

MinterEllison

5 December 2018

BY EMAIL and DELIVERY

Mr Adam Ockwell
Director, Compliance
Victorian Commission for Gambling and Liquor Regulation
49 Elizabeth Street
RICHMOND VIC 3101

Dear Mr Ockwell

China Investigation

Thank you for your letter dated 14 November 2018 and its enclosures.

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

1. Link between 23 August 2018 notice and your provision of documents on 21 September 2018

Attachment A correctly identifies the documents in the categories in the 23 August 2018 letter.

The fourth folder contained board papers and minutes of Crown Resorts Limited which were inspected in the course of the Sixth Casino Review on various dates between 29 March 2018 and 4 April 2018, but they were not tabbed for copying and production to the VCGLR.

2. Information missing from your response.

2.1 Targets

Enclosed behind tabs 3 to 60 are documents referred to as VIP Daily Turnover Scorecards (**Scorecards**), which are described below at 2.5. These documents have emerged over the course of the class action discovery and were provided to the Applicant's lawyers in the 2nd discovery tranche on 30 November 2018.

Subject to the comments regarding Scorecards at 2.5 below, and the comments regarding daily management reports at 3.17 below, all documentation and records as sought in paragraph 1.4 of the 23 August 2018 letter which Crown has been able to locate to date have been provided.

2.2 Remuneration

Enclosed behind tab 61 is the F15 VIP Short Term Incentive Plan.

Also enclosed behind tabs 62 to 76 are all payment summaries for financial years FY14, FY15, FY16 and FY17 in respect of the following employees:

- (a) Alfreed Gomez;
- (b) Bin Xiong;
- (c) Carol Wu;



- (d) David Dai;
- (e) Herbert Jia;
- (f) Jane Pan;
- (g) Jack Zhu (commenced employment with Crown Resort Pte Limited in July 2015);
- (h) Jason O'Connor;
- (i) Jenny Jiang;
- (j) Jerry Xuan;
- (k) Jessie He (commenced employment with Crown Resort Pte Limited in December 2015);
- (l) Leo Lyu (commenced employment with Crown Resort Pte Limited in July 2016);
- (m) Liu Yuanzheng (commenced employment with Crown Resort Pte Limited in November 2015); and
- (n) Wang Xun (commenced employment with Crown Resort Pte Limited in June 2015).

Crown has also located an additional payment summary for Mr Edison Chi from FY17 which is enclosed behind tab 77.

We note that a number of these documents were intended to be produced under cover of our letter of 21 September 2018 but, due to a clerical error, they were omitted. We apologise for this.

2.3 *Education agent contracts*

Copies of all contracts are enclosed behind tabs 78 to 118.

We note that education agents are not involved in, and their functions and roles do not relate to, Crown's gaming business (or the marketing of Crown's gaming business).

2.4 *Information about annual salary and bonus payments*

In addition to the documents referred to in 2.2 above, we also enclose behind tab 119 a table summarising payments made to Fiona Cai. As Ms Cai was not paid from Crown payroll prior to FY17, Crown is unable to generate payment summaries for Ms Cai for this period.

2.5 *Further information about targets*

Crown has now provided the Short Term Incentive Plans applicable to Crown Resort Pte Limited staff in the VIP International division. These documents set out the methodology of calculating incentive remuneration referable to VIP International targets.

A separate incentive program was applicable to the role of President – International Marketing. Behind tab 205 is a spreadsheet summarising the targets for the program for President – International Marketing for FY13. Further, behind tabs 206 to 209 are the incentive plans applicable to President – International Marketing for FY14 to FY17.

To assist the VCGLR in interpreting the incentive plans applicable to Crown Resort Pte Limited staff, we have included Scorecards for your reference. The Scorecards were produced for each sales region in mainland China, and contain the cumulative targets for each region. The Scorecards also contain broader regional targets, as well as the overall targets for the VIP International division. These targets should be read in conjunction with the applicable short term incentive plans.

As set out in the respective incentive plans, there were threshold-based bonuses for China-based staff related to regional targets. By way of example, the letter from Michael Chen to Edison Yang dated 11 September 2014 (which was provided to the VCGLR on 5 September 2018, and is now re-enclosed behind tab 120 for convenience) notes that the full year 'Elite' level target for Mr Yang's region, the China Mid-North, was \$8,480,000,000 in FY15. This figure corresponds with

the FY15 'Elite' target for China Mid-North in the FY15 Scorecards (see for example, pages 1 and 13 of the June 2015 Scorecard behind tab 36). The method of calculation of these targets varied between roles as well as from financial year to financial year, as set out in the applicable incentive plans.

To further assist in interpreting the Scorecards, the following table sets out each of the regions for each of the detained Crown Resort Pte Limited staff which correspond with the respective turnover¹ targets in each Scorecard.

| Staff member | Region |
|--------------|----------------------|
| Alfred Gomez | NEA - China |
| Wang Xun | Central China |
| Lucent Liu | Northern China |
| Jack Zhu | Southern China |
| Carol Wu | China Shanghai |
| Teresa Tao | China Shanghai |
| Jessie He | China Shanghai |
| Bin Xiong | China Shanghai |
| David Dai | China Mid-East Coast |
| Herbert Jia | China Central |
| Jane Pan | China South |
| Jerry Xuan | China Mid-North |
| Edison Chi | China Mid-North |
| Frank Cao | China Mid-North |
| Leo Lyu | China North |

The Scorecards were produced daily from September 2012, but the targets contained within them were only varied on a monthly and quarterly basis. As such, we have provided a Scorecard for each calendar month in FY13 (commencing from September 2012) to FY17.

Crown has, over the course of the document recovery process discussed at paragraph 3.19 below, located approximately 40,000 iterations (including duplicates and bare extracts) of the Scorecards for the period requested by the VCGLR, which do not materially differ from the versions enclosed. Can you please confirm that the VCGLR does not want to receive all of these iterations, given that they merely duplicate information regarding targets for regions or for the VIP International department contained in the documents produced.

For the avoidance of doubt, Jenny Jiang, Fiona Cai and Athena Tang, all of whom were the subject of the criminal proceedings in China on 26 June 2017, did not occupy sales positions at Crown and as such were not affected by the regional targets in the Scorecards.

We are instructed that Crown did not have an 'International Marketing division', and as such cannot provide information regarding targets for this division. We assume that this request refers to the internationally based sales staff of the VIP International division, the targets for which can be gleaned from the Scorecards provided. Crown would welcome the opportunity to discuss this part of the VCGLR's request if anything further is sought under it.

3. Information already provided during the Sixth Casino Review

3.1 Commentary

¹ or, in the case of FY17, their contribution targets (noting that pursuant to the F17 VIP Short Term Incentive Plan staff bonuses were calculated according to contribution and not turnover).

Crown notes your commentary concerning the VCGLR's resourcing of the Sixth Casino Review and the China investigation. Such resourcing decisions are of course a matter for the VCGLR, but some duplication of effort and expense has occurred as a result.

Crown also notes your correction regarding which Crown Resorts documents were inspected in the course of the Sixth Casino Review. Crown apologises for its misunderstanding on this point.

3.2 *Management reports*

The management reports to the board of Crown Resorts Limited referred to in our letter of 21 September 2018 are comprised of two components – a CEO report which was presented periodically at board meetings, and a set of management accounts which were generated monthly.

Enclosed behind tabs 121 to 164 are copies of the management accounts and the periodic CEO reports to the board of Crown Resorts Limited for the period from 1 June 2014 to 31 December 2016, redacted for legal professional privilege.

The management reports to the Crown Melbourne Board are also comprise of two components – a 'Current Issues' update which was presented periodically to the Board, and a set of management accounts which were generated monthly.

Enclosed behind tabs 165 to 202, and tab 225, are copies of the management accounts and the periodic 'Current Issues' updates to the board of Crown Melbourne Limited for the period from 1 June 2014 to 31 December 2016, redacted for legal professional privilege.

3.3 *Target records and 'contribution'*

In relation to the VCGLR's request for target records, to the extent available, the relevant documents have been enclosed and are referred to in 2.1 and 2.5 above.

We are instructed that 'contribution' and 'direct contribution' have the same meaning, which is the profit directly attributable to relevant player programs before deduction of expenses such as salaries, cost of accommodation, incentives, etc.

We are further instructed that the target for the North East Asia region was based on previous year final results adjusted for market conditions and other factors likely to affect business from the region.

3.4 *Payment summaries, remuneration agreements, policies, etc for VIP international staff*

Attachment A to your letter correctly identifies which documents were provided in response to Item 1.5(c) of the 23 August 2018 letter.

As noted in 2.2 above, Crown has now provided a copy the F15 VIP Short Term Incentive Plan. We also now enclose behind tab 203 the F17 VIP Short Term Incentive Plan as requested by your letter.

3.5 *Salaries, allowance and bonus payments to Mr Chen*

The annual salary, allowances and bonus payments made to Mr Chen in FY13 to FY17 inclusive are set out in the payment summaries enclosed behind tab 204.

3.6 *Roadshow documentation*

As far as Crown has been able to ascertain, there were roadshows in mainland China in FY15 on the following dates:

| Date of roadshows |
|------------------------|
| 20 – 25 July 2014 |
| 11 – 18 August 2014 |
| 23 – 27 September 2014 |

25 – 30 October 2014

3 – 11 December 2014

16 – 27 March 2015

11 – 14 May 2015

22 – 27 June 2015

Crown did not have a practice of compiling a report following a roadshow, so there is no ready resource of information about specific roadshows. As indicated in our 21 September 2018 letter, roadshows did not involve 'presentations' as such, so Crown does not have documents which indicate the subject matter of discussions on any particular roadshow. The same goes for internal documents; there was no practice of staff briefings or the like in the lead-up to or following a roadshow, so Crown has not located any documents provided to Crown staff at roadshows.

3.7 *Crown Resorts Limited Board and Crown Melbourne Limited Board*

Enclosed behind tabs 210 to 222 is a full set of the board and committee papers not otherwise provided to the VCGLR China Investigation team for all board and committee meetings for the period from 1 July 2014 to 13 October 2016, redacted for claims of legal professional privilege, which refer to:

- (a) the Chinese authorities' crackdown on corruption;
- (b) the Chinese authorities' crackdown on the transfer of funds from mainland China to other countries and/or territories (including Macau);
- (c) the Chinese authorities' crackdown on foreign casinos; or
- (d) the detention, arrest, charging or sentencing of South Korean casino staff in mainland China.

For completeness, we note that the documents behind tabs 128 and 129 also respond to this request.

3.8 *Organisational reporting – Ms Lily Wan*

The Group Director of Sales is based in Melbourne. She works in the Hotel Operations department.

They report separately from the VIP International department, in accordance with the reporting line diagram behind tab 223.

3.9 *Education agents – Crown College*

Shane Thomas, Group General Manager – Learning and Development at Crown Melbourne Limited is currently responsible for overseeing the agents for recruiting students to Crown College (referred to above at 2.3).

The arrangements to ensure that agents comply with their contractual obligations include:

- (a) annual performance reviews of agent performance; and
- (b) monitoring of student feedback on agent performance.

In addition to these monitoring requirements, agency agreements are renewed for a period of no more than 12 months, and an agent is required to provide three references as part of the application process.

3.10 *Hakluyt advice and circulation*

Advice was sought from Hakluyt by MinterEllison pursuant to an initial letter of engagement dated 23 April 2018. Thereafter, MinterEllison has sought further input from Hakluyt on 7 May, 2 August and 13 August.

None of Hakluyt's reports have been seen by anyone at Crown. They have been received and reviewed only by us, for the purposes of us advising Crown on matters related to its international operations. In the circumstances, Crown maintains its claim for legal professional privilege over Hakluyt's reports.

3.11 Location of internationally based staff

All active internationally based VIP international staff currently operate out of the Hong Kong office. Mr Ratnam operates out of Melbourne.

3.12 Updated VIP business model

The VIP model was noted at the Crown Resorts board meeting on 27 April 2017 on the basis of oral advice. There was no board paper or like document for the meeting.

3.13 Crown Resorts Limited financial plan (FY17-20)

Enclosed behind tab 224 is a copy of this financial plan.

3.14 Mr Xuan's statement

In order to afford procedural fairness, it is incumbent on the VCGLR to indicate what findings it may be urged to make and on the basis of what evidence, for Crown then to have the opportunity to provide any further evidence relevant to that proposed finding and to make submissions on it.

Crown's primary submission is that the VCGLR should not be urged to make any adverse finding, whether based on the statement of Mr Xuan or otherwise. If, contrary to this submission, VCGLR officers or staff propose to recommend any adverse findings, whether formal or informal, Crown should be given due notice of such proposed findings and the evidence upon which they are sought to be based, to afford Crown a proper opportunity to provide relevant evidence and submissions. Crown should not be left to speculate about possible findings or the significance, if any, of the range of evidence which the VCGLR has assembled, including Mr Xuan's statement.

3.15 Information from Asian Casino employee

In connection with the undated file note of the undisclosed executive, Crown submissions are:

- (a) whilst Crown cannot comment on the privileged and confidential legal advice said to have been obtained by the undisclosed casino operator, the precis of it appears to be inaccurate, to the extent that it suggests that there is any relevant legal prohibition other than Article 303;
- (b) similarly, the executive's general understanding of Chinese law supposedly prohibiting the 'marketing of gambling and debt collection activities' is misplaced, to the extent that it suggests that there is any other relevant provision apart from Article 303;
- (c) the executive's casino is said not to have had permanent staff in China, but it did have a team of 10 to 12 marketing employees who travelled to China for an average duration of 4 days per quarter. It is not clear what those staff did or did not do whilst in mainland China and how that differed, if at all, from activities undertaken by Crown staff;
- (d) the executive's casino ceased all activity in mainland China following the detention of Crown staff. That suggests that the unexpected detention of Crown staff altered the casino's assessment of the risk of its China operations, not its understanding of relevant China law. In other words, like Crown, prior to October 2016, it did not understand its staff to be at material risk of breaching relevant Chinese law through 'low key' marketing activities;
- (e) the executive stated that, like Crown and MGM, it did not receive any warning or other official communication from the Chinese government concerning mainland Chinese operations. This further contradicts any suggestion of an industry warning that 'low key' activities were considered by the authorities to breach Article 303;

- (f) the executive said that the February 2015 report of a crackdown on 'gambling related marketing and debt collection' was seen only in hindsight to be of significance;
- (g) the February 2015 announcement and the detention of the South Korean casino staff were seen by the executive and the executive's casino group to be separate, and not part of a larger enforcement initiative by Chinese authorities;
- (h) the note says '*...although hindsight is 20/20, and it can be argued that it should have been as a warning sign, it would be unfair to state now that the two occurrences above were an indication of a Chinese government intent given these were occurrences more than 6 months apart and there were no particular links or indications that these were part of a similar narrative*';
- (i) this quote strongly underlines our earlier submissions regarding the wisdom of hindsight. Like Crown, the executive's casino group did not interpret the crackdown announcement or the Korean detentions to suggest an escalating enforcement risk environment as at mid-2015, let alone almost 18 months later in October 2016 when the Crown detentions occurred;
- (j) the note further bears out points made in Crown's earlier submissions, to the extent that the note says that:
 - (i) the executive's casino group was not aware of any changes or incidents in 2016 prior to the detention of Crown staff;
 - (ii) the executive was not aware of Crown doing anything that was different to other foreign casinos or junket operators in relation to mainland China operations;
 - (iii) the executive was not aware of any withdraws from mainland China of any foreign casinos prior to the detention of Crown staff; and
 - (iv) the executive did not know the reason for the detention of Crown staff, about which there are many theories but no reliable information;
- (k) the note suggests that the executive was asked about the significance of 10 or more Chinese nationals being organised to gamble overseas. The executive evidently said that it did not come up in discussions of Chinese law, which indicates that the executive is unaware of the 14 May 2005 interpretation of 'group gambling' or 'assembling a crowd to engage in gambling' in Article 303 as referring to organising more than 10 Chinese citizens to go overseas for gambling (for commission or a 'kickback');
- (l) moreover, the executive was not aware of the news story on mainland Chinese television in October 2015 concerning foreign casino marketing. That undermines any suggestion that the story was of such significance that foreign casino operators should have taken any specific action in response to it; and
- (m) the note generally supports Crown's submission that the whole industry (junket operators and foreign casinos operating in mainland China) were blindsided by Chinese authorities singling out Crown staff for enforcement action in October 2016.

3.16 *Judgment of the Shanghai Baoshan District People's Court*

We note that the VCGLR now has a copy of the judgment.

For the sole purpose of us advising Crown in relation to the VCGLR's investigation, we may wish to inspect the judgment and any English translation of it. Do you have any objection to this?

3.17 *Documentation received on 12 October 2018*

The document attached to our correspondence on 12 October 2018, which was referred to in the final paragraphs of that correspondence, is a daily management report of the financial results for the VIP International division. It was provided as an example of a category of documents which contains targets for the VIP International division, and is therefore responsive to the VCGLR's request for documents made under cover of its letter dated 23 August 2018 (at 1.4).

There are thousands of such management reports – they were issued daily during the relevant period. Can you please confirm that the VCGLR does not want to receive all of these iterations, given that they merely duplicate information regarding targets and results for regions or for the VIP International department contained in the documents produced.

3.18 Conclusion of investigation process, compliance with Section 26 Notices and further information

Crown has complied with its statutory obligations, in that it has undertaken reasonable steps to locate and provide to the VCGLR documents the subject of the section 26 notices.

Crown has taken the VCGLR investigation very seriously and provided considerable focus and resources to respond to the VCGLR's requests for documents and information. We reiterate that the subject matter is complex, involving issues pertaining to a foreign jurisdiction and legal system, and staff who are no longer in the business (which has resulted in considerable loss of direct knowledge of documentation, information and processes).

3.19 Class action discovery

Separately, Crown is undertaking an extensive and expensive document recovery and review process for the purposes of discovery of documents in the class action. The process is ongoing, and the ultimate cost of it will significantly exceed \$1M.

The database which has been compiled for this purpose contains over 3.5 million documents. It is continuing to grow as more documents are recovered or provided from external sources.

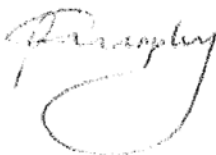
The Tranche 2 discovery process outlined in our previous letter resulted in over 100,000 documents being extracted from this database for review, and approximately 13,000 documents of these documents were provided to the lawyers for the class action applicants in batches, the last of which was provided last Friday (30 November 2018).

The 13,000 or so documents include many Scorecards and daily management reports referred to in paragraphs 2.5 and 3.17 above. Some additional documents which respond to VCGLR requests have been located since our letter of 21 September 2018, and have been enclosed behind tabs 1 and 2 (and one document has been redacted for legal professional privilege).

As previously stated, Crown would welcome the opportunity to discuss with you and your staff the process which has been undertaken, including the search terms used to interrogate the database, and any further process which might be undertaken to identify other documents which the VCGLR may wish to review.

We and Crown seek the opportunity to discuss with you and your staff the completion steps for the VCGLR's investigation. In the meantime, if you or your staff would like to discuss any aspect of the above, please contact us or Mr Josh Preston of Crown.

Yours faithfully
MinterEllison



Richard Murphy
Partner

Contact: Richard Murphy



OUR REF: RDM 1147099