.*

*With respect to accomplice liability, Article 25 of the PRC Criminal Law provides that a "joint crime" occurs when two or more persons intentionally commit a joint crime. The 2005 SPC/SPP Interpretation and 2005 Criminal Division Interpretation explain with respect to article 311 that accomplice liability requires evidence that (i) the actor is aware that others are committing gambling crimes and (ii) the actor has provided direct assistance such as funds, computer networks, communications, or fee settlement.*

## 7 Changes recommended to existing Crown China Draft Report

The working group recognises that changes are now required to the existing Draft Report (dated 29 May 2019) to incorporate the previously redacted legal advice, statements and documents provided by Crown. Recommended paragraphs to be changed are:

Paragraph	Reason	Changes required or to be considered
Executive Summary (Generally)	Criticism regarding Legal Advice	<ul style="list-style-type: none"> <li>- Legal advice was initially provided verbally, and then via email. Formal, written legal advice (for example, in a memorandum of advice) was never provided;</li> <li>- It is not the role of the Commission to consider whether the advice provided was correct.</li> <li>- Various staff had a different understanding of the advice received and what was permitted/not permitted in China (provide brief examples)- could discuss "commissions" here</li> <li>- Key aspects of the legal advice, including options to consider, seemed to not have been considered or progressed by key staff (e.g. CHEN is advised by WilmerHale in Feb/Mar 2016 to consider an option of having key employees work outside of China – but this seems never have to been considered.</li> <li>- <b>Possible new recommendation:</b> Crown must ensure that, when it proposes to engage in marketing or seeking to attract customers in jurisdictions where there are restrictions regarding such behaviour, that Crown seek formal written legal advice from an appropriately experienced practitioner, and that a copy of such advice is distributed to all key management staff and the CRL Board.</li> </ul>
6,7	Refers to legal advice	Detail a brief summary of legal advice received, timeline of same and method of receipt
8,9	Warning signs	consider whether this should be expanded to include earlier 'warning' signs and/or risks identified – namely, the arrest of junket operators on 22 November 2012 (point 4.1.2) Crown junket operators questioned by authorities and said that the laws concerning gambling trips had changed on 19 May 2013 (point 4.1.5) and Information received by O'CONNOR that Chinese authorities were going to arrest anti-corruption people and anything to do with gambling on 6 March 2014 (point 4.1.6),
11	Refers to legal advice	Need to include 'Commission' definition as explained by CHEN and how this evolved
12	Failure to report	Need to include alleged escalation to the Board re Koreans arrests but the lack of minuting/documentation.





14	Koreans	Need to include brief advice and analysis that shows similarities and not just differences between Koreans and Crown operations.
16	Failure to report	Koreans and relevance of Crown employees being questioned. Why didn't this go to Board also
20	Failure to report	Went to Board but not in Minutes or Agenda
25 or 28	VIP Focus Group	Need to insert paragraph re its role and CHEN's understanding that it was a conduit to the Board.
33	Check currency	We are not aware that Crown has undertaken a critical review of the circumstances that led to detentions.
59	Methodology on investigation	Include this work. Reviewing statements, LPP material
60	Timeframe Scope of investigation	Needs to expand now back to 2012 to include initial provision of legal advice
61	Dates not inserted	Need to insert dates re Crown being provided with this report and feedback
62	Crown material provided	Need to update to include this material
92	VIP Focus Group	Need to insert a para re its relevance, intent, members etc
117	VIP Focus Group	Part of Crown's Financial and Business planning so need to insert
191-196	Refers to Legal advice	Need to summarise request, receipt, nature, to whom, timeframes etc re same. Include the CCTV report re their legal interpretation or leave at para 199
201	Refers to Legal advice re Koreans	Insert re what Crown requested and received
220	Warning signs	Include the warning signs received prior to Feb 2015 starting in March 2014 (eg the ANH text advice)
248 to 250	Warning signs Legal advice	Need to expand to include WilmerHale advice against each warning sign
254 to 280	Warning signs Government Relations Advice	Need to point out any differences between Mintz and WilmerHale and/or what was relayed by CHEN. For example, to leaving out of part of Mintz advice for briefing notes to staff.
280	Legal advice	Insert in accordance with Legal advice
281-291	South Korean arrests	Need to insert how it allegedly went to Board level (but without documentation)
292- 317	Questioning of Crown employees	Need to insert WilmerHale's involvement

320-327	CCTV media report	Expand to include to include WilmerHale advice and what was/wasn't escalated.
336-338	Staff concerns and advice to staff	Consider going back to 6 March 2014.
341	Redacted advice	Include
344	Redacted advice	Include
362	Reporting to Board	Need to change to include 2015 August Board meeting. Need to include unsupported comment that Koreans were 'warned' as per JOHNSTON's statement
365	Reporting to Board	Need to change to include 2015 August Board meeting
369	Police questioning reporting to Board	Insert despite opportunity to escalate to the Board level shortly after the staff members questioning.
372	Legal advisors reference	Delete reference
378	Failure to report	Change re reporting to Board re Korean's
380-389	South Korean arrest and CCTV report	Include similarities in Korean and Crown operations not addressed. Opportunity lost to brief Board in August 2015 re Crown staff being questioned in July 2015 shortly after Korean arrests
389 second last line	CCTV report	Is 'lifetime' correct word or should it be 'timely'
392	Board briefed re Koreans	No minutes, no outcome and not clear what they were told other than FELSTEAD and JOHNSTON's statements
393	Board briefed re Koreans	Board briefed but continued based on what they were told by JOHNSTON
395	Board re Koreans	Change – they were briefed but continued
404-414	CRL Risk Management Policy	Include how "Foreign Political Policy" came about. <i>Another risk you might consider adding to the register, which effect the international business, is "Foreign Political Policy". An example of this is that if the Chinese central government decide to clamp down on currency movement, our international business will suffer. Similarly, if they decide to curb lending for real estate development or decide to restrict international travel of politicians and dignitaries, our international business will suffer.</i>  This occurred in Oct 2013 – see O'CONNOR statement paras 118 onwards.
422	Koreans arrests	Change that 'management' level could be VIP International

		management or Board level because it went that high and Board must have been satisfied that nothing material had changed.
424	Risk assessments (ex Mintz) to risk committees	Include that risk assessments from legal advisors also not provided
425	Risk assessments (ex WilmerHale) to Craigie	Include that risk assessments from WilerHale also not provided to Craigie
425	Typo	"Chinee" police should be Chinese
430	Mitigation controls	Consider including despite O'CONNOR describing CHEN as being <i>'well connected in China</i> in his statement and at interview – <i>connected both within the industry and outside the industry, politically'</i> In reality – not sure how accurate this was.
439	Commission comment on WilmerHale advice	Need to insert commentary re WH legal and 'practical' advice and what was / wasn't relayed to management and staff by CHEN
442	CHEN escalating	Need to include - JOHNSTON states that CHEN and FELSTEAD informed his understanding regarding the Koreans and he briefed the Board accordingly paras 25-28
445	Checks or balances regarding risk process	EG STUART (responsible for risk process) reported to FELSTEAD.
469	Attracting Chinese customers	Need to include para re Junkets in light of ILGA allegations/ COVID effect for currency of report?
480	Review of Crowns Risk management framework	Need to check for currency if Crown have done same?
481	Current roles	Need to check for currency of same
484	How the Board operates	No material change – lack of documented minutes a concern eg re Korean arrest reporting
485	Strategic and leadership changes	Need to check for currency

## 8 Recommendations

1. Recommend that no further interviews take place (excepting Frank CAO and Jenny JIANG, which are still being pursued)
  - Approved
  - Not approved
2. Recommend that written queries be given to Crown to:
  - Approved

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- Clarify whether key Crown executives knew of the interview of Crown staff by Chinese Police, their understanding of object of the interview and what questions were asked, and specifically, what action they took (if any) in response.  Not approved
  - Clarify whether the issue of the arrest of the South Korean Casino Staff in June 2015 was discussed at the Crown Resorts Board meetings in July or August 2015, and if so, any evidence or documentation supporting this.
3. At the conclusion of (1) and (2) and the assessment of any material received, include in the Draft Report a new recommendation stating:
- a. "That Crown obtain written legal advice (in a written memorandum of advice or similar) from a suitably qualified practitioner when it intends to operate or source customers in any overseas jurisdiction in which gambling (or its promotion etc.) is prohibited by criminal law.  Approved  
 Not approved
  - b. A copy of the entire legal advice received is escalated to the Board upon receipt and Crown management reports to the Board on what actions are or will be undertaken by Management to minimise or prevent any breach of those laws"
4. At the conclusion of (1) and (2), the working group amend relevant sections of the report, to include information about legal advice received, in a marked up version for consideration by the Commission and then, when approved, to be sent to Crown for comment.  Approved  
 Not approved

## Document information

## Document details

Criteria	Details
TRIM ID:	XXCD/20/7861
Document title:	xx
Document owner:	Legal Services Division

## Version control

Version	Date	Description	Author
V01	26/05/20	First draft	Scott May, Director Legal Services

## Document approval

This document requires the following approval:

Name	Title	Organisation

## Audience

The audience for this document is **describe audience** to **describe purpose**.

## Reference material

Attached references	TRIM ID/Location	
Bibliography	Author	TRIM ID/Location
Acronyms	Description	
VCGLR	Victorian Commission for Gambling and Liquor Regulation	



Terms	Description
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