

MinterEllison

17 May 2018

BY EMAIL

Mr Stephen Berriman and Mr Tim Bryant
Victorian Commission for Gambling and Liquor Regulation
49 Elizabeth Street
RICHMOND VIC 3001

Dear Mr Berriman and Mr Bryant

Confidential : VCGLR China Investigation - detention of Crown group staff in China

Context

1. We write to set out the position of Crown Melbourne Limited in connection with the VCGLR's consideration of the detention of one of Crown Melbourne's staff (Mr Jason O'Connor) and 18 former staff of Crown Resorts Pte Ltd (a Singaporean company in the Crown group) from October 2016.

Background

2. Crown group staff have been operating in China for around 20 years without any substantial changes in their mode of operation and without any significant incident prior to the detentions.
3. Other major casino operators also had staff based in China performing similar functions to Crown staff prior to October 2016 (and we understand that some of their staff have returned to China since the Crown staff were released). Moreover, junket operators licensed by the Gaming Inspection and Coordination Bureau in Macau are in the business of arranging for customers, particularly mainland Chinese customers, to visit Macau-based casinos and engage in gambling there.
4. Crown Melbourne's parent company, Crown Resorts Limited, is ASX listed. It reports regularly on Crown group operations, including revenues from the international business. Its immediate competitors in Australia, The Star Entertainment Group and The SKYCITY Entertainment Group, are also ASX listed and licensed to operate casinos in Australia, and they too had staff based in China performing similar functions to Crown staff prior to October 2016. It was therefore well known that staff of Australian casinos were operating in China in a manner which it was generally understood was in compliance with local law.

Relevant Chinese law

5. The relevant law in China is Article 303 of the *Criminal Law of the People's Republic of China*. It is written in the Chinese language, but Crown has at all material times understood that:
 - (a) the substantive English translation is that it is an offence for a person to organise 'gambling parties' or 'group gambling' or to 'gather a crowd to gamble', and for that person to derive personal profit or receive a commission or 'kick-back' for doing so; and
 - (b) under an official guideline, the authorised interpretation of this prohibition was that a foreign casino staff member should not organise a trip for 10 or more customers to visit their employer's casino/s to gamble.



6. You have questioned Crown interviewees about a report on Chinese television on 12 October 2015 in which it was said that the guideline could mean 10 or more customers on '*...numerous occasions with an accumulated number of 10 people*'. The report was seen by Michael Chen (although he does not recall the reference to the '10 customer rule'). He prudently sought advice about the report and was comfortable that there had been no change to the guideline or Article 303. No-one in the Crown reporting line above Michael Chen became aware of the above quote in the report or any reference in the report to the '10 customer rule' until questioned by you.

Crown's knowledge and belief

7. Crown understood at all times prior to the detention of the Crown group staff that they were operating in such a manner as to not infringe Article 303. They did not organise trips to Crown's Australian casinos of 10 or more patrons at a time, and did not receive commissions or kick-backs.
8. This understanding was tested in a due diligence process including external advice in 2012/2013 when Jason O'Connor moved into the VIP role and Michael Chen was recruited.

The detention, arrest, charging and conviction of Crown group staff

9. The detentions occurred 'out of the blue'. Crown received no warning from any enforcement agency in China, official or informal, that staff were considered to be breaching Article 303.
10. Crown sought in its response to the detentions to put the welfare of the detainees and their families above all else. Crown officers and staff did all they could to secure the earliest possible release of the detainees.
11. Crown does not know why its staff were singled out for enforcement action. The reasons have been the subject of media speculation and conjecture, but the reality is that there is no statement, official or informal, from relevant Chinese authorities.
12. There are fundamental differences between the justice system in China and western countries. In China, prosecutors and judicial officers are all employees of the State. There is no equivalent of the western law doctrine of separation of powers.
13. Crown does not wish to be critical of the Chinese justice system. How it operates is a matter of Chinese sovereignty. Nevertheless, account needs to be taken of the circumstances of a conviction under the Chinese legal system when considering the implications in Australia.
14. It was clear to the detainees that the quickest and most assured means of being released was to accede to the charges and express respect for the justice system, irrespective of how the evidence might be evaluated or the charges might be defended under a western law system.
15. The guilty pleas should not be taken for Australian legal or regulatory purposes to mean that the detainees admit that they breached a foreign law, knowingly or otherwise. You heard Jason O'Connor's emphatic statement that he personally has never organised a single Chinese customer to visit a Crown venue.

February 2015 'crackdown'

16. You have questioned Crown interviewees about media reports of a statement by a Deputy Bureau Chief of the Ministry of Public Security to the effect that:

'A fair number of neighbouring countries have casinos, and they have set up offices in China to attract and drum up interest from Chinese citizens to go abroad and gamble. This will also be an area that we will crack down on.'

17. In response to these media reports, Michael Chen sought legal advice from a respected law firm in Beijing, Wilmer Hale, and strategic/government relations advice from a well-connected intelligence group, MINTZ. He understood that there had been no change to Article 303 and that Crown staff should not be exposed to any 'crackdown' enforcement action if they continued to abide by guidance on how to conduct their marketing efforts in China in compliance with Article 303.

18. In their interviews, none of Michael Chen's superiors in the reporting line specifically recalled mention of foreign casinos in the context of the media reporting of the crackdown. They thought that the crackdown was essentially directed at corruption (particularly of government officials) and the potential implication was a slowdown for casinos in Macau or other neighbouring countries.

Detention of South Korean casino staff in June 2015

19. You have also asked Crown interviewees about media reporting of the arrest (although it was, at that time, only the detention) of a number of staff from two South Korean casinos in June 2015.
20. In response to media reports of those detentions, Michael Chen again sought advice from Wilmer Hale and the MINTZ Group and consulted contacts in the industry, including contacts in Korean casinos. As a result, he again understood that there had been no change to the relevant law and that the Koreans had been targeted because they:
- (a) had established offices in China and were significantly involved in assisting the illegal movement of currency (and other nefarious activities);
 - (b) were focused on bringing large numbers of 'mid-market' customers into their neighbouring foreigners-only casinos;
 - (c) carried and used gaming promotional material; and
 - (d) were arranging trips of 10 or more customers at a time.
21. The matter was considered and discussed up the reporting line to Crown Resorts' Chief Executive Officer. Ultimately, everyone was comfortable that appropriate legal and strategic/government relations advice had been sought and that it was reasonable to conclude that the Koreans had not been targeted for general casino marketing activities of the kind undertaken by Crown group staff and the staff of other western-licensed casinos, but for other serious and flagrant conduct.
22. That remained Crown's view up to the date of detention of its own staff.

Police interview of Benny Xiong in July 2015

23. This interview was the subject of our letter to Mr Berriman dated 5 April 2018.
24. As indicated in our letter (and, in particular, in an enclosed email dated 15 July 2015), Mr Xiong attended the XinGouqiao Police Station in Wuhan Province on 9 July 2015, in response to a telephone request. He was asked questions, including about the nature of his work and by whom he was employed. He was also asked to obtain a letter to confirm his employment, and this was arranged.
25. The letter confirmed that Mr Xiong was an employee of Crown Resort Pte Limited, part of the Crown Resorts Group, which was said in the letter to be one of the leading hotel, resort and entertainment companies in Australia and to be listed on the Australian Stock Exchange.
26. According to the email dated 15 July 2015, after Mr Xiong delivered the letter to the police on 10 July 2015, they said *'everything is alright'*.
27. Michael Chen consulted Wilmer Hale in relation to the matter, and Crown Melbourne's internal lawyers were also involved. The matter was not considered to have any wider legal implications.
28. Michael Chen also consulted the MINTZ Group. Again, the matter was not considered to affect the work of Crown Group staff in China. The reference in the correspondence from MINTZ that the *'...letter has the effect of contributing to an evidentiary pile that PSB could decide to draw upon in the future...'* was not taken by Michael Chen to be of any real significance and was not seen by others up the reporting line.

Risk Management

29. The Crown Group has a well-established risk management framework and processes. (Crown Melbourne's risk management processes have been the subject of independent review by PricewaterhouseCoopers for the more general purposes of the Sixth Review.)

30. Relevantly, the framework identified the risk of material breaches of gaming and other relevant legislation and specified the mitigating controls to include:
- (a) *'adherence to and awareness of relevant legislative and/or regulatory policy including training of relevant employees/contractors where applicable'; and*
 - (b) *'ongoing communication with Government and regulators in relevant jurisdictions to ensure regulation is clear and that proposed activities are compliant (and perceived by regulators to be compliant'.*
31. Crown applied these mitigating controls in China by seeking legal and strategic/government relations advice as and when appropriate (including in February, June, July and October 2015). That was all it could reasonably do, in the absence of access to official channels to the Central Government or a China gaming regulator.
32. The only other mitigation step Crown could have taken was the withdrawal of all staff based in China and banning visits by staff to mainland China. No one considered that to be warranted at the time. Nor did other foreign casinos (including Star and SKYCITY) or junket operators conducting business in mainland China.
33. Moreover, even if a temporary withdrawal and travel ban had been imposed in mid to late 2015, how long would it be suggested that such measure would remain warranted? Nothing of relevance occurred in 2016, prior to the detentions in October. (There was no further incident or report requiring input from MINTZ after October 2015.) And how could effectively abandoning the jurisdiction be justified given Crown Melbourne's obligation under clause 22.1(ra) of the Casino Agreement to be the dominant commission-based player casino in Australia?

Hindsight

34. *'But all these hints at foreseeing what actually did happen... are only conspicuous now because the event has justified them. If the event had not come to pass, these hints would have been forgotten, as thousands and millions of suggestions and supposition are now forgotten that were current at the period, but have been shown by time to be unfounded and so have been consigned to oblivion' – Leo Tolstoy, War and Peace.*
35. It is only with such hindsight that the assessment of the risk of Crown Group staff being detained in China made by Crown at the time (on the basis of external, expert advice) can now be criticised.
36. It is inherently unfair to criticise the judgment calls made at the time without deep knowledge and understanding of the Chinese legal system, law enforcement processes, political environment and culture. Looking from afar through the lens of western law and regulatory processes is prone to error.
37. As Michael Chen said in his interview, the Chinese justice system is 'opaque' and unpredictable in comparison to western systems. It is a significant challenge in many industries, not only the gaming industry, to understand what might, or might not, attract adverse attention by Chinese authorities. The country is rife with rumours, most of which transpire to be untrue (such as the rampant rumour that Michael Chen himself had been detained).
38. Crown appropriately relied, in significant part in recent years, on Michael Chen to do the detailed work to inform the assessment of the legal risks of its China operations and how best to mitigate them. Michael Chen is a Harvard-educated, sophisticated person, with significant international experience in the casino industry, who previously lived in mainland China and Hong Kong. His input was tested and discussed regularly with his superiors, and their shared view at all relevant times was that staff were operating in compliance with Chinese law.
39. As you know, Michael Chen reported directly to Jason O'Connor, who was one of the detainees. You cannot have been left in any doubt from your interview of Jason O'Connor that he would not have visited China in October 2016 if he had thought that there was any risk of him being detained. The same applies to his immediate superior, Barry Felstead, who was in China only 10 days or so before the detentions occurred (and Michael Chen, who was last in China in September 2016).

40. Crown's decision not to withdraw staff from China reflected and was reinforced by the same decision taken by other foreign casinos, including Star and SKYCITY. Crown was not out-of-step in this regard with its competitors or licensed junket operators.
41. The documents you have reviewed in the course of your investigation constitute a minute proportion of the overall email traffic and documentary records of Crown during the period under consideration (and of the many media reports seen daily by senior Crown management in this period), such that viewing them in isolation may give a misleading impression about the context and significance of past events and the reporting of them.

Further steps

42. We understand that your interviews have concluded and that you have received from Crown all that you require for the purposes of preparing your report. If, however, there is anything further you require, or any aspect of the above points which you would like to discuss, Crown would welcome the opportunity to assist further.
43. We take that Crown will be afforded procedural fairness by being given the opportunity to review and comment on a draft of your report. If this is not correct, please let us know as a matter of priority.
44. As you are aware, Crown Resorts is defending a shareholder class action in relation to the detentions. Naturally, it is concerned to ensure that its defence is not prejudiced by findings or commentary in your report which is not well-founded. Further, you have had access to other evidentiary material, including from an interview of Jerry Xuan (which occurred without prior notice to Crown) and documents from other sources. Again, as a matter of procedural fairness, we ask that you make such material available for Crown's review in the event that you propose to base any adverse finding or comment on it.
45. We look forward to hearing further from you.

Yours faithfully
MinterEllison

Confidential

Contact: Richard Murphy T: Confidential

Confidential