

## NOTICE OF FILING

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### Details of Filing

Document Lodged: Statement of Claim - Form 17 - Rule 8.06(1)(a)  
File Number: VID1317/2017  
File Title: ZANTRAN PTY LIMITED v CROWN RESORTS LIMITED  
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



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A handwritten signature in blue ink that reads 'Sia Lagos'.

Registrar

### Important Information

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Form 17  
Rule 8.05(1)(a)

**FURTHER AMENDED STATEMENT OF CLAIM**

No. VID1317 of 2017

Federal Court of Australia  
District Registry: Victoria  
Division: General

**ZANTRAN PTY LIMITED (ACN 078 669 155)**

Applicant

**CROWN RESORTS LIMITED (ACN 125 709 953)**

Respondent

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## A THE PARTIES

### A.1 The Applicant and the Group Members

1. This proceeding is commenced as a representative proceeding pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth) by the Applicant on its own behalf and on behalf of all persons who or which:

- (a) acquired an interest in fully paid ordinary shares in Crown Resorts Limited (**Crown Shares**) during the period between 6 February 2015 and 16 October 2016 (**Relevant Period**);
- (b) suffered loss or damage by reason of the conduct of the Respondent (**Crown**) pleaded in this Statement of Claim;
- (c) were not during any part of the Relevant Period, and are not as at the date of this Statement of Claim, any of the following:
  - (i) a related party (as defined by s 228 of the *Corporations Act 2001* (Cth) of Crown;
  - (ii) a related body corporate (as defined by s 50 of the *Corporations Act*) of Crown;
  - (iii) an associated entity (as defined by s 50AAA of the *Corporations Act*) of Crown;
  - (iv) an officer or a close associate (as defined by s 9 of the *Corporations Act*) of Crown; or
  - (v) a Justice, Registrar, District Registrar or Deputy District Registrar of the High Court of Australia or the Federal Court of Australia (**Group Members**).

2. The Applicant:

- (a) was at all material times a company incorporated under the *Corporations Act*;
- (b) acquired interests in Crown Shares during the Relevant Period.

## Particulars

Details of the acquisitions of Crown Shares by the Applicant are set out below.

Date	Transaction	No of shares	Price	
13 Aug 2015	Buy	1,000	500	\$13.04
			500	\$13.03
13 Aug 2015	Buy	2,000	\$13.04	

3. As at the date of the commencement of this proceeding, there are seven or more persons who have claims against Crown in respect of the matters set out in this Statement of Claim.

### A.2 The Respondent

4. Crown is and at all material times was:
- (a) incorporated pursuant to the *Corporations Act* and capable of being sued;
  - (b) a person within the meaning of s 1041H of the *Corporations Act*;
  - (c) a person within the meaning of s 12DA of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**);
  - (d) a person within the meaning of s 18 of the Australian Consumer Law set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth), as applicable pursuant to:
    - (i) s 7 of the *Fair Trading (Australian Consumer Law) Act 1992* (ACT);
    - (ii) s 28 of the *Fair Trading Act 1987* (NSW);
    - (iii) s 12 of the *Australian Consumer Law and Fair Trading Act 2012* (Vic);
    - (iv) s 16 of the *Fair Trading Act 1989* (Qld);
    - (v) s 6 of the *Australian Consumer Law (Tasmania) Act 2010* (Tas);
    - (vi) s 19 of the *Fair Trading Act 2010* (WA);
    - (vii) s 14 of the *Fair Trading Act 1987* (SA); and/or

(viii) s 27 of the *Consumer Affairs and Fair Trading Act* (NT),

as in force after 1 January 2011 (individually, or together, the **ACL**); and

- (e) included in the official list of the financial market operated by the Australian Securities Exchange (**ASX**);
- (f) a listed disclosing entity within the meaning of s 111AL(1) of the *Corporations Act*; and
- (g) subject to and bound by the Listing Rules of the ASX (**ASX Listing Rules**).

5. Further, at all material times, Crown had on issue Crown Shares which were and are:

- (a) ED securities within the meaning of s 111AE of the *Corporations Act*;
- (b) quoted ED securities within the meaning of s 111AM of the *Corporations Act*; and
- (c) able to be acquired and disposed of by investors and potential investors in Crown Shares (**Crown Securities Market**) on the financial market operated by ASX.

6. At all material times, the ASX was a market operator of a listing market, namely the ASX's financial market, in relation to Crown Shares for the purposes of s 674(1) of the *Corporations Act*.

7. At all material times, Rule 3.1 of the ASX Listing Rules provided that once an entity is aware or becomes aware of any information concerning it that a reasonable person would expect to have a material effect on the price or value of the entity's securities, the entity must, unless the exceptions in ASX Listing Rule 3.1A apply, immediately tell the ASX that information.

8. At all material times, Rule 19.12 of the ASX Listing Rules provided that an entity becomes aware of information if, and as soon as, a director or executive officer has, or ought reasonably to have, come into possession of the information in the course of the performance of their duties as a director or executive officer of that entity.

9. At all material times, s 674(2) of the *Corporations Act* applied to Crown by reason of:
- (a) the matters set out in paragraphs 4(e) to (g) and 5 above; and
  - (b) ss 111AP(1) and/or 674(1) of the *Corporations Act* (**Continuous Disclosure Obligations**).

## **B CROWN'S BUSINESS**

10. At all material times, Crown carried on a business as one of Australia's largest gaming and entertainment groups with operations and investments in Australia, Asia, the United Kingdom and the United States.
11. At all material times, Crown's assets and interests included:
- (a) in Australia:
    - (i) 100 per cent ownership of the Melbourne casino and hotel resort (**Crown Melbourne**); and
    - (ii) 100 per cent ownership of the Perth casino and hotel resort (**Crown Perth**);
  - ~~(b) an equity stake of between approximately 33.6 per cent and 27.4 per cent in Meleo Crown Entertainment (**Meleo Crown**), which owned and operated casinos in Macau and the Philippines.~~

### **Particulars**

- ~~A. As at 30 June 2014, Crown held 33.6 per cent of Meleo Crown (Crown 2014 Annual Report, p. 107);~~
- ~~B. As at 30 June 2015, Crown held 34.3 per cent of Meleo Crown (Crown 2015 Annual Report, p. 111);~~
- ~~C. As at 30 June 2016, Crown held 27.4 per cent of Meleo Crown (Crown 2016 Annual Report, p. 100);~~
- ~~D. At all material times, Meleo Crown was the owner and operator of City of Dreams and Altira Macau, two premium integrated casino and hotel resorts in Macau. Meleo Crown also held equity interests in Meleo Crown (Philippines) Resort Corporation (which had an interest in a consortium that owned and operated City of Dreams Manila, an integrated resort in Manila) and Studio City Macau (which operated Studio City~~

~~Macau, an integrated resort in Macau). (Crown 2014 Annual Report, p. 16 – 18; Crown 2015 Annual Report, p. 22 – 24; Crown 2016 Annual Report, p. 16 – 17);~~

~~E. In 2016 and 2017, Crown sold all of its holdings in Meleo Crown, with the sale completed on 15 May 2017.~~

12. At all material times, the customers of Crown Melbourne, and Crown Perth ~~and Meleo Crown~~ included customers who travelled to Australia and Macau from other countries including China and:
- (a) placed bets in private gaming rooms at Crown Casino Melbourne, and Crown Perth ~~and City of Dreams Macau, Altira Macau, and Studio City Macau (the latter three being Crown Macau casinos);~~
  - (b) were extended credit, including arrangements known as “rolling chips”, to gamble at Crown Melbourne and Crown Perth ~~and Crown Macau~~ casinos; and
  - (c) were provided with assistance with organising visas and travel plans, and benefits including accommodation, meals and refreshments while in Australia ~~or Macau~~ (**Crown’s international VIP gamblers**).
13. At all material times, Crown’s international VIP gamblers included Chinese nationals who travelled to Australia to gamble at Crown Melbourne and Crown Perth, ~~and who travelled to Macau to gamble at Crown Macau casinos~~ (**Crown’s Chinese VIP gamblers**).
14. Between 2014 and October 2016, Crown derived a substantial portion of its revenue from VIP gambling (**Crown’s VIP revenue**).

### Particulars

- A. For the financial year ending 30 June 2014, Crown reported revenue from VIP Program Play of \$937,228,000 and its reported total revenue was \$3,094,764,000.
- B. For the financial year ending 30 June 2015, Crown reported revenue from VIP Program Play of \$1,121,676,000 and its reported total revenue was \$3,484,753,000.

The revenue figures for the financial years ending 30 June 2014 and 30 June 2015 were recorded in Crown’s Preliminary Final Report (Appendix 4E) published on the ASX on 13 August 2015.



- C. For the financial year ending 30 June 2016, Crown reported revenue from VIP Program Play of \$1,004,583,000 and its reported total revenue was \$3,617,757,000.

The revenue figures for the financial year ending 30 June 2016 was recorded in Crown’s Appendix 4E published on the ASX on 17 August 2016.

15. Between 2014 and October 2016, Crown derived a substantial portion of its revenue from Crown’s international VIP gamblers (**Crown’s international VIP revenue**).

**Particulars**

The Applicant refers to and repeats the particulars to paragraph 14. Further particulars may be provided after discovery.

16. Between 2014 and October 2016, Crown derived a substantial portion of its revenue from Crown’s Chinese VIP gamblers (**Crown’s Chinese VIP revenue**).

**Particulars**

In an ASX release dated 20 October 2016, Crown reported that:

- A. around a quarter of Crown Group’s revenues were generated from international VIP gaming programs;
- B. Crown’s international VIP gaming program visitors originated from regions including South East Asia, North Asia (including mainland China), Europe and the Middle East; and
- C. the segment of Crown Group revenue attributable to the international VIP gaming program play business from mainland China visitors was approximately 12 per cent of the Crown Group revenues in FY16.
- D. Crown’s Chinese VIP revenue was derived from turnover produced from Crown’s Chinese VIP gamblers. The “theoretical revenue” was 1.4% of turnover, being the statistical house edge of baccarat. The turnover produced from Crown’s Chinese VIP gamblers was as follows (at paragraph 45 of the witness statement of Jason O’Connor filed in these proceedings):

<u>Year to date ending</u>	<u>Region</u>	<u>Turnover from region (\$,000)</u>
<u>30 June 2013</u>	<u>China</u>	<u>\$17,311,852</u>
<u>30 June 2014</u>	<u>NEA - China</u>	<u>\$21,897,093</u>
<u>30 June 2015</u>	<u>NEA - China</u>	<u>\$27,396,305</u>
<u>30 June 2016</u>	<u>NEA - China</u>	<u>\$36,675,169</u>

## C CROWN'S CHINA OPERATIONS

17. Between 2014 and October 2016, Crown employed employees who performed functions and tasks for the benefit of Crown on mainland China, including:

(a) performing sales, marketing and administrative tasks; in teams organised by reference to regions of China;

(aa) contacting potential and existing Chinese VIP gamblers via telephone or text message, including cold calling;

(b) meeting with Chinese nationals for the purpose of promoting gambling at Crown Melbourne, and Crown Perth ~~and Crown Macau~~ casinos;

(bb) offering sales and marketing incentives to entice Chinese nationals to travel from mainland China to Australia for the purpose of gambling at Crown Melbourne and Crown Perth casinos, including by providing:

(i) gifts;

(ii) the use of private jets operated by Crown, or chartered planes, as transport to and from Crown Melbourne and Crown Perth;

(iii) complimentary accommodation, meals and refreshments at Crown Melbourne and Crown Perth; and

(iv) 'Lucky Money', being gifted money to be used for gambling;

(c) providing assistance to Chinese nationals with arranging travel from mainland China to Australia for the purpose of gambling at Crown Melbourne and Crown Perth and providing assistance with visa applications;

(d) organising for Chinese nationals who travelled from mainland China to Australia for the purpose of gambling at Crown Melbourne and Crown Perth to be provided with:

(i) gifts;

- (ii) the use of private jets operated by Crown, or chartered planes, as transport to and from Crown Melbourne and Crown Perth, and/or airport pick-up service;
- (iii) complimentary accommodation, meals and refreshments at Crown Melbourne and Crown Perth, and elsewhere, while in Australia; and
- (iv) 'Lucky Money', being gifted money to be used for gambling;
- (e) organising credit for Chinese nationals to use for gambling at Crown Melbourne, ~~and Crown Perth and Crown Macau~~ casinos;
- (f) reporting the results of sales and marketing performed by Crown employees in China; and
- (g) seeking to recover and recovering gambling debts owed to Crown by Chinese nationals who had gambled at Crown Melbourne and Crown Perth casinos, including by:
  - (i) contacting Chinese nationals who had engaged in gambling at Crown Melbourne, ~~and Crown Perth and Crown Macau~~ casinos for the purpose of requesting those Chinese nationals to pay debts incurred while gambling; and
  - (ii) sending letters of demand and offers of compromise to Chinese nationals in respect of gambling debts incurred at Crown Melbourne and Crown Perth casinos;
- (h) promoting to actual or prospective Chinese VIP gamblers major VIP gambling events conducted each year at Crown Melbourne and Crown Perth casinos such as "October Golden Week", "Jingle Balls", "Chinese New Year" and "Golden Balls", including by:
  - (i) distributing promotional material;
  - (ii) contacting actual or prospective Chinese VIP gamblers;

(iii) conducting promotional tours, known as “roadshows”, which involved meetings with actual or prospective Chinese VIP gamblers attended by Crown executives;

(i) meeting with junket operators to discuss and arrange for the junkets to procure Chinese nationals to gamble at Crown Melbourne and Crown Perth casinos,

**(Crown’s China Operations).**

18. Between 2014 and October 2016, persons employed by Crown who performed functions and tasks in Crown’s China Operations on mainland China:

- (a) had sales targets; and
- (b) earned commissions and received payments from Crown,

based on gambling turnover derived from Crown’s Chinese VIP gamblers.

19. By October 2016, Crown employed at least 19 employees who performed functions on mainland China as part of Crown’s China Operations, namely:

- (a) Jason O’Connor;
- (b) Yaohui Gaomu;
- (c) Wang Xun;
- (d) Liu Yuanzheng;
- (e) Zhu Bing;
- (f) Wu Xuefen;
- (g) Tao Yin;
- (h) He Xi;
- (i) Xiong Bin;
- (j) Dai Bin;

- (k) Jia Qi;
- (l) Pan Dan;
- (m) Xuan Peng;
- (n) Chi Yang;
- (o) Cao Zhiqiang;
- (p) Lv Xiaolei;
- (q) Jiang Ling;
- (r) Tang Xiaoqing; and
- (s) Cai Xiaoyu.

20. Jason O'Connor:

- (a) was employed by Crown as Executive Vice President, VIP International; and
- (b) had duties including:
  - (i) approving sales targets for 19 Crown staff who were arrested as set out in paragraphs 25– 26 below; and
  - (ii) visiting China to meet with Chinese nationals who were existing clients of Crown and to develop potential new clients.

20A. Between 2014 and October 2016, as a result of Crown's China Operations, a large number of Chinese VIP gamblers gambled at Crown Melbourne and Crown Perth casinos.

**Particulars**

- A. In each of FY14 and FY15, at least 640 Chinese VIP gamblers gambled at Crown Melbourne and/or Crown Perth casinos.
- B. In FY16, at least 800 Chinese VIP gamblers gambled at Crown Melbourne and/or Crown Perth casinos.

21. Crown derived a substantial portion of its revenue from the implementation of Crown's China Operations.

### Particulars

The Applicant refers to and repeats the particulars to paragraphs 14 to 16.

### D CHINESE LAW

22. At all material times, the Criminal Law of the People's Republic of China provided that:

- (a) Article 303

"Whoever, for the purpose of profit, gathers a crowd to gamble, ~~opens a gambling establishment~~ or undertakes gambling as a business shall be sentenced to fixed-term imprisonment of ~~not more than~~ three years or less, detention or surveillance and shall be subject to a fine.

Whoever opens a gambling establishment shall be sentenced to a fixed-term imprisonment or not more than three years, detention or surveillance and shall be subject to a fine; if the circumstances are serious, [the person shall be sentenced to] a fixed-term imprisonment of three years or more and ten years or less and shall be subject to a fine."

- (b) Article 25

"A joint crime refers to the situation where two or more persons intentionally commit a crime jointly.

Where two or more persons negligently commit a crime jointly, it will not be punished as a joint crime; those who should bear criminal liability shall be separately punished in accordance with the crime that they have committed."

23. On 11 May 2005, the Supreme People's Court of the People's Republic of China issued Interpretation No. 3 [2005] of the Supreme People's Court entitled *Interpretation of the Supreme People's Court and Supreme People's Procuratorate about Some Issues Concerning the Application of Law in Gambling Criminal Cases* (**Supreme People's**

**Court Interpretation**), which was effective from 13 May 2005 and was in effect at all times during the Relevant Period.

24. At all material times, Article 1 of the Supreme People’s Court Interpretation provided that:

“Any of the situations set out below, if undertaken for the purpose of profit, will  
~~Whoever, for the purpose of profit, falls into any of the following circumstances shall~~  
constitute ‘gathering a crowd to gamble’ as provided by Article 303 of the Criminal Law:

- (1) Organising three or more persons to gamble and generating illegitimate  
~~reaping profits by taking a cut of the winnings percentage~~ in amounts that equal 5,000 yuan or more in aggregate;
- (2) Organising three or more persons to gamble where the amount gambled is 50,000 yuan or more in aggregate;
- (3) Organising three or more persons to gamble where the number of people participating in the gambling is 20 persons or more in aggregate;
- (4) Organising 10 or more persons who are citizens of the People’s Republic of China to go abroad to gamble, from which kickbacks or referral fees are collected.”

## **E THE DETENTION, ARREST AND PROSECUTION OF CROWN STAFF**

25. Between 13 and 24 October 2016, Chinese authorities detained 19 Crown employees.
26. In about June 2017, the 19 Crown staff were charged with offences relating to the promotion of gambling and their cases were referred to the Baoshan District Court.
27. On 26 June 2017, the 19 Crown staff were found guilty by three judges of the Baoshan District Court of the commission of gambling offences contrary to Articles 25 and 303 and of the Criminal Law of the People’s Republic of China.

### Particulars

Shanghai Baoshan District People's Court of the People's Republic of China – Judgment in a Criminal Case (2017) S.0113 C.F.I 985 (SJO.001.001.0004).

#### **F 17 OCTOBER 2016 ANNOUNCEMENT**

28. On Monday 17 October 2016, in accordance with information which had been widely publicised in the media on the preceding day, Crown announced that 18 of its staff, including Crown's Executive Vice President VIP International, Jason O'Connor, had been detained by Chinese authorities (**17 October Announcement**).

### **Particulars**

The 17 October announcement was made in an ASX announcement released by Crown on 17 October 2016 titled 'Response to Media Reports'.

29. Following the publication of the 17 October Announcement, Crown's share price declined by approximately 13.9 per cent.

### **Particulars**

On Friday 14 October 2016, the closing price of Crown Shares was \$12.95. On Monday 17 October 2016, the closing price of Crown Shares was \$11.15.

#### **G CROWN'S KNOWLEDGE PRIOR TO 17 OCTOBER 2016**

##### **G.1 Chinese Gambling Crackdown**

30. On or about 6 February 2015, the Chinese Government announced that:
- (a) the fact that Chinese citizens were being organised to gamble abroad was causing great harm; and
  - (b) casinos in overseas countries which had set up ~~representative~~ offices in China to attract and recruit Chinese citizens to gamble abroad were now a "focus of the ~~major-crackdown-target.~~" (**Chinese Gambling Crackdown**)



### Particulars

On 6 February 2015, the Ministry of Public Security held a press conference at the Ministry of Public Security on the topic of public security crackdown and rectification.

The speakers who addressed the press conference included Liu Shaowu, Director of the Public Security Bureau under the Ministry of Public Security and Yan Zhengbin and Hua Jinfeng, Deputy Directors of the Public Security Bureau.

Journalists attended the press conference including journalists representing China Daily, Beijing Times, CCTV, Xinhua News Agency, and People's Public Security.

31. On and from 6 February 2015, Crown was aware (within the meaning of ASX Listing Rule 19.12) of the Chinese Gambling Crackdown.

### Particulars

Crown's awareness arises from the following:

- A. The Chinese Gambling Crackdown was announced at a public press conference. The Applicant refers to and repeats the particulars to paragraph 30 above.
- B. The press conference and the announcement of the Chinese Gambling Crackdown were reported in the English language media on or shortly after 6 February 2015, including in:
  - (i) an article published by Reuters dated 6 February 2015 titled 'China to crack down on foreign casinos seeking Chinese gamblers'.
  - (ii) an article in the Singapore-based *Business Times* dated 6 February 2015 titled 'China clamps down on foreign casinos wooing Chinese gamblers'.
  - (iii) On 20 February 2015, it was reported in *The Australian* in an article titled 'VIP influx a windfall for Crown' that Crown Chief Executive Officer Rowan Craigie said that "the Australian and New Zealand markets are benefitting from the [Chinese corruption] crackdown".
- C. The Chinese Gambling Crackdown was information that ought reasonably have come into the possession of the directors or executive officers of Crown having regard to the fact of Crown's China Operations.
- D. The knowledge of the Chinese Gambling Crackdown was held by Michael Chen, Jason O'Connor, Barry Felstead, Rowan Craigie, and Michael Johnston. In relation to Mr Johnston, he held the knowledge from March 2015.

## **G.2 South Korean Casino Employee Arrests**

32. On or about 17 June 2015, employees of South Korean casino operators Paradise and Grand Korea Leisure were detained and/or arrested by Chinese authorities and charged with offences relating to marketing gambling to Chinese citizens (**South Korean Casino Employee Arrests**).
33. On and from 19 June 2015, Crown was aware (within the meaning of ASX Listing Rule 19.12) of the South Korean Casino Employee Arrests.

### **Particulars**

Crown's awareness arises from the following:

- A. The arrest of the South Korean employees was reported by:
- (i) the Yonhap News Agency on 19 June 2015 in an article titled 'China arrests 14 S Koreans for allegedly luring Chinese gamblers';
  - (ii) the *Straits Times* on 20 June 2015 in an article titled 'S Korean casino operators hit by arrests in China', and
  - (iii) the *Macau Daily Times* on 22 June 2015 in an article titled 'Korean casinos plunge after report China arrests promoters'.
- B. Crown's status as a competitor of Paradise and Grand Korea Leisure and the facts of Crown's China Operations.
- C. The South Korean Casino Employee Arrests was information that ought reasonably have come into the possession of the directors or executive officers of Crown having regard to the fact of Crown's China Operations.
- D. The knowledge of the South Korean Casino Employee Arrests was held by Michael Chen, Jason O'Connor, Barry Felstead, Rowan Craigie, James Packer, Michael Neilson, John Alexander, Helen Coonan, Rowena Danziger, Andrew Demetriou, Geoff Dixon and John Horvath.

### **G.2A Questioning of Crown China Staff by Chinese authorities**

- 33A. On or about 9 July 2015, a Crown employee, namely Xiong Bin (also known as Benny Xiong) was questioned by Chinese authorities and accused of organising Chinese nationals to gamble in Australia.

33B. On and from 9 July 2015, Crown was aware (within the meaning of ASX Listing Rule 19.12) of the matters alleged in paragraph 33A.

### Particulars

Michael Chen, Jason O'Connor, Barry Felstead, Michael Johnston, Jan Williamson and Debra Tegoni knew that Xiong Bin had been questioned by Chinese authorities and accused of organising Chinese nationals to gamble in Australia. The Applicant refers to, inter alia, correspondence between Michael Chen, Jason O'Connor, Barry Felstead, Michael Johnston, Jan Williamson and Debra Tegoni regarding this incident (CWN.502.032.0220, CWN.515.001.0056, CWN.541.002.0038, and CWN.567.014.7568).

### G.3 Information and risk known to Crown

34. On and from 6 February 2015 (~~or in the alternative on and from 19 June 2015~~) by reason of the matters pleaded in paragraphs 17 to 24 ~~33~~ and 30 to 31 above (~~or in the alternative, on or from 19 June 2015 by reason of the matters pleaded in paragraphs 17 to 24 and 30 to 33 above~~) (or in the alternative, on or from 9 July 2015 by reason of the matters pleaded in paragraphs 17 to 24 and 30 to 33B above):

- (a) Crown's China Operations were in breach of Chinese law (**China Operations Illegal Information**); and/or
- (b) Crown's China Operations possessed characteristics which were a target of the Chinese Gambling Crackdown (**China Operations Crackdown Information**);

35. On and from 6 February 2015 (~~or in the alternative on and from 19 June 2015~~) by reason of the matters pleaded in paragraphs 17 to 24, 30 to 31, and 34 above (~~or in the alternative on and from 19 June 2015 by reason of the matters pleaded in paragraphs 17 to 24 and 30 to 34 above~~) (or in the alternative, on or from 9 July 2015 by reason of the matters pleaded in paragraphs 17 to 24 and 30 to 34 above), there existed a risk that:

- (a) 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 (**Employee Detention Risk**);

- (b) in circumstances where Crown employees were charged, arrested, detained, prosecuted or convicted by Chinese authorities for commission of crimes in contravention of Chinese laws in relation to gambling, Crown would be forced to terminate its China Operations (**China Operations Enforcement Risk**);
  - (c) ~~in circumstances where Crown terminated its China Operations~~, Crown would suffer a significant reduction in Crown's Chinese VIP Revenue (**Chinese VIP Revenue Risk**); and/or
  - (d) in circumstances where Crown suffered a significant reduction in Crown's Chinese VIP Revenue, it would suffer a significant reduction in Crown's total revenue (**Revenue Risk**).
36. On and from 6 February 2015 (or in the alternative on and from 19 June 2015) (or in the alternative, on and from 9 July 2015) Crown was aware (within the meaning of the ASX Listing Rule 19.12) of:
- (a) the China Operations Illegal Information;
  - (b) the China Operations Crackdown Information;
  - (c) the Employee Detention Risk;
  - (d) the China Operations Enforcement Risk;
  - (e) the Chinese VIP Revenue Risk; and/or
  - (f) the Revenue Risk.

**Particulars**

**(initially filed and served on 18 February 2018  
and amended as marked on 23 February 2021)**

1. Each of the items in paragraph 36(a)–(f) of the Further Amended Statement of Claim (FASOC) was information which, as at 6 February 2015 (or in the alternative on and from 19 June 2015) (or in the alternative on and from 9 July 2015):
  - (i) had come into the possession of an officer of Crown; or

(ii) ought reasonably to have come, into the possession of an officer of Crown, in the course of the performance of their duties as an officer of Crown,

and was, therefore, information of which Crown was aware within the meaning of ASX Listing Rule 19.12.

2. That the China Operations Illegal Information defined in paragraph 34(a) of the FASOC was information which had come into the possession of an officer of Crown, or ought reasonably to have come into the possession of an officer of Crown in the course of the performance of their duties as an officer of Crown, is to be inferred from each of:

(a) the nature of Crown's business as pleaded in paragraphs 10 to 16 of the FASOC;

(b) the nature of Crown's China Operations as pleaded in paragraphs 17 to 21 of the FASOC;

(c) the fact that, at all material times, Crown employed employees who performed the Crown China Operations;

(d) the fact that, at all material times, Crown's China Operations included the promotion of gambling at Crown resorts to Chinese nationals; sales, marketing and administrative tasks associated with the promotion of gambling at Crown resorts to Chinese nationals; assisting Chinese nationals with travel and related matters for the purposes of gambling; organising credit for Chinese nationals for use for gambling in Australia and Macau; and debt collection from Chinese nationals of debts incurred while gambling at Crown resorts;

(e) the fact that, at all material times, Chinese law provided that, inter alia, "Whoever, for the purpose of profit, gathers a crowd to gamble, ~~opens a gambling establishment~~ or undertakes gambling as a business" shall be subject to criminal penalties as per Article 303 of the Criminal Law of the People's Republic of China, as pleaded in paragraph 22(a) of the FASOC;

(f) the fact that, at all material times from 11 May 2005, the Supreme Court People's Interpretation provided that, inter alia, that "gathering a crowd to gamble" as provided for in Article 303 of the Criminal Law of the People's Republic of China included each of the matters set out in paragraph 24;

(g) the representations made in Crown's Risk Management Statements made in its Annual Reports in the financial years ending 30 June 2014, 2015, and 2016, as pleaded in paragraphs 63, 66, and 69 of the FASOC;

(h) the fact of the Chinese Gambling Crackdown as pleaded and particularised in paragraph 30;

- ~~(i) the public nature, notoriety and press coverage of the announcements by the Chinese Government which constituted the Chinese Gambling Crackdown as pleaded and particularised in paragraphs 30 to 31 of the SOC; and~~
- (j) Crown's awareness of the Chinese Gambling Crackdown as pleaded and particularised in paragraph 31;
- (k) the fact that Crown conducted Crown's China Operations covertly including by:
- (i) not applying for (or otherwise having) a licence necessary to conduct business legally in China;
  - (ii) establishing an unofficial and clandestine office in Guangzhou in China for the purposes of Crown's China Operations. The office was initially located a semi-residential building. It was moved to an apartment in a residential building in 2015. The leases were taken out in the name of Crown staff (including Alfreed Gomez). Crown paid the rent on the office. The office contained equipment, including photocopiers, computers, hard drives, gifts and documents containing customer information. The office carried no Crown signage. The office was used by Crown staff to perform administrative functions relating to processing visa applications;
  - (iii) providing a letter to Xiong Bin for the purpose of provision to Chinese authorities following his questioning by Chinese authorities, which omitted reference to Crown's casino business (CWN.502.068.5889);
  - (iv) instructing Crown staff in China to avoid overt sales and marketing activity (CWN.502.047.2388);
  - (v) instructing Crown employees to use code words when discussing Crown's China Operations on telephone calls that took place with at least one employee in China (CWN.514.034.4232);
  - (vi) stating, on permits for flights in and out of China by Crown's private jets, that the flights were for the purpose of Crown executives attending and returning from meetings in China, when those flights also, or instead, were for the purpose of transporting Chinese VIP gamblers to and from Crown Melbourne and Crown Perth (CWN.502.013.4979, CWN.502.050.3673, CWN.502.010.0312); and

- (vii) within three days of the Crackdown Announcement, deciding to remove the Crown logos from Crown’s private jets that were used to transport Chinese VIP gamblers to and from Crown Melbourne and Crown Perth casinos (CWN.525.001.4075).
- (l) the fact that Crown received legal advice from WilmerHale in August 2014 (such advice having been given on the basis of an instruction or assumption that Crown did not at that time have any registered offices in China): that “It may be advisable to set up and maintain some formal business registrations, such as a rep office, in China so that (a) we at least have some formal business registrations to conduct business on the ground, and (b) when we pay employees/consultants, we can pay the rep office and the rep office will pay its employees, so that we can avoid direct payments from an overseas corporate account to bank accounts of individual employees/advisors in China” (CWN.514.044.9351), but Crown nevertheless did not in the Relevant Period apply for (or otherwise have) a license to conduct business in China;
- (m) the fact that Crown received legal advice from WilmerHale on 9 February 2015 (such advice having been given on the basis of an instruction or assumption that Crown did by that time have a registered office or offices in China) that: “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” (CWN.502.032.8667);
- (n) the fact that Michael Chen and Jason O’Connor knew of the matters in sub-paragraphs (a) to (m) above, that Barry Felstead knew of the matters in sub-paragraphs (a) to (m) above except for (k)(ii); and Jan Williamson knew of the matters in sub-paragraph (k)(ii) and (iii);
- (o) the fact that Rowan Craigie, Jason O’Connor and Debra Tegoni knew that Crown would not be granted a business license to operate in China because of the nature of Crown’s China Operations;
- (p) the fact of the questioning of Xiong Bin by Chinese authorities as pleaded in paragraph 33A of the FASOC;

- (q) Crown’s awareness of the questioning of Xiong Bin by Chinese authorities as pleaded and particularised in paragraph 33B of the FASOC; and
  - (r) the fact that Jason O’Connor and Jan Williamson knew that Xiong Bin had not been truthful in his answers to questions of Chinese authorities, in that he denied organising tours for Chinese citizens to gamble abroad.
3. That the China Operations Crackdown Information defined in paragraph 34(b) of the FASOC was information which had come into the possession of an officer of Crown, or ought reasonably to have come into the possession of an officer of Crown in the course of the performance of their duties as an officer of Crown, is to be inferred from each of:
- (a) the matters in sub-paragraphs 2(a) to (j) above;
  - (aa) the matters in sub-paragraph 2(k) to (r) above.
  - (b) the fact of the South Korean Casino Employee Arrests as pleaded and particularised in paragraph 32 of the FASOC;
  - ~~(c) the public nature, notoriety and press coverage of the South Korean Casino Employee Arrests as pleaded and particularised in paragraphs 32 to 33 of the SOC; and~~
  - (d) Crown’s awareness of the South Korean Casino Employee Arrests as pleaded and particularised in paragraph 33 of the FASOC.
  - (e) the fact that Michael Chen, Jason O’Connor, Barry Felstead, Michael Johnston and Rowan Craigie knew of the China Operations Crackdown Information.
4. That the Employee Detention Risk defined in paragraph 35(a) of the FASOC was information which had come into the possession of an officer of Crown, or ought reasonably to have come, into the possession of an officer of Crown in the course of the performance of their duties as an officer of Crown, is to be inferred from each of:
- (a) the matters in sub-paragraphs 2(a) to (j) above; and
  - (aa) the matters in sub-paragraphs 2(k) to (r) above;
  - (b) the matters in sub-paragraph 3(b) to (d) above.
  - (c) the fact that Michael Chen, Jason O’Connor and/or Barry Felstead knew of the Employee Detention Risk;
  - (d) the fact that Crown sought and received external advice regarding the risk that Crown’s China staff could be detained in China, including:
    - (i) from WilmerHale on 9 February 2015, which noted that: “there were a number of cases in the past where foreign casino’s rep offices in China



were closed and employees were detained” and that Crown’s China employees should avoid engaging in activities “which may be viewed as directly facilitating Chinese individuals gambling offshore” (CWN.514.054.8199);

(ii) from WilmerHale on 25 February 2015 to the effect that it would be prudent to limit travels of Crown senior executives to Mainland China (CWN.502.069.3498);

(iii) from WilmerHale (CWN.502.032.1515) and the Mintz Group (CWN.502.068.6890) in June 2015 following the South Korean Casino Employee Arrests;

(e) the fact Crown’s China employees expressed concern to senior executives at Crown including Michael Chen, Jason O’Connor and Barry Felstead, that they would be detained by Chinese authorities (CWN.514.070.7077, CWN.514.008.1147; CHE.500.001.0007, CHE.500.001.0008, CWN.514.036.9637, CWN.514.007.2156, CWN.514.037.9882);

(f) that fact that on 24 June 2015 Robert Rankin advised Ken Barton and Rowan Craigie of Crown in respect of the South Korean Casino Employee Arrests that “We should be on high alert for this type of regulatory action in China” (CWN.525.022.6137).

5. That the China Operations Enforcement Risk defined in paragraph 35(b) of the FASOC was information which had come into the possession of an officer of Crown, or ought reasonably to have come into the possession of an officer of Crown in the course of the performance of their duties as an officer of Crown, is to be inferred from each of:

(a) the matters in sub-paragraphs 2(a) to (j) above;

(aa) the matters in sub-paragraphs 2(k) to (r) above;

(b) the matters in sub-paragraphs 3(b) to (d) above; and

(c) the natural and ordinary consequence of any charge, arrest, detention, prosecution, or conviction of Crown employees for contravention of the Chinese criminal law in relation to gambling.

6. That the Chinese VIP Revenue Risk defined in paragraph 35(c) of the FASOC was information which had come into the possession of an officer of Crown, or ought reasonably to have come into the possession of an officer of Crown in the course of the performance of their duties as an officer of Crown, is to be inferred from each of:

(a) the matters in sub-paragraphs 2(a) to (j) above;

- (aa) the matters in sub-paragraphs 2(k) to (r) above.
  - (b) the matters in sub-paragraph 3(b) to (d) above;
  - (c) the matters in sub-paragraph 5(c) above;
  - (d) the fact that, at all material times, Crown derived a substantial portion of its revenue from VIP gambling, as pleaded and particularised in paragraph 14 of the FASOC;
  - (e) the fact that, at all material times, a substantial proportion of Crown's international VIP revenue was attributable to international VIP gaming program play business from mainland Chinese visitors of (in the financial year ending 30 June 2016) at least 12 per cent of total Crown Group revenue, per paragraph (C) of the particulars to paragraph 16 of the FASOC; and
  - (f) the fact that if Crown terminated the Crown China Operations, its capacity to market gambling at Crown Melbourne and Crown Perth ~~and Crown Macau~~ casinos to Chinese nationals and on mainland China would be diminished.
7. That the Revenue Risk defined in paragraph 35(d) of the FASOC was information which had come into the possession of an officer of Crown, or ought reasonably to have come into the possession of an officer of Crown in the course of the performance of their duties as an officer of Crown, is to be inferred from each of the matters in sub-paragraphs 6(a) to (f) above.
- ~~8. Further particulars may be provided after discovery and before trial.~~

## **H CROWN'S CONTINUOUS DISCLOSURE CONTRAVENTION**

### **H.1 China Operations Illegal Information Continuous Disclosure Contravention**

37. On and from 6 February 2015 (or in the alternative, on and from 19 June 2015) (or in the alternative, on or from 9 July 2015) until 17 October 2016, the China Operations Illegal Information was information that:
- (a) a reasonable person would expect to have a material effect on the price or value of Crown Shares within the meaning of ASX Listing Rule 3.1 and s 674(2)(c)(ii) of the *Corporations Act*; and
  - (b) was not generally available.

38. By reason of Crown's Continuous Disclosure Obligations and the matters pleaded in paragraphs 36(a) and 37, on and from 6 February 2015 (or in the alternative on and from 19 June 2015) (or in the alternative, on or from 9 July 2015), Crown became obliged immediately to tell the ASX the China Operations Illegal Information.
39. Crown did not inform the ASX of the China Operations Illegal Information immediately on 6 February 2015 (or in the alternative on 19 June 2015) (or in the alternative, on or from 9 July 2015) or at all during the Relevant Period, and the Crown Securities Market did not become aware of that information until 17 October 2016.
40. By reason of the matters pleaded in paragraphs 37 to 39, Crown contravened s 674(2) of the *Corporations Act* (**China Operations Illegal Continuous Disclosure Contravention**).

## **H.2 China Operations Crackdown Continuous Disclosure Contravention**

41. On and from 6 February 2015 (or in the alternative, on and from 19 June 2015) (or in the alternative, on or from 9 July 2015) until 17 October 2016, the China Operations Crackdown Information was information that:
- (a) a reasonable person would expect to have a material effect on the price or value of Crown Shares within the meaning of ASX Listing Rule 3.1 and s 674(2)(c)(ii) of the *Corporations Act*; and
  - (b) was not generally available.
42. By reason of Crown's Continuous Disclosure Obligations and the matters pleaded in paragraphs 36(b) and 41, on and from 6 February 2015 (or in the alternative on and from 19 June 2015) (or in the alternative, on or from 9 July 2015), Crown became obliged immediately to tell the ASX the China Operations Crackdown Information.
43. Crown did not inform the ASX of the China Operations Crackdown Information immediately on 6 February 2015 (or in the alternative on 19 June 2015) (or in the alternative, on or from 9 July 2015), or at all during the Relevant Period, and the Crown Securities Market did not become aware of that information until 17 October 2016.

44. By reason of the matters pleaded in paragraphs 41 to 43, Crown contravened s 674(2) of the *Corporations Act* (**China Operations Crackdown Continuous Disclosure Contravention**).

### **H.3 Employee Detention Risk Continuous Disclosure Contravention**

45. On and from 6 February 2015 (or in the alternative on and from 19 June 2015) (or in the alternative, on or from 9 July 2015), until 17 October 2016, the Employee Detention Risk Information was information that:

(a) a reasonable person would expect to have a material effect on the price or value of Crown Shares within the meaning of ASX Listing Rule 3.1 and s 674(2)(c)(ii) of the *Corporations Act*; and

(b) was not generally available.

46. By reason of Crown's Continuous Disclosure Obligations and the matters pleaded in paragraphs 36(c) and 45, on and from 6 February 2015 (or in the alternative on and from 19 June 2015) (or in the alternative, on or from 9 July 2015), Crown became obliged immediately to tell the ASX the Employee Detention Risk Information.

47. Crown did not inform the ASX of the Employee Detention Risk Information immediately on 6 February 2015 (or in the alternative on 19 June 2015) (or in the alternative, on or from 9 July 2015), or at all during the Relevant Period, and the Crown Securities Market did not become aware of that information until 17 October 2016.

48. By reason of the matters pleaded in paragraphs 45 to 47, Crown contravened s 674(2) of the *Corporations Act* (**Employee Detention Risk Continuous Disclosure Contravention**).

### **H.4 China Operations Enforcement Risk Continuous Disclosure Contravention**

49. On and from 6 February 2015 (or in the alternative on and from 19 June 2015) (or in the alternative, on or from 9 July 2015) until 17 October 2016, the China Operations Enforcement Risk Information was information that:

- (a) a reasonable person would expect to have a material effect on the price or value of Crown Shares within the meaning of ASX Listing Rule 3.1 and s 674(2)(c)(ii) of the *Corporations Act*; and
  - (b) was not generally available.
- 50. By reason of Crown's Continuous Disclosure Obligations and the matters pleaded in paragraphs 36(d) and 49, on and from 6 February 2015 (or in the alternative on and from 19 June 2015) (or in the alternative, on or from 9 July 2015), Crown became obliged immediately to tell the ASX the China Operations Enforcement Risk Information.
- 51. Crown did not inform the ASX of the China Operations Enforcement Risk Information immediately on 6 February 2015 (or in the alternative on 19 June 2015) (or in the alternative, on or from 9 July 2015), or at all during the Relevant Period, and the Crown Securities Market did not become aware of that information until 17 October 2016.
- 52. By reason of the matters pleaded in paragraphs 49 to 51, Crown contravened s 674(2) of the *Corporations Act* (**China Operations Enforcement Risk Continuous Disclosure Contravention**).

#### **H.5 Chinese VIP Revenue Risk Continuous Disclosure Contravention**

- 53. On and from 6 February 2015 (or in the alternative on and from 19 June 2015) (or in the alternative, on or from 9 July 2015) until 17 October 2016, the Chinese VIP Revenue Risk Information was information that:
  - (a) a reasonable person would expect to have a material effect on the price or value of Crown Shares within the meaning of ASX Listing Rule 3.1 and s 674(2)(c)(ii) of the *Corporations Act*; and
  - (b) was not generally available.
- 54. By reason of Crown's Continuous Disclosure Obligations and the matters pleaded in paragraphs 36(e) and 53, on and from 6 February 2015, (or in the alternative on and from 19 June 2015) (or in the alternative, on or from 9 July 2015), Crown became obliged immediately to tell the ASX the Chinese VIP Revenue Risk Information.

55. Crown did not inform the ASX of the Chinese VIP Revenue Risk Information immediately on 6 February 2015 (or in the alternative on 19 June 2015) (or in the alternative, on or from 9 July 2015), or at all during the Relevant Period and the Crown Securities Market did not become aware of that information until 17 October 2016.
56. By reason of the matters pleaded in paragraphs 53 to 55, Crown contravened s 674(2) of the *Corporations Act* (**Chinese VIP Revenue Risk Continuous Disclosure Contravention**).

#### **H.6 Revenue Risk Continuous Disclosure Contravention**

57. On and from 6 February 2015 (or in the alternative on and from 19 June 2015) (or in the alternative, on or from 9 July 2015), until 17 October 2016, the Revenue Risk Information was information that:
- (a) a reasonable person would expect to have a material effect on the price or value of Crown Shares within the meaning of ASX Listing Rule 3.1 and s 674(2)(c)(ii) of the *Corporations Act*; and
  - (b) was not generally available.
58. By reason of Crown's Continuous Disclosure Obligations and the matters pleaded in paragraphs 36(f) and 57, on and from 6 February 2015 (or in the alternative on and from 19 June 2015) (or in the alternative, on or from 9 July 2015), Crown became obliged immediately to tell the ASX the Revenue Risk Information.
59. Crown did not inform the ASX of the Revenue Risk Information immediately on 6 February 2015 (or in the alternative on 19 June 2015) (or in the alternative, on or from 9 July 2015), or at all during the Relevant Period and the Crown Securities Market did not become aware of that information until 17 October 2016.
60. By reason of the matters pleaded in paragraphs 57 to 59, Crown contravened s 674(2) of the *Corporations Act* (**Revenue Risk Continuous Disclosure Contravention**).

## **H.7 Continuing nature of Crown's contraventions**

61. Each of:

- (a) the China Operations Illegal Continuous Disclosure Contravention;
- (b) the China Operations Crackdown Continuous Disclosure Contravention;
- (c) the Employee Detention Risk Continuous Disclosure Contravention;
- (d) the China Operations Enforcement Risk Continuous Disclosure Contravention;
- (e) the Chinese VIP Revenue Risk Continuous Disclosure Contravention;
- (f) the Revenue Risk Continuous Disclosure Contravention (collectively, the **Continuous Disclosure Contraventions**),

was a continuing contravention, which continued during the Relevant Period.

### **Particulars**

Crown did not, at any time prior to 17 October 2016 make any statement which disclosed to the Crown Securities Market:

- A. the China Operations Illegal Information;
- B. the China Operations Crackdown Information;
- C. the Employee Detention Risk;
- D. the China Operations Enforcement Risk;
- E. the Chinese VIP Revenue Risk; and/or
- F. the Revenue Risk.

## **I CROWN'S STATEMENTS PRIOR TO 17 OCTOBER 2016**

### **I.1 Crown's 2014 statements**

62. On 12 September 2014, Crown published and lodged with the ASX its Annual Report for the financial year ended 30 June 2014 (**2014 Annual Report**).

63. In the 2014 Annual Report, Crown made the following statements (collectively, the **2014 Risk Management Statements**):

- (a) The Board is responsible for guiding and monitoring Crown on behalf of its shareholders. In addition, the Board (in conjunction with management) is responsible for identifying areas of significant business risk and ensuring arrangements are in place to adequately manage those risks (p. 33);
- (b) Crown has established policies for the oversight and management of material business risks and has adopted a formal Risk Management Policy. Risk management is an integral part of the industry in which Crown operates. (p. 39);
- (c) As required by the Board, Crown's management have devised and implemented risk management systems appropriate to Crown (p. 39);
- (d) The Board convened Risk Management Committee administers Crown's Risk Management Policy. The policy sets out procedures which are designed to identify, assess, monitor and manage risk at each of Crown's controlled businesses and requires that the results of those procedures are reported to the Crown Board (p. 39);
- (e) A formal Risk Management Plan has been developed using the model outlined in AS/NZS ISO 31000:2009 Risk Management – Principles and Guidelines. The Plan identifies Head Office risks in light of major risks identified at an operational level and provides the framework for the reporting and monitoring of material risks across the Crown group (p. 39);
- (f) The Board has received, and will continue to receive, periodic reports through the Risk Management Committee, summarising the results of risk management initiatives at Crown (p. 40).
- (g) Each of the casinos in which Crown has an interest is subject to extensive regulation under the laws, rules and regulations of the jurisdiction where it is located (p. 41).

64. In the 2014 Annual Report, Crown made the following statements (collectively, the **2014 Chinese Market Growth Statements**):

- (a) Crown has made significant enhancements to its VIP assets including new gaming areas and Crown Towers Melbourne villas and hotel rooms. During the period,



Crown acquired three Bombardier jets to expand the range of our private jet service to Asian VIP customers and provide a superior level of comfort and amenity (p. 11);

- (b) Crown believes that the world-class Crown Sydney will assist New South Wales to meet its tourism targets by attracting a larger share of the booming Asian outbound tourism market. Incorporating world-class VIP gaming into such a hotel resort will provide further attraction to high net worth tourists from China and other Asian countries (p. 20);

## **I.2 Crown's 2015 statements**

65. On 17 September 2015, Crown published and lodged with the ASX its Annual Report for the financial year ended 30 June 2015 (**2015 Annual Report**).

66. In the 2015 Annual Report, Crown made the following statements (collectively, the **2015 Risk Management Statements**):

- (a) The Board is responsible for guiding and monitoring Crown on behalf of its shareholders. In addition, the Board (in conjunction with management) is responsible for identifying areas of significant business risk and ensuring arrangements are in place to adequately manage those risks (p. 33);
- (b) The gaming industry is highly regulated and each of the casinos in which Crown has an interest is subject to extensive regulation under the laws, rules and regulations of the jurisdiction where it is located (p. 34);
- (c) Crown has established a formal Risk Management Committee to provide strategic risk management leadership, oversight and analysis to the Crown Board (p. 43);
- (d) The Risk Management Committee has adopted a formal charter that outlines its duties and responsibilities (p. 43);
- (e) Crown has established policies for the oversight and management of material business risks and has adopted a formal Risk Management Policy. Risk management is an integral part of the industry in which Crown operates (p. 43);

- (f) The Board convened Risk Management Committee administers Crown's Risk Management Policy. The policy sets out procedures which are designed to identify, assess, monitor and manage risk at each of Crown's controlled businesses and requires that the results of those procedures are reported to the Crown Board (p. 44);
- (g) A formal Risk Management Plan has been developed using the model outlined in AS/NZS ISO 31000:2009 Risk Management – Principles and Guidelines. The Plan identifies Head Office risks in light of major risks identified at an operational level and provides the framework for the reporting and monitoring of material risks across the Crown group (p. 44);
- (h) Management are required to conduct an annual review of the Risk Management Plan to ensure that risk ratings and risk definitions remain appropriate for Crown, and that adequate controls are in place to manage risk. A review has been conducted during the reporting period and presented to the Risk Management Committee (and the Board). In the course of that review the current Risk Profiles of Crown's major operating businesses were taken into account and the risk environment of its investments also considered (p. 44);
- (i) In addition, the Board has received, and will continue to receive, periodic reports through the Risk Management Committee, summarising the results of risk management initiatives at Crown (p. 44).

67. In the 2015 Annual Report, Crown made the following statements (collectively, the **2015 Chinese Market Growth Statements**):

- (a) A stand-out was the strong growth in international VIP Program Play turnover across Crown's Australian resorts. This followed greater investment in our VIP international marketing (p. 1);
- (b) Our most important future priority is to ensure Crown Resorts is globally recognised as a first class luxury resorts brand, as this will help us attract an even greater share of international visitor from across Asia and globally (p. 1);

- (c) High net worth individuals from Australia and around the world, especially China, place a very high premium on luxury brands (p.1);
- (d) The ongoing upgrade of Crown Perth also continues to capture the attention of the region's high-end players. Much of this growth was driven by the North Asian market (p. 20);

### **I.3 Crown's 2016 Statements**

68. On 19 September 2016, Crown published and lodged with the ASX its Annual Report for the financial year ended 30 June 2016 (**2016 Annual Report**).

69. In the 2016 Annual Report, Crown made the following statements (collectively, the **2016 Risk Management Statements**):

- (a) The Board is responsible for guiding and monitoring Crown on behalf of its shareholders. In addition, the Board (in conjunction with management) is responsible for identifying areas of significant business risk and ensuring arrangements are in place to adequately manage those risks (p. 23);
- (b) The gaming industry is highly regulated and each of the casinos in which Crown has an interest is subject to extensive regulation under the laws, rules and regulations of the jurisdiction where it is located (p. 24);
- (c) Crown has established a formal Risk Management Committee to provide strategic risk management leadership, oversight and analysis to the Crown Board (p. 33);
- (d) The Risk Management Committee has adopted a formal charter that outlines its duties and responsibilities (p. 33);
- (e) Crown has established policies for the oversight and management of material business risks and has adopted a formal Risk Management Policy. Risk management is an integral part of the industry in which Crown operates (p. 33);
- (f) The Board convened Risk Management Committee administers Crown's Risk Management Policy. The policy sets out procedures which are designed to identify, assess, monitor and manage risk at each of Crown's controlled

businesses and requires that the results of those procedures are reported to the Crown Board (p. 34);

- (g) A formal Risk Management Plan has been developed using the model outlined in AS/NZS ISO 31000:2009 Risk Management – Principles and Guidelines. The Plan identifies Head Office risks in light of major risks identified at an operational level and provides the framework for the reporting and monitoring of material risks across the Crown group (p. 34);
- (h) Management are required to conduct an annual review of the Risk Management Plan to ensure that risk ratings and risk definitions remain appropriate for Crown, and that adequate controls are in place to manage risk. A review has been conducted during the reporting period and presented to the Risk Management Committee (and the Board). In the course of that review the current Risk Profiles of Crown’s major operating businesses were taken into account and the risk environment of its investments also considered (p. 34);
- (i) In addition, the Board has received, and will continue to receive, periodic reports through the Risk Management Committee, summarising the results of risk management initiatives at Crown (p. 34).

70. In the 2016 Annual Report, Crown made the following statements (collectively, the **2016 Chinese Market Growth Statements**):

- (a) It was also delivered in the face of increasing competition from other Asia Pacific casino operators seeking to capture a share of Crown Melbourne’s Australasian market dominance (p. 13);
- (b) With its array of luxury assets and commitment to customer service, Crown Perth represents a compelling option for discerning Asian VIP customers. (p.15).

#### **I.4 Crown’s Representations**

71. By the matters pleaded in paragraphs 63, 66 and 69, Crown represented to the Crown Securities Market during the Relevant Period that it:

- (a) had in place effective policies, systems and structures to identify, assess, monitor and manage risk to Crown; and/or
- (b) was able to and did effectively identify, assess, monitor and manage risk to Crown,

**(Risk Management Representation).**

72. By the matters pleaded in paragraphs 64, 67 and 70, Crown represented to the Crown Securities Market during the Relevant Period that:

- (a) Crown had marketed itself as a luxury brand to International VIP gamblers, including Chinese VIP gamblers.
- (b) Crown had experienced strong growth in revenue from Crown's international VIP gamblers, including Chinese VIP gamblers.
- (c) One of the reasons for Crown's strong growth in revenue from Crown's international VIP gamblers was its marketing of Crown as a luxury brand to Chinese VIP gamblers.

73. By the matters pleaded in paragraphs 64, 67 and 70, Crown represented to the Crown Securities Market throughout the Relevant Period that:

- (a) Crown would continue to market itself as a luxury brand to Chinese VIP gamblers.
- (b) As a result of Crown's continued marketing of itself as a luxury brand to Chinese VIP gamblers:
  - (i) Crown would in the future attract an even greater share of international VIP gamblers, including from China; and
  - (ii) Crown's Chinese VIP revenue would continue to grow,

**(Chinese Market Growth Representation).**

74. Each of the Risk Management Representation and the Chinese Market Growth Representation was a continuing representation during the Relevant Period.

### **Particulars**

Crown took no step to withdraw or qualify the Risk Management Representation or the Chinese Market Growth Representation on or from 6 February 2015 (or in the alternative on and from 19 June 2015) (or in the alternative on and from 9 July 2015) throughout the Relevant Period until 17 October 2016.

## **J CROWN'S MISLEADING OR DECEPTIVE CONDUCT**

### **J.1 Risk Management Representation Misleading Conduct Contravention**

75. The conduct pleaded in paragraph 71 was conduct engaged in by Crown:
- (a) in relation to financial products (being Crown Shares), within the meaning of ss 763A(1)(a) and 764A(1)(a) of the *Corporations Act*;
  - (b) in trade or commerce, in relation to financial services within the meaning of ss 12AB(1)(a) and 12BA(5) of the ASIC Act; and
  - (c) in trade or commerce, within the meaning of s 18 of the ACL.
76. In making the Risk Management Representation, Crown engaged in conduct which was misleading or deceptive, or likely to mislead or deceive because during the Relevant Period, Crown did not have in place effective policies, systems and structures to identify, assess, monitor and manage; and/or was not able to and did not effectively identify, assess, monitor and manage each or any of the:
- (a) China Operations Illegal Information;
  - (b) China Operations Crackdown Information
  - (c) ~~(a)~~Employee Detention Risk;
  - (d) ~~(b)~~China Operations Enforcement Risk;
  - (e) ~~(c)~~Chinese VIP Revenue Risk;

(f) ~~(4)~~Revenue Risk,

in relation to Crown's China Operations.

### **Particulars**

That Crown did not have in place effective reporting lines, policies, systems, and structures to identify, assess, monitor and manage; and was not able to and did not effectively identify, assess, monitor and manage the risks referred to above in relation to Crown's China Operations can be inferred from the charge, arrest, detention, prosecution and conviction of the 19 Crown staff.

Crown had a line of reporting from Barry Felstead to Michael Johnston and James Packer, but it went around Rowan Craigie and avoided the Crown Risk Management Committee and the Board.

Crown did not have in place any policies, systems and structures so as to ensure that Michael Chen, Jason O'Connor, Barry Felstead, Michael Johnston, or any other senior Crown employee reported to Crown's (i) Board or (ii) Risk Management Committee any of the following matters:

- A. the Chinese Gambling Crackdown on 6 February 2015 as pleaded in paragraph 30 above;
- B. the South Korean Casino Employee Arrests on 17 June 2015 as pleaded in paragraph 32 above;
- C. in respect of the South Korean Casino Employee Arrests, the subsequent direction from Robert Rankin on 24 June 2015 that Crown "should be on high alert for this type of regulatory action in China" as set out in particulars (4)(f) to paragraph 36 above;
- D. the questioning of Xiong Bin by Chinese authorities on 9 July 2015 as pleaded in paragraph 33A above;
- E. the external advice from WilmerHale and Mintz sought and received by Crown as set out in particulars (2)(l) and (m), and (4)(d) to paragraph 36 above;
- F. that Crown did not have a licence to conduct business in China as set out in particulars (2)(k)(i) to paragraph 36 above;
- G. that Crown had an unofficial and clandestine office in China for the purposes of Crown's China Operations as set out in particulars (2)(k) to paragraph 36 above; and
- H. any other risks associated with Crown's China Operations that related to breach of Chinese laws in relation to gambling, regulatory change, and enforcement activity.

77. By reason of the matters pleaded in paragraphs 75 to 76 on and from 6 February 2015, or in the alternative 19 June 2015, or in the alternative 9 July 2015, Crown contravened

s 1041H of the *Corporations Act*, s 12DA(1) of the *ASIC Act* and/or s 18 of the *ACL* (**Risk Management Misleading Conduct Contravention**).

## **J.2 Chinese Market Growth Representation Misleading Conduct Contravention**

78. The conduct pleaded in paragraphs 72 and 73 was conduct engaged in by Crown:
- (a) in relation to financial products (being Crown Shares), within the meaning of ss 763A(1)(a) and 764A(1)(a) of the *Corporations Act*;
  - (b) in trade or commerce, in relation to financial services within the meaning of ss 12AB(1)(a) and 12BA(5) of the *ASIC Act*; and
  - (c) in trade or commerce, within the meaning of s 18 of the *ACL*.
79. Crown engaged in conduct which was misleading or deceptive, or likely to mislead or deceive, because during the Relevant Period, Crown's Chinese Market Growth Representation was continuing and Crown failed to disclose the following information and risks:
- (a) the China Operations Illegal Information;
  - (b) the China Operations Crackdown Information;
  - (c) the Employee Detention Risk;
  - (d) the China Operations Enforcement Risk;
  - (e) the Chinese VIP Revenue Risk;
  - (f) the Revenue Risk
- (the **Contravening Omissions**).
80. The Contravening Omissions by Crown had the effect that the Crown Securities Market was deprived during the Relevant Period of information and knowledge which rendered the Chinese Market Growth Representations untrue, namely the:



- (a) information that Crown’s capacity to continue to market itself as a luxury brand to Chinese VIP gamblers was vulnerable to each of the Employee Detention Risk and the China Operations Enforcement Risk; and
- (b) information that Crown’s capacity to continue to earn Crown’s Chinese VIP revenue was vulnerable to each of the Employee Detention Risk and the China Operations Enforcement Risk; and
- (c) knowledge of the Chinese VIP Revenue Risk;
- (d) knowledge of the Revenue Risk.

81. By reason of its knowledge of the Information and the Risks referred to in paragraph 79 above, Crown did not have reasonable grounds for making the Chinese Market Growth Representation.

82. By reason of the matters pleaded in paragraphs 79 to 82, on and from 6 February 2015, or in the alternative 19 June 2015, or in the alternative 9 July 2015, Crown contravened s 1041H of the *Corporations Act*, s 12DA(1) of the ASIC Act and/or s 18 of the ACL (**Chinese Market Growth Misleading Conduct Contravention**).

### **J.3 Continuing nature of Crown’s contraventions**

83. Each of:

- (a) the Risk Management Misleading Conduct Contravention;
- (b) the Chinese Market Growth Misleading Conduct Contravention  
(together, the **Misleading and Deceptive Conduct**)

was a continuing contravention during the Relevant Period.

## **K CAUSATION, LOSS AND DAMAGE**

### **K.1 Market-based causation**

84. During the Relevant Period, the Applicant and Group Members acquired an interest in Crown Shares in a market of investors or potential investors in Crown Shares:

- (a) operated by the ASX; and
  - (b) regulated by, inter alia, s 674(2) and s 1041H of the *Corporations Act* and the ASX Listing Rules; and
  - (c) where the price or value of Crown Shares would reasonably be expected to have been informed or affected by information disclosed in accordance with s 674(2) and s 1041H of the *Corporations Act* and ASX Listing Rule 3.1 or that otherwise became publicly available.
85. During the Relevant Period, each of the Risk Management Representation and the Chinese Market Growth Representation constituted material information, which a reasonable person would expect to have a material effect on the price or value of Crown Shares, ~~in that if those representations not been made, no investors or potential investors in Crown Shares would have been in a position to read or rely upon them.~~
86. During the Relevant Period, the Contravening Omissions constituted material information, which a reasonable person would expect, had it been disclosed, would have had a material adverse effect on the price or value of Crown Shares.
87. For the reasons set out in paragraphs 84 to 86 above, each of:
- (a) the Continuous Disclosure Contraventions; and
  - (b) the Misleading and Deceptive Conduct,
- (the **Contravening Conduct**) individually or in combination caused or materially contributed to the traded price for Crown Shares being materially higher during the Relevant Period than:
- (c) the true value; or
  - (d) the traded price that would have existed
- had the Contravening Conduct not occurred.
88. By reason of the matters set out at paragraphs 84 to 87 above, when the Applicant and the Group Members acquired interests in Crown Shares during the Relevant Period, the

price of the securities they acquired had been artificially inflated by the Contravening Conduct.

89. The decline in the price of Crown Shares pleaded in paragraph 29 above was caused or materially contributed to by the market's reaction to the information communicated to the Crown Securities Market in the 17 October Announcement.
90. Further or alternatively, if Crown had not engaged in the Contravening Conduct, the Applicant and each of the Group Members:
- (a) would have acquired their interests in Crown Shares at a traded price which had not been artificially inflated; or
  - (b) alternatively would not have acquired some or any of Crown's Shares, and would instead have retained or acquired other investments or assets for which the price was not inflated.

#### **Particulars**

Particulars of any alternative investments or assets that the Applicant would have retained or acquired will be provided prior to trial.

Particulars of the Group Members who would have retained or acquired alternative investments will be provided following the determination of the common questions.

91. Further, or in the alternative to paragraphs 84 to 90, the Applicant and some Group Members would not have acquired interests in Crown Shares if they had known some or all of the information the subject of the Contravening Conduct Omissions.

#### **Particulars**

The Applicant would not have acquired an interest in Crown Shares had it known the information the subject of the Contravening Omissions.

~~There are identities of the~~ Group Members who would not have acquired an interest in Crown Shares had they known information the subject of the Contravening Omissions and/or who relied directly on either or both of the Chinese Market Growth or Risk Management—Contravening Representations ~~are not presently known~~. The names and particulars of reliance in relation to those

Group Members will be provided following opt out and the determination of the Applicant's claim and the common issues.

### **K.3 Loss or damage suffered by the Applicant and Group Members**

92. By reason of the matters pleaded in paragraphs 84 to ~~9089~~ and/or 91, the Applicant and Group Members have suffered loss and damage by and resulting from the Contravening Conduct (or any one or combination of them).

#### **Particulars**

The loss suffered by the Applicant is the greater of:

- A. the difference between the price at which Crown Shares were acquired by the Applicant during the Relevant Period and the true value of that interest; or
- B. the difference between the price at which the Applicant acquired an interest in Crown Shares and the market price that would have prevailed had the Market Contraventions not occurred; or
- C. alternatively, for the day or days ~~during the Relevant Period~~ where the traded price of Crown Shares fell as a result of the disclosure of information which had not previously been disclosed because of the Market Contraventions, ~~and~~ the quantum of that fall; or
- ~~D. alternatively, the days after the Relevant Period when the traded price of Crown Shares fell as a result of the disclosure of information which had not previously been disclosed because of the Market Contraventions, and the quantum of that fall;~~
- D. ~~E.~~ alternatively, the difference between the price at which Crown Shares were acquired by the Applicant and the price in left in hand.

Further particulars in relation to the Applicant's losses will be provided after the service of evidence in chief.

## **L ENTITLEMENT TO RELIEF**

93. The Applicant and each of the Group Members may recover the amount of the loss and damage suffered by them from Crown pursuant to s 1041I of the *Corporations Act* and s12GF of the ASIC Act.
94. Further or alternatively, above, Crown is obliged pursuant to s 1317HA of the *Corporations Act* to compensate the Applicant and the Group Members for the damage that resulted from its contravention of s 674(2) of the *Corporations Act*.

Date: ~~4 December 2017~~ 23 February 2021



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Signed by Andrew Watson  
Lawyer for the Applicant

This pleading was prepared and amended by Rachel Doyle SC, Nicholas De Young QC, and Kate Burke of counsel.

**Certificate of lawyer**

I, Andrew John Watson certify to the Court that, in relation to the statement of claim filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: ~~4 December 2017~~ 23 February 2021



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Signed by Andrew Watson  
Lawyer for the Applicant

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