

RE: CUP

From: [REDACTED]
To: [REDACTED]
Cc: Jason O'Connor <[REDACTED]>, Roland Theiler <[REDACTED]>
Date: Wed, 12 Jun 2013 08:06:34 +1000
Attachments: 225487166_1_MSA Terms Sheet - Regal Crown and Crown.docx (45.08 kB);
225492111_1_Comment on draft MSA from Regal Crown Ltd.doc (46.59 kB)

Dear Steve

Please find attached the following documents:

- a draft of a proposed Terms Sheet for initial review and consideration by CPH/Crown (**Crown**); and
- marked-up comments on the very thin draft agreement prepared by Regal Crown Limited (**RC**).

(These documents have been prepared with the assistance of my partner, Phil Trinca. Patrick Phua, partner in our Beijing office, has assisted with the PRC regulatory issues mentioned below.)

The draft Terms Sheet

You have requested us to prepare a detailed Terms Sheet, which can be provided to Regal Crown (**RC**), and which sets out suggested provisions for the merchant acquiring arrangement, using the draft agreement from RC as a base. With respect to the enclosed draft Terms Sheet, we note the following for your consideration.

As a general comment, a merchant service agreement of the type that is in contemplation is normally drafted in fairly detailed terms by the merchant acquirer (eg. RC) so as to provide a range of protections and controls over the conduct and activity of the merchant (Crown). You will have seen that the draft agreement provided by RC essentially provided none of these types of provisions. For the moment, at least, we did not see it as being a part of our remit to now include such protective provisions for RC (to the detriment or restriction of Crown) in the draft Terms Sheet that we have now prepared. Instead, we have set out a high level description of the provisions that we would expect Crown to require in order to give more certainty to the terms of the arrangement now in contemplation. (You will also appreciate that, at the present time, the specific terms of the proposed arrangement are still very much in the air, as they are largely unspecified by RC or Crown.)

Particular comments

In reviewing the material provided by RC to Crown, a number of questions or potential concerns arose. A note of the following matters is provided for your assistance and consideration.

- As discussed in more detail below, we have a general concern about the ability of RC to provide Crown with the proposed acquiring services, in view of the policies and requirements of CUP.

While this risk might be sought to be covered (to some extent) by indemnities and warranties from RC, they will not be of great value if RC is itself of limited financial value – which we understand to be the case. Further, if RC is prevented from providing the services by CUP, then the whole purpose of the arrangement would be frustrated. One possible option would be to require RC to provide evidence before the commencement of the Agreement that CUP has accepted and approved of the proposed Agreement under which RC will provide the payment Services to Crown. Whether or

not CUP would agree to do this may be open to question. (It may also be informative, in the first instance, to see if RC is prepared to ask the question of CUP.)

Our more detailed understanding of the background to this issue is set out below.

- The draft agreement provided by RC suggests that Crown would only be requiring one point of sale terminal, which seems odd.
- The draft agreement provided by RC proposes that the settlement currency will be in GBP. We wonder if that is correct. We have noted a question about this in the attached marked-up comments on the RC draft agreement.
- The draft agreement provided by RC suggests settlement at T+3, but other documents provided by RC suggest that T+1 or T+2 settlements may be possible. We have noted this issue in the comments on the RC draft agreement.
- The promotional document from RC suggests that a commission of 3% is a good deal, and much lower than that charged by Visa or MasterCard. We query whether this is the case and have made a comment to this effect on the draft agreement from RC.
- As Crown has noted, it will be taking substantial settlement risk on the proposed arrangement with RC.

Our concern about the ability of RC to provide the Services

There is an acknowledgement by RC (in one of the documents provided) that "CUP will not deal with the Gaming or Casino industry". RC then goes on to say, however, that "... as the licensed Merchant acquirer on behalf of CUP [RC] can process unlimited transactions on behalf of its clients, which means that RC can move on behalf of Crown unlimited funds both in and out of China ... ". It is not clear to us, how on the one hand CUP could refuse to deal with the gaming or casino industry while at the same time permitting its merchant acquiring members (such as RC) to contract with Crown and to agree to provide payment services in relation to gaming or casino industry transactions undertaken by Crown.

Our understanding of the position in China with regard to CUP is as follows.

- * Under the current PRC foreign exchange control regime, the use of 'foreign currency bankcards' (which are issued by banks in China ("**Issuer**") bearing brand(s) of CUP and/or another international payment network provider (e.g. Visa and MasterCard)) ("**Bankcard**") is subject to relatively strict controls. A 'foreign currency bankcard' is a Bankcard (debit card or credit card) that has been issued in China and denominated either in single foreign currency or in both RMB and multiple foreign currencies.

As you are aware, RMB is currently not a freely convertible currency. Any domestic transaction that occurs in China must be settled in RMB, while overseas/cross-border payments can only be settled in a foreign currency. If a Bankcard is denominated in both RMB and a foreign currency, that means the cardholder can use the card for both overseas/cross-border payments and domestic payments. If a Bankcard is denominated in RMB only, that means the card can only be used in China.

In other words, the restrictions would apply to any CUP enabled card which is issued in China and which can be used outside China.

- * For such control/monitoring purpose, each merchant must be assigned a merchant category code ("**MCC**", which is a four-digit number), according to its business type, which is identifiable by the system of the relevant Issuer/CUP when the Bankcard is used at the merchant's terminal.

- * The State Administration of Foreign Exchange (being the foreign exchange control authority in China) publishes a list of MCCs ("**MCCs List**") and divides MCCs into three categories: "prohibited", "amount limited" and "free to use". According to this list, the MCC of a merchant engaging in gaming/casino business is 7995 which is currently classified as "prohibited", which means any payment via a Bankcard to a merchant with category MCC 7995 will be rejected by the Issuer of the Bankcard or by CUP.
- * In addition, CUP is also required by law to ensure that all overseas merchant acquirers licensed by it (such as RC) have set the MCCs for their merchants in accordance with the categories in the MCCs List. If this is not done, CUP is required to revoke the acquiring license of the relevant defaulting merchant acquirer.
- * Given the business nature of Crown, it is very likely that Crown should be assigned an MCC of 7995. Therefore, it will be important for Crown to ensure that the provision of the proposed acquiring services by RC will not occur in breach of the contract between RC and CUP (as this would cause, or eventually cause, payments to Crown to be rejected by the Issuer/CUP). Accordingly, before it proceeds further with the documentation, and if it has not already done so, we suggest Crown confirm with RC which MCC will be assigned to it. If RC then advises that Crown will be assigned a non-"prohibited" MCC, Crown should require RC to provide evidence that CUP has agreed the selected classification.

Please let us know if you would like to discuss any of the above. Separately, if you think that Crown would prefer us to prepare a more detailed and comprehensive Terms Sheet, that seeks to cater more fully for the requirements that a merchant acquirer would normally seek to cover for itself, then please let us know. (This would be possible, but it would essentially be necessary to include a range of terms which may not be directly favourable to Crown, and which RC has not, to date, chosen to include.)

Perhaps the next step is to have a discussion about how you would prefer to proceed.

Kind regards

Paul and Phil

Paul Jenkins

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From: Bennett, Steve [mailto: [REDACTED]]
Sent: Wednesday, 29 May 2013 2:31 PM
To: Jenkins Paul 6336
Cc: [REDACTED]
Subject: FW: CUP

Paul, I refer to our discussions today and enclose a description of what Regal Crown (unrelated to Crown) is proposing as a "merchant acquirer" interfacing between China Union Pay and Crown as a merchant.

I will send you through (under separate cover) a copy of the short form merchant agreement proposed by Regal Crown, In this regard, as discussed, Regal Crown is a recently formed entity with limited capitalisation and we will be taking substantial settlement risk with RC as a counterparty. We need to protect ourselves as best we can and, although they have limited financial capacity, as a first step we would seek a more robust merchant agreement incorporating reps & warranties, indemnities etc. As you will be aware China has certain policy issues associated with the use of its currency for the purposes of gaming and we are not privy to the agreement as between CUP & RC and therefore do not know if there are any preclusions as to dealing with merchants etc and would not be wanting to do anything that contravenes such policies.

We will separately pursue directly with RC potential economic support eg performance bond , but feel that this is a remote possibility and will ultimately be falling back on our legal documentation.

As discussed, in anticipation of reaching a commercial path forward with RC, could you please draft a terms sheet that would easily flip to a merchant agreement.

If you have any questions concerning these arrangements please give me a call.

Thanks,

Steve

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