

File note

Matter Crown | China Union Pay

File No. 011916235

Date 21 May 2021 21 May 2021

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Subject **Second meeting with Jason O'Connor**
Friday, 21 May 2021 at 12:30 – 2:35 pm

Present: Jason O'Connor (**JoC**), Graydon Dowd (Hall & Wilcox), Pia Rossignuolo (Hall & Wilcox), Christopher Archibald (**CA**), Christopher Carr (**CC**), Anna Dixon (**AD**), Harriet Craig

Risk appetite

- 1 CC asked about the compliance, as opposed to commercial, risk appetite for VIP International at the time of China Union Pay. JoC advised that risk was a factor, as was the general culture and the strategic focus of the organisation. He noted that there might be a general proposition or statement about Crown's appetite for risk but that, if you dropped down a layer to the departments, risk appetite was different and was never formalised which may have been a flaw. JoC commented that he can only speak to and describe the culture and the expectations of the department as he saw it.
- 2 When JoC returned from Canada, he thought he was taking on the role in a caretaker capacity. The culture and practices were embedded in the organisation for many years. Obviously, the appetite for compliance and legal risk was or was close to absolutely zero. JoC commented that that should be the case in any organisation and that was certainly the case for JoC. JoC's approach to running the business was not to mess with compliance and legal risk as there's a lot at stake. When you distil down to how Crown's business is run compared to others, JoC doesn't think they were encouraged to take any more risk around legal compliance or regulatory compliance, but they were encouraged to take more risk around commercial issues. Risk is weighing up benefits and costs and, when looking at rewards on offer in the VIP business, Crown was prepared to accept elevated risks because the rewards were so high. That was the difference between VIP and the rest of the business.
- 3 CC noted that he has the impression from reading the Bergin Report that there were CPH influences who saw VIP International as the driver of growth in business. JoC accepted that was a fair statement, but said it wasn't just CPH – the entire business saw VIP International as a mature market and the team was encouraged to tap into it. CC asked whether James Packer (**James**) and those around him were forceful in that encouragement. JoC advised that James, who was also sitting on the Board of Melco Crown, was interested in the VIP International part of the business and could see the enormous potential of the VIP international market.
- 4 CC asked whether the pressure to drive growth in the international market flowed across into the appetite for risk regarding compliance issues. JoC conceded that it did but said that the art of management is to know how much of that pressure you can absorb commercially until it starts to impact decisions on governance and compliance. JoC advised that commercial pressure sometimes causes you to figure out where the line is that you can go to without finding yourself on the wrong side of it in terms of compliance issues and that's what management theory is.

Legal and compliance advice

CC showed JoC document CWN.514.063.0229 – email chain dated 9 August 2012

- 5 CC observed that this seems to be the day after the first China Union Pay transaction and that Michelle Fielding (**Michelle**) was writing to Matt Sanders (**Matt**) and Debra Tegoni (**Debra**) about the possibility of selling chips on credit card or taking a charge over a credit card to provide chips. CC noted Michelle's comment that: "there is ... a risk that the Regulator may take the view that to take advantage of [the s 68] exemption it must be the casino operator providing the credit and not the bank". JoC agreed that Michelle was saying there was a risk.
- 6 CC observed that there's no push back from anyone saying that "there's a risk so we're not going to do it" so zero legal and compliance risk doesn't seem to be the risk appetite. JoC accepted this as a fair comment. He clarified that saying there is a zero risk appetite is probably an oversimplification as there's always some risk. When it comes to advice from Legal, the advice is always qualified somehow because there's always some risk.
- 7 CC noted that casinos are licensed and asked whether the risks need to be understood differently in the context of casinos. JoC agreed and said that is understood a lot better now than it might have been 10 years ago. JoC hasn't worked in VIP International since the China arrests (after returning to Australia, JoC started helping the team in Sydney) but said that the risk appetite there is different now based on what has happened.
- 8 CA asked whether, having received advice from Compliance, the decision remained with the VIP business about whether to proceed rather than transferring responsibility for the decision to Michelle as General Manager of Compliance. JoC advised that he doesn't recall that being his approach to the issue. He doesn't know whose decision it was but said he did seek Michelle's and Debra's guidance. If it ultimately was JoC's decision, it was taking their advice heavily.
- 9 JoC and Debra were both on the executive team and both reported to the CEO. CC asked whether it was a case of JoC going to Debra and getting the process ticked off for legality and compliance or an opinion about those issues came back to JoC for approval. JoC confirmed that it wouldn't have proceeded without his approval so, in that context, CC's description is probably right.

CC showed JoC document CRW.523.002.0121 – Advice from Debra Tegoni to David Stoddart, copied to Catherine Young, Roland Theiler and Jason O'Connor dated 30 September 2013

- 10 CA noted that this advice was about a year later, by which time there was a policy and an approval sheet. JoC wondered whether the proposal had changed and noted that CWN.514.063.0229 was referring to using a credit card to buy chips. By CRW.523.002.0121, the proposal had changed to China Union Pay cards rather than credit cards. CC noted that other material suggests they were talking about the same thing.
- 11 JoC confirmed that he thought of China Union Pay as a debit card rather than a credit card. Thinking back now, he thought Crown was pursuing China Union Pay cards only because they were clearly debit cards not credit cards. He accepted that documents might undermine that but said that was his recollection.



- 12 CC asked whether JoC remembers ever getting particular advice about having to use a debit card rather than a credit card. JoC doesn't remember receiving formal advice about it but said, when he thinks back, he thought it was a debit card concept. He noted that there are obviously issues with allowing customers to use credit cards for gambling purposes. JoC thought there was a prohibition on credit card use but that there weren't the same issues with a debit card because it was the customer's own money.
- 13 CC explained that the reason he took JoC to CRW.523.002.0121 was to follow up the notion of the risk. He noted Debra's advice that "[t]here has and remains a risk ... We have assessed that risk as low" and asked whether that's consistent with JoC's recollection of the China Union Pay process. JoC agreed that's consistent with his recollection. There was a low risk that Crown was going to be non-compliant with the prohibition against allowing people to use credit cards to purchase gaming chips. He thought there was also something that differentiated international customers from Australian customers, which might have been that Crown was allowed to offer credit to international customers but not to domestic customers. JoC advised that the business then lacked a clear, well-defined, robust risk framework. The directors will say there was a risk policy, but it wasn't well understood at the business level.
- 14 CA asked whether this was a business that just swallowed every risk. JoC advised that the business didn't do that and that he thinks people would describe him as very cautious and conservative. Here, there was advice that there were risks on compliance issues, but that risk was low. He wouldn't have expected any advice to say that there are no risks – there always are. JoC saw this as something that was tested a few times by a few people from Compliance and Legal. Risks were highlighted as was always the case, but the process seemed to be supported.

CC showed JoC document CRW.523.001.0030 – Email from Debra Tegoni to Jason O'Connor, copied to Phillip Batsakis and Jacinta Maguire dated 17 October 2014, forwarded by Debra Tegoni to Jason O'Connor, Jacinta Maguire and Phillip Batsakis on 11 September 2015

- 15 CC explained that this seems to be the next piece of advice dated 2014. He noted the reference to "our conversation before" and asked whether JoC can remember a discussion. JoC doesn't recall a discussion and noted he was surprised by the first email in 2012 as he thought they first got advice in 2014/2015.
- 16 CC read Debra's comments that "[t]his is the provision I was talking about that we would have to defend in circumstances where the transitions were questioned", "[w]e would argue that" and "we may fail in any defence". He noted that Debra seems to be saying there's a real risk of non-compliance with the law and asked whether that suggests a higher level of risk that just saying that "any transaction has risk". JoC noted it was hard to say. He can't remember what frame of mind they were in at the time but thought it seemed consistent with earlier advice. He commented that it's hard to say whether this advice represents an escalation of the risk. JoC doesn't recall the conversations he had with Debra about the risks involved.
- 17 CC noted the Debra's comment that "this is the provision we would have to defend" and asked whether one possible reading of this is that what's really the issue is not whether Crown was complying with the law but whether they were at risk of being caught. JoC doesn't think Crown ever had that mindset and doesn't think the discussion was ever about getting caught.
- 18 CC noted that there are documents which suggest that, when Perth was considering implementing this process, there was a reluctance to put it to the Perth regulator



because it might cause the Perth regulator to speak to the Melbourne regulator. He noted the inference from the document is that Crown doesn't want the Perth regulator speaking to the Melbourne regulator about the process and asked whether, if that's accurate, the concern was really about Crown being caught doing the wrong thing not a concern about doing the wrong thing. JoC advised that it was hard to comment on what motivation of the email might have been.

- 19 CC asked whether there was a culture in VIP International at the time not of compliance for compliance's own sake but a concern about not being caught being non-complaint. JoC didn't think it was accurate to describe the business like that. He does have a recollection of a discussion about the possible interaction between the Perth and Melbourne regulators. When asked what was behind it, JoC advised that he could speculate but couldn't honestly remember what the sensitivity was. He thought it may have been that people in Perth who were assessing the process perhaps took a different interpretation of the level of risk involved and thought, in turn, that the Victorian regulator might do the same thing. He said he is speculating but that's the obvious inference of the exchange.
- 20 When asked whether he remembers the bank's terms and conditions influencing the process, JoC advised that he can't remember what the issue was but recalls that the bank's terms and conditions were an issue that needed to be navigated. When asked whether there was a condition that a transaction should not be an illegal transaction, JoC couldn't remember that issue.
- 21 CA asked whether JoC was aware that it was possible for customer, when they received their card statement, to raise a question with their provider which flowed through to the merchant's bank. JoC remembers customers saying that they didn't initiate a transaction being identified as one of the risks. He accepted that, in that situation, Crown would presumably need to be able to explain the transaction. CA asked whether this was the questioning being referred to in Debra's email. JoC doesn't remember but said it could be. He does remember that the issue of a customer denying the transaction was one that was discussed.
- 22 CA observed that this wasn't merely a commercial risk that a client might raise a query, but it carried with it an aspect of legality and compliance. JoC doesn't recall there being a discussion at this level of detail. CA asked whether the appetite for this sort of risk, being a commercial situation with compliance aspects, was more aggressive. JoC explained that they identified there was a commercial risk that a customer would deny the transaction. In identifying that risk, he doesn't think Crown factored in any legal implications. It was just a matter of weighing up the risk of customers denying the transaction. He doesn't recall that crossing over into consideration of legal implications. For those issues, JoC was happy to defer to Debra and Michelle who had a better understanding of the regulatory environment than he did.
- 23 CA referred to the most recent email dated September 2015 from Debra to JoC saying "as discussed" and noted that legal consideration seems to be given to the process about once a year. He noted that there doesn't seem to be any specific trigger other than just low-level noise. JoC wondered whether the process was proposed, ignored, proposed again later and ignored again, but CA advised that the process was being used in this time. JoC noted there was a new article about China Union Pay being used in Macau which may have triggered a review, and CA advised that that was published in March 2014, about 6 months before the 2014 email from Debra. CC noted that JoC said during the last meeting that China Union Pay didn't pass the pub test. He noted that one possibility is that the regularity of the email was because there was a sense of unease which various people identified at various times and gave rise to a need to go



back and confirm the advice that the process wasn't illegal. JoC thought that was plausible but couldn't remember exactly what triggered it.

CA showed JoC document CWN.539.081.3049 – Email from Jason O'Connor to Debra Tegoni dated 28 October 2015

- 24 CA noted JoC's question to Debra about whether she was "still happy with this" and noted the earlier emails in the chain involve Debra settling the China Union Pay process with Hotel. CA asked what JoC's question to Debra says about the concerns he had about the state of the policy or other issues at the time. JoC could think of anything that caused him to think about the process in any different way.
- 25 CA noted JoC's comment that he has "heard recently that Echo have no limits on their corresponding transactions are therefore allowing customers to transact much higher values" and asked what JoC recalls about the competitive supply in the market of China Union Pay transactions as a factor in the business's attitude to providing it. JoC advised that it's a big factor because customers and staff were regularly lobbying for this facility to be put in place. Was it not being used elsewhere, Crown likely wouldn't have done it simply because they wouldn't have thought about it. CC asked whether, without the commercial pressure, Crown wouldn't have accepted the compliance risk. JoC advised that it just wouldn't have occurred to Crown. It only occurred to Crown because customers brought it to their attention.
- 26 JoC said that knowing that other businesses were using China Union Pay and finding comfort and ways to do it gave Crown some support. CA asked whether this was a factor in JoC's acceptance of the risk identified by Legal and Compliance. JoC explained that they drew comfort from the knowledge that other organisations felt comfortable doing it. He said it's hard to measure how much more comfortable that made Crown, but it was one of the pieces of information Crown weighed up. In the overall scheme, it wasn't afforded much weight, but it was a factor.

Regal Crown

CC showed JoC document CWN.502.060.7825 – Emails between Jason O'Connor and Michael Chen dated 24 March 2014

- 27 CC noted that the email from Michael Chen (**Michael**) to JoC included a link to a Reuters news article and showed JoC that article. He observed that the gist of the article is about China Union Pay being used to avoid Chinese currency limit and the consequential legal issues in China. JoC's response to Michael was that he "saw that when it was published... Makes me doubly wary of our friends Gordon and Michael". CC noted the email above that is a response from Michael that JoC "[s]hould be no more wary than any other route". CC noted that, what Michael seems to be talking about by "any other route" is either routes for getting money out of China or routes for getting money out of China Union Pay. JoC suggested it was the former. He doesn't think Michael was specifically pointing to China Union Pay here. JoC noted that they were regularly being encouraged to find ways for customers to transact with Crown. Proposals were coming from Regal Crown and other entities. JoC expects that Michael's comment was more to do with him being more open to what Regal Crown was proposing than other services. He doesn't think the comment was targeted at China Union Pay.

50m requirement



- 28 CA returned to document CWN.514.063.0229 and noted Michelle's comment that "[a]s previously discussed, it would be preferable to have these transactions occur 50 meters away from any entrance to the casino". CA noted that there was, at some stage, a proposal that the process be conducted on the casino floor or at the Cage but ultimately the process ended up at the Hotel. JoC couldn't recall any discussion of the process occurring on the casino floor or at the Cage. The earliest concept he can recall was for the process to occur at the Hotel desk due to the 50m issue.
- 29 CA noted that the Casino Control Act says the 50m rule applies to ATMs and taking cash, but here the process involved a receipt to exchange for chips rather than cash. He asked whether there may have been any other reasons which might explain why the process was carried out at the Hotel. JoC thought it was due to the 50m requirement and couldn't recall any other reason.

Merchant category codes

CA showed JoC document CWN.514.051.0604 – Advice from Ashurst regarding Regal Crown

- 30 CA noted that the email arises out of the Regal Crown project exploration and is a relatively early piece of advice from Ashurst. He noted that one of the selling points of Regal Crown was stated to be the ability to leverage China Union Pay or provide an intermediary role that had some connection with China Union Pay. Ashurst referred to the merchant category code (**MCC**), which is explained as a four-digit number ascribed to the merchant – either Crown or Regal Crown – which categorises the business and appears on the patron's card statement. Ashurst identified that the State Administration of Foreign Exchange (the foreign exchange control authority in China) publishes a list of MCC which is divided into "prohibited", "amount limited" and "free to use" MCCs. The MCC of a merchant engaging in a gaming/casino business is classified as "prohibited" meaning any payment via a bank card to a merchant with that MCC would be rejected by the issuer of the bank card. JoC advised that he does not recall those kinds of considerations arising. CA asked whether this could have played any role in Crown adopting the process at the Hotel desk rather than on the gaming floor. JoC has no recollection of such a discussion occurring and doesn't recall any suggestion that the process should be conducted at the Hotel so as not to raise red flags. He thinks that what motivated them to do the transaction at the Hotel was the 50m requirement and possibly also the fact that the Hotel was the only place on the property to already have a China Union Pay terminal.

NAB

CA showed JoC document CRW.528.004.0051 – Handwritten file note by Debra Tegoni dated 27 April 2015 recording a telephone call with Jason O'Connor

- 31 CA noted Debra's comment that "Star via NAB – pls explain request Chinese Govt size of transactions" and asked whether JoC remembers learning anything about Chinese government raising concerns about how Star was milking the China Union Pay process with much bigger transactions than Crown. JoC remembers that Star was doing much bigger transactions but doesn't recall how he became aware of that or any discussions with Debra.
- 32 CA noted Debra's comment: "Now not the time to push harder" and asked whether JOC recalls a time in 2015 where Crown was interested in being able to increase the size of transactions because Star were able to but, having learned about queries from China,



decided that it wasn't the time to push harder at Crown's end. JoC advised that he doesn't have any recollection of this.

- 33 CA noted Debra's comment: "Ok to continue w/in the limit \$500k. Size [illegible] up the limit. Told GARY". JoC doesn't know who the Gary referred to is. The two people named Gary he was familiar with was Gary O'Neil (media and government relations) who had left by this stage and Gary from the Guangdong office.
- 34 CA noted Debra's comment: "Star dob us in" and asked whether that rings a bell. JoC advised that it doesn't and that he wonders whether there was another Jason that Debra spoke to. He couldn't think of anyone else within Crown that would be relevant to this conversation, so it was most logically him, but he has no recollection of it.
- 35 CC noted the references to NAB, Promontory, the regulator and reporting. JoC didn't previously know of Promontory but recognises the name from recent discussions around the Royal Commission hearings. He doesn't remember a conversation with Debra about proactively approaching the regulator and reporting.
- 36 CA noted Debra's comment, "My suggestion close down before if going to happen anyway". JoC can't recall this.

CA showed JoC document CRW.528.004.0011 – Handwritten file note by Debra Tegoni dated 3 May 2015 recording a telephone call with Jason O'Connor

- 37 CA noted Debra's comment that "NAB know and trying to formulate a response".

CC showed JoC the file note by Debra Tegoni dated 20 May 2016 recording a telephone call with Jason O'Connor (no document ID)

- 38 CC noted Debra's comment that: "Jason said that whilst NAB were quite careful with the message that he received was, they were ok with what we were doing but don't overdo it. There needed to be a justification such that the amounts going through could be justified ...". CC observed that Debra seems to be saying that JoC has spoken to NAB about making it seem like the China Union Pay transactions are legitimately Hotel-related transactions. JoC commented that it looks like he has spoken to someone at NAB about this and that he thinks he has a recollection of speaking to someone at NAB but that he is relying on the document to remind him what was discussed. He noted that NAB seemed to be saying that Crown needs to make sure the numbers don't get too high.
- 39 CC asked whether it therefore seems like Crown and NAB were setting out to deceive China Union Pay about the transactions by making them look like Hotel transactions. JoC didn't think "deceive" was the right word to use. He commented that it was a matter of making the transactions not look like gambling transactions. When asked whether this was deception given it was disguising the true nature of the transactions, JoC thought that the intention was to not have any of the transactions appear on an exception list so as not to draw attention to them. He didn't want to use words like "deceiving" or "misleading".
- 40 CC referred to the Ashurst advice which said that a MCC which says "gaming" is a problem but it's fine if the MCC is "Hotel". He noted that seems to tie nicely with the NAB suggestion that Crown needs to make them look like Hotel transactions. JoC advised that he has no recollection of the MCC codes and advised that the desire wasn't to mislead but to allow transactions to occur that were within the framework of what was deemed to be acceptable. CC asked whether JoC meant acceptable to NAB or China



Union Pay. JoC wasn't sure that he differentiated them. NAB were the people that needed to be comfortable because they were providing the facility. He thinks this was his main concern. Once Crown got comfortable with NAB, JoC isn't sure much thought was given to whether China Union Pay was comfortable.

- 41 CA asked whether JoC recalls a discussion with NAB which was relatively open as to using China Union Pay at Crown for patrons to use for gaming. JoC thinks Crown explained what they wanted to do. He accepted that it certainly looks like Crown and NAB were working together to try to keep the transactions low so that they appeared to be Hotel transactions rather than for the purchase of gambling chips. He thinks limits were imposed because Crown didn't want to appear on exception lists and bring attention to itself or customers because transactions were too high.

Limit increase

CA showed JoC document INQ.950.002.0131 – Emil from Roland Theiler to various recipients dated 5 December 2013

- 42 CA noted that the email advises that the China Union Pay limit has increased from \$200k per day to \$500k per transaction. JoC advised that this wasn't his recollection of the way it was administered. CA noted that there are emails in which JoC authorises multiple transactions per day, and JoC responded that he's just speaking to his recollection. He commented that he could see a situation where limits were put in place and, over time, attitudes changed, and people became more comfortable to the limits changed. He is, however, surprised that it was so early and asked whether it was before a more formal policy was put in place. CA advised that it wasn't.
- 43 AD noted that there were transactions authorised by JoC for large amounts of up to \$2.8m. JoC doesn't have any recollection of this. He recalls that only large transactions would go to him for authorisation, but most transactions were at a lower level and were authorised by more junior people.
- 44 CA asked whether the limit of \$500k per transaction while still allowing multiple transactions was effectively a device to avoid being on exception lists and JoC advised that, qualified by the comment that he thought the limit was \$200k, the answer was probably yes. He said it's difficult to comment on the large transactions because it is inconsistent with what he thought was happening. Limits were importance because of concerns about the process not passing the pub test and not wanting to appear on exception lists.

