INDEPENDENT LIQUOR AND GAMING AUTHORITY OF NSW

INQUIRY UNDER SECTION 143 OF THE CASINO CONTROL ACT 1992 (NSW)

THE HONOURABLE PA BERGIN SC
COMMISSIONER

PUBLIC HEARING
SYDNEY

THURSDAY, 5 NOVEMBER 2020
AT 10.00 AM

Continued from 4.11.20

DAY 50

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MR A. BELL SC, MS N. SHARP SC, MR S. ASPINALL and MR N. CONDYLIS appear as counsel assisting the Inquiry
MR E. BATROUNEY and MR H.C. WHITWELL appear for Crown Resorts Limited & Crown Sydney Gaming Proprietary Limited
DR R. HIGGINS SC appears with MR N. HUTLEY SC, MR A. D'ARVILLE and MR T. O'BRIEN for CPH Crown Holdings Pty Ltd
MR J. STOLJAR SC appears with MS Z. HILLMAN for Melco Resorts & Entertainment Limited

COMMISSIONER: Thank you. Yes, Mr Bell. I think we have a different appearance this morning. Mr Batrouney, you're appearing for Crown and Crown Sydney Gaming; is that right?

MR BATROUNEY: That's correct, Madam Commission.

COMMISSIONER: And, Ms Higgins, you're appearing for the CPH Crown Holdings and the directors; is that right?

DR HIGGINS: Yes, Madam Commissioner, with Mr d'Arville and Mr O'Brien. Thank you.

COMMISSIONER: Yes, yes. Thank you. Yes. And Mr Stoljar is the constant in all of this. Yes. Yes, Mr Bell.

MR BELL: Commissioner, you asked me yesterday who approved the incentives for Mr Felstead - - -

COMMISSIONER: Yes.

MR BELL: - - - Mr O'Connor and Mr Chen. The evidence is that, in respect of Mr Felstead and Mr O'Connor, their incentives were recommended by the nomination and remuneration committee and were ultimately approved by the board. And in relation to Mr Chen, he gave evidence to the VCGLR that his incentives were approved by the board.

COMMISSIONER: Yes. So those matters of approval – although I'm not looking at them right now – but those matters of approval would have been for Mr Chen's work in China, obviously. So even if it wasn't appreciated that they were working in China, Mr Chen was based in Hong Kong, wasn't he?

MR BELL: Mr Chen was based in Hong Kong. And he had responsibility for all of VIP international, not just China.

COMMISSIONER: Yes, I see. Yes. Thank you.

MR BELL: Could I turn to address the influence of Mr Packer - - -

COMMISSIONER: Yes.

MR BELL: - - - in the period since the controlling shareholder protocol.

COMMISSIONER: Thank you.

MR BELL: That issue has both specific and general relevance to the questions to be determined by this Inquiry. The specific relevance is that if Mr Packer is characterised as a director of Crown Resorts in the period leading up to the Melco transaction, then there is a basis to attribute his knowledge of the share sale agreement to Crown Resorts. That bears on the question of whether the Melco transaction put Crown Resorts in breach of its regulatory agreements with the authority, but the question of attributing the knowledge of individual officers to a corporation is a matter that I will return to later.

COMMISSIONER: Thank you.

MR BELL: At a more general level, we submit the picture which has emerged in this Inquiry of Mr Packer and CPHs influence and control over Crown Resorts has a bearing on the suitability of the licensee and Crown Resorts as a close associate. We submit that the evidence demonstrates that the influence of Mr Packer and CPH resulted in reporting lines being compromised, to which I referred yesterday, and the governance of the board of Crown Resorts being compromised and harm being caused, thereby, to the company.

We submit that you should make the following findings of fact in relation to Mr Packer's influence on Crown Resorts in the period off the protocol was entered into. In terms of the genesis of the protocol, it was primarily focused on interactions with Mr Packer, as Ms Mary Manos, the current company secretary and general counsel of Crown Resorts explained in her evidence to the Inquiry. According to Ms Manos, the need for the protocol arose, because in March 2018, Mr Packer resigned not only from the board of Crown Resorts, but also from all of its other directorships within the Crown group, including his role as a director of CPH. This led to a request from CPH to amend the services agreement between Crown Resorts and CPH, dated the 1st of July 2016, to allow for the continued sharing of information with Mr Packer.

COMMISSIONER: He remained as a director of the ultimate company in the Bahamas, though, is that right?

MR BELL: That's the case. Yes.

COMMISSIONER: Yes. Thank you.

MR BELL: Under the services agreement, Crown Resorts was required to pay CPH for services provided to Crown Resorts by certain CPH executives. Those executives

included Mr Johnston and Mr Jalland, although the services agreement provided that any CPH executives appointment as a director of Crown Resorts operated independently of the agreement and remuneration payable in connection with such an appointment wasn't governed by the agreement.

The services agreement permitted confidential information of Crown Resorts to be provided to CPH for the purpose of CPH and the CPH executives providing services to Crown Resorts in the manner contemplated by that agreement. The services agreement also contained a mechanism for conflicts of interest arising out of the provision of services by the CPH executives to be resolved.

On the 23rd of August 2018, Mr Michael Johnston, on behalf of CPH, wrote to Mr Barton, on behalf of Crown Resorts, requesting what he described as a minor amendment to the CPH services agreement with the object of allowing Crown Resorts to continue to provide its confidential information to Mr Packer as it has done in the past. Mr Johnston's proposal was considered at a meeting of the nomination and remuneration committee of Crown Resorts held on 19 September 2018. The meeting was chaired by Mr Geoff Dixon, and Mr Michael Johnston attended as an invitee, as he regularly did. The minutes of the meeting record that, following careful consideration of the request by all committee members, it was proposed that rather than amending the services agreement it would be preferable for a standalone controlling shareholder protocol to be established which does not link the sharing of information with the provision of services.

Ms Manos explained in her evidence that there was a struggle to see how the provision of information to Mr Packer would fit within the existing framework of the services agreement. Mr Johnston gave evidence to the Inquiry that, on 19 September 2018, at that meeting he declared an interest, as a director of CPH, and stepped out of the meeting for the discussions in relation to the protocol. However, the signed minutes do not support that evidence and contain no indication that Mr Johnston declared an interest and left the meeting. When shown the signed minutes in his testimony Mr Johnston insisted that the minutes were inaccurate. We submit that it should be found that the minutes were accurate and Mr Johnston's evidence should not be accepted.

Mr Johnston's evidence was that the minutes were normally attached to board packs and he reviewed them as part of the normal board pack material. If the minutes had been inaccurate on such an important matter about which he asserted he was sensitive, then it must be inferred that he would have taken steps to correct them. Mr Dixon said that the practice was that the draft minutes were reviewed at the subsequent meeting of the nomination and remuneration committee. These present were asked if there were any inaccuracies in the draft minutes and if no inaccuracies were drawn to his attention Mr Dixon would sign the minutes as being true and correct. In relation to the minutes from the 19 September 2018 meeting, Mr Dixon said he had no reason to believe the minutes were inaccurate; that if Mr Johnston left the meeting when the agenda item was discussed, he would expect that to be recorded in the minutes.

We submit that it should be found that Mr Johnston, on a number of occasions, failed to appreciate the conflicts of interest which arose by virtue of his various roles as a director of Crown Resorts, as an executive of CPH providing services under the services agreement, as a director of CPH, as a director of CPH Crown. We submit that this episode reflects poorly on Mr Johnston's credit, which is a topic to which I will return.

After the terms of the protocol had been negotiated, the document was then approved by the full board of Crown Resorts at a meeting on 31 October 2018. The minutes from that meeting were signed as true and correct by Mr Alexander, the chairman of the meeting. The meeting was attended by Mr Johnston and Mr Jalland as directors, and by Mr John Poynton as an invitee. The minutes record Mr Jalland and Mr Poynton leaving the meeting and the controlling shareholder protocol was discussed, but do not record Mr Johnston leaving the meeting.

In her evidence to the Inquiry, Ms Manos, who was responsible for the minutes, said that Mr Jalland and Mr Poynton left the meeting, because they were representatives of CPH, and that there would be a conflict if they participated in the discussion on behalf of Crown Resorts. Ms Manos did not recall why Mr Johnston did not leave the meeting and agreed that he had a conflict of interest just as much as Mr Jalland and Mr Poynton. We submit that Mr Johnston's evidence that the minutes from the 31 October 2018 were also inaccurate and that he left the meeting should be rejected.

Just as in the case of the meeting of the nomination and remuneration committee on the 19th of September 2018, minutes from the 31 October 2018 meeting were inaccurate in relation to an issue in respect of which Mr Johnston claimed to be sensitive. Surely, he would have noticed the inaccuracy when he reviewed the draft minutes with the board papers for the next meeting. Perhaps it was because Mr Johnston was the sponsor of the proposal for the protocol that he felt he should remain in the meeting just as he'd remained in the meeting of the nomination and remuneration committee which considered the proposal on 9 September 2018.

Commissioner, it's worth reviewing some of the terms of the protocol which is exhibit Y5, CRL.509.014.8430. If we could turn to the next page ending in .8431. Commissioner, you will see that the purpose of the protocol is, according to clause 1.2, to establish a general guide for the sharing of information by the board and management of Crown Resorts, CPH and its ultimate owner, Mr Packer. Clause 1.4 provides that clause 14 of the services agreement prevails to the extent of any inconsistency, but that is subject to clause 1.5 which provides that to the extent the protocol deals with the provision of information to Mr Packer, the protocol prevails. Clause 1.6 provides that the protocol is intended to operate alongside and be read together with Crown Resorts board charter, the code of conduct for directors and the code of conduct for employees.

Clause 2.1 permits the directors of Crown Resorts to act in the interests of CPH as the controlling shareholder of Crown Resorts, where to do so would be in the interests of Crown Resorts or its shareholders as a whole. This was an important

modification to the duties of directors. If we could turn to the next page, please, operator, in fact two pages on – sorry, if we go to page .8435. Commissioner, you will see that clause 3.2 requires the content of the protocol to be kept confidential and not be disclosed to a third party unless specifically authorised by Crown Resorts. In that regard, while the services agreement had been disclosed to the market and to Crown Resorts shareholders, the board of Crown Resorts made the conscious decision not to disclose the protocol to Crown Resorts own shareholders.

We submit that it's remarkable that the board of Crown Resorts considered it appropriate to enter into an agreement of this nature, significance and impact, opening the door to an extraordinary level of control and influence by CPH and Mr Packer, all while hiding it from the rest of Crown Resorts shareholders who would surely find the agreement material in the assessment of their ongoing shareholders in the company.

COMMISSIONER: Is that because, in looking at the services agreement and this agreement the nature of the services agreement was the provision of confidential information for the purpose of allowing those persons who were providing services to provide those services, whereas this is effectively carte blanche?

MR BELL: Yes, and what's more, it was purporting to modify the services agreement which was a public document.

COMMISSIONER: Yes.

MR BELL: And moreover, it was modifying the duties of directors.

COMMISSIONER: That's in relation to 2.1. You made that point.

MR BELL: 2.3.

COMMISSIONER: I'm sorry.

MR BELL: Sorry, not 2.3.

COMMISSIONER: 2.1.

MR BELL: 2.1. My apologies.

COMMISSIONER: That's all right. Yes. Thank you.

MR BELL: Now, Crown Resorts' determination to keep the controlling shareholder protocol hidden from the market and its own shareholders was illustrated by the failure of the current managing director of Crown Resorts, Mr Barton, to inform shareholders of Crown Resorts 2019 annual general meeting of the existence of the protocol or the flow of information under it when a direct question had been asked from the floor. Mr Barton gave evidence to the Inquiry that he had not forgotten

about the protocol when he provided his answer. In that event we submit that the only conclusion that can be drawn is that Mr Barton not accidentally, but deliberately misled Crown Resorts shareholders in providing his answer, or chose not to tell them the truth.

It's also remarkable, according to the evidence given to this Inquiry, that every single member of the board of Crown Resorts present at the annual general meeting apparently failed to appreciate that Mr Barton hadn't answered the question correctly or accurately and did nothing to correct what Mr Barton had said. Turning to clause 2.3 of the protocol at page ending in .8432, Commissioner, you will see that it requires each director or officer of Crown Resorts to act carefully before revealing information to anyone under the protocol and to consider whether disclosure is in the best interests of the corporate group, whether disclosure would be to the corporate group's detriment or someone else's benefit, whether disclosure is improper, and if we can turn to the next page, please, page .8433, that obligation is also emphasised by clause 2.12 of the protocol which requires each authorised representative in all circumstances to assess the request for confidential information and be satisfied that disclosure would be appropriate having regard to the protocol.

Despite these serious obligations, Ms Manos gave evidence to the Inquiry that so far as she was aware Crown Resorts kept no formal register or record of information requests under the protocol, that further, it was up to each person to whom requests were made to keep their own private records of requests for information, yet it appears that not one single director or executive of Crown Resorts in fact kept any record of the assessment they made of the propriety of requests for information they received from Mr Packer from time to time, nor of the considerations they took into account in deciding to provide that information to him.

Could I turn to deal with communications to Mr Packer under the protocol. The confidential information of Crown Resorts was provided regularly and extensively to Mr Packer under the protocol by an inner group of senior executives, including the executive chairman, Mr Alexander, the then chief financial officer, Mr Barton, the chief executive officer of Australian Resorts, Mr Felstead, and the executive vice president of strategy and development, Mr Todd Nisbet. Apart from Mr Alexander, another board member of Crown Resorts who regularly provided information to Mr Packer under the protocol was Mr Demetriou.

Mr Barton provided financial reports to Mr Packer on practically a daily basis from the time that the protocol was entered into. This included daily EBITDA reports, monthly management accounts and financial forecasts. Mr Felstead provided regular reports to Mr Packer on the tables business in Melbourne and Perth as well as updates in relation to the VIP international business. Mr Nisbet provided reports to Mr Packer and Crown Resorts development projects.

COMMISSIONER: I recall that Mr Kunaratnam also was authorised and communicated with Mr Packer through the period.

MR BELL: He was specifically nominated under the protocol as a person who was authorised to provide information to Mr Packer.

COMMISSIONER: Yes. Thank you.

MR BELL: Mr Alexander regularly provided high level information to Mr Packer in meetings and by email on topics as diverse as trading results and financial forecasts, his proposed initiatives as executive chairman and what occurred at board meetings. Mr Demetriou also provided reports by email to Mr Packer on what occurred at board meetings. This was all in addition to the information which was provided to Mr Packer by CPHs nominees on the board of Crown Resorts, Mr Jalland, Mr Johnston and Mr Poynton. In short, as Mr Packer agreed in his evidence, after the protocol was entered into, he was regularly receiving confidential information about Crown Resorts from a number of different sources, including senior executives and board members.

Mr Packer said that he understood that he was being kept up to date with all important information concerning Crown Resorts and, indeed, said that that is what he expected to occur. We submit that this is somewhat extraordinary for a person who had officially departed the board. The protocol was drafted as a mechanism for communication in one direction from Crown Resorts to Mr Packer. However, the evidence presented to the Inquiry demonstrates that communications were very much in both directions in practice. In fact, Mr Packer was regularly providing instructions to board members and senior executives although Mr Packer preferred to characterise these as requests which were not declined.

In the period after the protocol was entered into, Mr Packer, on several occasions, asked for particular financial forecasts to be prepared for him by Mr Barton and Mr Alexander. The peremptory language used by Mr Packer in these communications is revealing. It's the language of instruction, not request. It's perfectly clear that Mr Packer did not expect and would not tolerate any argument, dissent or polite refusal.

Commissioner, it's worth looking again at some of Mr Packer's communications. One example is exhibit AA72, CRL.501.062.4997. I'm sorry. Yes, CRL.501.062.4997. I'm sorry. I've given you the wrong number. It's CRL.501.062.4997. This is an email to Mr Barton dated 23 November 2018 in which Mr Packer says:

> *I know Mike has spoken to you about preparing a downside plan for me. I don't believe your financial year forecast and am sick of always missing budget and being unlucky in VIP. Please prepare something for me that I could bank and can look at the net debt levels through a conservative downside prism.*

Mr Barton immediately replies saying:

> *Yes. Mike and I have spoken and put together a full plan with a conservative downside scenario.*

Mr Packer said in evidence that he expected Mr Barton to prepare the conservative financial year forecast which he had requested. Another example, Commissioner, is exhibit AA71, which is CRL.568.043.2762. Now, this is an email to Mr Alexander dated the 21st of November 2018, in which Mr Packer says:

> *I don't believe Ken's financial year forecast. Can you please ensure you have been through and believe the numbers that are being brought to me in Aspen.*

Mr Alexander agreed in evidence that this was an instruction to him in response to Mr Alexander's email which had been sent under the authority of the protocol. Another example is exhibit AA93, CRL.501.059.7562. This is an email from Mr Packer to Mr Barton, dated 12 February 2019, in which Mr Packer says:

> *Ken can you please prepare and show me the latest financial plan that goes out to financial year '22. Make it conservative as I'm getting angry with always missing our plans. I'm around till Thursday mid-morning.*

Another revealing illustration is exhibit AB32, CRL.501.032.9065. This is an email to Mr Barton, dated the 1st of March 2019 in which Mr Packer says:

> *Ken, I think all of you have had your heads in the sand this year. We never meet our plans and I'm sick of it. Make sure for your own sake that we achieve the financial year '20 plan.*

Mr Packer then followed up with another email on this page to Mr Barton, copying in Mr Johnston, Mr Alexander and Mr Felstead saying:

> *Sorry, Ken. I meant everyone.*

Mr Packer wasn't saying that he was sorry that he told Mr Barton that his job was on the line, rather, he was sorry he hadn't made the same statement to the other senior executives as well. Mr Packer agreed in evidence that he was making it abundantly clear that he expected these executives to ensure that they met the financial year 2020 plan. When asked whether there was some urgency in the provision of a particular financial plan to Mr Packer, Mr Barton said most of Mr Packer's requests tend to be quite time critical.

The communications between Mr Packer and Mr Alexander in this period are particularly significant. Mr Alexander was both the chairman of Crown Resorts and its managing director. Ostensibly, Mr Alexander, therefore, had significant power.

COMMISSIONER: He was the CEO, wasn't he?

MR BELL: He was the executive chairman.

COMMISSIONER: Yes. And the CEO of the company.

MR BELL: Yes. And although he ostensibly had significant power, the language of the communications demonstrates the thrall which Mr Packer had over Mr Alexander. Exhibit OO74 is a good example, CRL.501.027.1601.

COMMISSIONER: What exhibit is that?

MR BELL: Exhibit AA74.

COMMISSIONER: Thank you.

MR BELL: If we could start, operator, at the next page, .1602, it's an email from Mr Packer to Mr Alexander. He says:

> *Dear John, I understand you are on a world trip looking at restaurants. As the restaurants were supposedly locked in when I last saw you, this seems excessive to me. We have trading questions to answer and all hands should be on deck and head office costs kept to a minimum. And do we need an overall cost cutting plan to immediately implement, including travel bans for our executives?*

Mr Packer said in his evidence to the Inquiry that it was his idea for a cost-cutting plan for Crown Resorts which he was proposing to Mr Alexander in this email. Mr Alexander's response is illuminating. He says:

> *Dear James, thanks for this. Firstly, it's not a world trip –*

and so on, saying to the effect that he's closing out two restaurant deals in New York and London. He then says in about the middle of the email:

> *In terms of the unacceptable trading results, yes, all hands should be on deck. Mine are. But you have a scoreboard attended culture at Crown and precious little proactivity. You should recall our conversation around budget time when I told you I wasn't happy with the budget because we were going backwards, as did at least three other directors, but we let it pass. And I was also told not to upset Barry and Ken. I love them dearly, but there has been –*

I think it should be –

> *no proactive response to the budget shortfalls which obviously, belatedly, has to change. You will get a financial year forecast which will be at least $10 million below the previous. In terms of reacting to the new forecast, I have already signalled no short-term incentives, which equate to approximately $14 million. It won't be enough. Yes. Travel is obvious, but I need the authority to control across the company along with everything else. Maybe we should start with Aspen and do it via telephone conferencing, although I suspect you want the personal contact. We should also table not just cuts, including staff, but salaries.*

Mr Packer agreed in his evidence to the Inquiry that, although he didn't recall the conversation, it appeared that Mr Alexander was referring to a conversation with Mr Packer in which Mr Packer had said not to upset Mr Felstead or Mr Barton. However, Mr Alexander's evidence was that it was Mr Johnston who had told him not to upset Mr Felstead and Mr Barton. Mr Alexander said that he understood that both Mr Felstead and Mr Barton were very loyal to Mr Packer, Mr Alexander added, as were most executives.

In relation to the specific proposals suggested by Mr Alexander in this email, Mr Alexander agreed in his evidence to the Inquiry that, if need be, he was wanting to get Mr Packer's approval to an approach which involved salary cuts and other cost-cutting, and that must be what the reference to "I need the authority" should be taken to mean. And Mr Packer replied. And, as we can see in Mr Alexander's email, saying:

> *Let's be very clear, hitting the numbers it more important to me than Crown Sydney. I do recall in Aspen saying I was happy with the budget numbers presented, which I was assured would be hit. Anyway, I'm over being Captain Good-Guy to everyone. Go hard, my friend. You have my blessing.*

In relation to this reply, Mr Packer gave evidence to the Inquiry that he expected Mr Alexander to act on what he had said and implement the cost-cutting measures. Mr Packer agreed that he gave his blessing to implement cost-cutting measures, Mr Alexander having sought it.

The question which arises in this Inquiry and which is particularly relevant to the Melco transaction is whether Mr Packer should be characterised as a director of Crown Resorts in the period after the controlling shareholder protocol was entered into. In that regard, apart from individuals, in fact, appointed as directors of the company and alternate directors appointed to exercise the powers of the appointed directors during temporary absence, the definition of "director" in section 9 of the Corporations Act includes an individual, firstly, who is not validly appointed as a director, but who acts in the position of a director is described as the "de facto director"; secondly, a person not validly appointed as a director but whose instructions or wishes appointed directors are accustomed to act in accordance with, there's the so-called "shadow director".

Commissioner, there's not one single decisive test as to when a person will be found to be a de facto director and courts have, for the most part, cautioned against attempting to formulate one. Cases demonstrate that attempts to generalise in this area can often require subsequent qualification. The definition of a "de facto director" applies as much to a person who is a true usurper of the functions of a director as a person who takes an active part in directing the affairs of a company with the acquiescence of appointed directors. The formula "acts in the position of a director" contemplates that, in some degree at least, the person concerned, though not formally appointed as a director, has been acting in a role and performing functions

one would reasonably expect to be undertaken by an appointed director of the company given its circumstances.

The roles and functions so-performed will vary with the commercial context, operations and governance structure of the particular company. Ultimately, the determination of whether a person is a de facto director of a particular corporation requires a value judgment about the proper characterisation of what, in the company's particular context, the person in question has been doing. Now, whether the company itself has held the person out as a director will be a relevant but not decisive consideration in determining whether the person is a de facto director. Further, the perceptions of those dealing with the company that the person was a director can be of some textual evidentiary significance. However, third party perceptions, one way or the other, cannot change the reality of the true character of the position in which the person in fact acts.

A shadow director is a person whose instructions or wishes are adopted by a governing majority of appointed directors as a matter of course, in the sense of habitual compliance over a period of time without the exercise of any independent discretion. This differs to the de facto director test, where a person need only be actively involved in important company decisions without his or her views and wishes necessarily being accepted automatically or accepted automatically by the requisite governing majority. Importantly, a person can be a de facto director or a shadow director even if he or she is only involved in or exercises influence in relation to some rather than the full range of a company's affairs. Yet a rigid distinction between a de facto director and a shadow director cannot be maintained, so the authorities inform us. Indeed, a person's power or influence over the appointed directors by a person alleged to be a de facto director may throw light on the evaluation of that person's true position and influence in the affairs of the company more broadly. A person may also be a de facto officer of a corporation under the definition of "officer" in section 9 of the Corporations Act, but that definition is less significant considering the position of Mr Packer.

So was Mr Packer a de facto director of Crown Resorts? The justifications given by others within Crown Resorts for the protocol reveal a great deal about Mr Packer's continuing role within Crown Resorts in the period from November 2018. Mr Alexander said that information was provided to Mr Packer under the protocol :

> *...not just because, in my view, he was the largest shareholder, but more because of what he had actually individually brought to Crown on behalf of all shareholders over the years. And I'd had a long journey with James, obviously, starting back in the early 2000s. James conceived, as well, the entire Sydney project which was a remarkable outcome given there was no – it wasn't by invite and obviously he got bipartisan support for that. He brought Betfair to Crown, he brought Aspinalls to Crown. He's done a lot for Crown and Crown shareholders generally.*

Likewise, Mr Johnston, in his evidence, said that in his view the disclosure of sensitive financial information to Mr Packer under the protocol was justified given the benefits that Crown has historically got from Mr Packer's involvement with the business. These comments were echoed by Mr Demetriou. According to Mr Demetriou, the protocol recognised that Mr Packer had always been a valuable contributor to the growth of Crown. The protocol was intended not solely to enable Crown Resorts to provide information to Mr Packer, but also to facilitate the provision of advice by Mr Packer to Crown Resorts. Mr Demetriou said:

> *And his input again, in my experience, has always been in the best interests of Crown as a whole. I've always regarded Mr Packer as somewhat of a visionary. Any information that could be provided to Mr Packer under the protocol would see Crown benefiting, whether it be in Barangaroo or whether it be in how our finances should be structured and the like. I felt it was advice that was invaluable to Crown as a whole.*

Mr Demetriou said that he personally:

> *...shared information about Crown Resorts affairs with Mr Packer on several occasions for the express purpose, as he put it, of trying to get his input and feedback because I knew that whatever advice would come back from his way would be to the benefit of all of our shareholders as a whole.*

Now, that included information and board decisions in relation to Wynn's takeover approaches to Crown. Mr Demetriou viewed Mr Packer's resignation from Crown Resorts' board in March 2018 as a matter that occurred, as he put it, through unforeseen circumstances and in some cases unfortunate circumstances, and appeared to consider the protocol and Mr Packer's ongoing input into Crown Resorts' affairs as an effective substitute for that resignation.

Likewise, Mr Alexander viewed Mr Packer's historical influence and contribution to Crown Resorts as motivating not only the provision of information to Mr Packer under the protocol, but also his belief that when Mr Packer was making suggestions about the business, I had cause to listen. We submit that this evidence accordingly establishes that the senior executives and board members of Crown Resorts conceived of the protocol not merely as a means of providing information to Mr Packer, but also as a mechanism for Mr Packer to continue to express his instructions and wishes in relation to the business and management of Crown Resorts notwithstanding that he was no longer an appointed member of the board.

We submit that you should find that in the period from November 2018 to May 2019 at least Mr Packer had at least the same amount of confidential information of Crown Resorts available to him as the executive chairman, Mr Alexander did. In fact, if anything Mr Packer's access to information was even more extensive than that of Mr Alexander having regard to the variety of sources of information available to Mr Packer. Mr Packer's access to information was certainly more extensive than that of any other director. The sources of information available to Mr Packer included the

inner group of senior executives of Crown Resorts loyal to him, the CPH executives who were providing services to Crown Resorts under the services agreement, the CPH nominees on the board of Crown Resorts, Mr Demetriou and Mr Alexander himself.

We submit that you should find that Mr Packer was much more than just the recipient of confidential information. In the period from November 2018 to May 2019, the evidence tendered to the Inquiry shows that Mr Packer played an active and important role in significant management decisions of Crown Resorts despite the fact that he was no longer an appointed director. He was a driving force in the business, particularly by virtue of the power he exercised over the executive chairman, Mr Alexander, and the chief financial officer, Mr Barton. We submit that the perceptions of outsiders are not a significant consideration in the context of Mr Packer's action at Crown Resorts in particular circumstances, those particular circumstances being an overarching lens in the examination of whether a person is a de facto director, where in circumstances where Crown Resorts had hid the protocol and the communications under it in both directions from its own shareholders and the market.

In his evidence to the Inquiry, Mr Packer said that in relation to the requests and directions he made to officers of Crown Resorts under the protocol, he expected the officers to listen to him and to push back if they disagreed, just as he expected the same when he was Crown Resorts appointed chairman. Mr Packer accepted that in the examples brought to his attention during the Inquiry there was no occasion on which any of Crown Resorts' officers in fact declined to carry out his requests. When it was put to Mr Packer that he was, in the period after the protocol, acting as though he was still a director of Crown Resorts, Mr Packer did not deny it. He said:

> *I was under the impression that I could communicate the way I was communicating.*

That was how he chose to answer the question when given the opportunity to say more. Commissioner, it's not apparent that a governing majority of Crown Resorts appointed directors received and accepted Mr Packer's instructions or wishes concerning Crown Resorts' affairs over the period. On that basis we don't submit that Mr Packer was a shadow director of Crown Resorts. However, we submit that the evidence demonstrates that he was a de facto director of Crown Resorts in the period, at least in the period from the date of the protocol to the date of the Melco transaction.

COMMISSIONER: It's interesting, too, you mentioned the nominee directors so that a controlling shareholder or a majority shareholder has an entitlement to have directors on the board, but it looks as though from the evidence that even if you compare the nominee directors to Mr Packer's position, he was doing things that were much more involved with the company's operations than you would expect of a director on a day-to-day basis who might go to a board meeting and receive reports. It looks from all of those emails and the others that you've tendered during the

course of the Inquiry that he had operational involvement, particularly with Mr Barton and Mr Felstead in a way that is greater than the description that you've given me of a de facto director because you would expect a de facto director not to get into the minutiae of management, I presume, unless of course there's a special arrangement.

MR BELL: Yes. Well, the extent of involvement in management, of course, depends on the particular context of the company, but certainly if you compared Mr Packer's involvement with that of his own nominees, Mr Jalland, Mr Johnston and Mr Poynton, it was plainly far more profound and fundamental and significant than their involvement.

COMMISSIONER: Except where those – Mr Johnston provided services under the services agreement. Yes. Thank you.

MR BELL: So we submit that that influence, irrespective of whether or not a finding is made that Mr Packer was a de facto director of Crown Resorts in that period, we submit that it can clearly be said that Mr Packer had a profound level of power and influence over the affairs of Crown Resorts both while on and off the board. While Mr Packer may well have brought significant benefits to Crown Resorts over the years, we submit that the evidence presented to this Inquiry demonstrates that Mr Packer's profound influence over the affairs of Crown Resorts in the period under examination had an adverse impact on its good governance, culture and accountability.

So focusing specifically on the period after the protocol was entered into, there were 11 appointed members of the board of Crown Resorts. Three of those directors, as we've mentioned, were CPH nominees, Mr Jalland, Mr Johnston, Mr Poynton. At the time he gave evidence to the Inquiry in September 2020, Mr Johnston was on six committees of the board of Crown Resorts, including the risk management committee, and the audit and corporate governance committee. The executive chairman, Mr Alexander, was clearly not independent and was very much a loyal servant to Mr Packer. Indeed, Mr Alexander said in his evidence to the Inquiry that his first loyalty had been to Mr Packer for many years.

Further, we submit that the influence of Mr Packer and the CPH would lead a reasonable bystander to question the independence of some of the other directors of Crown. Mr Demetriou's evidence to the Inquiry indicates that he treated Mr Packer's views and wishes at least as seriously as any of Crown Resorts appointed directors and that he considered and acted upon those wishes. In an email exchange with Mr Packer on 5 April 2019, Mr Demetriou said:

> *I remain committed to serving the best interests of Crown and, most importantly, you.*

Mr Demetriou admitted that a reasonable bystander would have a concern as to whether he was truly independent in light of that exchange and the manner in which

Mr Demetriou acted on Mr Packer's wishes and views. Despite being an independent director, Ms Halton said that she felt pressured into approving the board's advertisement in response to the media allegations in July 2019. She nominated Mr Alexander as one of the people applying that pressure. Ms Halton succumbed to that pressure notwithstanding in the witness box she presented as combative. When confronted on several occasions with inconsistent evidence that she had previously given, instead of simply admitting that the previous evidence was incorrect, Ms Halton was intractable in refusing to admit the inconsistency. In that light, the pressure which overcame her independent judgment to approve the media advertisement must have been considerable.

Some of Crown Resorts' other independent directors had longstanding ties to the Packer family. Mr Mitchell, for example, was provided with a substantial interest-free loan from Mr Kerry Packer at a time when he was financially vulnerable. Both Professor Horvath and Mr Dixon were longstanding members of the board of Crown Resorts who had ties to Mr Packer and his family extending back more than a decade. Mr Packer himself acknowledged in evidence that he thought the board of Crown would be more independent in the future than it had been in the past. We submit that it clearly must be in order for the licensee to be suitable for Crown Resorts to be a suitable close associate. Professor Horvath and Ms Coonan both echoed the need for a more independent board in future.

The adverse impact of Mr Packer and CPH in relation to the events leading to the China arrests I've already dealt with. Reporting lines were compromised which meant that important information concerned escalating risk as reported by Mr Felstead to Mr Johnston rather than to his direct report, Mr Craigie. The asymmetric provision of information to the board let to a breakdown in corporate governance when Mr Johnston failed to inform his colleagues of that escalating risk. Furthermore, if Mr Packer's evidence is accepted, then three of his most loyal employees – Mr Johnston, Mr Felstead and Mr Ratnam – failed to inform him of factors escalating the risk to the safety of staff in China which he said he needed to know about.

In the context of Mr Packer's influence over the board and management of Crown Resorts, it is necessary, we submit, to consider Mr Packer's personal suitability to be a close associate of the licensee. It's relevant because Mr Packer was approved as a close associate of the licensee by the Authority under the provisions of the CPH Group deed dated 8 July 2014 because of his control over CPH and in turn CPHs influence over Crown Resorts. Mr Packer admitted that the threats he made to Mr X evidenced in and indicated by the emails in MFIA were shameful, disgraceful, and totally unsuitable for a director of a public company as a close associate of a licensee of a casino. There's been no medical evidence presented to this Inquiry by Mr Packer to support a causal connection between his conduct evidenced in and indicated by these emails and bipolar disorder or any other medical condition.

Furthermore, the email from Mr Packer to Mr Rankin and Mr Carshe on 25 November 2015, which is exhibit AB22, was sent on the very same day as the worst

of the emails in MFIA. It also related to the privatisation proposal and is expressed in perceptive and business-like terms. The difference was that Mr X had conveyed information to Mr Packer which was bad news which Mr Packer did not want to hear. We submit that you should recommend to the Authority that it reconsider its approval of Mr Packer as a close associate of the licensee, having regard to his conduct evidenced in these emails. Could I turn to address the Melco transaction.

COMMISSIONER: Yes.

MR BELL: On 30 May 2019, at approximately 6 pm Australian Eastern Standard Time, Melco Resorts and CPH Crown executed the share sale agreement. According to the share sale agreement, the transfer was to be effected in two equal tranches of approximately 9.99 percent for a total price of $1.79 billion. On the 3rd of June 2019, KittyHawk executed a nominee deed poll which identified that KittyHawk had been nominated by Melco Resorts to purchase, on its behalf, the first tranche of shares in Crown Resorts. And the transfer of that first tranche of shares to KittyHawk was completed on the 6th of June 2019. On 6 February 2020, Melco Resorts and CPH Crown entered into an agreement pursuant to which Melco Resorts terminated its obligation to purchase the second tranche of shares. On the 1st of May 2020, Crown Resorts issued an ASX announcement which stated that, as at 29 April 2020, KittyHawk and other entities in the Melco group of companies ceased to have any relevant interest in Crown Resorts, having transferred the first tranche of 9.99 per cent to the Blackstone Group and its affiliates.

Commissioner, paragraph 16(d) to (f) of the amended terms of reference require you to inquire into and report on whether the disposal and transfer of the first tranche of shares in Crown Resorts by CPH Crown to KittyHawk, as agreed under the share sale agreement, was a breach of the Barangaroo restricted gaming licence or any other regulatory agreement, and whether the agreement by CPH Crown to dispose of the second tranche of shares in Crown Resorts to Melco Resorts was a breach by the licence – a breach of the licence or of any other regulatory agreement.

A regulatory agreement is one which is made pursuant to section 142 of the Casino Control Act. According to that provision, the Authority may enter into agreements on behalf of the State of New South Wales with the approval or at the direction of the Minister, or in connection with the establishment and operation of a casino and any development of which a casino or proposed casino forms part, provided the terms of any such agreement are approved by the Minister and are not inconsistent with the Casino Control Act.

Two of the regulatory agreements entered into in connection with the establishment and operation of the Barangaroo restricted gaming facility are, firstly, Crown group consents and approvals deed, executed by the Authority, Crown Resorts, Pennwin Proprietary Limited and Crown Entertainment Group Holdings on 10 May 2013. I will refer to that as the "Crown deed". And, secondly, the VIP gaming management agreement executed by the Authority, Crown Resorts, Crown Sydney Gaming Proprietary Limited, that is, the licensee, Crown Sydney Property Proprietary

Limited and Crown Sydney Holdings Proprietary Limited on the 8th of July 2014. I will refer to that as the "VIP agreement".

Clause 2.4(b) of schedule 2 of the Crown deed contains the following condition:

> *To the extent to which its within its power to do so, Crown will ensure that it prevents Stanley Ho or a Stanley Ho associate from acquiring any direct, indirect or beneficial interest in Crown Resorts.*

I will refer to that as "the relevant clause". Schedule 3 of the Crown deed sets out 58 entities and individuals deemed to be Stanley Ho associates. The relevant clause is replicated in clause 2.1 of schedule 1 of the VIP agreement. There are 59 relevant Stanley Ho associates listed in schedule 2 of the VIP agreement adding Profit Boom Investment Limited to the 58 entities nominated in schedule 2 of the deed. The relevant clause was intended to replicate a similar condition imposed by the Pennsylvania Gaming Control Board over the Pennsylvania gaming licence held by the Crown group. That is noted in a memorandum from Crown Resorts' previous general counsel and company secretary, Mr Michael Neilson, to the Crown Resorts board, dated 15 February 2013.

It was also confirmed by the current general counsel and company secretary, Ms Mary Manos, in a private hearing before the Inquiry on 24 July 2020, the transcript of which has been publicly tendered to this Inquiry. Ms Manos noted that the drafting of the relevant clause was intended to broadly align with the language used in connection with the Pennsylvania gaming licence. The Stanley Ho associates identified in the Crown deed and the VIP agreement included the entity Great Respect Limited, a limited liability company incorporated in the British Virgin Islands. At the time of the share sale agreement, Melco Resorts owned 100 percent of the shares in KittyHawk; Melco Leisure and Entertainment Group Limited owned 54.9 per cent of the shares in Melco Resorts; Melco International Development Limited, or Melco International, with 100 percent of the shares in Melco Leisure and Entertainment Limited and Great Respect owned 20.44 per cent of the shares in Melco International.

Now, I need to address an issue about the operative status of the relevant clause at the time of the share sale agreement. Prior to the commencement of the Inquiry, Crown Resorts appeared to suggest that a number of its obligations under the VIP agreement and, apparently, also the Crown deed were not operative at the time of the share sale agreement. This was first raised in the letter from Crown Resorts solicitors to the solicitors assisting the Inquiry on the 22nd of August 2019 in which it stated that:

> *Following the divestment of its interest in Melco Resorts in May 2017, Crown Resorts reached –*

as they put it –

an in principle agreement with Liquor & Gaming New South Wales that certain aspects of schedule 1 of the VIP agreement would be deleted, including the deletion of 2.4.

That is to say the relevant clause. The letter further states that:

On the basis of that in principle agreement, Crown Resorts and Liquor & Gaming New South Wales agreed to suspend Crown Resorts' reporting obligations under clauses 2.5 and 2.6 of schedule 1 of the VIP agreement.

COMMISSIONER: But not 2.4.

MR BELL: No. So those same clauses are replicated in schedule 2 of the Crown deed.

COMMISSIONER: Yes.

MR BELL: And I will refer to those clauses as the verification and reporting clauses.

COMMISSIONER: Yes.

MR BELL: Now, according to the verification and reporting clauses, Crown Resorts is required to, among other things, conduct searches and investigations; make inquiries to verify the nature of the shareholdings and other controlling influence held by Stanley Ho and Stanley Ho associates on a quarterly basis; to report to board committees of Crown Resorts and the board itself in relation to those searches, investigations and inquiries as well as Crown Resorts compliance with the relevant clause.

COMMISSIONER: I notice that that was a report that was to be furnished biannually by the risk management committee to the board and that the chairman of the risk management committee was to report to the board after those risk management committees on the very searches in relation to Stanley Ho and his associates.

MR BELL: The searches were intended to be escalated up to the – or the outcome of the searches.

COMMISSIONER: Yes.

MR BELL: And the other aspect of the verification and reporting clause is they were required to inform the Authority of any noncompliance with the development clause.

COMMISSIONER: Yes.

MR BELL: In relation to Liquor & Gaming New South Wales, by way of background, the Authority has delegated some of its functions to Liquor & Gaming New South Wales, which forms part of the Department of Customer Service, specifically as an instrumentality of Liquor, Gaming and Racing, in turn, is part of the Better Regulation Division of the Department of Customer Service to assist the Minister in for Customer Service in administering the Casino Control Act and the Gaming Administration Act. On the 18th of January this year, the solicitors assisting the Inquiry wrote to the solicitors for Crown Resorts requesting clarification of Crown Resorts' position as to the operation of the relevant clause at the time the share sale agreement was executed.

In a letter from Crown Resorts solicitors dated 24 February 2020, Crown Resorts' position was reiterated that an in principle agreement had been reached between Crown Resorts and Liquor & Gaming New South Wales to delete the relevant clause and the verification and reporting clauses, and that it had been further agreed to suspend Crown Resorts' obligations under the verification and reporting clauses pending formalisation of this in principle agreement by way of execution of a formal agreement. It was also stated in the letter dated 24 February 2020, that, while Crown Resorts accepted that the in principle agreement had never been formalised:

> *…that does not mean that the communications between Crown and Liquor & Gaming New South Wales are devoid of possible legal significance.*

Crown Resorts did not further explain the purported legal significance during the Inquiry. Nevertheless, Crown Resorts did not expressly contend for or during the Inquiry that the relevant clause was not in effect when the share sale agreement was executed.

Commissioner, clause 18 of the VIP agreement sets out the conditions required for a variation of the VIP agreement to take effect: the proposed variation for a party must be submitted to all other parties in writing; the other parties must advise whether they approve or reject the proposed variation within 20 business days or such longer period as may be agreed by the parties; and any failure to respond in the required timeframe amounting to a deemed rejection; and if consented to by all the other parties, a proposed variation must then be approved by the Minister pursuant to section 142 of the Casino Control Act. There's no variation clause in the Crown deed, nevertheless, pursuant to subsection 142(2) of the Casino Control Act, any regulatory agreement can only contain terms that are expressly approved by the Minister. That would include terms that are varied subsequent to the approval of the original version.

For the purpose of investigating Crown Resorts' assertions as to the operative status of the VIP agreement and the Crown deed at the time the share sale agreement was executed, the Inquiry considered the following events reflected in various documents, as well as the evidence given by Ms Manos in private hearing on 24 July 2020. On 9 June 2017, Ms Manos and other Crown Resorts employees met with Susan Bray, Liquor & Gaming New South Wales executive director, to discuss the

possibility of various amendments to the VIP agreement. On 19 June 2017, Ms Manos sent an email to Ms Bray attaching a memorandum and draft variation agreement in relation to the proposed amendments. The memorandum acknowledged that the VIP agreement is a regulatory agreement under section 142; acknowledged the relevant clause and the verification and reporting clauses; proposed the deletion of the relevant clause and the verification and reporting clauses, along with certain other clauses, in light of the cessation of Crown Resorts' remaining ownership interest of Melco Resorts in 2017; and acknowledged the variation requirements in clause 18 of the VIP agreement, including the requirement for the Minister to approve the proposed variation agreement.

On 10 July 2017, Ms Patricia Navier, Liquor & Gaming New South Wales team leader, sent an email to Ms Manos attaching a revised draft of the proposed variation agreement and draft Ministerial consent and acknowledgment. On the 13th of July 2017, Ms Manos sent an email to Ms Navier attaching further revised drafts of those documents. On 4 August 2017, Ms Mary Butterfield, Liquor & Gaming New South Wales compliance manager, sent an email to Lauren Harris, Crown Resorts legal counsel and assistant company secretary who was assisting Ms Manos in relation to the proposed variation, and Michelle Fielding, Liquor & Gaming New South Wales group general manager of regulatory and compliance, stating that, following an earlier telephone call, Ms Bray had now confirmed she was happy to proceed with the further revised drafts emailed by Ms Manos on 13 July 2017 along with an identical set of revisions of the Crown deed.

On 20 February 2018, Ms Manos sent an email to Ms Butterfield stating that, as agreed in their telephone conversation the previous day, Crown Resorts would be suspending the old reporting requirements and the verification and reporting clauses pending finalisation of the proposed variation agreement and Ministerial consent. In the private hearing on 24 July 2020, Ms Manos confirmed that she was aware that there would be no binding variation until it was approved by the Minister. On 10 April 2018, Ms Manos sent an email to Ms Butterfield stating that Crown Resorts was continuing to suspend its reporting procedures under the verification and reporting clauses pending finalisation of the proposed variation of the agreement and Ministerial consent.

On 30 July 2018, following various personnel changes at Liquor & Gaming New South Wales, Ms Manos met with Mr Atish Bucktowonsing, Liquor & Gaming New South Wales compliance program coordinator and other Liquor & Gaming New South Wales employees to inform them of the status of the previous negotiations between Crown Resorts and Liquor & Gaming New South Wales in relation to the proposed variation of the agreement. On 26 September 2018, Mr Bucktowonsing sent an email to Ms Manos stating that Liquor & Gaming New South Wales had requested external legal advice in relation to the proposed variation agreement and anticipated that the advice would be received by October 2018. On the 8th of February 2019, Mr Bucktowonsing sent an email to Ms Manos proposing certain changes to the proposed variation agreement, continued to propose that the relevant

clause and the verification and reporting clauses would be deleted from the VIP agreement and the Crown deed.

In February 2019, Crown Resorts issued a chief executive officer's report as part of the board papers for a board meeting at Crown Resorts. In section 5 of the report, under the heading New South Wales Agreements, it stated that:

> *Following Crown Resorts' divestment of its interest in Melco Resorts, Crown Resorts had proposed that the reporting obligations in relation to Melco Resorts be removed from the Crown deed and the VIP agreement.*

The paper noted that:

> *In mid-2017, draft variation deeds were provided to the regulator and while removal of Melco Resorts' reporting obligations were agreed to in principle, but with turnover in staff at the regulator the matter had not been progressed.*

The paper further noted that as:

> *As at February 2019 Crown Resorts had provided updated draft agreements to the regulator and was awaiting responses to the next steps.*

Ms Manos confirmed in her evidence to the Inquiry on 24 July 2020 that she prepared this part of the report and believed it to be accurate at the time it was prepared.

COMMISSIONER: Yes, that reference to the structure and the turnover of staff is relevant to the evidence given by Ms Webb from the department a couple of Fridays ago in respect of the bifurcation of the obligations between ILGA, as it is, the board and the department – and just, in detail, this wasn't referred to, but it's another aspect of demonstrating how difficult it is when you bifurcate obligations between departmental officers and the executive and an authority.

MR BELL: So, according to the board paper, the deletion of the verification and reporting clauses had therefore, by Crown Resorts' own acknowledgment, not been finalised by that time. There's no reference at all in Crown Resorts summation of the matter to the relevant clause falling within the scope of the envisaged amendments. By 1 March 2019, the final form of the proposed variation agreement was approved by Crown Resorts and Liquor & Gaming New South Wales. It again proposed that the relevant clause, the verification and reporting clauses, would be deleted from the VIP agreement and the Crown deed.

On 2 July 2019, Ms Manos sent a letter on behalf of Crown Resorts to the New South Wales Department of Premier and Cabinet. In the letter, Ms Manos requested the department to make a claim for privilege over schedule 2 of the VIP agreement on the grounds of public interest immunity, specifically, on the basis that it contains commercially sensitive information and is commercial in confidence. In support of

that request, the letter includes annexure A, which refers to the relevant clause, and states that:

> *At the time of the share sale agreement, Crown Resorts was not in a position to prevent the transaction between Melco and CPH pursuant to which Melco acquired the Crown Resorts shares.*

Annexure A further states that:

> *The subtlety of the obligation that is imposed on Crown Resorts under clause 2.4 of schedule 2 of the agreement will not likely be made clear in likely adverse and misinformed commentary about the sale that would eventuate following the public disclosure of the schedule.*

In light of these events, we submit it's apparent that, despite the in principle agreement between Crown Resorts and Liquor & Gaming New South Wales, first, the VIP agreement was not varied in accordance with the requirements of clause 18 and section 142 of the Casino Control Act; and, secondly, the Crown deed was not varied in accordance with section 142 of the Casino Control Act.

Furthermore, any suspension of Crown Resorts obligations under the VIP agreement and the Crown deed, pending the formal variation of those documents, was confined to the verification and reporting clauses and did not extend to the primary obligation of Crown Resorts under the relevant clause. Indeed, the letter from Ms Manos dated 2 July 2019 and, in particular, the matters referred to in annexure A to that letter, reflect Crown Resorts' own clear belief that the relevant clause remained operative when the share sale agreement was executed up to and including the date of the letter, and that was expressly acknowledged by Ms Manos during her private hearing. Accordingly, we submit that you should find that the relevant clause remained operative in both the VIP agreement and the Crown deed at the time that the share sale agreement was executed.

I turn to the issue of whether the share sale agreement gave rise to an indirect interest for Great Respect. In addressing paragraphs 16(d) to (f) of the amended terms of reference, a material issue is whether the share sale agreement gave Great Respect, as a Stanley Ho associate, indirect interest in Crown Resorts within the meaning of the relevant clause.

COMMISSIONER: I don't know that that's in issue. Is that in issue, Ms Higgins?

DR HIGGINS: Yes, Madam Commissioner, it is.

COMMISSIONER: Yes. And you say it didn't?

DR HIGGINS: We will say that, yes, Madam Commissioner.

COMMISSIONER: On what basis?

DR HIGGINS: The short answer to that, your Honour, is – Madam Commissioner, rather, is the proper construction of the agreement.

COMMISSIONER: Sorry?

DR HIGGINS: The proper construction of the agreement – on the proper construction of the agreement it does not give rise to an indirect interest.

COMMISSIONER: An indirect interest?

DR HIGGINS: Yes.

COMMISSIONER: I see. Yes, Mr Bell. Please proceed.

MR BELL: Thank you. On 3 June 2019, Crown Resorts published a notice of initial substantial holder pursuant to section 671B of the Corporations Act. The notice stated that Kittyhawk and various Melco Group companies, including Great Respect had obtained a relevant interest of 19.99 per cent of the voting shares in Crown Resorts upon the execution of the share sale agreement. "Relevant interest" has the meaning set out in sections 608 and 609 of the Corporations Act. The basic rule, as provided in subsection 608(1) is that a person has a relevant interest in shares if the person is the holder of the shares or has power to exercise or dispose of or control the exercise or disposal of right to vote attached to the shares.

It's irrelevant how remote the relevant interest is or how it arises, therefore power or control is deemed by subsection 608(2) of the Corporations Act to include in each case whether express or implied, formal or informal, or exercisable individually or jointly, indirect power or control, power or control which is or can be exercised under or by the revocation or breach of a trust agreement or practice, whether enforceable or not, and power or control that is or can be made subject to a restraint or restriction. Commissioner, apart from that basic rule, there are also various deeming rules which deem a relevant interest to exist in specific circumstances. One such deeming rule is the tracing rule in subsection 608(3) of the Corporations Act according to which a person automatically has a relevant interest in shares if another company has a relevant interest in provided the person has voting power in that company above 20 per cent or otherwise controls it.

And that is the basis to support Great Respect having a relevant interest in Crown Resorts' shares on the execution of the share sale agreement insofar as it held more than 20 per cent, that is, 20.44 per cent of shares in Melco International which in turn through Melco Leisure, Melco Resorts and Kittyhawk had a relevant interest in Crown Resorts shares. Nevertheless, having a relevant interest in shares within the meaning of the specific statutory context of the Corporations Act, it can't be considered to automatically give rise to an indirect interest for the purposes of the clause. There is no case law which considers the general meaning of the term "indirect interest" outside a specific statutory context.

However, the natural and ordinary meaning of the term is wide enough to include an interest which arises under a chain of shareholders, specifically an interest that an entity has in the company on the basis of the direct interest in the company held by a subsidiary within a corporate group. The entity has a direct interest not in the subsidiary, but rather in the subsidiary's parent. That's the very kind of interest the Inquiry is concerned with in assessing the interests that arose under the share sale agreement. And the purpose of these provisions needs to be seen in the context of section 142 which is designed to ensure that there's a wide-ranging inquiry into when interests arise.

COMMISSIONER: Just pardon me for a minute. Ms Higgins, I asked you that question as you are appearing for the directors of Crown and although you have a limited number of clients in that regard, Mr Batrouney, you are representing Crown this morning, and Mr Stoljar, I might propose a question to you as well, but throughout the Inquiry, for the last many days, in particular when the directors were being examined by counsel assisting, each of the directors has admitted or conceded or agreed that they were well aware of the government's deep concern about ensuring that Dr Ho senior or his associates as identified did not obtain a direct or indirect interest in Crown, and the question that I posed a little earlier was really directed at that, that is it really in issue that an indirect interest was obtained as a result of the Crown – CPH Crown Holdings transaction with Melco pursuant to which Melco obtained the interest in Crown and Great Respect had an interest in Melco.

So I had perhaps anticipated wrongly that this was not in issue but rather it was more to do with other things that I would receive submissions on. So I would appreciate if you would reflect on that because if it's not in issue that the interest was obtained, it's probably ultimately – as we know, Melco has now gone from the share register, but it's the issue of whether there is an issue that it obtained an indirect interest. I had thought that would not be an issue. If it is, you can tell me.

MR BATROUNEY: Madam Commissioner, can I reflect on that with others.

COMMISSIONER: Yes, of course.

MR BATROUNEY: And we will come back to you.

COMMISSIONER: Yes, Mr Batrouney. So Ms Higgins, it's just that fine issue that I put to you.

DR HIGGINS: Yes, Madam Commissioner. We will contend that on the proper construction of the agreement itself, an indirect interest was not obtained as a matter of proper construction.

COMMISSIONER: And the proper construction of which agreement?

DR HIGGINS: Each of the VIP agreements, Madam Commissioner, and the CPH consents and approval deed.

COMMISSIONER: And CPH?

DR HIGGINS: The Crown approvals deed.

COMMISSIONER: And the proposition in respect of which you will propound that construction is to do with which particular clause?

DR HIGGINS: Madam Commissioner, the gist of the submission will be that there are two available constructions of interest within the relevant clauses, one of which is that it is limited to legal interests being direct, indirect or beneficial in Crown Resorts, and the other of which is that it extends to any economic interest, and we will submit it is the former and that on the proper construction of the relevant provisions of the deed no indirect interest was obtained. That is the crux of the submission that will be made.

COMMISSIONER: Thank you, Ms Higgins. And in respect of the existence of – I don't believe that will therefore affect propositions that have been put that Great Respect was in fact a shareholder in the way that Mr Bell has put. I think that's right.

DR HIGGINS: If by that, Madam Commissioner, you mean that it held 19 per cent, etcetera, that appears to be correct.

COMMISSIONER: Yes. Mr Stoljar, that seems right, doesn't it?

MR STOLJAR: That aspect of the matter, yes, your Honour, that that shareholding was acquired.

COMMISSIONER: Yes. Thank you. Yes, Mr Bell.

MR BELL: Can I move to logically the next issue which is what the relevant clause required Crown Resorts to do.

COMMISSIONER: Yes.

MR BELL: It required Crown Resorts to prevent Stanley Ho and Stanley Ho associates, including Great Respect, from obtaining a direct or indirect or beneficial interest in Crown Resorts but the obligation was not absolute. Rather, it was conditioned so that Crown Resorts must do everything within its power to prevent such an interest arising. That condition is not surprising insofar as Crown Resorts as opposed to its shareholders would not be a party to a transaction involving the sale of its shares and accordingly there are limits as to what it could legitimately do to prevent a prohibited interest arising. That said, while it may not always be within Crown Resorts' power to absolutely prevent a prohibited interest arising, Crown

Resorts would in all cases have the power to take all reasonable steps that might stop a prohibited interest from proceeding.

Necessarily, however, in relation to the indirect interest obtained by Great Respect under the share sale agreement, if you find such an interest was obtained, Crown Resorts could not have had any power to take such reasonable steps if it was not aware that the share sale agreement existed. Before turning to that issue of knowledge and how you attribute the knowledge of individuals to an artificial entity, it's useful to set out the background to the negotiation of the share sale agreement leading up to its execution on 30 May and the issues raised in the context of the relevant negotiations.

At the time the share sale agreement was negotiated and executed there were 11 appointed directors to Crown Resorts, as we know: Mr Johnston, Mr Jalland, Mr Poynton, Mr Alexander, Ms Coonan, Mr Demetriou, Mr Dixon, Ms Halton, Professor Horvath, Ms Korsanos and Mr Mitchell. And additionally, Ms Manos was the company secretary and general counsel. Apart from his directorship of Crown Resorts, Mr Johnston was also the sole director of CPH Crown and a director of CPH Crown's ultimate Australian holding company, CPH, during the negotiation and execution of the share sale agreement. Apart from his directorship of Crown Resorts, Mr Jalland was the managing director of CPH during the negotiation and execution of the share sale agreement. I've already dealt with the submission that Mr Packer was a de facto director.

On or around 29 April 2019 Laurence Ho telephoned Mr Packer. He expressed interest in Melco Resorts acquiring shares in Crown Resorts from CPH. Mr Ho and Mr Packer agreed that Mr Jalland ,on behalf of CPH, and Mr Winkler, on behalf of Melco Resorts, would have a discussion to take forward this proposal. On 29 April 2019 Mr Packer sent an email to Mr Jalland saying:

> *I need you to speak to you re Lawrence. Potentially good news.*

On 30 April 2019, Mr Jalland and Mr Winkler first spoke and agreed to have a more substantive discussion about the proposed transaction in a few days' time. On the 3rd of May 2019 Mr Packer sent an email to Mr Barton, copies to Mr Alexander and Mr Johnston, saying:

> *Have you got a forward financial forecast that you believe in yet? I'm only interested until the end of '22. If the online business JA and you told me was so good goes broke do we still have to pay the last payable and for how much?*

COMMISSIONER: I think that should be "if" rather than is.

MR BELL: I think so.

COMMISSIONER: The first word should be "if".

MR BELL: Indeed.

COMMISSIONER: Yes.

MR BELL: He goes on:

> *Let's assume no more buybacks. I want to see what peak net debt is after we have paid for Crown Sydney 100 per cent.*

Mr Barton replied on the same day saying:

> *In relation to the financial plan, the current timing is to have detailed business units plan information early in the week of May 13. We should be able to review those and have an agreed plan to you during that week. This will give us full P&L cashflow and balance sheets for financial year '22.*

The following day, 4 May 2019, Mr Johnston provided a number of discussion papers to Mr Packer identifying options for CPH Crown to dispose of some or all of its shares in Crown Resorts. These papers had been prepared by Mr Johnston, Mr Kady, another CPH executive listed as providing services to Crown Resorts under the services agreement. These papers were called Project Tiger, Project Lion, Project Rhino. Project Tiger considered a potential takeover of Crown Resorts by Melco Resorts, fifty-fifty cash scrip basis. Project Lion considered a privatisation of Crown Resorts with Melco Resorts as CPH Crown's partner. Project Rhino considered CPH Crown selling 19.99 per cent of the shares in Crown Resorts to each of two strategic but not associated investors, one of which would be Alvin Chau's Suncity Group.

On or around 4 or 5 May 2019 Mr Jalland told Mr Johnston that he was thinking of a potential sale of 19.99 per cent of Crown Resorts shares by CPH Crown to Melco Resorts. Mr Jalland expressed the view this had a number of benefits from CPH Crown's point of view. Mr Johnston sent an email to Mr Kady on 5 May 2019 saying:

> *Guy is thinking about a 19.99 per cent sale to Lawrence, ie, no approval is required, at a premium with perhaps Crown providing Lawrence by way of condition of share issue with an incentive to substantially grow the VIP business.*

Later that same day, 5 May 2019, Mr Johnston informed Mr Jalland of the advantages and disadvantages of the sale which he and Mr Kady had identified. After the 5th of May 2019 Mr Kady and Mr Johnston continued to develop their thinking about an option which involved a takeover of Crown Resorts but now contemplated that Melco Resorts would acquire – re-acquire a pre-bid stake of 19.99 per cent. Mr Johnston told Mr Jalland that he and Mr Kady were thinking about this option on or around the 7th of May. On about the 8th of May 2019 Mr Jalland and Mr Winkler met in person in Los Angeles. During that meeting Mr Jalland asked if

Melco Resorts would be interested in buying a 19.99 per cent shareholding in Crown Resorts from CPH Crown for cash.

Mr Winkler said he would consider the proposal and then meet again with Mr Jalland. On or about the 8th of May after his meeting with Mr Winkler, Mr Jalland told Mr Johnston that Melco Resorts was considering the idea of acquiring a 19.99 per cent stake in Crown Resorts. Mr Kady and Mr Johnston then further developed their thinking on the option of a takeover of Crown Resorts by Melco Resorts but with Melco Resorts having a pre-bid stake of 19.99 per cent. Mr Johnston communicated that thinking to Mr Jalland on or around the 9th of May 2019. On 17 May 2019, Mr Barton sent an email to Mr Packer with copies to Mr Alexander, Mr Johnston and Mr Felstead informing him that a first draft of the financial plan which Mr Packer had requested on 3 May 2019 had been prepared.

Mr Barton said that the draft plan had been provided to Mr Alexander, Mr Johnston and Mr Kady, that those officers would like a few days to review and provide comments on the plan before Crown Resorts would be in a position to take Mr Packer through it the following week. Some days after 8 May 2019, Mr Winkler told Mr Jalland that Melco Resorts was open to the idea of purchasing a 19.99 per cent shareholding in Crown Resorts from CPH Crown. By around 18 May 2019, Mr Jalland told Mr Johnston that Melco Resorts had indicated that the purchase was an interesting opportunity that it wished to explore further. Mr Johnston then sent an email to Mr Kady on 18 April 2019 saying - - -

COMMISSIONER: 18 May?

MR BELL: 18 May 2019 saying:

> *I spoke to Guy. Apparently, Evan rang him back today and said they are investigating the 19.99 per cent variant, ie, ... 26 per cent.*

Between 18 and 23 May 2019, there were a number of telephone calls between Mr Jalland and Mr Winkler. In those calls there were discussions about the price at which 19.99 per cent of Crown Resorts shares would be sold. Mr Jalland told Mr Winkler that CPH Crown would require a price of $13 a share. In the second last of the telephone calls Mr Winkler said that Melco Resorts would consider that price. Mr Jalland said that he would discuss this further with Mr Packer and call Mr Winkler back. In one of those calls Mr Winkler also told Mr Jalland that Melco Resorts would complete a purchase of half of the shares promptly, but would need until 30 September 2019 for the other half to allow sufficient time to raise financing. Is that a convenient time, Commissioner?

COMMISSIONER: Yes, it is. I thought that – in respect of the $13 mark, I thought Mr Jalland said that he had told Mr Winkler that it had to have a 13 in front of it, as I recollect it, and then Mr Winkler comes back with just the 13.

MR BELL: You are quite correct, with respect.

COMMISSIONER: Yes.

MR BELL: My recollection is that Mr Jalland said that CPH Crown required a price with a $13 handle.

COMMISSIONER: I see, handle.

MR BELL: And then Mr Winkler came back with $13 precisely.

COMMISSIONER: Flat. Yes. All right. Yes, I will take 10 minutes. Thank you.

ADJOURNED [11.30 am]

RESUMED [11.43 am]

COMMISSIONER: Yes, thank you. Yes, Mr Bell.

MR BELL: Commissioner, by 21 May 2019, Mr Johnston had reviewed the draft financial plan for Crown Resorts which Mr Packer had requested. On that date he sent an email to Mr Barton, Mr Felstead, Mr Alexander and Mr Packer with a copy to Mr Kady. He set out five discussion points for a telephone call to be held that evening:

> *(1) I will take out references to the 10-year CAGR, 08 to 0218 and with reference to five year CAGR, that is, compound annual growth rate.*
> *(2) References to issues related to the change of government should be removed and discussion of potential for improved ..... added.*

This is just after the Federal election.

> *(3) I think the revenue growth assumptions for financial year '21 and '22 currently assumed at 3.6 per cent in each year should be higher. Spend per customer in table games should be assumed to normalise again from there, thus financial year '19 is only the base for financial year '20 not the whole plan.*
> *(4) VIP gaming machine growth should likewise be higher, currently assumed to be 8.5 per cent for financial year '21 and beyond. What costs are assumed in Singapore and Hong Kong for this initiative, ie, employment costs, new sales staff.*
> *(5) For Perth only we should assume a more significant impact from the tap and go initiative for financial year '21 and beyond.*

COMMISSIONER: Just pause there for a moment. I think we might have lost Crown. Either Mr Batrouney has been lost or he's turned his camera off. Just wait a

moment, Mr Bell. What's the position, operator? I see. We will just make contact with Crown to make sure that they are present during the submissions. I gather it won't be long, Mr Bell. Mr Batrouney, good of you to join us.

MR BATROUNEY: I apologise, Madam Commissioner.

COMMISSIONER: Thank you for your apology. It's noted. Yes, Mr Bell.

MR BELL: Commissioner, in his evidence to the Inquiry, Mr Johnston agreed that the changes which he was suggesting in paragraphs 3, 4 and 5 of his email would have the effect of making the financial forecast more optimistic for financial years '21 and '22. Likewise, in his evidence to the Inquiry, Mr Barton concurred that those suggestions would, if adopted, result in a favourable increase in Crown Resorts' projected financial position. Mr Johnston's evidence was that on the evening of 21 May 2019 he had a telephone call with Mr Barton and Mr Kady. He said that there was one modification made to the financial plan in accordance with paragraph 3 of the suggestions contained in his email earlier that day to use a slightly higher assumed growth rate in table game revenue. After the financial plan was modified it was then provided to Mr Packer.

Mr Johnston did not inform Mr Barton at the time that he was reviewing and suggesting changes to the financial plan. CPH Crown was negotiating a sale of Crown Resorts shares in Melco Resorts – to Melco Resorts. Mr Barton said in his evidence to the Inquiry that he first learnt about the share sale agreement on the evening of 30 May 2019 after it had been publicly announced. It is worth pausing to reflect upon the various roles which Mr Johnston was carrying out at this point in time. Mr Johnston's evidence to the Inquiry was that he was reviewing the financial plan and making suggestions in relation to it as part of the normal Crown Resorts budget process in his capacity as an executive of CPH providing services to Crown Resorts under the services agreement.

Mr Johnston understood in doing so that he had obligations to Crown Resorts, including an obligation to notify Crown Resorts of any actual or potential conflict of interest which he perceived arising out of the provision of services under the services agreement. Yet Mr Johnston was also the sole director of CPH Crown and a director of CPH at the time. He owed statutory and fiduciary duties as the director to each of those companies. He was aware in reviewing and suggesting amendments to the draft financial plan that there were advanced negotiations by CPH Crown to sell 19.99 per cent of shares in Crown Resorts to Melco Resorts. Mr Johnston was being kept informed by Mr Jalland of the status of those negotiations.

Mr Johnston gave evidence to the Inquiry that the information included in the financial plan which he had received from Mr Barton shortly after 21 May 2019, was relevant giving financial guidance which Mr Johnston later provided to Melco Resorts prior to the execution of the share sale agreement.

COMMISSIONER: But he was also a Crown director at the time.

MR BELL: Indeed. He was also a director of Crown Resorts at the time, and he was aware that the financial plan which he was commenting on had been specifically requested by Mr Packer and would be provided to him. He knew that Mr Packer's own entitlement to the plan was pursuant to the terms of the controlling shareholder protocol. He said in his evidence to the Inquiry that he understood Mr Barton had a duty to consider whether it was appropriate to provide this confidential information to Mr Packer, a duty which required Mr Barton to consider whether it was in the best interests of Crown Resorts to do so and to consider whether, by providing the financial plan, Crown Resorts might suffer detriment or someone else might obtain a benefit.

In his evidence Mr Johnston claimed to be very sensitive to a conflict of interest between his duties to CPH and Crown Resorts. He said that sensitivity extended not just to actual conflicts of interest, but to the perception of conflicts of interest as well. Yet despite that assertion Mr Johnston denied seeing any actual or potential conflict of interest in his review of and suggestions to amend the financial plan in accordance with the instructions of Mr Packer. He also admitted to failing to ever consider whether there was a perception of a conflict of interest. We submit that Mr Johnston placed himself into an obvious conflict of interest in these circumstances which he failed to see at the time. His evidence to the Inquiry denying that there was in fact a conflict, we submit, should not be accepted.

The conflict was both actual and perceived. At the very least, there was a real possibility of conflict between his duties to CPH Crown and CPH on the one hand, and his duties to Crown Resorts on the other in reviewing and suggesting amendments to the financial plan in the circumstances. Conflict of interest required him to either withdraw from reviewing the financial plan or to alternatively fully inform Crown Resorts of the advance negotiations by CPH Crown to sell Crown Resorts shares to Melco for the purpose of obtaining Crown Resorts informed consent to remain involved in his review in those circumstances.

Ms Coonan agreed in her evidence to the Inquiry that Mr Johnston should have brought to Crown Resorts' attention that CPH Crown was in the process of negotiating a sale of its shares in Crown Resorts to Melco Resorts, and that information in the financial plan Mr Johnston was reviewing was being passed on to Melco Resorts prior to the execution of the share sale agreement. A number of other directors also expressed concern about Mr Johnston's conduct in their evidence to the Inquiry. We submit that it's clear that Mr Johnston was looking only to the interests of CPH and CPH Crown at this time and failed to consider the interests of Crown Resorts. At the outset of his evidence, Mr Johnston agreed that for a long time he had shown complete loyalty to Mr Packer.

This was a situation, we submit, where his complete loyalty to Mr Packer came at the expense of his duties to Crown Resorts. We submit that you should find that Mr Johnston failed without justifiable reason to either withdraw from the process of reviewing the draft financial plans or to fully inform Crown Resorts of the advance negotiations to sell Crown Resorts shares to Melco Resorts.

COMMISSIONER: I suppose there was an alternative – yes, I see. You say fully withdrawn from – well, fully withdrawn from the negotiations or, alternatively, fully withdrawn from the process of reviewing the plans.

MR BELL: Both.

COMMISSIONER: Yes.

MR BELL: Well, both.

COMMISSIONER: So he should have – he could have said "I don't want to receive these documents at the moment. I can't tell you why, but I'm not in a position to receive them for various reasons."

MR BELL: Yes.

COMMISSIONER: Yes. Yes, I understand.

MR BELL: Having crossed the Rubicon, his obligation was to seek fully informed consent.

COMMISSIONER: Yes. Thank you.

MR BELL: Before continuing with the chronology of the share sale agreements it's unfortunately necessary to make a submission concerning Mr Johnston's credit. Mr Johnston accepted, with the benefit of hindsight, that he should have seen that the questioning of the employee in Wuhan and the requirement of a letter from Crown Resorts was an escalation of the risk to the safety of the staff in China which he should have shared with his colleagues. In those circumstances, it is curious that Mr Johnston did not accept that he was one of the people at Crown Resorts who failed to properly engage the risk management process of Crown Resorts when he became aware of relevant information concerning risks to the safety of the staff. Mr Johnston's refusal to accept responsibility for a failure, which was obvious to his colleagues on the board of Crown Resorts, reflects adversely on his credit.

Mr Johnston also gave evidence to the Inquiry that he would take steps to correct any inaccuracy in the minutes of any meeting of the board or board committees of Crown Resorts which came to his attention before the minutes were signed. Yet on three separate occasions, Mr Johnston said that signed minutes of meetings were incorrect because they were inconsistent with the evidence he gave to the Inquiry. Two of those minutes of meetings I've already referred to.

COMMISSIONER: When you said it reflects adversely on his credit, if it is accepted that he honestly held that view then I suppose it reflects adversely on his position as a director to understand what should have happened, so I suppose on one view of it, it may reflect adversely on his credit, but if that's not found to be so it would have to be looked at from the point of view of what he should have done in his

position as a director of Crown, director of – yes, a director of Crown and in respect of what he should have done in respect of escalating the risk.

MR BELL: If he truly believes, even today, he did properly engage with the risk management process of Crown Resorts in these circumstances then I respectfully agree that that reflects rather more on his perception of his duties - - -

COMMISSIONER: Yes.

MR BELL: - - - rather than his credit.

COMMISSIONER: Yes. Thank you.

MR BELL: Now, I've referred to two occasions on which Mr Johnston disputed the accuracy of signed minutes of meetings. In another instance, Mr Johnston denied that he had reviewed the Crown deed of 10 May 2013 carefully at the time it was about to be entered into. During his evidence, Mr Johnston was then taken to the minutes of the meeting of Crown Resorts board which occurred more than seven years ago on 20 February 2013. He was shown an agenda item dealing with the consideration of the deed which recorded that having carefully considered the draft of the New South Wales deed, directors concluded that they are acceptable to the company and that it was in the best interests of the company to enter into the deed.

Mr Johnston then gave evidence that he did not suggest that the minutes were inaccurate. It was then put to Mr Johnston in those circumstances he did carefully review the Crown deed. Mr Johnston denied that was the case and then said three times that the minutes were in fact inaccurate. He later said that the minutes were not untruthful but could be interpreted as Mr Neilson taking the board through the key terms of the agreement rather than the directors carefully considering the draft of the deed as the minutes state. It's relevant that the board paper provided prior to the meeting prepared by Mr Neilson made it clear that a copy of the draft deed would in fact be made available at the board meeting and we submit that emphasises the likelihood that the minutes from seven years ago were, indeed, accurate.

Additionally, when asked why CPH Crown had decided to terminate the share sale agreement with Melco Resorts on 6 February 2020 Mr Johnston said:

> *It was apparent that the processes that were required in order for completion before the drop dead date were not going to be completed by even the six month extension so therefore we thought that it was – there was little point in allowing the arrangements to continue.*

That wasn't consistent with the subsequent evidence on the topic given to the Inquiry by both Mr Jalland and Mr Packer. Mr Jalland said that Mr Packer and Mr Ho had a conversation about a day or two before 6 February 2020. Mr Ho indicated that he no longer wished to go forward with the acquisition of the second tranche. Mr Packer agreed not to enforce it. Similarly, Mr Packer said that he had a conversation with

Mr Ho prior to the termination in which Mr Ho said Melco Resorts didn't want to proceed with the deal. Mr Packer said he would never hold Mr Ho to something Mr Ho didn't want to proceed with. It appears that, contrary to the explanation given by Mr Johnston, the truth of the matter is that the share sale agreement was terminated because Mr Packer requested that to occur. I have to acknowledge that, because Mr Johnston's evidence was given prior to Mr Jalland and Mr Packer, I didn't ever put that proposition specifically to him.

COMMISSIONER: Yes. I understand.

MR BELL: But, overall, we submit that you ought treat Mr Johnston's evidence with caution, particularly in circumstances where Mr Johnston has given evidence about matters which he perceived to be contrary to his interests.

Continuing with the negotiations concerning the share sale agreement, on the 23rd of May 2019, Mr Johnston and Mr Kady prepared further discussion materials for Mr Packer to consider alternatives to a sale of 19.99 percent of Crown Resorts shares to Melco Resorts. These alternatives again included a possible sale to Suncity. However, Mr Packer made it clear to Mr Johnston that he wished to proceed with the proposed sale to Melco Resorts. Later that day, the 23rd of May 2019, Mr Packer told Mr Jalland and Mr Ho that he was supportive of proceeding with the sale of 19.99 percent of the issued shares in Crown Resorts to Melco for a price of $13 a share. Thereafter, the terms of the agreement were negotiated and documented by the solicitors for CPH Crown and the solicitors for Melco Resorts.

On the 29th of May 2019, Mr Johnston and Mr Jalland signed a letter on behalf of CPH Melco Resorts requiring confidentiality undertakings so that CPH could provide confidential information in relation to Crown Resorts to Melco Resorts. We submit that the terms of the letter illustrate the extent to which CPH and its officers were prepared to expose Crown Resorts to the risk of harm without informing Crown Resorts, still less seeking its consent. In the letter, CPH required an acknowledgment that CPH held the benefit of the agreement under which it provided the confidential information from Crown Resorts to Melco Resorts on trust for Crown Resorts and its related bodies corporate. CPH also required an acknowledgement that any breach of the confidentiality restrictions may cause irreparable harm to the related bodies corporate. There was no legal basis, including as Mr Jalland himself acknowledged in his evidence to the Inquiry, under the services agreement for CPH to assert or create a trust or to expose Crown Resorts to irreparable harm by virtue of that trust.

We submit that it's inexplicable how Mr Johnston and Mr Jalland could proceed with this arrangement with Melco Resorts without giving thought to their duties as directors of Crown Resorts and their obligations to their colleagues on the board of Crown Resorts. Despite clearly being in a situation which required CPH to seek the informed consent of Crown Resorts to the creation of a trust of this kind, neither Mr Jalland nor Mr Johnston could perceive, what they said in their evidence to the Inquiry, any conflict of interest in them proceeding with such an arrangement without notifying Crown Resorts.

This was a reflection of the fact, we submit, that at all times during the negotiation of the share sale agreement, Mr Jalland and Mr Johnston considered only the interests of CPH, CPH Crown and Mr Packer. Mr Jalland acknowledged that, during this time, he was thinking only of the benefits which he perceived the transaction would bring to CPH, CPH Crown and Mr Packer. He accepted that it could be perceived that there was a conflict between his obligation to act in the best interests of Crown Resorts and his obligation to CPH to complete the deal.

As we apprehend it, the whole purpose of providing the information to Melco Resorts was to avoid the possibility of any breach of insider trading provisions of the Corporations Act. In that regard, it's to be noted that section 1043M, subsection (2) of the Corporations Act provides for an equality of information defence, so that it's a defence to an insider trading prosecution if the other party to the transaction knew of the inside information before the transaction.

As to whether the information obtained by CPH and provided to Melco Resorts before the share sale agreement was executed was inside information, that's not a matter that can be determined by this Inquiry. Mr Barton said that the information in the financial plan provided to Mr Johnston contained price-sensitive information which was not publicly available. On the other hand, Mr Johnston denied that the financial plan which Mr Barton provided to him contained price-sensitive information. It would usually require expert evidence to resolve that controversy.

If the financial information provided to Melco Resorts was inside information, as opposed to simply being confidential information, then Mr Johnston acted in breach of the Crown Resorts securities trading policy, which prohibited him or any of his close associates trading in Crown Resorts shares or communicating information to a third party where it was known or reasonably should have been known that the third party were trading Crown Resorts shares whilst in possession of inside information.

COMMISSIONER: That's the policy that you took Mr Johnston to.

MR BELL: Yes.

COMMISSIONER: Yes.

MR BELL: I also took the chairman and deputy chairman - - -

COMMISSIONER: Yes.

MR BELL: - - - Ms Coonan and Professor Horvath, to that – the evidence that had been given to the Inquiry and to that policy, and they gave evidence that, in circumstances where there was a dispute between Mr Barton and Mr Johnston over whether the information provided to Melco Resorts was inside information, Crown Resorts securities trading policy needed to be reviewed.

Commissioner, the minutes of a meeting of the board of CPH Crown, held at 3.55 pm on 30 May 2019, record the presence of both Mr Johnston and Mr Jalland as directors. This was in fact a mistake, as Mr Johnston was the sole director of CPH Crown at the time. The minutes record that Mr Johnston determined that the share sale agreement would benefit CPH Crown; that it would be in the best interests of CPH Crown to agree to a price of $13 per share for the Crown Resorts shares. Mr Johnston ultimately agreed that, in determining that this was an appropriate price to accept, he took into account all of the financial information concerning Crown Resorts that was available to him and that, of course, included information in the financial plan which he had reviewed on or about the 21st of May 2019 and which, in turn, had been the basis for the information provided to Melco Resorts, the very circumstances giving rise to Mr Johnston's position of conflict. Contracts were then exchanged at approximately 6 pm that evening Australian Eastern Standard Time.

So that gives rise to the question whether Crown Resorts was aware, or should be taken to be aware, of the share sale agreement before execution and exchange. In their written statements provided to the Inquiry, Mr Alexander, Ms Coonan, Mr Demetriou, Ms Halton, Professor Horvath, Ms Korsanos, Mr Mitchell and Ms Manos stated that they only became aware of the share sale agreement after it was executed. In his evidence to the Inquiry, on 21 October 2020, Mr Dixon, likewise, said that he was not aware of the share sale agreement before its execution, in his case, only becoming aware of it in media reports the following morning.

In his written statement, Mr John Poynton states that he first became aware of the transaction constituted by the share sale agreement in a telephone call with Mr Packer at approximately 9.30 am, Perth time, that is, 11.30 am Australian Eastern Standard Time, on 30 May 2019. According to Mr Poynton, in that conversation, Mr Packer informed him that there would be a sale to Lawrence Ho that will be 19 percent over two tranches and told Mr Poynton that "you will hear more about it shortly". Mr Poynton, therefore, was aware of at least the material scope of the share sale agreement before it was executed.

COMMISSIONER: Just before you leave Mr Poynton, Mr Poynton was a director of Crown at the time.

MR BELL: Yes.

COMMISSIONER: Was he a director of any of the CPH companies?

MR BELL: No.

COMMISSIONER: So he was only a director, relevantly, of Crown at least.

MR BELL: Yes. Although I'm sure he would hasten to add he was a CPH nominee on the board of Crown Resorts.

COMMISSIONER: I understand the nomination process, but so far as his directorships, it was only Crown?

MR BELL: That's so.

COMMISSIONER: Yes. Thank you.

MR BELL: Obviously, Mr Johnston, Mr Jalland and Mr Packer had been involved in the negotiations for approximately a month and obviously knew about the existence of the share sale agreement before it was executed. So on the basis that Mr Poynton, Mr Johnston, Mr Jalland, as appointed directors, and Mr Packer, so we submit, is a de facto director, were the only directors that knew about the share sale agreement prior to its execution, at which point Great Respect's indirect interest, we submit, arose, the legal question for consideration is whether the knowledge of Mr Johnston, Mr Jalland, Mr Packer and Mr Poynton can be attributed to Crown Resorts itself as a corporate entity.

Can I deal, first, with attributing the knowledge of Mr Johnston and Mr Jalland. It's important that Mr Johnston and Mr Jalland became aware of the share sale agreement not while acting for Crown Resorts, but rather in the course of acting as directors of CPH, in the case of both Mr Johnston and Mr Jalland, and for CPH Crown in Mr Johnston's case.

The general proposition which emerges from the authorities in Australia and the United Kingdom that information obtained by a director in the course of acting for company A can't be attributed – sorry. I will start again. If you have a situation where a director is a director of company A and company B, the general proposition which emerges is that information obtained by a director in the course of acting for company A cannot be attributed to company B unless the director is under a duty to disclose that information to company B. In the absence of such a duty, the director, in fact, has a positive duty of confidentiality to company A not to disclose the information.

In the decided case law, the circumstances in which a director has been held, in those circumstances, to be under a duty to disclose information to company B obtained in the course of acting for company A, include: where the information may be relevant to a decision or course of action to be made or undertaken by company B; may be at risk of exposing company B to the prospect of harm in relation to a matter concerning company Bs operations and/or important to the affairs of company B. They're the various which ways in which authorities have characterised the proposition. Although it hasn't been definitively addressed in the decided cases, the better view appears to be that a director must be actually aware that the information has those characteristics for the duty to disclose to arise. Those assisting the Inquiry have approached this issue on the basis that constructive knowledge is insufficient.

On that basis, the knowledge that Mr Johnston and/or Mr Jalland obtained as to the negotiations and impending execution of the share sale agreement acquired while

acting for CPH or CPH Crown may be attributed to Crown Resorts if they were aware the share sale agreement and the transactions contemplated by it may have been relevant and important to Crown Resorts performing its obligations under the relevant clause or could expose Crown Resorts to the prospect of harm arising from a breach of the relevant clause.

For that to be the case, Mr Johnston and Mr Jalland would have needed to know more than just that the share sale agreement was being contemplated, as they both obviously did. Even if they weren't aware of the specific terms of the relevant clause and the precise nature and extent of the shareholdings within the Melco group of companies, including Great Respect's Melco International – Melco International's ultimate interest in Melco Resorts – we submit that if they were aware of the existence of the Crown deed and the VIP agreement they were aware that the Crown deed and/or the VIP agreement contained provisions intended to prevent entities associated with Stanley Ho taking an interest in Crown Resorts, and that there was at least a risk that entities associated with Stanley Ho may have had an interest in Melco International and Melco Resorts, they must, in our submission, be taken to have known that Crown Resorts needed to be informed about the share sale agreement before its execution so that Crown Resorts could take steps to ensure that it was not in breach of the Crown deed or the VIP agreement. In those circumstances, we submit knowledge of the share sale agreement held by Mr Johnston and Mr Jalland would be attributed to Crown Resorts as an entity.

So dealing first with Mr Johnston, in his evidence to the Inquiry, he said that whether or not he had absorbed all of the details of the Crown deed he was aware prior to the negotiation and execution of the share sale agreement of the existence of the Crown deed; that it contained provisions intended to prevent entities associated with Stanley Ho taking an interest in Crown Resorts. Whether or not he'd absorbed all of the details of the VIP agreement, he was aware prior to the negotiation and execution of the share sale agreement of the existence of a VIP agreement and that it contained provisions intended to prevent entities associated with Stanley Ho taking an interest Crown Resorts. Mr Johnston also admitted in his evidence that, at the time the share sale agreement was executed, he knew that Melbourne International had a substantial shareholding in Melco Resorts; that at some time during the period of the Crown Resorts Melco Resorts joint venture, between 2004 and May 2017, he knew Great Respect had an approximately 20 percent shareholding in Melco International; he knew that an entity associated with Stanley Ho – although he could not be certain this was Great Respect – was connected with the joint venture through Melco Resorts; and he hadn't checked since the cessation of the joint venture whether those shareholdings and associations continued.

Accordingly, we submit that Mr Johnston was aware that a relationship with Melco Resorts gave rise to some prospect of a connection with Stanley Ho. We submit that it's immaterial that Mr Johnston may not have known whether that connection arose specifically through Great Respect's interest in Melco International. The point is that when the shares sale agreement was being negotiated, there must have been a red flag in Mr Johnston's mind when he became aware that the purchaser would be

Melco Resorts or its nominee. Even if all of the evidence given by Mr Johnston was accepted at face value, and while Mr Johnston cannot be said to have known positively the connection between Stanley Ho and Melco Resorts, which he knew existed at some point during the joint venture, continued once the joint venture had come to an end, equally, he didn't positively know that the connection had ceased, which it in fact hadn't. We submit that Mr Johnston must, therefore, be taken to have known when the share sale agreement was being negotiated, up to and including its execution, there was at least a risk that the sale of Crown Resorts shares to Melco Resorts or its nominee would give rise to a renewed connection between Stanley Ho and Crown Resorts.

On that basis, and given also Mr Johnston's knowledge about the Crown deed and the VIP agreement and that they contained provisions intended to prevent Stanley Ho and entities associated with him from having any interest in Crown Resorts, we submit that Mr Johnston may be taken to have known that there was a risk the share sale agreement may give rise to a breach of the Crown deed or the VIP agreement and was, therefore, relevant and important to Crown Resorts and may expose Crown Resorts to the risk of harm. Accordingly, applying the duty to disclose knowledge attribution test that I've outlined, we submit that Mr Johnston's knowledge of the share sale agreement prior to its execution may be attributed to Crown Resorts as a corporate entity.

Turning to Mr Jalland, the evidence to the Inquiry is that Mr Johnston said he was also aware prior to the negotiation and execution of the share sale agreement of the Crown deed and the VIP agreement and that, in general terms, they contained provisions intended to prevent entities associated with Stanley Ho taking an interest in Crown Resorts. However, Mr Jalland maintained that he wasn't aware that Great Respect or any entity associated with Stanley Ho either had an interest in Melco International or was involved in bringing into the joint venture the land on which the City of Dreams casino was developed.

Mr Johnson – Mr Jalland said that he had read parts of the chairman's address in various annual reports of Melco Resorts during the time of the joint venture, however, he denied reading material in the reports stating that Great Respect had an interest in Melco International or those parts of the reports which indicated that Great Respect was controlled by a trust, the beneficiaries of which included Stanley Ho. Mr Jalland denied reading draft media releases on the 30th of May 2019, issued before the share sale agreement was executed, from Melco International which had been sent to him indicating that Great Respect was the holder of over 20 percent of the share in Melco International and it was controlled by a discretionary family trust, the beneficiaries of which included Mr Laurence Ho and his family members.

Mr Jalland said that he was aware that Mr Laurence Ho, Melco Resorts, Melco International had been subject to probity checks by the Authority, as well as gambling regulators in Victoria, Queensland, Western Australia, Pennsylvania and Nevada on two previous occasions before the share sale agreement was executed and that those probity checks examined, among other things, a possible connection

between those entities and Stanley Ho as part of their approval of casino licensing operations. However, Mr Jalland maintained that because the relevant authorities had granted regulatory approval, he believed there could not have been a connection with Stanley Ho.

COMMISSIONER: It's an interesting process, because those probity inquiries were looking at Melco from the point of view of it being an associate of Crown rather than, certainly, Melco becoming part of Crown, becoming a shareholder in Crown, or having an indirect or direct interest in Crown. And from the point of view of those inquiries to see if – I think one of the issues was whether there was, in fact, a concern that Mr Ho senior's presence which was known about was in fact something that was going to be a relevant power in exercising over Melco and that was to see whether Mr Ho senior was exercising that power over Melco which was then in a close association with Crown in the joint venture in Macau, thus a close associate via that relationship to the licensee in Australia.

MR BELL: Yes.

COMMISSIONER: So it's once removed in terms of what is happening here, or was happening here, that if Melco had stayed as an applicant for approval it was a very different regime because if it be right that Melco was – I withdraw that – if it be right that Dr Stanley Ho or an associate became or had an interest in Melco and therefore in Crown, very different from looking at the once removed situation that the previous inquiries looked into.

MR BELL: And that fact that it was once removed is also emphasised by the fact that even if those inquiries had determined that – even if those inquiries had determined there was an interest that Stanley Ho held in Melco, that said nothing about the concern that the New South Wales government had about Stanley Ho getting an interest in Crown Resorts.

COMMISSIONER: Correct. Correct. That's one of the differences, and I think a lot of – well, not a lot of them, but some of the directors had said, well, we knew that Melco had been approved in previous probity checks and of course that was for a very different purpose.

MR BELL: Yes, quite so.

COMMISSIONER: Well, not very different, but a different purpose. Yes. Yes.

MR BELL: Now, certainly on the basis of Mr Jalland's evidence you would certainly find that Mr Jalland had constructive notice of the risk that entities associated with Stanley Ho may have had an interest in Melco International, but we would submit unless you found that he had actual notice into the kind of notice that Mr Johnston had, would not attribute his knowledge to Crown Resorts. So there would be an issue, Commissioner, for you to consider as to whether on the evidence

you would find that Mr Jalland had actual notice because that's the approach, at least, that those assisting the Inquiry have taken.

COMMISSIONER: Thank you.

MR BELL: Could I turn to attributing the knowledge of Mr Packer to Crown Resorts. Unlike Mr Johnston and Mr Jalland, Mr Packer didn't acquire his knowledge whilst acting as a director of CPH or CPH Crown, so it's not the company A, company B type situation. Rather he became aware of it in pursuit of his interests as a controlling shareholder of CPH and CPH Crown. The attribution rule that applies to Mr Johnston and Mr Jalland in the context of dual directorships therefore doesn't directly apply to Mr Packer although the duty to disclose concept remains relevant.

COMMISSIONER: Can I just ask you, in respect of that distinction, Mr Packer being the director of the ultimate holding company in the Bahamas, being the – is that why you put the position that you did in respect of the shareholding or not?

MR BELL: Well, just that the – in relation to Mr Johnston and Mr Jalland there is a competing conflicting duty as directors.

COMMISSIONER: Yes.

MR BELL: I'm just putting it for consideration that's not the situation with Mr Packer.

COMMISSIONER: Yes. I see.

MR BELL: Now, there are two other tests of attribution which I should refer to. Under the organic theory of attribution, it's possible to attribute knowledge obtained by a company's so-called directing mind and will to the company itself. That's based on the principle identified in Tesco Supermarkets v Nattrass. The directing mind and will of the company is usually its board collectively or otherwise its managing director or perhaps some other superior officer, however, this principle has been applied primarily in the criminal context, but it's application in a civil context in Australia has been doubted.

Apart from the organic theory, in Meridian Global Funds Management Asia Limited v Securities Commission, the Privy Council identified an alternative basis, knowledge attribution, which it called general rules of attribution found in principles of agency, specifically the knowledge acquired and actions performed by officers in the course of duties they were authorised by the company to undertake are deemed to be the knowledge and actions of the company itself. That's been accepted in Australian cases, for example, after doubting the directing mind and will concept in civil cases Justice Von Doussa said in Beach Petroleum NL v Johnson:

In seeking to attribute the knowledge and actions of a person to a company, the wider notions of the principles of agency should be applied where the issue is civil responsibility arising under the general rule.

Now, however, it's problematic to apply the agency concept in the context of attributing the knowledge of Crown Resorts' officers to the share sale agreement of Crown Resorts because Crown Resorts wasn't a party to the share sale agreement. It couldn't have authorised any officer to negotiate and execute the agreement and to obtain knowledge of that agreement on its behalf. Crown Resorts itself had no direct power, function, right or obligation under the agreement. The third alternative for attributing knowledge held by an individual officer to a company outside of the principles of organic theory and agency, and in circumstances where the director does not act as a director in multiple companies is where the officer acquires knowledge under such circumstances that it is his duty to communicate it.

This was endorsed in Re Chisholm Services and the Companies Act 1961; it's been accepted in other Australian and United Kingdom authorities. This alternative is co-extensive with the duty to disclose test that applies when assessing attribution in the context of knowledge acquired by a director who acts for multiple companies. So in assessing when the duty to disclose arises, resort could be had to the circumstances considered in the multiple director knowledge attribution concept. So for example, in LMI v Baulderstone, Justice Barrett referred to the prospect of harm alternative. He said:

It can be said at once that neither company automatically possesses the knowledge of each of its directors. At the same time, however, a director's knowledge may become the subject of positive duties owed by the director to the company. One such duty arises when a director is in possession of knowledge that a course of action the company has contemplated may, unbeknownst to the other directors and officers, expose the company to the prospect of harm.

So in practical terms it's the same kind of analysis that operates in relation to questions arising in relation to Mr Jalland and Mr Johnston. Now, in Mr Packer's case, of course, he knew about the existence of the share sale agreement. We submit that he also knew that the share sale agreement may expose Crown Resorts to the prospect of harm by breaching its obligations under the share sale agreement. In that regard, Mr Packer - - -

COMMISSIONER: Just pause there.

MR BELL: Yes.

COMMISSIONER: That is the object – I'm sorry, the prospect of harm, that is, Crown's prospect of harm by breaching its obligations – could you just say that again for me?

MR BELL: Yes. On the assumption that Mr Packer was a de facto director of Crown Resorts - - -

COMMISSIONER: Yes.

MR BELL: - - - we submit that he had an obligation to – I withdraw that. His knowledge can be attributed to Crown Resorts if you found that he had an obligation to disclose to Crown Resorts the fact that the share sale agreement was being entered into because he should have appreciated that there was a prospect of harm being suffered by Crown Resorts should that occur.

COMMISSIONER: What was the harm?

MR BELL: The harm was the breach of the regulatory agreements, the same harm - - -

COMMISSIONER: That's all right. You said breach of the share sale agreement and that's what threw me off your submissions.

MR BELL: My apologies.

COMMISSIONER: So it's the breach of the regulatory agreement. Yes, I do understand your submission. Yes.

MR BELL: Commissioner, Mr Packer said in his evidence that he knew that the New South Wales government had sensitivities about Stanley Ho or a Stanley Ho entity taking an interest in casinos in New South Wales, whether or not he had absorbed all the details of the terms of the Crown deed and the VIP agreement, he was aware in general terms there were New South Wales regulatory agreements which contained provisions – sorry, I withdraw that. He said that whether or not he had absorbed all the detail of the terms of the Crown deed, he was aware in general terms in 2013 that there was a New South Wales regulatory agreement which contained provisions intended to prevent entities associated with Stanley Ho from taking an interest in Crown Resorts.

He said that whether or not he had absorbed the detail of the VIP agreement he was aware in general terms in 2014 that regulatory agreements relating to the proposed Barangaroo casino contained provisions intended to prevent entities associated with Stanley Ho taking an interest in Crown Resorts. He said he gave no thought to those regulatory restrictions at the time that the share sale agreement was being negotiated. In Mr Packer's words:

> *I left it to my legal team, and I gave it no thought.*

He was aware at the time that he was co-chairman of Melco Resorts with Lawrence Ho in 2006, that Great Respect had an approximate 20 per cent shareholding in Melco International as the parent entity of Melco Resorts, and that Great Respect

was a company controlled by a discretionary trust, the beneficiaries of which included Stanley Ho. And likewise, he didn't turn his mind to that interest at the time when the share sale agreement was being negotiated. So Commissioner, if you accepted the proposition that he was a de facto director of Crown Resorts, it is in fact a far more simple exercise to attribute his knowledge to Crown Resorts having regard to what his admitted knowledge was. We submit there's a strong basis to attribute his knowledge of the share sale agreement to Crown Resorts if you find that he was a de facto director.

In terms of Mr Poynton's knowledge, clearly Mr Poynton wasn't the directing mind and will of Crown Resorts if that test operates. The same difficulty with the alternative agency basis applies to Mr Poynton as it did to Mr Packer. In relation to the duty to disclose attribution test, in his evidence to the Inquiry, Mr Poynton admitted he was aware that there were regulatory agreements in New South Wales which in general terms contained provisions intended to prevent entities associated with Stanley Ho taking an interest in Crown Resorts, however, he denied having any knowledge that Stanley Ho or entities associated with him had an interest in Melco International or Melco Resorts. And if you accept that evidence from him, and we don't submit that you should not, on that basis we submit that it couldn't be concluded that Mr Poynton knew the share sale agreement might be relevant or important or expose Crown Resorts to the prospect of harm such that his knowledge could be attributed to Crown Resorts.

COMMISSIONER: Just on the position of Mr Johnston, for instance - - -

MR BELL: Yes.

COMMISSIONER: - - - he's a director of Crown Resorts at the time and assume that he's aware that the government had taken all these very careful steps to prevent Mr Stanley Ho or his associates from having any interest in Crown, and assume that he knows that at least at some stage there was an interest by Mr Stanley Ho or an associate in Melco. Irrespective of the attribution argument, and just standing alone as a director of Crown with the knowledge that there is a requirement on Crown to do whatever it can within its power to prevent such an acquisition, the position of Mr Johnston, if those circumstances – and/or Mr Jalland, if those circumstances pertain is that they had an obligation to prevent Crown – it was within Crown's power to conclude that transaction. Correct?

MR BELL: That is correct. The only complication in relation to Mr Johnston and Mr Jalland is that they acquired the knowledge of the share sale agreement, not in their capacity as directors of Crown Resorts, but because they were acting on behalf of CPH, CPH Crown, but in practical terms we submit it makes no difference because ultimately it's the same test of the prospect of harm that applies to them as it would if they were not a director of CPH.

COMMISSIONER: Yes, yes. And Ms Coonan said "we should have been told", but that is perhaps an expression more of frustration and a situation than analysis that

you've done but in the circumstances of Mr Johnston and Mr Jalland, in particular, knowing the full detail of it and the exposure to Melco and to obviously discussions between Mr Winkler and Mr Jalland, it heightens the circumstances that I will have to consider, no doubt.

MR BELL: If you found on the facts that Mr Johnston and Mr Jalland knew that there was a prospect of harm to Crown Resorts by the entering into this agreement, that would be enough, actually knew there was a prospect of harm, that would be enough to attribute their knowledge to Crown.

COMMISSIONER: What about if they should have known?

MR BELL: If they should have known then that is not so much a question of attribution but a question of whether they properly performed their duties as a director.

COMMISSIONER: Yes, all right. Yes, thank you, Mr Bell. I'm sorry to interrupt.

MR BELL: So if one gets to the point of attributing the knowledge of one or more of those individuals to Crown Resorts, what could Crown Resorts have done to prevent the breach. Even if Crown Resorts was aware of the existence of the share sale agreement, it is significant that Crown Resorts wasn't a party to the share sale agreement and because it wasn't a party there are limits to what Crown Resorts could reasonably have done in complying with its obligations under the relevant clause. However, whilst Crown Resorts may not have been able to absolutely prevent the share sale agreement from being executed, that's not the correct question. The question was whether it was in Crown Resorts' power to take reasonable steps – could they have taken reasonable steps that might prevent the share sale agreement from being completed.

Now, we submit that on the basis of the knowledge of the share sale agreement and the – by Mr Johnston and Mr Packer at least, and the attribution of that knowledge to Crown Resorts it's possible that Crown Resorts acting through its board collectively could have taken steps to prevent the share sale agreement being executed. In his evidence to the Inquiry Mr Dixon was adamant that he and the other independent directors of Crown Resorts had done all they could straightaway to ensure Crown Resorts didn't breach the relevant clause. So what could Crown Resorts have done. Certainly, it could have sought to persuade CPH, CPH Crown and Melco not to proceed with the share sale agreement given that it would result in a breach of the regulatory agreements that might ultimately have caused the Authority to revoke the licence, an outcome adverse to the entire group.

Even if CPH, CPH Crown and Melco Resorts insisted on proceeding with the share sale agreement, Crown Resorts could have sought to persuade those entities to effect a share divestiture so that Great Respect no longer had an interest in Melco Resorts and therefore Crown Resorts under the share sale agreement. The potential for Crown Resorts to use its persuasive influence in pursuit of that outcome was

accepted by Ms Coonan in her evidence to the Inquiry. Indeed, Ms Coonan indicated that in board discussions after the share sale agreement was entered into at which point the entire Crown board had knowledge of the existence of the share sale agreement, the potential for the agreement to be modified, including by way of share divestiture or restructure was raised because, so she said, it became a matter of certainly comment that Mr Stanley Ho was roped into it.

Even if efforts to persuade CPH, CPH Crown and Melco Resorts to either not proceed with the share sale agreement or not effect a share divestiture of Great Respect's interest came to no avail, Mr Alexander's evidence to the Inquiry revealed another step that it was within Crown Resorts' power to take which might have prevented or delayed the share sale agreement. Mr Alexander said that had he personally known about the intention for the share sale agreement to be executed he would have recommended we cease all information to protect Crown, that is, no further financial or other information would have been provided to Mr Packer pursuant to the controlling shareholder protocol because of the risk the information would be used to inform the transactions contemplated by the share sale agreement.

Ms Korsanos also agreed that Crown Resorts may have taken steps to prohibit or at least control the flow of information about Crown Resorts to Mr Packer if it was aware that the share sale was about to occur. And although it was denied by Mr Alexander, if that information flow had ceased it may have held up the sale of shares in Melco Resorts because Mr Packer would no longer have had significant information to inform the price and timing considerations material to the transaction. Even if it wouldn't definitely have prevented the share sale agreement from being executed at all, ceasing to provide any information to Mr Packer under the protocol may therefore be seen as another step Crown Resorts could have taken to comply with its obligations under the relevant clause by doing everything within its power to at least attempt to prevent the sale.

So on the basis of those matters, we submit there is a good basis for concluding that Crown Resorts breached the relevant clause in failing to take all reasonable steps within its power to prevent the share sale agreement being executed, and Great Respect thereby obtaining an indirect interest in Crown Resorts upon becoming aware, as it should be taken to have become aware, that the share sale agreement was being negotiated based upon the attribution of the knowledge held, in particular, by Mr Johnston and Mr Packer.

Can I turn to the question of breach of the licence itself, because that's also a matter that's required to be considered under the Terms of Reference. Subsection 35(2) of the Casino Control Act incorporates, as conditions of the licence obligations for the licensee, among other things, to ensure that a major change in the licensee's state of affairs which is within the licensee's power to prevent does not occur without the prior approval in writing of the Authority, and to notify the Authority in writing of the likelihood of any such major change which is not within the licensee's power occurring as soon as practicable after becoming aware of the likelihood of change.

It's not certain at all that the share sale agreement gave rise to a major change within the meaning of subsection 35(1), specifically a change in the licensee's state of affairs which resulted in one or more persons becoming a close associate – that's not a matter that was investigated during the course of the Inquiry – but even if the share sale agreement did result in a major change, necessarily, the licensee could only have breached section 35(2)(a) or 35(2)(b) if it was aware of the negotiation and impending execution of the share sale agreement.

Now, that then brings into play the attribution rules during the period that the share sale agreement was negotiated. The appointed directors of the licensee were Mr Barton, Ms Manos and Mr Alexander. As noted, Ms Manos and Mr Alexander informed the Inquiry that they only became aware of the share sale agreement after it was executed, and that was also Mr Barton's evidence. Furthermore, there was no evidence provided to the Inquiry that Mr Poynton, Mr Johnston, Mr Jalland and Mr Packer acted as de facto or shadow directors of the licensee at any time, so there's no basis for attributing their knowledge of the share sale agreement prior to the execution of the licence. So we don't make a submission that the licence itself was breached. Instead, we make the submission that the regulatory agreements, the VIP agreements and the Crown deed were breached.

Now, I've so far been dealing with a number of technical matters in connection with the breach of the regulatory agreements, but there is a wider and more fundamental matter of suitability which we submit ought to be considered here.

COMMISSIONER: In respect of the Melco transaction?

MR BELL: Yes.

COMMISSIONER: Yes.

MR BELL: What occurred in relation to the share sale agreement and, specifically, the practices within the Crown Resorts group and the conduct of its most influential officers that allowed the share sale agreement to be negotiated without informing the collective board of Crown Resorts, we submit is also of relevance to the suitability review caught by paragraph 16(a) and (b) of the amended Terms of Reference. We submit, as we have submitted, that suitability ought to be assessed with regard to the factors in subsection 13A(2) of the Casino Control Act and, in particular, 13A(2)(a), whether a particular entity, being, for the purpose of this Inquiry, Crown Resorts and the licensee is of good repute with regard to character, honesty and integrity. And it's also been submitted that you should have regard to the approach in New Jersey and Massachusetts authorities which emphasise the need to assess the suitability of the corporate entity with reference to those who manage or meaningfully influence its affairs, including its directors, senior management and controlling shareholders.

Now, we submit that the conduct and behaviour of Mr Johnston and Mr Jalland, as appointed directors of Crown Resorts, CPH, and also CPH Crown, in Mr Johnston's case, as well as Mr Packer, as a de facto director of Crown Resorts, is particularly

important given the level of influence and control they had over the negotiation of the share sale agreement and other significant matters material to the operation and the affairs of Crown Resorts on a day-to-day basis. We submit it's clear from the evidence that Mr Johnston, Mr Jalland and Mr Packer failed to turn their minds for a moment to the adverse impact the share sale agreement might have on Crown Resorts, an entity to which they owed statutory and fiduciary duties and the risk that the execution of that agreement posed to Crown Resorts of breaching its obligations under major regulatory agreements.

In the case of Mr Johnston and Mr Packer, they knew of the existence of the regulatory agreements and that they contained provisions intended to prevent Stanley Ho from obtaining an interest. They knew of the risk that Stanley Ho may have continued to have been connected with Melco Resorts, and yet they simply ignored those matters when negotiating the share sale agreement for the financial benefit of CPH, CPH Crown and Mr Packer.

In Mr Johnston's case, he was guided only by his admitted complete loyalty to Mr Packer. That loyalty motivated Mr Johnston to facilitate the provision of sensitive financial forecasts concerning Crown Resorts to Mr Packer and suggested revisions of those forecasts that would make the future prospects of Crown Resorts appear more optimistic and, therefore, more attractive as an investment. In Mr Jalland's case, while he said that he was not aware of the risk of a connection between Mr Stanley Ho and Melco Resorts, in relation to this wider question of suitability, the point is that he didn't bother to find out either. He also failed to read corporate reports and records put before him that would have made the connection immediately apparent. So even if that's not sufficient to attribute his knowledge to Crown Resorts, it is sufficient, we submit, to reveal a clear corporate governance deficiency within the Crown Resorts group, the failure of key officers to take an active interest in the affairs of the entities they are appointed to and to ensure, even though they might be representatives of a controlling shareholder on the board, that they didn't allow the interests of the appointor to prevail over their duties to the company itself.

Another example of the failure of Mr Johnston and Mr Jalland to consider the interests of Crown Resorts was the manner in which they chose to convey the confidential information to Melco Resorts by creating a trust structure which exposed Crown Resorts to a risk as a beneficiary without considering for a moment whether they should inform Crown Resorts or seek its consent. And, in our submission, it is significant to contrast the conduct of Mr Johnston, Mr Jalland and Mr Packer to that of the Crown Resorts independent directors. Less than 24 hours after finally becoming aware of the share sale agreement following its execution, independent directors wanted to hold a separate meeting from CPH representatives to understand the potential ramifications of the Melco transaction. By that time, a number of them had appreciated that the conduct of CPH Crown had exposed Crown Resorts to the risk of breach of the regulatory agreements, a matter which apparently didn't occur to Mr Johnston, Mr Packer and Mr Jalland over a month of negotiations of that agreement.

We submit that you should find that Mr Jalland and Mr Johnston and Mr Packer, should you find him to be a de facto director, failed, without justifiable reasons, to ensure that Stanley Ho or a Stanley Ho associate didn't acquire a direct interest in Crown Resorts. We submit that the negotiation and execution of the share sale agreement, which I've gone through in some detail, reflects a culture where Crown Resorts allowed itself to be dominated by a single interest group, that represented by CPH Crown, CPH and, ultimately, Mr Packer.

COMMISSIONER: I suppose the actual establishment of that trust, albeit it was obviously on legal advice, but it just goes along with the other conduct that they saw it as appropriate for themselves to do, to establish the trust on Crown's behalf without informing Crown. Of course, there's that irony that if you say that they had the knowledge attributable to Crown, if they were there, then you could say that Crown knew because of their own position, but putting that technical argument to one side. It is a most odd situation that, once that discussion about the trust occurred and the suggestion of a protection of harm – from harm in Crown, that someone wouldn't have said, "We've got to look after Crown here and, actually, we should think about this a bit deeper." But each of them, I think, from what I can gather, was concerned – Mr Packer was very keen, after the Wynn transaction fell over, to take this on. And it may have been, as I discussed with Mr Packer, that they were supporting him to try and get him into a position where he could divest himself of the 20 percent or 19.99 percent in the circumstances where Wynn had fallen over only weeks before. But that was a sale – that was a takeover bid, wasn't it?

MR BELL: That was a takeover bid - - -

COMMISSIONER: Yes.

MR BELL: - - - which the whole board was aware of. I think it was a scheme of arrangement that was under consideration.

COMMISSIONER: Yes. Thank you.

MR BELL: But turning to the provision of confidential information, it's symptomatic of a mindset where the CPH nominees felt they could provide Crown Resorts confidential information to Melco for a transaction which benefits CPH without, even for a moment, considering whether they should consult with their colleagues on the board of Crown Resorts.

COMMISSIONER: Yes. I understand.

MR BELL: And we submit that the – at its – in terms of its wider implications, this transaction reflects adversely on the suitability. Could I turn to deal with the final topic I wanted to address, which is the issue of how one might deal unsuitability in relation to the impact of CPH – the adverse impact, we submit, of CPH on Crown Resorts. Ms Sharp SC will deal with other aspects of addressing how unsuitability might be rectified. Before we make submissions on proposals to address the

influence of CPH, it's necessary to consider the relevant legislative framework and the suite of regulatory agreements that were in place between the State, the Authority, Crown Resorts and CPH which were entered into at the time the licence was issued in July 2014.

In terms of the legislative framework, under section 18, subsection (2) of the Casino Control Act, the Authority may grant a casino licence subject to any conditions it thinks fit. Under section 20 of the Casino Control Act, a casino licence remains in force for the period for which it's granted unless it's sooner cancelled or surrendered under that Act. The licence for the Barangaroo restricted gaming facility has a term of 99 years from 8 July 2014.

Section 21 of the Casino Control Act provides that a casino licence is a statutory privilege and confers no property rights upon the licensee. In relation to the licence with which we're concerned, I will just refer to it as "the licence", section 22 subsection (2A) of the Casino Control Act states the conditions of the licence may only be amended with the licensee's agreement. However, section 23(1)(c) of the Act indicates that the term or conditions of the licence may be amended without the licensee's consent if the amendment takes the form of disciplinary action. Section 22, subsection (6) of the Casino Control Act also states that section 22 doesn't apply to conditions – licence conditions – imposed by the Casino Control Act itself, and they include, for example, in subsection 22A terms prohibiting gaming before the 15th of November 2019, the use of poker machines and certain proscribed low-level gaming.

In terms of the disciplinary provisions of the Casino Control Act, it's section 23 that addresses that issue. In section 23, subsection (1) of the Casino Control Act, the Authority may take the following disciplinary action: (a) cancellation or suspension of the licence; (b) the imposition on the licensee of a penalty of up to $1 million; (c) the amendment of the terms or conditions of the licence, other than under section 22; or (d) the issue of a letter of censure to the licensee. Section 23, subsection (1) also includes the grounds for disciplinary action on which the Authority may rely. Those grounds include (a) the casino licence will be properly obtained; (b) the casino operator, a person in charge of the casino, an agent of the casino operator or employee of the casino has contravened a provision of the Casino Control Act or a condition of the licence; (c) the casino premises are, for specified reasons, no longer suitable for the conduct of casino operations; (d) the licensee is, for specified reasons, considered to be no longer a suitable person to give effect to the licence under the Casino Control Act; or (e) for specified reasons, it's considered to be no longer in the public interest that the licence should remain in force.

Against that background of actions and grounds to initiate the disciplinary process, under section 23, subsection (2) of the Casino Control Act, the Authority may serve upon the licensee a notice in writing affording the licensee the opportunity to show cause within 14 days why disciplinary action should not be taken against the licensee on grounds for disciplinary action specified in the notice.

COMMISSIONER: So disciplinary action is, in fact, a matter that is subject of the Terms of Reference, that is, the suitability.

MR BELL: Yes.

COMMISSIONER: So if there were to be an answer to the question posed in the Inquiry in the negative, that it's no longer suitable, then that would, on one view of it, should there be a view taken that it's appropriate that it was – it falls under 23(d) as a discretionary matter for the Authority to take disciplinary action.

MR BELL: That's so; it would engage the disciplinary provisions of the Casino Control Act.

COMMISSIONER: Yes, I see.

MR BELL: Now, under – just doing the section 23. Under section 23, subsection (3), the licensee may, within the time specified by the notice, make arrangements with the Authority for the making of relevant submissions. Under section 23, subsection (4), the Authority, on the receipt of any response or submissions from the licensee, may then decide that it's appropriate that certain disciplinary action be taken, either by taking disciplinary action through giving written notice to the licensee or, as an alternative to taking disciplinary action, take action under section 24 of the Act. Under section 24, subsection (1) of the Act, as an alternative to taking disciplinary action under section 23, the Authority may direct the operator to take specified action within a specified period of time to rectify the matter which constitutes the ground for disciplinary action. Under section 24, subsection (2), if the casino operator fails to take the specified action within the specified time, the Authority may then proceed to take relevant disciplinary action under section 23 by giving notice to the operator.

So in terms of the legislation, it's open to the Authority, under section 23, subsection (1)(c), to amend the terms and conditions of the licence by way of disciplinary action if the Authority decided that the licensee was, for specified reasons, considered to be no longer a suitable person to give effect to the licence and the Act. However, Commissioner, the position, at least in relation to proposed amendment of licence conditions under section 23(1)(c), is a disciplinary measure complicated by the regulatory agreements entered into at the time that the licences issued and a Ministerial direction to the Authority made under section 5A of the Act pursuant to those agreements.

The regulatory agreements are detailed and complicated, but the overall theme is to give, on the assumption of continued suitability, a degree of regulatory and financial certainty to the various parties. Five of the agreements are of particular relevance to the situation where the Authority may well decide to take disciplinary action against the licensee. These are the amended and restated framework agreement between the State of New South Wales, Crown Resorts, the licensee, Crown Sydney Property Proprietary Limited and Crown Sydney Holdings dated the 7th of July 2014; the

State Crown financial deed between the State of New South Wales, the Authority, Crown Resorts, the licensee, Crown Sydney Holdings Proprietary Limited and Crown Sydney Property, dated the 8th of July 2014; the financial arrangements agreement between the Authority, the Minister for Hospitality, Gaming and Racing and the licensee, dated the 8th of July 2014; the VIP gaming management agreement, once again, between the Authority, Crown Resorts, the licensee, Crown Sydney Property Proprietary Limited and Crown Sydney Holdings, dated the 8th of July 2014; the CPH group deed between the Authority and CPH dated the 8th of July 2014.

So dealing first with the amended and restated framework agreement, the Authority is not a party to that agreement. The State undertook that it would cause the relevant Minister to give a direction to the Authority that if it determined to grant a licence under section 18 of the Casino Control Act, the Authority was to include all but only the matters directed by the Minister as terms and conditions of the licence; that is called the first direction. That direction was given by the relevant Minister pursuant to section 5A of the Casino Control Act in July 2014.

The State also undertook that it would cause the relevant Minister to give a second direction to the Authority that it must not exercise the power in section 23(1)(c) of the Casino Control Act such that (a) it has the effect of amending any of the terms and conditions of the licence as granted in accordance with the first direction; or (b) it is inconsistent with the conditions of the licence. And I will refer to that as the second direction; that's the way it's described in that agreement.

The second direction was in fact given by the Minister on 8 July 2014. The rights and obligations of the parties under this agreement end on the date that VIP gaming commences in accordance with the licence. An issue may arise as to whether the licensee's protection from disciplinary action under section 23(1)(c) by reason of the second direction is a right under that agreement. If the agreement comes to an end by reason of the commencement of VIP gaming and if the licensee's protection from such disciplinary action is a right, there is an issue as to whether that right comes to an end at that time.

COMMISSIONER: It's interesting to hear you describe the second direction. I suppose it's – so long as the power be exercised – let's assume that unsuitability is found in a licensee and the Authority takes the view that the disciplinary action should be taken for the purpose of amending the licence. That second direction presumably would not prevent the Authority from imposing an amendment to the licence so long as that amendment as planned was not inconsistent with the terms that had been granted in the original licence.

MR BELL: That may be right.

COMMISSIONER: And so it seems that it is a reported fetter on the power of the Authority, but with a carve-out that it would allow – if this is right, it would allow

the operation of the disciplinary process but would not permit it to impose a condition that was inconsistent – what were the other words?

MR BELL: Well, it's expressed broadly that it must not exercise the power in section 23(1)(c), that is the amendment power, on disciplinary grounds if it has the effect of amending any of the terms and conditions of the licence as granted, or it's inconsistent with the conditions of the licence.

COMMISSIONER: I see. Yes. Yes. So if you – in other words, if you leave the conditions as they are as granted, but you create a new condition, so long as that condition is not inconsistent with those that have been granted, you might slip through.

MR BELL: Yes, although one would have thought the purpose of taking disciplinary action to amend the terms would be to create some new obligations upon the licensee.

COMMISSIONER: Yes, it's odd. Yes, it's very strange. Yes, thank you.

MR BELL: There's an issue as to whether the parties intended that be a fetter on the Authority's power under section 23(1)(c) if valid was intended only until gaming operations commenced. The alternative of the second direction being in place for 99 years may seem untenable in the circumstances and there's a question as to the validity of the second direction. Section 5A of the Casino Control Act enables the relevant Minister to give directions to the Authority in relation to the granting of a restricted gaming licence, including directions in relation to the terms and conditions of the licence. The second direction was not a direction in relation to the grant of the licence; rather, it was purporting to prohibit the Authority from exercising a power under the Casino Control Act to take disciplinary action in the form of an amendment to the licence already granted where, for example, it considered the licensee was no longer suitable to give effect to the licence.

So it's submitted there is an issue which arises as to whether the second direction was valid. On one view, it purports to go beyond any action permitted under section 5A, subsection (1) of the Act with respect to directions in relation to the granting of a licence and the terms and conditions of the licence. The issue may arise as to whether, in purporting to fetter the disciplinary power of the regulator, such a direction was ultra vires.

COMMISSIONER: Yes.

MR BELL: That would, of course, be a matter for judicial consideration and determination, and it may be appropriate for the Inquiry or the Authority to notify the Solicitor General.

COMMISSIONER: Well, that would be a matter that would only arise if that was relevant to consider - - -

MR BELL: Yes.

COMMISSIONER: Yes.

MR BELL: And it would only arise if one was contemplating amendments to the terms and conditions of the licence because there are other disciplinary measures available under section 23 which I will - - -

COMMISSIONER: I suppose it would only arise if, in considering the answer to question 16(c) it were to be recommended that certain things happen by way of amendment, let's assume, and then it may trigger that issue.

MR BELL: Yes.

COMMISSIONER: And then it's only a matter of reporting upon it, and in reporting upon it, a matter that would be incidental to that would be a need to indicate to the Authority that, on one view of it, it may be a question of power, that is, an ultra vires question and the Solicitor General point that you raise. Yes, I understand.

MR BELL: Yes. If I could turn to the State Crown financial deed. By clause 15.4(j)(i) of the State Crown financial deed in a provision related to tax regime and levies, the State undertakes not without the licensee's consent to amend the terms of the licence or to enact any new or amended legislation or regulations, take any other action which has the effect of amending the terms of the licence which could materially adversely affect the financial performance of the hotel resort. It's not clear whether this provision could validly fetter Parliament, whether it could validly fetter the Authority's power to take disciplinary action under the Casino Control Act, or whether it's intended to operate beyond the subject matter of tax regime and levies, but it is another provision that would need to be considered in the context of the Authority taking disciplinary action that involved amending the terms and conditions of the licence.

COMMISSIONER: It's interesting that you raise that because when I discussed that with Mr Packer – not that particular aspect of it, but when I discussed with him whether he had seen such legislation and it was rather remarkable, he focused on that, that it was a tax and superannuation, etcetera, as opposed to a general fetter on power.

MR BELL: Yes, and one could understand it having that purpose.

COMMISSIONER: Yes.

MR BELL: But in terms it's not expressed in that so there's an issue of construction that arises.

COMMISSIONER: Yes, I understand.

MR BELL: And then furthermore, clause 5 of the State Crown Financial Deed in combination with annexure 1 puts in place a compensation regime in Crown Resorts' favour in circumstances where certain trigger events are engaged. Clause 1B(3) of annexure 1 creates a trigger event if the State or the Authority takes any action which has the effect of changing any terms of the licence. Again, it's not clear whether this is intended to operate in circumstances where the Authority amends the terms of the licence by way of disciplinary action. It would, however, be grotesque if the Authority took steps to amend the terms of the licence by way of disciplinary action against the licensee, and that very act exposed the taxpayers of this State to claims for compensation by the entity being disciplined.

COMMISSIONER: Yes.

MR BELL: Clause 1A of annexure 1 gives rise to a trigger event should the Authority take any action that has the effect of cancelling the licence, however, carved out within that clause so that it is not a triggered event is the ability of the Authority to take disciplinary action in the form of, in effect, a revocation or termination of the licence under section 23(1) of the Casino Control Act and in such an instance no compensation would be payable by the State. Revocation as a concept may be temporary or permanent, capable of encompassing both cancellation and suspension to both disciplinary actions contemplated and permitted by section 23(1)(a) of the Casino Control Act.

Moreover, the exclusion of termination of the licence on disciplinary grounds as a trigger event can be taken to exclude the lesser measure of suspension. That measure is embraced by the concept of revocation as well. For the reasons mentioned previously about clause 1B(3) directed specifically at amendment, amendment of the licence as a disciplinary measure is more complex and faces these other natural hurdles. This suggests that a pathway which may be available to the Authority to take disciplinary action which doesn't contravene the direction by the Minister, nor expose the State to compensation, is either cancellation or suspension of the licence.

Nextly, I need to refer to the financial arrangements agreement. In that agreement the licensee provides certain tax guarantees for the Authority and the State. This includes bank guarantees to support the various tax guarantees. Clause 11 has the effect that if the licence expires or is cancelled, surrendered or terminated, the financial arrangements agreement itself terminates and the parties are released from their obligations, however, suspension of the licence is not a termination trigger of the financial arrangements agreement, and the concept of suspension is not mentioned in the clause.

Nextly, the VIP gaming management agreement. With respect to the VIP gaming management agreement, clause 14 provides that the Authority is to engage with the licensee in the consultation process in the event the Authority forms the view that the licensee is no longer a suitable person. Steps and procedures included in that clause guiding the consultation process and allowing the licensee the opportunity to rectify the issues, founding the Authority's concerns regarding the licensee's suitability.

The upshot of clause 14 may well be that the consultation process would need to be engaged before the Authority can take any disciplinary action under the Act.

COMMISSIONER: It seems that way.

MR BELL: It does.

COMMISSIONER: And so if one reported unsuitability, but in considering how to convert to suitability, whatever might be said, that process in that clause that you've just referred to seems to be a prerequisite to any steps that the Authority might take.

MR BELL: Yes.

COMMISSIONER: Is that right?

MR BELL: The parties have contemplated a process of constructive engagement to occur.

COMMISSIONER: Yes. You can understand that, in the circumstances.

MR BELL: Yes. So if the Authority forms the view that the rectification steps have not been fully implemented with the relevant rectification period – within the relevant rectification period, then clause 14 allows the Authority to then take disciplinary action under section 23. Finally, I need to refer to the CPH Group deed. Clause 17 of the CPH Group deed provides that CPH can terminate the deed if CPH or any of its holding companies cease to have voting power in Crown Resorts of more than 10 per cent. The clause also provides for the suspension of the substantive terms of the deed if certain events occur. These events all relate to CPHs voting power within Crown or of CPHs ability to influence both the Crown board and the operations of the licensee in Sydney.

If the deed is terminated, CPH is released from its obligations arising under that deed. The practical consequences that flow from that would need to be considered by the Authority. It may only currently apply to operating and maintenance agreements between CPH and Crown, and the restriction on CPH acquiring a certain level of securities in Echo Entertainment Group may already be spent. Moreover, at first glance, clause 9.3 of the deed seems relevant. It provides in effect that the Authority is not entitled to direct or require CPH or any other CPH group member to procure the disposal, directly or indirectly, of any shares in Crown Resorts which are held by any CPH group member. However, that clause is not ambulatory, and the better view seems to be it ought not to be read as a general prohibition on the Authority requiring CPH to dispose of shares in Crown Resorts

The clause needs to be read in its context under clause 9 which is an events of default provision. Clause 9.3 is in terms clarificatory, it's for the avoidance of doubt. The doubt it's calculated to avoid is that potentially raised under clause 9.2 which

requires CPH to comply with the Authority's reasonable requirements if it has committed an event of default.

COMMISSIONER: Because that deed was entered into as a result of the application for the Barangaroo licence, and the fact that CPH and CPH close associates had to be approved by the Authority to be close associates of the Barangaroo licensee, as I understand it.

MR BELL: That's right. Commissioner, you may recall me directing questions to Mr Jalland and Mr Johnston about the execution of that agreement and its purpose being to achieve the Authority's approval to CPH associates as close associates of the licensee.

COMMISSIONER: Yes. Thank you.

MR BELL: So with that background, it's clear that the contractual framework overlaying the legislation is far from straightforward.

COMMISSIONER: Yes.

MR BELL: It may never need to be engaged if Crown Resorts, the licensee and CPH engage constructively with the Authority, for example, in the consultation process contemplated under the VIP agreement. However, should unsuitability be ongoing, one option may be for the Authority to suspend the licence, coupled with conditions as to suitability that, if satisfied, would bring suspension to an end. The option of suspending the licence is a recognised form of disciplinary action under section 23(1)(a) of the Act. Further, the permitted grounds for taking that action include a situation recognised under section 23(1)(d) whereby a licensee is, for specified reasons, considered to be no longer a suitable person in respect of the licence.

COMMISSIONER: But in this instance, I suppose, the terms of reference require me to look at subparagraph (c) of 16 which, really, to put the burden really where it should be, I should be looking at Mr Hutley and Mr Batrouney's clients to tell me the answer to that question on the assumption, as I said some days ago, perhaps weeks, what is it that might, in circumstances, be the answer to that question.

MR BELL: Yes.

COMMISSIONER: It's not a search in the dark; it's in fact to be informed by those parties who are relevantly parties to the contractual arrangements between the State and the Authority to propose those things, I would have thought.

MR BELL: Quite. Quite. Our submissions are merely addressed to identifying the relevant contractual regimes and some complexities that arise under it.

COMMISSIONER: Yes. Thank you.

MR BELL: So the option of suspending the licence would not engage any trigger event. Annexure 1 of the State Crown financial deed. Of course, we say that the action of suspending the licence falls within the carve-out included in clause 1(a) of annexure 1 because suspension is in effect a form of temporary revocation. Another option that is available to the Authority having regard to the regulatory agreements is cancelling the licence. That option is a recognised form of disciplinary action under section 23(1)(a). Further, the permitted grounds for taking that action include a situation recognised under section 23(1)(d) whereby a licensee is for specified reasons considered to be no longer a suitable person to give effect to the licence. The step of cancelling the licence wouldn't engage a trigger event under annexure 1 of the State Crown financial deed and that's because the action of cancelling the licence on disciplinary grounds in accordance with section 23(1) is specifically carved-out.

However, the act of cancellation would lead to an end of the tax guarantees under the financial arrangements agreement. So with that background of the legislative and contractual framework, could I briefly turn to the identification of measures which may assist in addressing unsuitability of Crown Resorts and the licensee by reason of the influence of CPH. We submit that there is wisdom in the imposition of shareholding caps subject to the approval of the Authority such as are in place in the constitution of the Star Entertainment Group Limited.

COMMISSIONER: This is something Mr Packer raised.

MR BELL: Yes. Now, that is a long-term measure and minds may differ as to the utility or appropriateness of that measure in relation to Crown Resorts. There are, however, measures which could address the influence of CPH whilst it retains its present shareholding in Crown Resorts. The simplest way for that to be achieved would be by way of enforceable undertakings by CPH and we're putting these proposals in general terms for further consideration. First, that CPH and any person with whom CPH is associated not be permitted to exercise more than 10 per cent of their voting power in Crown Resorts. Secondly, that no more than one director of Crown Resorts or any subsidiary of Crown Resorts may be a CPH associate or a nominee of CPH or any CPH associate.

Thirdly, that neither the licensee nor Crown Resorts may enter into any agreement or arrangement under which CPH or any person with whom CPH is associated, including Mr James Packer, are provided with confidential and material non-public information regarding the licensee. Now, these proposals would plainly require further refinement and consideration. I submit it for consideration to address the problems and issues which have emerged in the evidence of the Inquiry whereby the direct and indirect control and influence of CPH, CPH nominee directors, and Mr Packer, in our submission, have contributed to failures and shortcomings in Crown Resorts' corporate governance. Those are my submissions.

COMMISSIONER: Yes, and thank you. In respect of that last aspect of it, that is helpful to give to both CPH and Crown an outline of the proposal which may or may not ever have to be considered, but at least thank you very much, Mr Bell. Seeing as

it's 20 past 1, I think I will adjourn until quarter past 2. Mr Hutley, you are there now. Yes, you are appearing now?

MR HUTLEY: Yes, Madam Commissioner. Can I say, we haven't troubled anybody because we can hear, but you've been frozen for the last hour or so, so there's a failure in the system of some variety, but it wasn't – but I didn't want to interrupt – we didn't want to interrupt the flow of the submissions. All it indicates is if something is wrong it could get worse.

COMMISSIONER: Thank you very much, Mr Hutley, for that indication, and I will see you, I hope, in some form, frozen or otherwise, at quarter past 2.

MR HUTLEY: I'm sorry, it's you, Madam Commissioner, who is frozen. Apparently, I'm mobile.

ADJOURNED **[1.21 pm]**

RESUMED **[2.25 pm]**

COMMISSIONER: Yes. All right. We can convert now to a public hearing. Thank you very much.

MS SHARP: Commissioner, we will now address you on part 2 on counsel assisting's closing submissions.

COMMISSIONER: Thank you, Ms Sharp.

MS SHARP: Part 2 deals with the media allegations other than those in relation to the China arrests.

COMMISSIONER: Yes.

MS SHARP: That is, part 2 deals with the media allegations about junkets, about visas and about money laundering. We will firstly deal with the allegations and then make submissions to you about what implications they have for the suitability of the Barangaroo licensee and Crown Resorts. I should indicate that it is intended to circulate written submissions on part 2 prior to the weekend.

COMMISSIONER: Part 2 being?

MS SHARP: Part 2 being the media allegations other than the China arrests.

COMMISSIONER: Thank you.

MR HUTLEY: Madam Commissioner, before my learned friend commences - - -

COMMISSIONER: Yes.

MR HUTLEY: - - - we were – just because of the matter she just adverted to, we are preparing for our oral address starting as early as we can – as I said – indicated on Wednesday next week. We're not going to be able to bring into existence written submissions in time for that because there's just a logistical problem of getting that ready. We would propose – I was going to indicate that whilst I will address orally, that will be followed by a written submission at some sometime thereafter. It also probably in the light of what's put by Mr Young on behalf of the licensee and Crown Resorts because it's, in effect, the logical order to an extent that has been swapped here, as you would appreciate. We make no criticism in that regard.

But I just – having regard to what my learned friend just indicated, we will not – we will seek to deal with the oral submissions that are made by counsel in the time allowed. I'm not sure we're going to be in a position to address the written submission just because of the timing in which they come other than by our written document which we would propose to deliver after my oral address, if that would - - -

COMMISSIONER: I think if you – yes. Well, thank you very much for that indication, Mr Hutley. I'm most grateful, and we will see what happens and whether you can or can't and you can let me know when you receive whatever document you receive. Before you arrived today, I was having some discussions – I'm sorry to interrupt, Ms Sharp – I was having some discussions with each of the representatives in relation to some issues that I thought might have been not in issue.

MR HUTLEY: Yes.

COMMISSIONER: What I would appreciate, obviously, is that if there aren't issues about aspects that have been raised – I mean, for instance, we will get to it, but there are many aspects I would have thought that could be the subject of accepting that it's not in issue that things happened, and that may be an indication at the outset of your submissions, for instance, aspects of dealing with junkets. Take for example Ms Sharp's segment, whether Crown, in particular Mr Whitwell, accepts that there wasn't a robust due diligence process. I mean, that seems to have been accepted by some and so rather than have days of addressing each other and dealing with it, it would be most helpful if I could hear from counsel as to whether what really is in issue because it does seem that the problems that have been identified are the problems that have been identified.

Whether that converts into unsuitability is a matter that you want – possibly want to address me on, or alternatively that it is unsuitable but that you can convert and you can convert this way, but I think we need to get to the core of this and as quickly as possible having regard to what is happening around us. So if I could just ask that

that happen as best you can. If you can't I understand, we will just keep going. Yes, Mr Hutley.

MR HUTLEY: I understand. Can I just address it shortly. I appreciate – I don't want to trample on my learned friend's submissions. We certainly will avoid anything which is not seriously in contention. We have no desire to waste anyone's time in that regard. However, we do – levels of generality in characterising flaws can of themselves cause difficulties. It is – for example, to take the example you've just given - - -

COMMISSIONER: Yes.

MR HUTLEY: There is, in a sense, a fundamental question about junkets which you will no doubt be called to deal with having regard to the fact they're dealt with throughout the country, subject to COVID, and have continued by all casinos, and there is the problem of rumour and, in effect, reputational rumour. And there are – one of the questions of – particularly with respect to questions of forward-looking suitability, that is going to require one to address the questions of how does one deal with that problem, and that's just not a problem we will be submitting for, as it were, a casino. It's also a regulatory problem because the law provides for the law to deal with junkets. In fact, junkets are – there's a specific section dealing with them.

So unsuitability becomes a fundamental question of in that regard is what does one deal with rumour? How does one deal with – what is the norm which the casino industry has to deal with at the level of rumour? And that will be a norm that – it may be that you will have to recommend a means of dealing with, because under our law, on the whole people are not refuse to be dealt with because of rumour. It's generally considered to be – and that may explain why regulators haven't become involved because – that's why, in effect, unsuitable systems, to take your example, becomes quite nuanced because of the nature of the question, if I'm making myself clear.

COMMISSIONER: Yes, I think the reference to robust is the reference in the internal control of the casino regulator and Crown in Melbourne so that Crown is obliged to have robust systems, and there's no problem with that, but I think as has been admitted to by the chairman, Ms Coonan, she wouldn't have used the word "robust", she would use the word "extensive", so there's things like that. So my example was simply if there isn't propounding that there was a robust system but rather an extensive system, then we should just get on with that. That's the sort of non-issue I think might be able to be got through, but I shouldn't tarry. Ms Sharp is ready to make her submissions and we should move on, but thank you, Mr Hutley.

MR HUTLEY: And thank you, Madam Commissioner.

COMMISSIONER: Yes. Yes, Ms Sharp. I'm sorry.

MS SHARP: Thank you, Commissioner. When we addressed you on 21 January, we identified that there were at that time six media allegations. The first of those, allegation 1, related to the China arrests and Mr Bell has already addressed you on those allegations. Let me summarise the balance of the allegations in the same way that we did during the opening address at pages 25 to 26 of the transcript. Allegation 2 is that Crown Resorts partnered with junkets that were backed by organised crime syndicates, including an allegedly triad-controlled drug trafficking and money laundering organisation known as The Company.

Allegation 3 was that Crown Resorts helped to bring criminals through Australia's borders in ways that raised serious national security concerns. Allegation 4 was that money had been laundered in Crown Resorts Australian casinos, including by The Company and that Crown Resorts had failed to rigorously enforce anti-money laundering controls. Allegation 5 was that two private companies set up by Crown Resorts, being Southbank Investments Proprietary Limited and Riverbank Investments Proprietary Limited, had been used to launder the proceeds of crime. And allegation 6 was that Crown Resorts staff lobbied federal government officials, including Australian consulate staff in China, to expedite visas for members of junkets and shopped around for consulate officials perceived to have the most ineffective vetting procedures for visa applicants.

After the opening address, Commissioner, further media allegations surfaced in respect of Crown Resorts employee and senior vice president, Mr Veng Anh. Those allegations were that he had authorised the transfer of money to a drug trafficker and nightclub owner by the name of Nan Hu in January 2017. I will call that allegation 7. These are the allegations that will be subject to the address in part 2 of counsel assisting's closing submissions. If I can briefly sketch out the manner in which we will address you, Commissioner.

COMMISSIONER: Yes, of course.

MS SHARP: Firstly, I will make some opening remarks about junkets in order to contextualise the allegations that relate to junkets. I will then make submissions on the specific allegations made with respect to specific junkets and make submissions as to the veracity of those allegations. I will then make submissions to you, Commissioner, on the visa allegations and their veracity. I will then hand over to Mr Aspinall who will make some introductory remarks about the anti-money laundering framework in Australia and then will address you, Commissioner, on the anti-money laundering – or the money laundering allegations.

And finally in part 3 of our address, I will make some submissions to you on overall matters of suitability, and in the event that you are to find that either or both Crown Resorts and the Barangaroo licensee are unsuitable, what can be done to convert them to a position of suitability.

COMMISSIONER: And as I said to Mr Bell a little earlier in the day prior to you commencing your submissions, I would expect – and it has been in part some of the

evidence, I would expect Crown and Crown Sydney Gaming to be making submissions on the premise that there is a finding, to do it conveniently, that they would promote and propound any conversion to suitability.

MS SHARP: Yes.

COMMISSIONER: Yes. And it may be that you would want to say something in reply about that.

MS SHARP: Yes. Indeed. Thank you for that indication. We will firstly make some introductory remarks about junkets in order to provide some context to the media allegations. The first point to make, Commissioner, is that junkets are a well-recognised part of the landscape of casinos both in Australia and abroad. The function of junkets is to identify high rollers, often known as VIPs or VVIPs and make arrangements for them to travel to gamble in particular casinos. Junkets may also advance credit to junket participants and enforce debts incurred by junket participants. The evidence has established, Commissioner, that there is a strong relationship between VIP players from mainland China and junkets.

In Australia, as in Macau, casino operators have been heavily dependent on junkets for the continued success of the VIP market segment in their casinos. This is for a number of reasons. First, there are legal restrictions on the promotion of gambling in mainland China. One of the important functions of junkets is, therefore, to attract the VIP players from mainland China to the casinos. Secondly, in places like Macau and Australia, junkets play an important role in providing credit to junket participants in making funds and chips available to those junket participants. Indeed, Macau junkets have been described as operating like mini banks. Thirdly, in Australia, as in Macau, junkets are responsible to casinos for the debts of their participants and have, therefore, assumed the role of enforcing those debts.

I will turn, now, to say something of Macau junkets. They are known in Macau as "gaming promoters" and have long been part of the casino landscape in Macau. It's relevant to consider junkets in Macau for the following reasons. First of all, the services provided by those junkets have many similarities with the services provided by junkets in Australia. This is to no small measure because Australia does deal with many junkets that have originated in Macau. Next, an important integrity feature that the Australian casinos have relied upon in determining to deal with junkets is that they are licensed in Macau by the regulatory – the casino regulatory body, which is commonly referred to as the DICJ.

The evidence has established that there has been a tightening of the regulation of junkets in Macau in recent years, indeed, going back to the time of the handover by Portugal to mainland China of Macau. The tightening of these regulations in Macau and in mainland China have led affluent Chinese gamblers to travel beyond Macau to destinations, such as Australia. This has also caused a consolidation of junkets in Macau and a level of sophistication in the way junkets operate, both in Macau and

abroad. The evidence has established that some junkets are now listed on stock exchanges, for example.

Macau junkets came under great scrutiny in the 1990s. The evidence shows that it was notorious, during that period, that there were triad wars fuelled by a desire to control the VIP gaming rooms. A more stable environment did emerge following the handover to mainland China of Macau, and the evidence establishes that the operations of these junkets became more sophisticated. Nevertheless, over a very lengthy period, caution has been expressed about the need to be vigilant to guard against the links between junket operators and organised crime. To take one example, Commissioner, in 2013, the United States China Economic and Security Review Commission reported to the US Congress that Macau junket operations have a history of affiliation with organised crime.

Commissioner, it is the credit-providing and debt-enforcing functions of junkets that make them vulnerable to infiltration by organised crime. In fact, it is no small feat to move large volumes of money out of mainland China, because of the very tight restrictions on the flow of capital outside that country. In moving funds out of mainland, China junkets have been implicated in money laundering, in relying on underground banking networks, and by smuggling cash and otherwise. It is also illegal to enforce gambling debts in mainland China. And this has given rise to concerns that junkets may resort to extrajudicial means in order to encourage debtors to repay their debts. In evidence before you, Commissioner, is a 2008 study by the Macau Polytechnic University of 99 high rollers from mainland China who were identified in the newspapers as excessive gamblers. Seven of these people were found to have died from murder or suicide and a further 15 were sentenced to death usually for embezzlement.

Junkets have been identified as being vulnerable to money laundering. And the international Financial Action Task Force has said that a vulnerability of junket programs is that they involve the movement of large amounts of money across borders through multiple casinos by third parties. These vulnerabilities have been recognised in Australia. And, here, can I take you, Commissioner, to the Victorian regulator's report on its sixth review of Crown Melbourne. Can I call up document ID INQ.140.010.2949.

COMMISSIONER: That's an exhibit, I think, is it?

MS SHARP: Yes, it is. This is exhibit A91.

COMMISSIONER: Thank you.

MS SHARP: Could I take you, please, Commissioner, to pinpoint 3087.

COMMISSIONER: Yes.

MS SHARP: In fact, I have the wrong number there. Pardon me and I'll - - -

COMMISSIONER: That's all right. It's the right document, it's just the wrong number.

MS SHARP: Yes. Wrong page. It's page 134 of the document which is pinpoint - - -

COMMISSIONER: 3086. Yes, we have it.

MS SHARP: Thank you. Thank you. And could I draw your attention to the heading in the bottom right-hand corner of the document entitled Junkets. And you will see, Commissioner, what the Victorian regulator has had to say about the risks of junkets, and categorising them as "significant potential risks of money laundering through casinos". It's observed that this topic was addressed by Dr Horton QC in New South Wales in 2016 and he noted that:

> *The AFP had advised that junkets present –*

and if I can turn the page. If we could go to the next page, please. And then in the top left-hand column:

> *…junkets present an opportunity for the introduction of tainted funds at various entry points.*

In addition to those remarks, Commissioner, a number of witnesses who have given evidence before you have pointed out the connections between junkets and organised crime. Mr Bromberg gave evidence that organised crime groups have been widely reported to be involved in the junket industry, and said there was a huge amount of evidence and media reporting of that matter. Professor Rose gave evidence and said that, and I will quote:

> *That is probably the most common way money is laundered through a casino is through junkets. There have been accusations in Macau of casinos openly colluding with junket operators who have ties with organised crime.*

Mr Vickers also gave evidence to you, Commissioner, and said:

> *By providing these services, the junkets have evolved into a major component of an informal financial system operating at the heart of the gaming sector in Macau.*

Commissioner, there is evidence before you of recent comments made by Mr Martin Purbrick, who is a former investigator with the Hong Kong Jockey Club, and, in a recent 7.30 Report program, he was recorded as stating, in relation to casino executives that, and I will quote:

> *If they have no idea that Macau casino junkets have a background in organised crime and have allegations of money laundering surrounding their business,*

then they clearly haven't looked at the internet or the news for around 20 years.

COMMISSIONER: That's the same Mr Purbrick that resisted the report from the Jockey Club.

MS SHARP: That is so.

COMMISSIONER: Yes.

MS SHARP: Junkets have been controversial in Australia, Commissioner. And, in earlier times when investigating the introduction of legislation to make lawful the operation of casinos in New South Wales, the Honourable Edwin Lusher QC strongly recommended that junkets be banned. Mr Xavier Connor QC, who examined the legalisation of junkets in Victoria, was of the opinion that junkets should be subject to specific approval by an independent licensing body. It was, of course, Mr Lawrence Street QC who reported on the legalisation of casinos in New South Wales. He formed the view that junkets could be controlled by regulation, but he said there would be three things to do this effectively – three requirements to be satisfied – and they are, firstly, the selection of a casino operator whose integrity and commitment preserving a crime-free environment in and in relation to the casino are assured; secondly, the formulation of a comprehensive regulatory structure for the operation of the casino; and thirdly, the diligent enforcement of that regulatory structure.

COMMISSIONER: So when Sir Laurence did his report, that was really before we established the first legal casino in New South Wales.

MS SHARP: Yes.

COMMISSIONER: Yes.

MS SHARP: Yes. And what I will come back to is this, Commissioner, and make the point when making submissions to you on suitability, that Sir Laurence Street identified that proper control of junkets required the selection of a casino operator whose integrity and commitment to preserving a crime-free environment in and in relation to the casino be assured.

COMMISSIONER: Yes.

MS SHARP: In the past, in both New South Wales and in Victoria, junkets have been licensed by the regulator, but that, of course, is not the situation now. Now, in those two states, it is for the casino operator to conduct probity checks and due diligence and make the decision itself about whether to have a business relationship with particular junket operators. It is the case that the – in Queensland junkets are still licensed by the Queensland - - -

COMMISSIONER: I don't think so. I can indicate that what has happened in our review in other parts of the Inquiry that – what actually happens, I think, Ms Sharp, is that the casino promotes a contract to the regulator – the form of the contract. The form of the contract between a party and the casino operator is looked at by the casino regulator so that the actual pro forma of the contractual relationship with any junket operator is given a tick or approved by the regulator, but not the individual casino junket operators or junket operators – they're not licensed – which we only ascertained in recent times. So it's not a licensing arrangement. It's an approval of the contractual terms as a pro forma that's acceptable to the regulator. So it does appear that, in the whole of the country, there is no licensing arrangement as we, I think, are talking about.

MS SHARP: Yes. Thank you for that indication - - -

COMMISSIONER: Yes, that's all right.

MS SHARP: - - - Commissioner. Now, insofar as Victoria and New South Wales are concerned, it is a condition of a casino licence that the casino operator conduct operations of the casino in accordance with a system of internal controls that have been approved by the regulatory authority. Can I take you to the relevant internal controls for Crown Melbourne. I understand it is no longer a confidential document.

COMMISSIONER: Yes. I think that's right.

MS SHARP: Could I ask for document CRL.523.001.0918 to be shown.

COMMISSIONER: That's an exhibit, I think.

MS SHARP: Yes, this is – pardon me – this is exhibit BA46.

COMMISSIONER: Thank you.

MS SHARP: Now, you will note, Commissioner, on the second page that this is a document that was approved on 24 December 2015.

COMMISSIONER: What's the pinpoint?

MS SHARP: The pinpoint is 0919.

COMMISSIONER: Thank you. Yes, I see that.

MS SHARP: You see the footer down there. What I wanted to take you to, Commissioner, was pinpoint 0922. And could I direct your attention, please, to clause 2.5 under the heading Audit. 2.5.1 says that:

> *Crown will ensure that it has robust processes in place to consider the ongoing probity of its registered junket operators, junket players and premium players.*

So it is there that one finds the requirement for a robust process, at least in Victoria.

COMMISSIONER: And that's the ones that are registered.

MS SHARP: Yes. It's a little more complicated than that, Commissioner. If I can take you to pinpoint 0923.

COMMISSIONER: Yes.

MS SHARP: You will see a risk assessment matrix, and you will note that S stands for significant, and the first risk identified is the risk of criminal influence and exploitation, and that's given an initial risk rating of significant. Then if you move to the right-hand side you will see that some minimum standards and controls have been proposed in this document in respect of managing that significant risk, and they are the controls that are articulated in clauses 2.1, 2.2, 2.3, 2.4 and 2.5. I took you to the last control because that neatly encapsulated the process, but a full understanding of that control requires regard to be had to each of those provisions.

COMMISSIONER: And so what do they do, in terms of the 2.1, for instance, if we just have a quick look at that.

MS SHARP: Yes, that is at pinpoint 0919. And - - -

COMMISSIONER: I think it will be coming up shortly.

MS SHARP: I will just wait for that to be brought up.

COMMISSIONER: Yes. Yes.

MS SHARP: And what you will see is the heading Minimum Standards and Controls and three paragraphs down, that the minimum standards and controls are 2.1, the maintenance of structured, documented processes for the conduct of junket and premium player programs. And then the – 2.2, the creation and maintenance of an audit trail for monitoring and recording junket and premium player programs. Then if we go over to 2.3 on pinpoint 0921 - - -

COMMISSIONER: Introduction of players, yes. No, that's – I see.

MS SHARP: Yes. I'll just - - -

COMMISSIONER: 2.3, yes, I have it.

MS SHARP: Yes, so it's independent review, authorisation and approval.

COMMISSIONER: Yes.

MS SHARP: So Crown will ensure that appropriate independent review, authorisation and approval processes are in place for junket program agreements and the like. So the regime is a little bit more complicated than simply ensuring a robust process, but it does require ensuring a robust process is in place.

COMMISSIONER: And is this the document that refers to notification to VCGLR of criminal convictions?

MS SHARP: I don't think this is the document. I will have my instructing solicitor look for that document, but it is not this one.

COMMISSIONER: Yes. Thank you.

MS SHARP: I should say it is proposed to regulate Crown Sydney and the Star Casino in Sydney are regulated in accordance with internal controls. There is a draft internal control in evidence for Crown Sydney. It is in slightly different terms to the one that applies down in Victoria.

COMMISSIONER: That's the one that Ms Webb gave evidence about a couple of Fridays ago.

MS SHARP: Yes.

COMMISSIONER: And one of the things that was identified in that which is, I think, the document to which I'm referring now that you've reminded me, was that Star has an obligation to notify the regulator if it becomes aware of one of its junket operators either being subject to a criminal charge - - -

MS SHARP: Yes.

COMMISSIONER: - - - subject to criminal conviction, etcetera, so that there is a benchmark of notification to the Authority in respect of criminality.

MS SHARP: Yes.

COMMISSIONER: But there was also the internal control that referred to consideration of the junket operator being of "ill status".

MS SHARP: Yes.

COMMISSIONER: So that there is this looseness on one view of it - - -

MS SHARP: Yes.

COMMISSIONER: - - - with the benchmark of criminality. So it's not straightforward.

MS SHARP: No. No, it's not, Commissioner, and on that point, Mr Preston did give evidence to this Inquiry that in his view the internal controls for junkets did not provide much guidance to Crown Resorts about what it needed to do in terms of audit and probity, and he gave that evidence at page 493 of the transcript at lines 45 and then over to page 494.

COMMISSIONER: But that's their job, isn't it?

MS SHARP: Yes, that will be our submission, that the decision has been made to transfer the risk of assessing probity from the regulator to the operator.

COMMISSIONER: But the person who drafts these things is the operator.

MS SHARP: It's – these internal controls are – as I understand the evidence, are a work that's contributed to by both the operator and the regulator and the regulator then approves the internal controls.

COMMISSIONER: But not the standing operating procedures.

MS SHARP: That's right, and oddly, Commissioner, the – even though much reference is made in the internal controls to procedures being fleshed out in the standard operating procedures, those standard operating procedures are not tabled with the regulator at the time they approve the internal controls.

COMMISSIONER: So it's at a different time.

MS SHARP: Yes.

COMMISSIONER: I see. Thank you.

MS SHARP: We submit, Commissioner, that a critical implication of the casino regulatory framework in both Victoria and in New South Wales is that casino operators must only have business relationships with persons or entities of good repute. We say that this follows from the statutory definitions of casino operator suitability in both jurisdictions, and I will use the New South Wales legislation as an example. Mr Bell has already addressed you on this in part, Commissioner. He took you to section 13A of the Casino Control Act and I will take you there as well.

COMMISSIONER: Yes, I have that. Thank you.

MS SHARP: 13A provides that the Authority must not grant the restricted gaming licence unless it is satisfied that the approved applicant and its close associates are suitable persons. So the burden here is on the Authority to be satisfied of that matter. There is no definition of suitability as Mr Bell has pointed out, but there are statutory factors which must be required in forming that satisfaction about suitability, and they are set out in section 13A at subsection (2). It is paragraph (g) that I wish to take you to, Commissioner. So one of the factors the Authority needs to consider is whether

any of those persons, that is, the applicant for the licence or its close associate, has any business associations with a person or body or association who, in the opinion of the Authority, is not of good repute having regard to character, honesty and integrity, or has undesirable or unsatisfactory financial sources.

Now, this is a matter that the Authority must reach an opinion about in order to determine whether it is satisfied as to suitability. Mr Bell has addressed you on both the statements in Sir Laurence Street's report and later in Dr Horton's report to the effect that these same statutory factors as to suitability continue to apply throughout the duration of the licence and must be considered in particular at each of the periodic reviews. And we say that that is the starting point for understanding what obligation the casino operator has in relation to the persons with whom it chooses to enter into business relationships.

And to put the point shortly, our submission is that if the operator cannot be satisfied that the entity is of good repute, it ought not deal with that entity. We say that is what the statutory framework must be taken as requiring. So in fact, there is a very bright guideline in making a determination as to who a casino operator should and should not enter into arrangements with. We will be submitting that Crown Resorts has not acted in accordance with this very bright guideline, notwithstanding that almost uniformly the directors who gave evidence said that they accepted that Crown Resorts should only deal with junket operators of good repute.

Can I turn now to make submissions about the specific media allegations in relation to junkets. This is what we've compendiously described as allegation 2. That is the allegation that Crown Resorts has partnered with junkets with links to organised crime. Now, there are really two limbs to that allegation. There is, first, an allegation that Crown Resorts partnered with junkets, which raises for your consideration the nature and quality of the relationship between Crown Resorts and junket operators and, secondly, there is the allegation that some of these junket operators have links with organised crime.

Can I deal first with – actually, before I go to deal with what I will call the partnering allegation, may I indicate that another aspect of allegation 2 is the allegation that Crown Resorts did not have a robust procedure in place for vetting its junket operator relationships. For example, in one media article of the 27th of July 2019, and this was an article published in both The Age and The Sydney Morning Herald, it was asserted:

> *Even a superficial analysis suggests many of the junkets Crown Resorts was partnering with had dubious associations, some of which could have been discovered via a simple Google search.*

I will turn now to consider the partnering allegation. We submit that it should be found that Crown Resorts partnered with junkets in the sense that that term was used in the media allegations. I should indicate there was no suggestion in the media articles or the 60 Minutes program in July 2019 that the media was relying on a

technical legal definition of "partnership", and we submit that that allegation should be taken as having its ordinary meaning which is that Crown Resorts collaborated with junket operators for the mutual benefit of Crown Resorts and the junket operators.

A number of witnesses before this Inquiry did accept that Crown Resorts partnered with junkets, and they include Mr Packer and Mr Preston. And the relevant transcript references will be provided in the written submissions to be served tomorrow. Mr Felstead accepted that Crown Resorts strategy was to partner with junkets. Mr Alexander accepted that the VIP international team saw themselves as partnering with junkets. However, a number of directors did not accept that Crown Resorts partnered with junkets: they include Ms Coonan, Mr Johnston, Ms Halton, Mr Poynton, Mr Demetriou – and Mr Demetriou. They all insisted in their evidence that a strict definition – a legal definition of "partnership" be applied.

What we submit is that, in making that assertion, they've revealed that they understood little about the relationships that Crown Resorts did seek to establish with the junkets and, in particular, what were identified as platform junkets. And can I address you on the platform junket strategy briefly: that was a strategy that was conceived in late 2014, early 2015, and it was a strategy that involved Crown Resorts directing mainland Chinese customers to work or play with a platform junket. And the platform junkets were junkets that Crown Resorts thought it could trust in terms of recovering debts. Thus, a 2015 Crown Resorts VIP international document defined the strategy as being to:

> *Identify and collaborate with key credit-worthy platform junkets who are prepared and able to finance players where Crown is not.*

And could I take you, Commissioner, to the platform junket strategy paper. I'm not sure if this is confidential any more. I will bring it up on the confidential link if I can. It is CRL.507.003.0212. It is exhibit BB35.

COMMISSIONER: You say double B?

MS SHARP: Double-B-three-five.

COMMISSIONER: Thank you.

MS SHARP: Could I take you, firstly, to pinpoint 0216. And you will see a reference to the Crown junket strategy. And then if I could take you to the next page, you'll see the goal is stated in the top paragraph there. I won't read it out.

COMMISSIONER: I don't think there's any problem of reading it out. It's not going to bring any company down.

MS SHARP: Yes:

The goal of this strategy is to unlock previously unrealised turnover by combining our strengths, selling Crown, with the strengths of our platform partners.

And you'll notice the language of partnership being invoked there. And if I could take you to pinpoint 0217 – I beg your pardon, 0218.

COMMISSIONER: Yes.

MS SHARP: That is not the page I'm looking for, but there is another quote that says:

Developed strategies for each key player and collaborate with platform junkets to drive business to Australia.

The evidence shows, Commissioner - - -

COMMISSIONER: Does it really matter? I'm sorry.

MS SHARP: Yes.

COMMISSIONER: Does it really matter that – it's obvious, I would think, to everyone who's here that what was happening was the collaboration between Crown and the junket operators, and either the platform junkets or others, to have the commercial relationship, whatever you might call it, to promote beneficial profit for each.

MS SHARP: Yes.

COMMISSIONER: So the point about partnering is, I think, because of the publications using that word?

MS SHARP: Well, there are two reasons why it is relevant.

COMMISSIONER: And the Terms of Reference.

MS SHARP: Yes. There are two reasons why it's relevant: first of all, it's one of the media allegations, and it's one that a number of directors have resisted; but, secondly, it's relevant to the quality of the relationship between Crown Resorts and the junket operators. This isn't a situation where, for example, a business associate is selling coffee to Crown Resorts. This is a deep collaboration between two organisations that is resulting in massive amounts of turnover moving through the casino and that – the quality of that relationship becomes relevant to the question of the suitability of Crown Resorts, if you are to find that it has not been dealing with junket operators of good repute.

COMMISSIONER: And, I suppose, because the terms of reference use the terminology "partnered with" - - -

MS SHARP: Yes.

COMMISSIONER: - - - if I were to find that it would be the colloquial "partner" as opposed to the legal entity "partner" that would be enough. But, on the other hand, if I were to find that they were just in commercial relationships with junket operators it, would still be a matter of relevance to report upon.

MS SHARP: Yes, it would. But where it assumes an additional relevance and, in particular, looking at the platform junket strategy, is because Crown deliberately set about building relationships with particular platform junkets, and a number of those platform junkets are the subject of media allegations.

COMMISSIONER: I see.

MS SHARP: For example, platform junkets included Suncity; they included the Neptune Group through its related junket, which has been referred to as the Guangdong Club - - -

COMMISSIONER: Guangdong Club, yes.

MS SHARP: - - - or sometimes the NN, Nicholas Niglio junket, through the Song junket, through the Chinatown junket, and so on. So that's why there is an additional relevance here.

COMMISSIONER: Thank you.

MS SHARP: And just on that point, it's important to understand that, in order to forge those relationships, Crown provided services to those junkets. And, in this regard, can I take you to a document authored by Mr Michael Chen. And if I could call up INQ.950.002.00 – I beg your pardon, 0112, which is exhibit O4. Now, this is a memorandum to – from Mr Chen to very senior executives within Crown Resorts. And what you'll see under the heading Restructuring Macau Junket Sales Team is that:

> *In order to deliver critical support to two of our most important junkets, we have restructured the Macau junket teams to enable dedicated business development support to Suncity and to Guangdong Club.*

So it's the quality and the strength of that collaboration, Commissioner.

COMMISSIONER: Yes, I understand. Thank you.

MS SHARP: Just on that point, there was another important collaboration that's been the subject of evidence before you, Commissioner, which is the dedicated

Suncity Room at Crown Melbourne, which, in every sense of the word, was a – or every colloquial sense of the word, was a partnership. We had a room for the exclusive use of Suncity junket participants. Suncity operated its own cash desk there, notwithstanding that there was a Crown Resorts cage. There was Suncity signage and branding in that room. There was uniformed Suncity staff, and so on. So this shows, again, the quality and the depth of the collaboration between Crown Resorts and a particular junket which, certainly, for many years has been the subject of adverse due diligence reports, which I will address you on further later in these submissions. That's all we wish to say about the so-called partnering allegation and why we say it's relevant.

Can I now turn, Commissioner, to deal with the specific allegations in the media. And the first of those are the allegations relating to a company that the media – well, an organisation that the media termed "The Company", which it said was an international drug trafficking and money laundering syndicate. Now, Crown Resorts issued an ASX media release on the 31st of July 2019, and asserted that it had had no dealings or knowledge of any organisation known as The Company or meeting that description.

Now, it is correct that, by the time of that media release, Crown had no record, that's been made available to this Inquiry, that shows it dealt with an organisation called The Company. And by that time, very little was known in the public domain regarding The Company. It does seem that the Nine/Fairfax journalists were the first journalists to refer to this drug trafficking, money laundering syndicate as The Company.

However, things changed on the 14th of October 2019 with the publication of a Reuters expose. And I'll call that up, if I can on the public link. It's INQ.100.010.0942. This is exhibit A226. And you will see, or you might just be able to see, Commissioner, there's a Reuters special report, The Hunt for Asia's El Chapo. And in this special report the journalist, Mr Tom Allard, made a number of assertions about a vast multi-national drug trafficking syndicate which was an alliance of five Asian triad groups and which was identified by various law enforcement authorities as The Company. So it's this article where we see the first public airing of an organisation called The Company, and this expose was picked up world-wide and, from that time, there was much discussion of this international drug trafficking syndicate. Of importance is that the leader of the organisation was identified as being Tse, T-s-e, Chi, C-h-I, Lop, L-o-p. Also of importance was that Mr Allard identified Tse Chi Lop as being known by the pseudonym Sam Gor. He also said that sometimes The Company was referred to as the "Sam Gor syndicate".

Mr Preston gave evidence that he became aware of this article in the days after it was published and he, in fact, caused Crown Resorts to review its records to see if they had any holdings on Tse Chi Lop and that result came back negative. Mr Preston told this Inquiry that he had told some other people in Crown Resorts about this article and the allegations that were made about The Company, but, importantly, he didn't draw this – or we will submit he did not draw the board's attention to this

article. So the board was never made aware that there was in fact an organisation, an international drug trafficking syndicate, known as The Company. Additionally, Commissioner, Mr Preston did not refer to becoming aware of this article in any of the statements he gave to this Inquiry. So his knowledge of this article was something that only emerged during his examination in July.

COMMISSIONER: His evidence – I withdraw that. What he said in July was to, with Mr Felstead, prepare that report for the board before it published its article – no, sorry, advertisement. In that report, as I possibly remember it correctly, maybe not, there was reference to the no knowledge of The Company; is that right?

MS SHARP: Yes, that's right, and that was a perfectly reasonable - - -

COMMISSIONER: Yes.

MS SHARP: - - - proposition to make at that time.

COMMISSIONER: Yes.

MS SHARP: But our submission is that things changed in mid-October when this expose was published, but no steps were taken to notify the board of its existence. But for present purposes, the significance of this article, which Mr Preston read, is it became possible to understand that a junket representative named Roy Moo had laundered money on behalf of The Company and that's what we will be submitting it is open to find, so I will move to address you on that now.

COMMISSIONER: Yes.

MS SHARP: In late July 2019 a number of media articles and the 60 Minutes program referred to Roy Moo. It was asserted that he was a junket operator and it was asserted that he had laundered money at Crown Melbourne on behalf of The Company. Now, we submit that it's open to you to find that that is true, save that Mr Moo was relevantly acting in his capacity as a junket representative rather than a junket operator - - -

COMMISSIONER: Yes, I see.

MS SHARP: - - - at the time. And just to briefly take you through what the evidence establishes here, Commissioner, it's not in dispute that Mr Moo was a junket representative at Crown Melbourne. He was also a junket operator at Crown Melbourne. At the time he was approved as such there was a licensing regime where the Victorian regulator was the one who granted the approval. Relevantly, though, Mr Moo was a junket representative for the Ang Lian Ping junket and it was in that capacity that he laundered the money. I say he laundered the money because he was convicted for that and - - -

COMMISSIONER: He went to jail.

MS SHARP: Yes, he went to jail. And before you in evidence are the agreed facts from his criminal prosecution as well as the sentencing remarks. The way he laundered the money at Crown Melbourne was because as a junket representative he was authorised to give directions on how Crown Melbourne's ANZ bank account could be used to transfer funds overseas, and what the evidence establishes is that on four separate occasions he came to the casino with large amounts of cash, deposited that cash and directed Crown Resorts staff to transfer that money overseas to Hong Kong. What the evidence also establishes is that it was a colleague of Mr Moo's named Mr Truong who gave him the money which was then deposited at Crown Resorts and the money came from a man by the name of Suky Lieu who, it was agreed in Mr Moo's sentencing proceedings, was an international drug trafficker.

If Crown Resorts had reviewed records diligently after the Reuters expose, we submit it would have uncovered the link between Roy Moo's money laundering activities and The Company, and I will just take you through some documents to show you how that could be done. If I could return you, Commissioner, to the Victorian regulator's Sixth Review Report, and I will call that up. It is CRL.508.001.8052 at pinpoint 8191 and this is exhibit J1.

COMMISSIONER: Thank you.

MS SHARP: And what we have is a case study for money laundering which was set out in the Sixth Review Report and you will see it relates to Mr Truong. Mr Preston agreed he was aware that it was Mr Truong who gave the money to Mr Moo so that this case study did relate to Mr Moo. You will see, if you read this case study, that reference is made to Mr Lieu in the - - -

COMMISSIONER: Mr Moo?

MS SHARP: Mr Lieu, that is L-i-e-u.

COMMISSIONER: Yes. I see. Suky Lieu.

MS SHARP: Yes. So Mr Truong assisted Mr Lieu, an Australian principal in a criminal syndicate, to remit proceeds of drug trafficking in Australia to Hong Kong. And a little further down at the bottom of this page you will see a reference to the case of Truong v R and citation to that case. And Mr Preston agreed that, had he wished to, he could have accessed this case to understand more about the circumstances of this money laundering. And I did wish to take you to this case which was available on the internet, and if I can call up that number; it is INQ.130.003.1745. It's exhibit G7.

COMMISSIONER: Thank you.

MS SHARP: And if we go to pinpoint 1749, the – if you have regard to the third full paragraph on this page you will see a reference is made to Mr Suky Lieu and

there's a discussion of how they operated the syndicate. And then on the sixth line down there's a sentence:

The arrangements between John and Sam Gor and Suky Lieu were ongoing and involved the Hong Kong connections.

Now, this is significant because Sam Gor is identified as being a pseudonym for Tse Chi Lop who was identified as being the principal of The Company.

COMMISSIONER: Yes.

MS SHARP: Mr Preston accepted that he was aware that from that Reuters article that Sam Gor was a pseudonym of Tse Chi Lop, but he would not accept that this judgment tended to suggest that Mr Moo had in fact laundered money on behalf of The Company. We submit otherwise. We submit there is a proper basis for concluding that Mr Moo did in fact launder money on behalf of The Company, which was the very allegation put in the media.

COMMISSIONER: So Mr Moo was arrested; Mr Moo laundered the money and the money was laundered in part through Crown Melbourne.

MS SHARP: Yes.

COMMISSIONER: That is, it was – its accounts or its gambling processes were utilised for the purposes of cleaning up that money from the drug trade.

MS SHARP: Yes.

COMMISSIONER: I see.

MS SHARP: Yes, that's right. And it reveals a vulnerability in the system because this is the quintessential example of Crown's bank account being used to transfer money to a third party who had not been demonstrated to be either a member of a junket or somebody who had won money during play at the casino.

COMMISSIONER: Yes.

MS SHARP: So there's a statement in the evidence where Mr Moo is recorded as saying it's easier to move money through the accounts at Crown Resorts than to move it through a bank.

COMMISSIONER: The bank. Yes, I saw that.

MS SHARP: Yes. It is, of course, relevant to note that Crown has recently ceased permitting the transfer of funds telegraphically to third parties.

COMMISSIONER: Yes, that was Mr Barton's suggestion to the board in September, is that right?

MS SHARP: Yes. Yes.

COMMISSIONER: Yes.

MS SHARP: I will now move to the second allegation which was to the effect that Crown engaged with The Company through the so-called Hot Pot junket, and the Hot Pot junket was said to be linked to organised crime because it was linked to The Company. We submit that it should be found that Crown Resorts did have a relationship with the Hot Pot junket, which was actually a man by the name of Ng Chi Un. And we submit there was sufficient material before Crown at the time it investigated the media allegations for it to determine that it did have a relationship with the so-called Hot Pot junket, but there was an oversight which Mr Preston described as a massive oversight by which that information did not come to his attention at the time of the investigations. We also submit that there was - - -

COMMISSIONER: At the time of the investigations for the board purposes.

MS SHARP: Yes, yes, in July and early August. We submit that there is also evidence in the holdings of Crown Resorts to link Mr Ng Chi Un to organised crime and that Crown Resorts could not have been satisfied at the time that he was a person of good repute and it should not have dealt with Ng Chi Un. I might move to that evidence now. I should start by noting that when Mr Preston gave his statement to this Inquiry dealing with the allegations, he said that Crown did not hold any records about the Hot Pot junket and he did not think that Crown Resorts could assist in understanding the allegations about Hot Pot, and he did later concede that that was incorrect.

In understanding what records Crown did hold about Ng Chi Un, the Hot Pot junket and so on, and what it would have been reasonable to ascertain at the time, the starting point are the series of questions which were posed by the journalist Nick McKenzie to Crown Resorts on about the 23rd of July 2019 in the lead-up to the publication of these allegations, and I would like to take you to that email where Mr McKenzie asked 63 questions. That is if I can pull up CRL.579.006.0712 which is exhibit BA76. If I can – you will see that this email goes to Mr Preston – I beg your pardon, it's sent by Mr Preston on the 23rd of July 2019, and if I could go over the page, please.

You will see there's an email – what Mr Preston is doing is forwarding an email from Mr McKenzie dated 23 July 2019, and you will note at the bottom of the page he sets out some questions. If I could then go to the next page, please. And in fact, I need to go to the page after that. You will note that question 14 refers to Roy Moo and then question 16 refers to junket partner Ng Chi Un being part of the same international criminal syndicate that used Roy Moo to launder funds. So Mr McKenzie was linking Ng Chi Un with The Company at this point.

COMMISSIONER: Yes.

MS SHARP: However, in the article that was published in July, Mr MacKenzie used the expression "Hot Pot junket" rather than Ng Chi Un, but it's our submission that there was a wealth of material within Crown Resorts Holdings which ought to have alerted it to the fact that Ng Chi Un was the Hot Pot junket. The first thing, of course, being that a link is made here. So the link is made between Roy Moo, Ng Chi Un and the Hot Pot junket.

Mr Preston, when taken – and I won't take you now to the various due diligence reports about Ng Chi Un – but what becomes quite clear in looking at those due diligence reports is that it is repeatedly asserted that he is the owner of a Hot Pot restaurant, and that that restaurant is called the Meng Mun restaurant. And there are then Crown records that refer to Ng Chi Un as operating the Meng Mun junket. So, again, that link is very clear and is one that we submit ought to have been established at the time of conducting the investigations if due care had been taken.

Of relevance now, though, Commissioner, is the information that was available to Crown at the time about Mr Ng Chi Un's links with organised crime. And there are two documents I'd like to take you to. First of all, a 10 December 2015 email exchange, which I'll call up. It is CRL.579.018.5541, which is exhibit BC12.

COMMISSIONER: Thank you.

MS SHARP: And you'll note the title of this email exchange, Commissioner. And the reference is made to Ng Chi Un. If I can direct your attention to the email from EMP1, the vice president of sales acceleration, on the second half of the page. He asserts, in the third paragraph:

> *For background, these two, particularly Ng, are very influential characters in Macau, particularly the underground network.*

Now, it's our submission that anybody reading this article ought to have been alerted by the reference to "underground network" that Mr Ng Chi Un may have had dubious connections. What you will see, if we go up the page, now, is the people who this email was forwarded to. They include one of the very senior executives in VIP international, Mr Roland Theiler and also, relevantly, copied in is Jason O'Connor. When this email was put to Mr O'Connor, he accepted that the email did suggest that these two gentleman had unsavoury connections. Mr Preston conducted some investigations in relation to this email after it was drawn to his attention in evidence and, in particular, he spoke with EMP1, who is the author of this email. And the solicitors representing Crown Resorts wrote to this Inquiry outlining the information that EMP1 had provided about Ng Chi Un. And he did say that Ng Chi Un's associates were unsavoury characters and he expressed concern that if checks from Ng Chi Un bounced, bad characters from Ng Chi Un's network would or might take action against Crown Resorts employee in Macau.

Now, this is a very clear indication, Commissioner, that Mr Ng Chi Un has some troubling connections and, indeed, that is what Mr Preston conceded in evidence. He described it as very troubling information. But it was not information that caused any reticence, at the time, to deal with Ng Chi Un has a junket operator. There's one other document I'd like to take you to, Commissioner, in relation to Ng Chi Un. And this is a credit profile that Crown Resorts prepared for him. This is CRL.579.018.1528, which is exhibit BJ127.

COMMISSIONER: Thank you.

MS SHARP: Now, it would appear this document dates from the 28th of January 2014. And you'll note, Commissioner, that a history – it relates to Ng Chi Un – in the middle of that first page, you'll see the total turnover that his junket has generated over the relevant period that Crown had been dealing with it, so a very significant buy-in and turnover.

COMMISSIONER: Hundreds of millions.

MS SHARP: Yes.

COMMISSIONER: Yes.

MS SHARP: And what I'd like to take your particular attention – well, you'll see a little bit further down "business interests". There, we see reference to the Meng Mun property.

COMMISSIONER: Yes.

MS SHARP: Again, there's a connection there, if one were looking for it, with the Hot Pot junket. But if you look at the further commentary, Commissioner, it's stated:

> *Patron is associate with Tam Yan Tak and brother, Nau Gor, who are associated with Water Room group and Mr Di.*

COMMISSIONER: Mr Li, is it, or Mr Di?

MS SHARP: Mr Li.

COMMISSIONER: I see.

MS SHARP: Now, that's information that was selected by whoever prepared this document as relevant to report. I just wanted to reflect on the reference to the Water Room group. We have evidence from Mr Steven Vickers that the Water Room group is an English way of referring to a triad organisation in Macau known as the Shui Fong triad group. I'll spell that S-h-u-i, Fong, F-o-n-g, which is also sometimes known as Wo On Lok. Now, there was no one who could – I put to Mr O'Connor

whether he knew that the Water Room group was a reference to a triad organisation, and he was not able to assist. It's – there is a question about why somebody unknown would report that Mr Ng Chi Un was associated with the Water Room group. However, this document is probably too far away from a document that could give you a sufficient level of satisfaction that Crown had a record that he was an associate of a triad. So I don't place any particular weight on this document.

What I do place weight on, Commissioner, is the "underground network" email and what EMP1, the author of the "underground network" email, had to say about plaintiff Ng Chi Un. And it's in light of those two pieces of evidence that we make the submission that Crown ought not to have dealt with him as a junket operator, because it could not be satisfied that he was a person of good repute. I will move now to the media allegations relating - - -

COMMISSIONER: So he was not a person of good repute because he was a standover merchant.

MS SHARP: That's what the evidence would appear to suggest.

COMMISSIONER: Or, alternatively, he would organise his standover friends to go and threaten the Crown staff, as EMP1 described to Mr Preston.

MS SHARP: Yes.

COMMISSIONER: Yes.

MS SHARP: Yes. I should indicate, for the sake of completeness, there's nothing in the evidence that links Ng Chi Un to The Company.

COMMISSIONER: Yes. I see.

MS SHARP: And so you cannot be satisfied of the veracity of that part of the allegation - - -

COMMISSIONER: Yes.

MS SHARP: - - - but, certainly, to the suggestion that the Hot Pot junket was linked with organised crime. Can I move now to address you on the media allegations about Suncity - - -

COMMISSIONER: Yes.

MS SHARP: - - - and the junket operator, Alvin Chau.

COMMISSIONER: Thank you.

MS SHARP: It's relevant to note that Suncity is one of the largest junkets in Macau and at all relevant times has been licensed as a junket operator by the DICJ in Macau. The evidence also established that the Star in Sydney continues to deal with the Suncity junket although the operator is not Alvin Chau; it is another gentleman. It was alleged in the media from July 2019 that Suncity was affiliated with The Company, that Alvin Chau was a member or former member of the 14 K triad gang, that Suncity had been banned by the Hong Kong Jockey Club in late 2017, and that Alvin Chau has been banned from entering Australia.

It was also alleged that Crown Resorts in Melbourne had given Suncity its own high roller room; that Crown Resorts had directed its staff to get close to Suncity; that Crown Resorts' due diligence on Suncity was inadequate, and that money had been laundered in the Suncity Room at Crown Melbourne. It's relevant to note, Commissioner, that numerous allegations have been made in the media over the years regarding the propriety of Suncity and also Alvin Chau, and these go back to at least 2001 where a publication in Hong Kong known as the Apple Daily reported that Alvin Chau was a 14K triad member and was on a black list of Hong Kong and Macau police.

There were also allegations about Suncity in September 2014 in Australia which came in the form of a Four Corners report called High Rollers – High Risk? And there it was alleged that the ultimate beneficiary of Suncity was Charles Heung Wah-Keung who was a member of a triad organisation. It was noted that he had always denied that allegation, Commissioner.

COMMISSIONER: That's Alvin Chau.

MS SHARP: No, that's the alleged ultimate beneficiary - - -

COMMISSIONER: I see. The beneficiary, thank you.

MS SHARP: Yes, Charles Heung Wah-Keung. Now, the evidence, of course, has established that Suncity is one – or has been one of Crown's platform junkets and indeed various directors and senior executives who gave evidence have agreed that Suncity is Crown's largest junket operator. The evidence established that Alvin Chau first became a junket operator at Crown Melbourne in September 2009 and at Crown Perth in June 2010. The evidence also establishes that Suncity did have a dedicated VIP room which is branded the Suncity Room at Crown Melbourne from January 2014 until August 2019, and in this regard I wanted to take you to an email from Mr Michael Chen, if I could call it up. It is CRL.505.003.2209.

COMMISSIONER: That's an exhibit, I think.

MS SHARP: This is exhibit M65.

COMMISSIONER: Thank you. Yes.

MS SHARP: And you will see that this is an email of the 27th of January 2014 from Mr Chen to a large number of senior executives at Crown Resorts including Mr O'Connor and Mr Felstead where he refers, you will see in the third paragraph, to an update of the Suncity VIP room grand opening. And he explains in the second paragraph under the heading Suncity VIP:

> *The Suncity VIP club is located in pit 86. It is a permanent salon and will remain so as long as the junket meets its minimum monthly turnover numbers. This is just one of a wide range of initiatives that we are working on with Suncity. We view the Suncity relationship to be very strategic with mutual strengths that benefit both parties.*

Really, that goes to the quality of the relationship between Crown Resorts and Suncity which, we submit, was one of deep collaboration and which becomes a relevant consideration in assessing suitability - - -

COMMISSIONER: So this is at about the time, as I recall, the documents relating to the platform junket strategy in China where they congratulated each other on securing a relationship with Suncity up there.

MS SHARP: Yes.

COMMISSIONER: And so what this is is the introduction of the Suncity junket, or Suncity Room here, from China to Australia.

MS SHARP: Yes. And it's even more significant because it's often been said that one of the key differences between junkets in Macau and junkets in Australia is that junkets in Macau operate the VIP rooms themselves, so in a sense those VIP rooms are outsourced to the junkets and they operate their own cages.

COMMISSIONER: Yes.

MS SHARP: And the point has been made that that does not happen in Australia because the casino operator retains control of the cage. But in fact what the evidence establishes in the case of the Suncity Room is that for many years, to Crown's knowledge, Suncity operated a cash desk, and as Mr Aspinall will address you further tomorrow, the transactions at that cash desk were not subject to Crown's usual reporting requirements under the Anti-Money Laundering Act because the transactions that occurred at that cash desk were not a designated service. In any event they weren't a service provided by Crown, so it didn't have to report, and Suncity was not a reporting entity.

So it was an area where very large cash transactions occurred, but they were not for many years drawn to AUSTRACs attention. That did change in late 2017, but Mr Aspinall will address you further.

COMMISSIONER: When you said that Suncity was not a reporting entity, it could have been, couldn't it?

MS SHARP: If – that calls for a technical analysis of whether it provided a designated service - - -

COMMISSIONER: A gambling service.

MS SHARP: Yes, and it's necessary to locate its services within either table 1 or table 3 of section 6, and there's also an additional requirement which is referred to as the geographic link, that has to be satisfied in addition to – and that ordinarily means that the putative reporting entity has to be ordinarily resident in Australia. So there may be difficulties in establishing that geographical link for Suncity.

COMMISSIONER: So it was a geographical link that was the impediment.

MS SHARP: Yes. Whether or not that be the correct legal analysis at the end of the day is neither here nor there because, as a practical matter, Suncity was not registered as a reporting entity and Crown Resorts was not a reporting entity within the meaning of the AML Act insofar as those transactions at that cash desk were concerned.

COMMISSIONER: So it was similar to the Macau situation.

MS SHARP: Yes, that's the submission we make, that this effectively operated as the importation of the Macau junket model into Australia. Now, Commissioner, you will recall that Mr Preston was most reluctant to describe the cash desk as a cage, but we submit that for all intents and purposes that's what it was, and you've seen footage, including the blue cooler bag footage, which shows hundreds of thousands of dollars of cash being handed over in exchange for chips provided by the Suncity representatives.

COMMISSIONER: Yes. Thank you.

MS SHARP: Would that be a convenient time?

COMMISSIONER: Yes. Thank you, Ms Sharp. So we will resume with your submissions tomorrow morning at 10 am.

MS SHARP: Yes.

COMMISSIONER: Yes. Thank you. Anything further from anyone? All right. Now, I will adjourn until 10 o'clock tomorrow morning. Thank you.

MATTER ADJOURNED at 4.00 pm UNTIL FRIDAY, 6 NOVEMBER 2020