



**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**

**FRIDAY, 25 SEPTEMBER 2020  
AT 9.59 AM**

**Continued from 24.9.20**

**DAY 31**

Any person who publishes any part of this transcript in any way and to any person contrary to an Inquiry direction against publication commits an offence against section 143B of the *Casino Control Act 1992* (NSW)

**MR A. BELL SC appears as counsel assisting the Inquiry**  
**MR N. YOUNG QC appears with MS C. HAMILTON-JEWELL for Crown**  
**Resorts Limited & Crown Sydney Gaming Proprietary Limited**  
**MR N. HUTLEY SC appears with DR HIGGINS SC, MR A. D'ARVILLE and**  
5 **MR T. O'BRIEN for CPH Crown Holdings Pty Ltd and Mr Johnston**  
**MR J. STOLJAR SC appears with MS Z. HILLMAN for Melco Resorts &**  
**Entertainment Limited**

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

MR BELL: I tender four additional documents which were referred to last night as exhibits AB34 to AB37.

15 COMMISSIONER: Yes. I'll mark those documents AB34 to 37 inclusive.

**EXHIBIT #AB34 TO AB37 FOUR DOCUMENTS**

20

MR BELL: And the parties have reserved their positions on the confidentiality of those documents.

COMMISSIONER: I can't hear you, I'm sorry.

25

MR BELL: The parties have reserved their position on the confidentiality of those documents.

COMMISSIONER: I see. Yes. Thank you.

30

MR BELL: I call Mr Michael Johnston.

COMMISSIONER: Mr Johnston. And I see, Mr Hutley, you're appearing today.

35 MR N. HUTLEY SC: Yes, Madam Commissioner. If it pleases you, I appear with DR HIGGINS, MR D'ARVILLE and MR O'BRIEN for CPH Crown Holdings Proprietary Limited and Mr Michael Johnston who - - -

COMMISSIONER: Yes. Thank you. I'm sorry.

40

MR HUTLEY: - - - is, as I think is the convention, makes clear that he is under compulsion.

45 COMMISSIONER: Yes. Thank you, Mr Hutley. Just on that topic, my practice has been thus far to indicate that if there is any particular objection taken in respect of the protections needed under section 17(2), they can be notified afterwards to

those assisting me and the transcript can be marked separately if need be, but I do understand your point in raising the compulsion at the beginning. Thank you, Mr Hutley.

5 MR HUTLEY: Thank you, Madam Commissioner.

COMMISSIONER: Mr Johnston, would you want to take an oath or make an affirmation to give your evidence? I think you might be on mute.

10 MR JOHNSTON: Am I on mute?

COMMISSIONER: Yes. You can be heard now, Mr Johnston.

15 MR JOHNSTON: My apologies, Commissioner.

COMMISSIONER: That's all right.

MR JOHNSTON: I'm happy to take an oath.

20

<MICHAEL ROY JOHNSTON, SWORN

[10.01 am]

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<EXAMINATION BY MR BELL

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

30 MR BELL: Mr Johnston, in a book called The Price of Fortune, published in 2018, Mr James Packer is quoted at page 255 as saying:

*Mike Johnston has been with me for a long time. He's a good friend and has also shown complete loyalty to me and my family.*

35 Would you agree that for a long time you've shown complete loyalty to Mr Packer?

MR JOHNSTON: Yes.

40 MR BELL: And is it the case that you're the sole director of CPH Crown Holdings Pty Limited?

MR JOHNSTON: Yes, it is.

45 COMMISSIONER: I wonder if I could just get Mr Johnston's full name.

MR BELL: I'm sorry.

COMMISSIONER: That's all right.

MR BELL: For the record, Mr Johnston, what's your full name?

5 MR JOHNSTON: Michael Roy Johnston.

MR BELL: And your address is known to those – your business address is known to those assisting this Inquiry, but what's your occupation, for the record?

10 MR JOHNSTON: I'm a chartered accountant by profession.

MR BELL: Now, CPH Crown Holdings Proprietary Limited was the company which on the 30<sup>th</sup> of May 2019 entered into a share sale agreement with Melco Resorts and Entertainment for sale of shares in Crown Resorts; is that correct?

15

MR JOHNSTON: That's correct.

MR BELL: And have you been the sole director of CPH Crown Holdings Proprietary Limited since its incorporation in December 2014?

20

MR JOHNSTON: As far as I recall, yes.

MR BELL: Do you say that Consolidated Press Holdings Proprietary Limited, via a series of subsidiaries, is the parent company of CPH Crown Holdings Pty Limited?

25

MR JOHNSTON: Yes, it is.

MR BELL: So I'll refer to Consolidated Press Holdings as CPH; do you follow?

30 MR JOHNSTON: Yes.

MR BELL: Now, you and Mr Guy Jalland are the two current directors of CPH; is that correct?

35 MR JOHNSTON: That's correct.

MR BELL: And have you been a director of CPH since August 2004?

MR JOHNSTON: I believe so, yes.

40

MR BELL: And are you the finance director of CPH?

MR JOHNSTON: Yes, I am.

45 MR BELL: Is that an executive role with CPH?

MR JOHNSTON: Yes.

MR BELL: And what are your duties as finance director of CPH?

MR JOHNSTON: I oversee the financial affairs of the CPH Group. I also act as a director on subsidiary entities and have an involvement in the – in the boards of  
5 controlled operating entities.

MR BELL: Have you had any other executive responsibilities for CPH in the period since 2014?

10 MR JOHNSTON: Since 2014, sorry, did you say?

MR BELL: Yes.

MR JOHNSTON: No, my role has always been as finance director.  
15

MR BELL: Now, prior to the establishing of Crown Resorts in 2007, you were a non-executive director of Publishing and Broadcasting Limited; correct?

MR JOHNSTON: That's correct.  
20

MR BELL: And were you appointed as a director of Publishing and Broadcasting Limited in December 2005?

MR JOHNSTON: I believe so, yes.  
25

MR BELL: I'll refer to that company as PBL; do you follow?

MR JOHNSTON: Yes.

30 MR BELL: Did you have any roles at PBL before you were appointed as a director in 2005?

MR JOHNSTON: No executive roles, no.

35 MR BELL: What do you mean by that?

MR JOHNSTON: Sorry, I was on a, I believe, a couple of board subcommittees for PBL. I was also, at one point when I was a partner of Ernst & Young, an adviser to PBL.  
40

MR BELL: What board subcommittees were you referring to?

MR JOHNSTON: I believe I was – I can't recall exactly, but I believe I was on the audit committee of PBL.  
45

MR BELL: Were you also a member of the finance committee of PBL?

MR JOHNSTON: Yes, sorry, I would have been, sorry.

MR BELL: How long before you became a director of PBL did you join the finance committee?

5

MR JOHNSTON: You're talking about the finance subcommittee of the board; I believe I would have become a member of that subcommittee upon becoming a director.

10 MR BELL: Sorry, I thought I understood you to say that before you became a director, you had some other non-executive roles at PBL; is that correct?

MR JOHNSTON: Sorry, no. I – I was an adviser to PBL as a third-party adviser when I was a partner at Ernst & Young.

15

COMMISSIONER: How long were you at Ernst & Young, Mr Johnston?

MR JOHNSTON: 17 years.

20 COMMISSIONER: And at the time that you joined the board, you were a partner; is that right?

MR JOHNSTON: I was a partner at Ernst & Young, yes, and then I was employed by CPH in 2004.

25

COMMISSIONER: I see.

MR JOHNSTON: And then subsequently I became a director of PBL.

30 COMMISSIONER: And you departed Ernst & Young?

MR JOHNSTON: I'm sorry, yes, I left Ernst & Young prior to commencing employment at CPH.

35 COMMISSIONER: Yes. I'm sorry to interrupt. Mr Bell.

MR BELL: Yes. Now, part of the role of the finance committee at PBL was to approve the entry into contracts by PBL and its subsidiaries; is that right?

40 MR JOHNSTON: It may have had that – that function. I'm not exactly recalling at this point.

MR BELL: Can we look at exhibit AB6, which is INQ.030.001.4315. Do you see that's the financial report for Publishing and Broadcasting Limited for 2006?

45

MR JOHNSTON: Sorry, which tab is it, can you – do you know?

MR BELL: Yes. It's exhibit AB, tab 6.

MR JOHNSTON: Tab 6, thank you. Yes.

5 MR BELL: Now, if you could look at the page ending in .4321, it is page 5 of the report.

MR JOHNSTON: Yes.

10 MR BELL: Do you see that it states under the heading Finance Committee that:

*The role of the finance committee is subject to its charter and to the direction and control of the board. The committee is authorised to approve the entering into contracts and leases, facilitate borrowings for the PBL Group –*

15

etcetera. Does that assist you to recall that one of the roles of the finance committee of PBL was to approve the entry into contracts for PBL and its subsidiaries?

MR JOHNSTON: I believe it was probably referring there to financing contracts, etcetera, but it's probably not abundantly clear.

20

MR BELL: It doesn't make that qualification in the annual report, does it?

MR JOHNSTON: No, it doesn't appear to.

25

MR BELL: And if you look at the previous page, point 4.

MR JOHNSTON: Yes.

30 MR BELL: You're described as a member of the finance and audit and corporate governance committees of PBL; do you see that?

MR JOHNSTON: That's right, yes.

35 MR BELL: Now, you've been a non-executive director of Crown Resorts Limited since the company was established in 2007?

MR JOHNSTON: Yes.

40 MR BELL: And is it correct that you and Mr John Alexander are the only current directors of the Crown Resorts who have been on the board since the company was established in 2007?

MR JOHNSTON: I believe that's correct. Yes.

45

MR BELL: And you are, and have always been, a nominee of CPH on the board of Crown Resorts; is that correct.

MR JOHNSTON: Yes.

MR BELL: You're currently a member of the audit and corporate governance committee of the board of Crown Resorts?

5

MR JOHNSTON: Yes.

MR BELL: And you're currently a member of the finance committee of the board of Crown Resorts?

10

MR JOHNSTON: Yes.

MR BELL: You're currently a member of the investment committee of the board of Crown Resorts?

15

MR JOHNSTON: Yes.

MR BELL: And you're currently a member of the occupational health and safety committee of the board of Crown Resorts?

20

MR JOHNSTON: That's right.

MR BELL: And you're currently a member of the people remuneration and nomination committee of the board of Crown Resorts?

25

MR JOHNSTON: Yes.

MR BELL: And you're currently a member of the risk management committee of the board of Crown Resorts?

30

MR JOHNSTON: That's right.

MR BELL: Are there any other committees of the board that you are currently a member of?

35

MR JOHNSTON: No other standing committees that I can recall. No.

MR BELL: Have you been approved by the New South Wales Independent Liquor and Gaming Authority as a close associate of the licensee of the Barangaroo restricted gaming facility?

40

MR JOHNSTON: Yes, I have.

MR BELL: Now, have you understood, at all times whilst you have been a director of Crown Resorts, that you owe duties of care and diligence to Crown Resorts?

45

MR JOHNSTON: Yes.

MR BELL: And do you say that, at all times, you have been a careful and diligent director of Crown Resorts?

MR JOHNSTON: Yes, I do.

5

MR BELL: And as a careful and diligent director of Crown Resorts, do you say that it's been your practice in discharge of your duties to read business emails which executives of Crown Resorts have thought sufficiently important to send to you?

10 MR JOHNSTON: I certainly try to do that. Yes .

MR BELL: And as a careful and diligent director of Crown Resorts, do you say that it's been your practice to read board papers of Crown Resorts prior to the board meetings to which the papers relate?

15

MR JOHNSTON: Yes.

MR BELL: And as a careful and diligent director of Crown Resorts, do you say that it's been your practice in discharge of your duties to ensure that you've understood the effect of important agreements which Crown Resorts is a party to?

20

MR JOHNSTON: I've done my best to do that, yes.

MR BELL: And over the period of time that you've been a director of Crown Resorts, you've often reviewed the minutes of meetings of directors, I take it?

25

MR JOHNSTON: Yes.

MR BELL: And the board papers for a meeting of directors of Crown Resorts include the draft minutes from the previous meeting; is that correct?

30

MR JOHNSTON: Typically, yes.

MR BELL: Yes. Which you have the opportunity to review before the board meeting that follows?

35

MR JOHNSTON: Yes.

MR BELL: And as a careful and diligent director of Crown Resorts, I assume that you would take steps to correct any inaccuracy in the minutes which came to your attention?

40

MR JOHNSTON: Anything that came to my attention. Yes.

MR BELL: And have you understood, at all times whilst you have been a director of Crown Resorts, that you had a duty to exercise your powers and discharge your duties in good faith and the best interests of Crown Resorts?

45

MR JOHNSTON: Yes.

MR BELL: And do you say, at all times, that you have exercised your powers and discharged your duties as a director of Crown Resorts in good faith in the best  
5 interests of Crown Resorts?

MR JOHNSTON: To the best of my abilities. Yes.

MR BELL: Have you been informed about the evidence given to this Inquiry by  
10 other witnesses?

MR JOHNSTON: I've watched snippets of some of the other witnesses, but not a lot.

MR BELL: Have you received briefings about the evidence given to the Inquiry by  
15 other witnesses?

MR JOHNSTON: Yes. I've received some briefings.

MR BELL: So you're aware of the evidence that has been given to this inquiry by  
20 Mr Felstead?

MR JOHNSTON: Some of it. I wouldn't say all of it. It went on for some time.  
25 Yes.

MR BELL: You were aware of the substance of the evidence given to this inquiry  
by Mr Craigie?

MR JOHNSTON: Yes.

MR BELL: Are you aware of the substance of the evidence given to this inquiry by  
30 Mr Barton?

MR JOHNSTON: I believe so, yes.

MR BELL: And have you had an opportunity to review the documents which have  
35 been provided to the lawyers for CPH by those assisting this Inquiry as the documents relevant to these hearings?

MR JOHNSTON: I'm sorry. You cut out at the end there, Mr Bell.

MR BELL: I asked if you'd had the opportunity to review the documents which  
40 have been provided to the lawyers for CPH by those assisting this Inquiry as the documents relevant to these hearings?

MR JOHNSTON: Yes. I've done my best to get through them. Yes.  
45

MR BELL: Can I take you to the code of conduct for employees issued by Crown Resorts in 2008. It's exhibit M3. Exhibit M, tab 3, INQ.010.003.0082.

5 MR JOHNSTON: Sorry. Is that behind a particular tab, Mr Bell?

MR BELL: It is exhibit M, tab 3.

MR JOHNSTON: M3. I'm sorry.

10 MR BELL: Do you have the code of conduct for employees?

MR JOHNSTON: Yes, I do.

15 MR BELL: And could I ask you to look at clause 1 on page .0084.

MR JOHNSTON: Yes.

20 MR BELL: I take it that you've been aware, at all times whilst you have been a director of Crown Resorts, that it's a fundamental principle of Crown Resorts that all of its business affairs should be being conducted legally, ethically and with strict observance of the highest standards of professionalism?

MR JOHNSTON: Yes.

25 MR BELL: And do you say, at all times whilst you have been a director of Crown Resorts, you've expected everyone at Crown Resorts to act in accordance with that fundamental principle?

30 MR JOHNSTON: Yes.

MR BELL: And I take it that you regard any failure to comply with that fundamental principle as a serious matter?

35 MR JOHNSTON: Yes, I do.

MR BELL: Now, when did you first join the risk management committee of the board of Crown Resorts?

40 MR JOHNSTON: I think in February of this year.

MR BELL: Could I ask you to look at the 2015 annual report of Crown Resorts. It's exhibit M224. Exhibit M, tab 224, INQ.010.002.0001.

45 MR JOHNSTON: Yes.

MR BELL: Now, could I take you to the corporate governance statement at page 33, which is the page ending in .0035. Do you see that the statement says that it sets

out the extent to which Crown Resorts has followed the best practice recommendations set by the ASX Corporate Governance Council?

MR JOHNSTON: Yes.

5

MR BELL: And that the disclosures in this corporate governance statement in 2015 respond to the ASX Corporate Governance Council's third edition of its Corporate Governance Principles and Recommendations?

10 MR JOHNSTON: Yes.

MR BELL: Perhaps, could I take you to that third edition of the ASX Corporate Governance Principles, it's exhibit O5. Exhibit O tab 5. Could I ask you to look at page 28 which is the page ending in .0337

15

MR JOHNSTON: Yes.

MR BELL: Now, do you see in the second-last paragraph of the left-hand column it says that:

20

*The board is a listed entity is ultimately responsible for deciding the nature and extent of the risks it is prepared to take to meet its objectives.*

MR JOHNSTON: Yes.

25

MR BELL: I take it that you agree with that statement of principle?

MR JOHNSTON: Yes, I do.

30 MR BELL: And I take it that you accept that this principle applied to Crown Resorts in relation to the risks involved in pursuing its business strategy in China in the period up to October 2016?

MR JOHNSTON: Yes.

35

MR BELL: And do you see that the last sentence in this column states:

*It is the role of the board to set the risk appetite for the entity to oversee its risk management framework and to satisfy itself that the framework is sound.*

40

I take it that you also agree with that statement of principle?

MR JOHNSTON: Yes.

45 MR BELL: And that you accept that this principle applied to Crown Resorts in relation to the risks involved in pursuing its business strategy in China in the period up to October 2016?

MR JOHNSTON: Yes.

MR BELL: Do you agree that it follows from these principles that it was a matter  
5 for the board of Crown Resorts to decide whether the business strategy being pursued  
in China, in the period up to October 2016, to continue to fit within the board's risk  
appetite?

MR JOHNSTON: Yes.

10 MR BELL: And do you agree that, in order for the board of Crown Resorts to  
decide if the business strategy being pursued in China continued to fit within its risk  
appetite, it was necessary for the board to be informed of the material facts relevant  
to making that decision?

15 MR JOHNSTON: Yes.

MR BELL: You were aware, whilst you were a director of PBL, that commencing  
in 2004, PBL had entered into a number of agreements with Melco International  
Development Limited?

20

MR JOHNSTON: Yes.

MR BELL: And you were aware, whilst you were a director of PBL, that Dr  
Stanley Ho was the chairman of Melco International from the 1980s until 2006?

25

MR JOHNSTON: I was aware that he was chairman for a period of time. I  
wouldn't have known that much detail, but – yes.

MR BELL: And you were aware, whilst you were a director of PBL, that one of the  
30 agreements entered into in 2004 between PBL and Melco International was a joint  
venture agreement to establish casinos in the Asia-Pacific region?

30

MR JOHNSTON: Yes.

35 MR BELL: And that joint venture vehicle was the company now called Melco  
Resorts and Entertainment Limited; correct.

MR JOHNSTON: That's right.

40 MR BELL: And the Crown subsidiary which held the shares in Melco Resorts was  
Crown Asia Investments Pty Limited.

MR JOHNSTON: I believe so. Yes.

45 MR BELL: Now, were you involved in the establishment of the joint venture  
between PBL and Melco International?

MR JOHNSTON: No, I wasn't – sorry – other than in my capacity as a board member when matters came up.

5 MR BELL: And were you involved as a member of the finance committee of PBL in reviewing the contract documents relevant to the joint venture?

10 MR JOHNSTON: I – I'm trying to recall whether I – I did or I didn't. It's – I would have been aware of the broad thrust of the agreements. I can't remember whether I reviewed them in detail. I'm sorry.

MR BELL: And were you involved in implementation of the joint venture in any way?

15 MR JOHNSTON: Sorry. What do you mean by "implementation"?

MR BELL: Well, the matters required for the joint venture to carry out its purpose of conducting – conducting casinos in the Asia-Pacific region?

20 MR JOHNSTON: No.

MR BELL: Now, were you aware, whilst you were a director of PBL, that Melco International brought to the joint venture with PBL as an asset the land which was used for the purpose of building the casino which became known as the City of Dreams in Macau?

25 MR JOHNSTON: Yes.

30 MR BELL: And can I just show you a Melco International Stock Exchange announcement to the Hong Kong Stock Exchange on the 13th of May 2005. It's exhibit AB3. Exhibit AB, tab 3, INQ.030.001.4107. Could I ask you first to look at the definitions on page 22 of the announcement page ending in .4128.

MR JOHNSTON: Yes.

35 MR BELL: Do you see at the bottom of the page there's a definition of "Melco PBL Holdings":

40 *A fifty-fifty joint venture established between Melco and PBL ... to engage in the business of gaming, entertainment, hospitality in the Asia-Pacific and greater China regions.*

MR JOHNSTON: Yes.

45 MR BELL: And that's the company which is now called Melco Resorts and Entertainment; correct?

MR JOHNSTON: That's my understanding. Yes.

MR BELL: Yes. And there's also a definition of a different company, "Melco Entertainment", a little bit further up the page, as:

*An 80 per cent owned subsidiary of Melco PBL Holdings.*

5

Do you see that?

MR JOHNSTON: Yes.

10 MR BELL: And there's a definition in the middle of the page, just above the middle of the page, of "joint venture MOA" as:

*The legally binding Memorandum of Agreement dated 28th October 2004 between Melco Leisure and Great Respect having the principal terms described in this announcement.*

15

Do you see that?

MR JOHNSTON: Yes, I do.

20

MR BELL: If I could ask you to look at page 21 of the announcement, the page ending in .4127, you see towards the bottom of the page there's a definition of "Great Respect" as:

*A company incorporated in the British Virgin Islands which is controlled by a discretionary family trust of Dr Stanley Ho.*

25

MR JOHNSTON: Yes.

30 MR BELL: And just above that there's a definition of "first agreement" as:

*An agreement dated 11 May 2005 between Melco Entertainment, Great Respect and Melco International for the acquisition by Melco Entertainment of the 49 per cent interest of Great Respect in the joint venture.*

35

Do you see that?

MR JOHNSTON: Yes.

40 MR BELL: If I could ask you to go back to page 1 of the announcement, at page .4107. Do you see that, just below the bullet points, it refers to an:

*...offer by the Macau Government to grant a long term lease in respect of land in the name of Melco Hotels –*

45

which was secured by the offer – I will start again. It refers to an:

*...offer by the Macau Government to grant a long term lease in respect of the land in the name of Melco Hotels*

which –

5

*was secured through the efforts of Great Respect, a company controlled by a discretionary trust of Dr Stanley Ho.*

MR JOHNSTON: Yes.

10

MR BELL: And if you look at page 2, the page ending in .4108. Do you see that it states, at the top of the page that:

15

*...on 11th May 2005, Melco Entertainment agreed to acquire the interest of Great Respect in the Joint Venture.*

MR JOHNSTON: Yes.

20

MR BELL: And further down the page, just below halfway, under the heading Acquisition Agreements, you see that it refers to the:

25

*First Agreement, dated 11 May 2005, with Great Respect, Melco Entertainment and Melco International, pursuant to which Melco Entertainment purchase the 49 per cent in the joint venture held by Great Respect for a consideration of HK\$1.175 billion.*

MR JOHNSTON: Yes.

30

MR BELL: And do you see that it states that:

*Great Respect has undertaken to immediately subscribe ... the consideration be received by ... convertible loan notes to be issued by Melco International.*

35

MR JOHNSTON: Yes.

MR BELL: And if you turn to page 8 of the Stock Exchange announcement, page ending in .4114, do you see there's a diagram explaining the transactions and how the transaction involving Great Respect tied into the Melco PBL joint venture?

40

MR JOHNSTON: Yes.

MR BELL: You understand that this is all publicly available information that was published on the Hong Kong Stock Exchange?

45

MR JOHNSTON: It seems to be that that's the case, yes.

MR BELL: Were you aware, whilst you were a director of PBL, that prior to the establishment of the joint venture between PBL and Melco International, a Melco International subsidiary, Melco Leisure and Entertainment, had entered into a joint venture with Great Respect for the establishment of the City of Dreams project in Macau?

MR JOHNSTON: I was aware that there were arrangements without necessarily being completely on top of the nature of them, but I was aware that there were some arrangements to that effect, yes.

MR BELL: So you were aware that an entity associated with Dr Stanley Ho was bringing in his interest in the City of Dreams joint venture to Melco International so it could be part of the assets of the Melco PBL joint venture.

MR JOHNSTON: I understood that there was, yes, some arrangements to that effect, yes. Yes.

MR BELL: And were you aware, whilst you were a director of PBL, that the consideration paid to Great Respect for its interest in the City of Dreams project was convertible notes issued by Melco International having a large margin?

MR JOHNSTON: I can't recall that, to be honest.

MR BELL: Were you aware that Great Respect ultimately converted convertible notes in Melco International into an approximately 20 per cent shareholding in Melco?

MR JOHNSTON: Yes.

MR BELL: Now, PBL and later Crown's investment in Melco Resorts was a significant investment both for Crown and also for CPH as its largest shareholder; is that correct?

MR JOHNSTON: Yes, it was.

MR BELL: And for many years, Mr Packer served as co-chairman of the Melco Resorts board; is that correct?

MR JOHNSTON: Yes. Yes, he did.

MR BELL: And as a director of both Crown Resorts and CPH during the period of the joint venture, I take it that it was your practice to review the financial reports of Melco Resorts and Melco International during that period?

MR JOHNSTON: There was financial reporting provided to the board of PBL and to the board of Crown once the – Crown became its own separately listed company.

And they were management-type financial reporting, as opposed to the statutory form.

5 MR BELL: Did you have an executive role as finance director of CPH during the period of the joint venture between PBL and Melco International?

MR JOHNSTON: Yes, I did.

10 MR BELL: So in order to carry out your functions as finance director of CPH and your functions as a director of Crown Resorts, was it your practice to review the annual financial statements of Melco International and Melco Resorts during the period of the joint venture?

15 MR JOHNSTON: No, it wasn't.

MR BELL: Did you ever do so?

20 MR JOHNSTON: Not that I can recall. As I said, the – we did get regular financial reporting in the board papers relating to the joint venture.

MR BELL: And did that reporting first go through the finance committee of the board of PBL when it was still a PBL joint venture?

25 MR JOHNSTON: No, it was included in the regular board packs, is my recollection.

30 MR BELL: In other words, you and your colleagues on the board of PBL and, later, Crown Resorts made it your practice to be informed of significant financial information relating to Melco International and Melco Resorts during the period of the joint venture? Is that a fair way of putting it?

MR JOHNSTON: Trading performance and the financial position of, yes.

35 MR BELL: Now, you were aware that Melco International was listed on the Stock Exchange of Hong Kong during the period of the joint venture?

MR JOHNSTON: Yes.

40 MR BELL: And Melco Resorts was listed on the Nasdaq?

MR JOHNSTON: Yes. I think the Hong Kong listing came subsequently, but yes.

45 MR BELL: Now, can I ask you to look at exhibit AA9, exhibit AA, tab 9, INQ.010.002.0795.

MR JOHNSTON: Sorry, the tab number for that, sorry, Mr Bell?

MR BELL: It's exhibit AA, tab 9.

MR JOHNSTON: Tab 9, thank you.

5 MR BELL: Do you see that this is an ASX media release by Crown Limited, as the company was then called, dated 10 May 2013?

MR JOHNSTON: Yes.

10 MR BELL: You were aware at the time that in May 2013, Crown Limited received approval from the Independent Liquor and Gaming Authority of this State to increase its shareholding in Echo Entertainment Group Limited, then the ultimate owner of the Star casino above 10 per cent?

15 MR JOHNSTON: Yes.

MR BELL: And if you could look at the page ending in point 0797, you were aware at the time that in that context the responsible New South Wales Minister approved the Independent Liquor and Gaming Authority of this State entering into a regulatory  
20 agreement with Crown Limited under the Casino Control Act to regulate Crown's acquisitions of shares in Echo Entertainment Group Limited.

MR JOHNSTON: Yes, I did.

25 MR BELL: You understood at the time this was an important agreement under which the State of New South Wales conferred rights and imposed liabilities on Crown Limited?

MR JOHNSTON: Yes.

30 MR BELL: You understood at the time that in order to discharge your duties as a careful and diligent director of Crown Limited it was necessary for you to understand the rights conferred and the liabilities imposed on Crown Limited under this important agreement; correct?

35

MR JOHNSTON: Yes.

MR BELL: If I could ask you to look at exhibit AA6, exhibit AA, tab 6. It's confidential link CRL.512.001.1993. Do you see it's a memorandum from Mr  
40 Neilson to all Crown Limited directors including, of course, yourself, dated 15 February 2013?

MR JOHNSTON: Yes.

45 MR BELL: And you see that it concerns the deeds to be signed with the State of New South Wales and the State of Queensland in relation to the approval for Crown Limited to increase its shareholding in Echo above 10 per cent.

MR JOHNSTON: Yes.

MR BELL: And if you look at page 2 of the memorandum, page .1994, you see that  
5 Mr Neilson informed you that a summary of the key terms of the New South Wales  
deed was set out in annexure A?

MR JOHNSTON: Yes.

MR BELL: That a copy of the draft deed would be made available at the board  
10 meeting?

MR JOHNSTON: Yes.

MR BELL: So if you look at annexure A to the memorandum, the page .1995, do  
15 you see that it sets out key terms of the New South Wales deed?

MR JOHNSTON: Yes.

MR BELL: If you look at the third last bullet point you see that a key term of the  
20 deed, according to this memorandum, was that Crown covenanted to monitor and  
report periodically to the Independent Liquor and Gaming Authority regarding  
ownership, interest of and commercial dealings with Stanley Ho and his associates.

MR JOHNSTON: Yes.  
25

MR BELL: And that this was similar to what was currently done for the  
Pennsylvania Gaming Control Board?

MR JOHNSTON: Yes.  
30

MR BELL: So Mr Neilson, in this memorandum, specifically drew your attention,  
didn't he, to the fact that the New South Wales deed contained provisions relating to  
the ownership interests and commercial dealings with Crown with Stanley Ho and  
his associates; correct?  
35

MR JOHNSTON: Yes.

MR BELL: And you knew that Dr Stanley Ho's involvement in casinos in this State  
40 was a matter of particular sensitivity to the New South Wales government, didn't  
you?

MR JOHNSTON: Yes, I understood there was sensitivity to that, yes.

MR BELL: Now, were you aware at the time of the provision of Crown Limited's  
45 agreement with the Pennsylvania Gaming Control Board?

MR JOHNSTON: I'm sorry, could you repeat that question?

MR BELL: Yes. Were you aware at this time of the provisions of Crown Limited's agreement with the Pennsylvania Gaming Control Board?

MR JOHNSTON: Not in any detail, no.

5

MR BELL: But you were aware, were you not, that the agreement with the Pennsylvania regulator contained provisions preventing Stanley Ho or a Stanley Ho associate taking an interest in Crown?

10 MR JOHNSTON: Again, I realised there was sensitivity to that, yes.

MR BELL: And do you see that – I will just take you back to what Mr Neilson said on the previous page at .1994; he says:

15 *A copy of the draft New South Wales deed will be made available at the board meeting.*

So we should take it, shouldn't we, that this document was part of the board papers for the next board meeting of Crown Limited?

20

MR JOHNSTON: I'm sorry, which document?

MR BELL: The document we have been looking at - - -

25 MR JOHNSTON: Yes.

MR BELL: - - - Crown Limited memorandum dated 15 February 2013. We should take it, should we, that this was a board paper?

30 MR JOHNSTON: Yes, this was a board paper, yes.

MR BELL: And can we look at the Crown Group consents and approval deed dated 10 May 2013 at exhibit Z1, exhibit Z, tab 1. It's confidential link CRL.506.005.2966. Mr Johnston, could I ask you to look at clause 5.5, the page ending in .2984.

35

MR JOHNSTON: Yes.

MR BELL: Do you see that this clause provides that Crown undertakes with the Independent Liquor and Gaming Authority in the terms set out in schedule 2.

40

MR JOHNSTON: Yes.

MR BELL: And if I could take you to schedule 2, which starts at the page ending in .3002, you see that's where schedule 2 starts?

45

MR JOHNSTON: Yes.

MR BELL: If I could take you to clause 2.4 at page .3004; you see clause 2.4 is headed Prevention of Associations with Stanley Ho.

MR JOHNSTON: Yes.

5

MR BELL: And do you see that clause 2.4B provides among other things, that:

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

MR JOHNSTON: Yes.

15 MR BELL: If you look at schedule 3, the page ending in .3009, you see that it identifies the entities and individuals who were deemed to be associates of Stanley Ho.

MR JOHNSTON: Yes.

20 MR BELL: And those entities included Great Respect Limited; do you see that?

MR JOHNSTON: Yes, I do.

25 MR BELL: Now, you were aware at the time, weren't you, that Dr Stanley Ho was a well-known and colourful identity in the casino industry?

MR JOHNSTON: Yes.

30 MR BELL: And these are quite extraordinary provisions, aren't they, which have the purpose of preventing a named individual and his associates from taking an interest in a group of companies which own casinos?

35 MR JOHNSTON: I'm not sure whether you can categorise them as extraordinary, but they had that effect. Yes.

MR BELL: Yes. And they're not the sort of provisions which you would easily or quickly forget, are they?

40 MR JOHNSTON: If – if I had read them. No.

MR BELL: But you reviewed this agreement carefully at the time, didn't you?

MR JOHNSTON: No, I didn't.

45 MR BELL: Is that a considered answer, Mr Johnston?

MR JOHNSTON: Yes, it is.

MR BELL: If we look at the minutes of the meeting of directors of Crown Resorts on the 20th of February 2013, at exhibit AA8. Exhibit AA, tab 8. It's confidential link CRL.512.001.2231.

5 MR JOHNSTON: Sorry. Tab 8. Exhibit – you said AA, did you?

MR BELL: Yes. Sorry. Exhibit AA, tab 8.

10 MR JOHNSTON: Tab 8. Thank you. My apologies.

MR BELL: So do you see that these are the minutes of the meeting of the directors of Crown Limited on 20 February 2013, which you attended?

15 MR JOHNSTON: Yes.

MR BELL: If you look at page 6 of the minutes, page ending in .2236. Do you see that, at the bottom of that page and going over to page .2237 - - -

20 MR JOHNSTON: Yes.

MR BELL: - - - the minutes record consideration by the directors in relation to the entry into the draft deed with the State of New South Wales and another draft deed with the State of Queensland?

25 MR JOHNSTON: Yes.

MR BELL: And, at page 2237, the minutes record that:

30 *Having carefully considered the draft of the New South Wales deed and the draft –*

New South Wales:

35 *...deed, directors concluded that they were acceptable to the company and that it was in the best interests of the company to enter into the deed.*

Do you see that?

40 MR JOHNSTON: Yes, I do.

MR BELL: You don't suggest these minutes are inaccurate, do you?

MR JOHNSTON: No, I don't.

45 MR BELL: So you did carefully review, did you not, the Crown Group consents and approval deeds at the time?

MR JOHNSTON: We carefully reviewed the paper that Mr Neilson had provided to us. I didn't review the agreement.

5 MR BELL: Well, that's not what the minutes record, is it, Mr Johnston? The minutes record that you and your colleagues carefully considered the terms of the draft New South Wales deed; correct?

MR JOHNSTON: Yes. The terms as set out in Mr Neilson's paper, yes.

10 MR BELL: That's not what it says, Mr Johnston, is it?

MR JOHNSTON: No.

15 MR BELL: And you don't suggest the minutes are inaccurate, do you?

MR JOHNSTON: Well, in that respect, they must be.

MR BELL: Really?

20 MR JOHNSTON: Yes.

MR BELL: You now say the minutes are inaccurate, do you?

25 MR JOHNSTON: Yes, I – we did not do a page turn on the deed. We – we were presented – Mr Neilson presented his paper to us.

MR BELL: So when you received these draft minutes with the next board papers, did you raise with Mr Neilson the fact that the minutes were inaccurate?

30 MR JOHNSTON: Well, given what I knew, I didn't see the minutes as being inaccurate in that I considered Mr Neilson had brought the relevant matters to the board's attention.

35 MR BELL: That just can't be true, can it, Mr Johnston? You've joined in with your colleagues in a resolution in minutes which state that you've carefully reviewed the provisions of the deed; that's correct, isn't it?

MR JOHNSTON: Not the provisions, the terms.

40 MR BELL: Right; the terms. Well, whether or not you can recall it at this moment, the probability is that these minutes are recording the truth; is it not?

45 MR JOHNSTON: I would have remembered if I had methodically gone through an agreement of that sort.

MR BELL: So do you tell the Commissioner, now, sitting here in 2020, do you say these minutes are untruthful?

MR JOHNSTON: No, I don't. I'm not suggesting that they're untruthful. I think that the minutes – you're expecting that the minutes are being interpreted in a way that you're suggesting. I'm saying that they can equally be interpreted in the way that I'm saying, which is that Mr Neilson took us through the key terms of the agreements and, considering the key terms, the board approved entry into the contracts.

MR BELL: Now, even if that were true, just have a look again at what Mr Neilson told you the key terms were. Exhibit AA6, CRL.512.001.1993. Your attention was specifically drawn by Mr Neilson to the fact that this agreement with the New South Wales regulator contained covenants requiring Crown to report periodically to ILGA regarding ownership interests and commercial deals with Stanley Ho and his associates; correct?

MR JOHNSTON: Yes.

MR BELL: And whether or not you absorbed the detail of the Crown Group consents and approvals deed, you were aware at the time that it contained provisions intended to prevent entities associated with Dr Stanley Ho from taking an interest in Crown Resorts; correct?

MR JOHNSTON: Stanley Ho or his associates. Yes.

MR BELL: Now, just have a look at your first statement to this Inquiry, dated 23 December 2019, which is exhibit AA223. Exhibit AA, tab 223, WIT.CPH.001.00001.

MR JOHNSTON: Yes.

MR BELL: This is for the hearing room only. You see that, in paragraph 11, it's stated that – you refer to the Melco PBL joint venture. You see the material terms of the joint venture are publicly available. Do you see that?

MR JOHNSTON: Yes.

MR BELL: And you identified the document as the document reference CPH.001.636.3494. Do you see that?

MR JOHNSTON: Yes.

MR BELL: And can we look at the document, the document bearing that reference, which is exhibit AA17. Exhibit AA, tab 17. Do you see it's the annual report of Melco Resorts, then called Melco Crown Entertainment for 2013 as reported to the United States Securities and Exchange Commission?

MR JOHNSTON: Yes.

MR BELL: As you supplied this document to the Inquiry with your statement, I take it that you reviewed this annual report at the time in 2013?

5 MR JOHNSTON: No, I didn't review it in 2013, but I've supplied it because it set out the material terms.

MR BELL: And you were aware, were you, that the material terms of the joint venture agreements in relation to the joint venture were publicly exhibited in Melco Resorts annual returns to Nasdaq?

10 MR JOHNSTON: Yes.

MR BELL: And if you just look at page – it's the page with the number 144 at the bottom, which is 149 in the PDF. It doesn't have a Ringtail reference, operator, but if you could find that page, please.

15 COMMISSIONER: Yes.

MR BELL: Thank you. And if we could zoom in, please, to note 3. Sorry. Just before we do that, can we zoom into the top of the page where it, just under the heading Name, it identifies the major shareholders of Crown, operator. You see that identifies, as one of the major shareholders, Melco Leisure as the owner of 33.55 per cent of the shares in Melco resorts at the time?

20 MR JOHNSTON: Yes.

MR BELL: You knew that Melco International held its shareholding in Melco Resorts via its subsidiary Melco Leisure and Entertainment Group Limited?

25 MR JOHNSTON: Yes.

MR BELL: And if we could now turn to note 3, operator, and if you could zoom on that. Note 3 identifies that Mr Lawrence Ho held shares directly in Melco International and also via the companies there identified, Lasting Legends, Better Joy Overseas, Mighty Dragon Investments and The L3G capital?

30 MR JOHNSTON: Yes.

MR BELL: You see that?

40 MR JOHNSTON: Yes, I do.

MR BELL: And you were aware at the time – at the time of this report – that Mr Lawrence Ho held a significant shareholding in Melco International in his own name and in the name of those entities?

45

MR JOHNSTON: I was not familiar with his ownership structure but I was aware that he held a substantial interest.

5 MR BELL: Yes. And you see that note 3 goes on to say that apart from those companies:

10 *...which are owned by persons or trusts affiliated with Mr Ho. Mr. Ho also has interest in Great Respect Limited, a company controlled by a discretionary family trust, the beneficiaries of which include Mr Ho and his immediate family members.*

MR JOHNSTON: Yes, I see that.

15 MR BELL: You knew by this time that Great Respect had a significant shareholding in Melco International?

MR JOHNSTON: Sorry. By which time?

20 MR BELL: By the time of this report; 2013?

MR JOHNSTON: No, I didn't. That wasn't something I had focused on.

MR BELL: You weren't aware of that at all, at 2013?

25 MR JOHNSTON: No.

MR BELL: But you'd already been aware that there was a significant shareholding in Great Respect?

30 MR JOHNSTON: Sorry. In Great Respect or by Great Respect?

35 MR BELL: I withdraw that. I withdraw that. Now, whether or not you read these words at the time, the specific entities, you did know, prior to the 30th of May 2019, that an entity or entities associated with Dr Stanley Ho had an interest in Melco International; correct?

MR JOHNSTON: I'm not sure that I did, no.

40 MR BELL: Not sure? Now, can you look at page 167 of this document. Do you see it's the page with 167 at the bottom of the page. It's page 172 of the PDF, operator. And if you could zoom in on paragraph 4.12. Do you see there, Mr Johnston, it refers to the assignment agreement and subscription agreement dated the 11th of May 2005 between Great Respect as assignor and Melco Entertainment as assignee, Melco International as issuer.

45

MR JOHNSTON: Yes.

MR BELL: Do you see that's the same agreement which is referred to in other publicly available documents which I've taken you to?

MR JOHNSTON: Yes.

5

MR BELL: And it's likely, isn't it, that you were aware of these agreements for the purpose of monitoring PBLs, later Crown's Resorts, investment in the Melco International joint venture?

10 MR JOHNSTON: I hadn't read this document at the time. The – the monitoring that we did of the joint venture was its business performance and financial affairs – or – sorry – that I did. I'm sorry. I should qualify that.

15 MR BELL: Now, you were aware in 2013, weren't you, that a subsidiary of Crown Limited, had made an application to the New South Wales Independent Liquor and Gaming Authority for a restricted gaming licence to manage and operate the Barangaroo restricted gaming facility?

MR JOHNSTON: Yes.

20

MR BELL: And in 2013, you became aware that a framework agreement was being negotiated by Crown Limited with the State of New South Wales in relation to that facility?

25 MR JOHNSTON: Yes.

MR BELL: And you became aware in 2013 that one of the regulatory agreements between Crown Limited and the Independent Liquor and Gaming Authority of New South Wales would be a VIP gaming management agreement.

30

MR JOHNSTON: I was aware of the existence of that agreement. It was referred to in a briefing paper, yes.

35 MR BELL: Look at exhibit AA15, exhibit AA, tab 15. That is confidential CRL.512.001.3911. Do you see these are minutes of a meeting of the board of directors of Crown Limited held on 29 October 2013 which you attended?

MR JOHNSTON: Yes.

40 MR BELL: And if you look at page 2 of the minutes, .3912, do you see that under the agenda item Crown Sydney update - - -

MR JOHNSTON: Yes.

45 MR BELL: - - - there was a discussion and presentation slides and the minutes record that Mr Craigie outlined the key legal documents in relation to Crown Sydney; do you see that?

MR JOHNSTON: Yes, I do.

MR BELL: And if you look at those presentation slides, which are exhibit AA16, exhibit AA, tab 16, confidential link CRL.512.001.3881, turn to page 5 of the slides,  
5 page .3886. So you see there there's a reference to the VIP gaming management agreement with the Liquor and Gaming Authority?

MR JOHNSTON: Yes.

10 MR BELL: And you understood at the time that this would be an important regulatory agreement with the Independent Liquor and Gaming Authority which would confer rights and impose liabilities on Crown Limited?

MR JOHNSTON: Yes.

15

MR BELL: And as a careful and diligent director of Crown Limited at the time, did you do your best to make sure you understood that agreement?

MR JOHNSTON: I listened carefully to and read the briefing paper that Mr Neilson  
20 gave us on it.

MR BELL: As a careful and diligent director of Crown Limited at the time, did you do your best to make sure that you understood this agreement?

25 MR JOHNSTON: I understood the terms of the summarised form for the board, yes.

MR BELL: You understood, didn't you, that the VIP gaming management agreement was one of a number of agreements entered into by the Independent  
30 Liquor and Gaming Authority in July 2014 which were relevant to conferring a licence on Crown Sydney gaming to conduct a casino at Barangaroo?

MR JOHNSTON: Yes.

35 MR BELL: And if we could look at exhibit Z13, exhibit Z, tab 13, you see this is confidential link INQ.080.120.1043. You see this is the CPH Group deed which was one of the agreements entered into by the Independent Liquor and Gaming Authority at the time?

40 MR JOHNSTON: Yes.

MR BELL: And if you look at page ending in .1078, you see that you and Mr Jalland signed this agreement on behalf of CPH?

45 MR JOHNSTON: Yes, I see that.

MR BELL: This was a significant agreement for CPH to enter into, I take it?

MR JOHNSTON: Yes, it was.

MR BELL: And you ensured that you thoroughly understood this agreement before you committed CPH to signing it, I take it?

5

MR JOHNSTON: Yes.

MR BELL: And you were aware, I take it, that one of the purposes of this agreement was to identify the persons associated with CPH who were approved as close associates of the licensee?

10

MR JOHNSTON: Yes.

MR BELL: And if you look at the page ending in .1077, you will see that among others you, Mr Jalland and Mr Packer were all approved as close associates of the licensee?

15

MR JOHNSTON: Yes.

MR BELL: And you understood that Mr Packer was approved as a close associate because of his control over CPH which, in turn, had a large shareholding in Crown Resorts, the holding company of the licensee?

20

MR JOHNSTON: Yes, I did, yes.

25

MR BELL: And if you look at the page ending in .1053, you see there's a definition of Minister's approval and consent acknowledgement, meaning the acknowledgement in annexure B?

30

MR JOHNSTON: Yes.

MR BELL: And if you look at clause 2.1, at page .1056, you see that clause 2.1 refers to the Minister's approval and consent acknowledgement?

35

MR JOHNSTON: Yes.

MR BELL: And if you look at clause 13.2 at page .1066, you see that it deals with CPHs rights – I withdraw that. You see that it deals with CPHs capacity to assign its rights under the CPH Group deed?

40

MR JOHNSTON: Sorry, which clause are you referring to there, Mr Bell?

MR BELL: 13.2.

45

MR JOHNSTON: 13.2, I'm sorry. Yes.

MR BELL: This was an important provision from CPHs point of view, of course?

MR JOHNSTON: Yes.

MR BELL: And you see that clause 13.2 refers to the Minister's approval and consent acknowledgement for the purposes of the authority giving its consent under  
5 that clause?

MR JOHNSTON: Yes.

MR BELL: So to understand CPHs rights under this agreement, it was necessary to  
10 review the Minister's consent – Minister's approval and consent acknowledgement;  
do you agree?

MR JOHNSTON: I would have – I would have taken advice on that, yes.

15 MR BELL: Yes. You would have considered it carefully, wouldn't you, as you  
have told us?

MR JOHNSTON: Yes, I would have taken advice on it. I'm not a lawyer. Yes.

20 MR BELL: If you look at annexure B to the agreement, page .1086, you see that it's  
the Minister's approval and consent acknowledgement?

MR JOHNSTON: Yes.

25 MR BELL: And if you look at page .1088, do you see that the acknowledgement  
refers at paragraph number 5 to the Minister's approval of the entry into certain  
agreements before the sunset date as that termed is defined in the VIP gaming  
management agreement?

30 MR JOHNSTON: Yes.

MR BELL: And the paragraph numbered 6, refers to the Minister's approval of the  
entry into certain agreements in item 3 of the schedule. Item 3 of schedule 1,  
immediately following execution of the sublease, as that term is defined in the VIP  
35 gaming and management agreement.

MR JOHNSTON: Yes.

MR BELL: And if you look at page 1089, you see that item 1 identifies agreements  
40 to be executed contemporaneously with the licence?

MR JOHNSTON: Yes.

MR BELL: It identifies the VIP gaming management agreement as one of those  
45 agreements?

MR JOHNSTON: Yes.

MR BELL: Item 1 also identifies on the next page the CPH deed as one of these agreements?

MR JOHNSTON: Yes.

5

MR BELL: And if you look at item 2 on page .1091, do you see that item 2 refers to the documents to be executed on or before the sunset date as defined in the VIP gaming management agreement?

10 MR JOHNSTON: Yes.

MR BELL: You see that item 3 refers to documents to be executed immediately following the execution of subleases defined in the VIP gaming management agreement? Do you see that?

15

MR JOHNSTON: Yes.

MR BELL: It was necessary for you, wasn't it, as a careful and diligent director of CPH to consider the provisions of the VIP gaming management agreement before you committed CPH to this CPH group deed?

20

MR JOHNSTON: I had lawyers that were acting for us on these contracts. They would have reviewed those, I can only assume. And they didn't bring anything to my attention that I should be concerned about.

25

MR BELL: But what you're saying is that you expected and had lawyers available to you to review these matters for you and explain any significant obligations in them, either from the perspective of CPH or Crown Resorts; correct?

30 MR JOHNSTON: From the perspective of CPH, yes.

MR BELL: But also from the perspective of Crown Resorts too; correct?

MR JOHNSTON: I don't think that CPH's lawyers would have seen that as part of their brief.

35

MR BELL: But let's just have a look at this VIP gaming management agreement, it's exhibit Z12. INQ.080.120.1298, confidential link.

40 MR JOHNSTON: Yes.

MR BELL: Now, you understood that this agreement regulated matters relating to the operation of the restricted gaming facility at Barangaroo?

45 MR JOHNSTON: Yes, based on the briefing that Mr Neilson had given me, yes.

MR BELL: You must have appreciated, I suggest, that to – you needed to understand this agreement, not only to discharge your duties as a director of Crown Resorts, but also to discharge your duties as a director of CPH, which was entering into an interrelated agreement?

5

MR JOHNSTON: I believe that I was briefed on the key terms of this agreement in the board meeting with Crown, and I would have relied on CPH's lawyers to bring anything to my attention if it was of concern with respect to the contemporaneous documentation as it affected CPH, with my CPH hat on.

10

MR BELL: And, well, let's have a look at the agreement a little bit more closely.

MR JOHNSTON: Yes.

15

MR BELL: If you look at page .1308, you see that the VIP gaming and management agreement also referred to the Minister's approval and consent acknowledgement?

MR JOHNSTON: Yes.

20

MR BELL: And if we look at clause 4 at page .1315, you see it also – there's a clause dealing with the ministerial acknowledgement and consent? Do you see that?

MR JOHNSTON: Yes.

25

MR BELL: And further down that page, clause 5.3 provides that:

*Crown Resorts provides undertakings to the authority in the terms set out in schedule 1.*

30

MR JOHNSTON: Yes, I see that.

MR BELL: And do you see that schedule 1 commences at page .1338?

35

MR JOHNSTON: Yes.

MR BELL: You see that page 1340, clause 2.4 is headed Prevention of Associations with Stanley Ho?

40

MR JOHNSTON: Yes.

MR BELL: And do you see that it contains a relevantly identical provision to that contained in the Crown Group consensus approvals deed, namely, that to the extent to which it's within its power to do so, Crown will ensure that it prevents Stanley Ho or a Stanley Ho associate from acquiring a direct, indirect or beneficial interest in Crown.

45

MR JOHNSTON: Yes.

MR BELL: And if you look at schedule 2, do you see that it identifies the individuals and entities who are deemed to be associates of Stanley Ho?

5

MR JOHNSTON: Yes.

MR BELL: And do you see they include Great Respect?

10 MR JOHNSTON: I do, yes.

MR BELL: And you were aware of the general sensibilities or sensitivities of the New South Wales government in relation to casinos having connections with Dr Stanley Ho at this time?

15

MR JOHNSTON: Yes.

MR BELL: And you told us earlier that as a careful and diligent director of Crown Resorts it has been your practice in the discharge of your duties to ensure that you have understood the effect of important agreements to which Crown Resorts is a party; correct?

20

MR JOHNSTON: Yes.

MR BELL: And whether you had absorbed all the details of the VIP gaming management agreements, you were aware at the time that the agreement contained provisions intended to prevent entities associated with Stanley Ho from taking an interest in Crown Resorts; correct?

25

30 MR JOHNSTON: Yes.

MR BELL: Can I ask you to look at exhibit M, tab 87, exhibit M87. It's CRL.545.001.2308. I'll re-read the number, CRL.545.001.2038. Sorry, it's exhibit M, M for Mike, tab 87.

35

MR JOHNSTON: Okay, yes. Is that a email from Michael Neilson; it's just my numbers don't correspond at the top.

MR BELL: Yes. No, you'll see that there's a number at the top which starts with CWN and down the bottom it starts with CRL. We're working off the CRL numbers.

40

MR JOHNSTON: Okay, sorry, my mistake.

MR BELL: Now, this is an email from Mr Neilson to you and others dated 28 July 2014 attaching papers for a CEO meeting on 30 July 2014.

45

MR JOHNSTON: Yes.

MR BELL: Is it the case that you regularly attended CEO meetings in 2014 and 2015?

5

MR JOHNSTON: Reasonably regularly, yes. I wouldn't say that I attended them all but reasonably regularly, yes.

MR BELL: And did you understand that the purpose of the CEO meetings was to brief Mr Packer while he was the chairman of Crown Resorts on matters relevant to the business of Crown Resorts prior to a board meeting?

10

MR JOHNSTON: Yes.

MR BELL: And who attended the CEO meetings?

15

MR JOHNSTON: They were typically people within the management of Crown: Mr Packer, Mr Craigie, Mr Alexander who was deputy chair at the time, myself and one or two other people from CPH.

20

MR BELL: And who from management attended?

MR JOHNSTON: Well, typically it was Rowen, Barry Felstead, Michael Neilson, Karl Bitar. Jason O'Connor would attend at times. Debra Tegoni would attend at times. I think I think that's who I can recall at this point.

25

MR BELL: Is it the case that it was the practice for there to be a VIP international business update prepared for consideration .....

MR JOHNSTON: Yes. I'm sorry, you have frozen there, Mr Bell. Sorry.

30

MR BELL: Sorry. I asked whether it was the practice for there to be a VIP international business update prepared for consideration at the CEO meetings?

MR JOHNSTON: To the extent that there were matters to report, yes.

35

MR BELL: Now, can I ask you to look at the next tab, exhibit M, tab 88, exhibit M88, which is confidential link CRL.522.001.0238.

MR JOHNSTON: Yes.

40

MR BELL: Were the VIP international business updates presented to the CEO meetings in the form of this document?

MR JOHNSTON: I think this would probably presented to the CEO meeting. No, they were not always this formal. Sometimes it was a much more informal presentation. But I imagine this was a document that was presented, yes.

45

MR BELL: Well, I should have explained to you. If you go back to exhibit M87.

MR JOHNSTON: Yes.

5 MR BELL: CRL.545.001.2038. You see that it refers in the bottom bullet point to a VIP update being attached?

MR JOHNSTON: Yes. Yes.

10 MR BELL: You can take it from me that the document at M88 is that attachment.

MR JOHNSTON: Okay. Thank you.

15 MR BELL: So my question is whether the VIP international business updates were typically in that form?

MR JOHNSTON: No, not always. As I said, sometimes they were much less formal than this.

20 MR BELL: All right. Can I ask you to look at exhibit M109, exhibit M, tab 109, confidential link CRL.527.001.1826. So Mr Johnston, this is a VIP marketing kick-off workshop prepared in October 2014, perhaps by Mr Michael Chen, and if I can ask you to turn to page 7, ending in the numbers .1032.

25 MR JOHNSTON: Yes.

MR BELL: You see there's a box in the right-hand identifying key meetings?

30 MR JOHNSTON: Yes.

MR BELL: And one of those key meetings is the CEO meetings which you have already described.

35 MR JOHNSTON: Yes.

MR BELL: And the other key meeting is described here as a CPH VIP working group meeting; do you see that?

40 MR JOHNSTON: Yes, I do.

MR BELL: Now, you may not have described the meeting in those terms, but is it the case that there was an informal group focused on the business of VIP international, which you attended in the period up to October 2016?

45 MR JOHNSTON: There was a group that met regularly through '13, calendar year '13 from about April. Less regularly through '14, and I attended fairly spasmodically through '15 and '16 until the China arrests, yes.

MR BELL: What was your name for this group?

MR JOHNSTON: The VIP working group. It wasn't CPH group.

5 MR BELL: Is it the case that in about March 2013 Mr Packer asked you to participate in the VIP working group?

MR JOHNSTON: Yes.

10 MR BELL: And apart from yourself, who regularly attended meetings of the VIP working group?

MR JOHNSTON: Regular attendees were Barry Felstead, Jason O'Connor, Michael Chen reasonably regularly; I put him at probably a 50 or 60 per cent attendance at  
15 those discussions. I think Roland Theiler, myself, Brad Kady, who was a financial analyst that worked with me, and for a period of time, Steve Bennett, who was the then treasurer of CPH. I may have missed some but that's who I recall at this point.

MR BELL: And did you understand that the purpose of the VIP working group was  
20 to provide guidance and advice to the senior executives of VIP International?

MR JOHNSTON: It was to provide input on specific matters to the group, yes.

MR BELL: Can I just ask you to look at exhibit M97, exhibit M, tab 97. That's  
25 CRL.527.001.4669. You see that email to you from Mr Alexander dated 28 August 2014; he says:

*Mike, putting your VIP hat on, I think it would be a good idea to have some  
30 sort of plan to get together on VIP.*

And he talks about various issues confronting the VIP international business at that time including a crackdown on high rollers in China and so on. Do you see that?

MR JOHNSTON: Yes, I do.

35 MR BELL: And then you replied to him on 28 August 2014 saying that you would have a look to have a discussion aimed at refreshing the strategy. Do you see that?

MR JOHNSTON: Yes.

40 MR BELL: And then you forwarded the email chain to Mr Kady; do you see that?

MR JOHNSTON: Yes.

45 MR BELL: So did Mr Alexander have any role in the VIP working group?

MR JOHNSTON: He came to the first meeting and he got regular reporting as part of the CEO meetings.

5 MR BELL: This was in August 2014.

MR JOHNSTON: Yes.

MR BELL: He had a role in the VIP working group at that time?

10 MR JOHNSTON: Not – no, not specifically. He was – he was part of the general management structure of Crown.

MR BELL: He was an executive deputy chairman at the time, wasn't he?

15 MR JOHNSTON: Yes, he was.

MR BELL: What did you understand his functions were as an executive?

20 MR JOHNSTON: He – well, he had, as the name suggests, he had an executive role and he was responsible for a broad overview of the business.

MR BELL: Any particular areas of the business that he was focused on, as you understood it?

25 MR JOHNSTON: I think the totality of the business, to be honest.

MR BELL: Is that a convenient time, Commissioner?

30 COMMISSIONER: Yes, it is. Thank you, Mr Bell. Mr Johnston, I'm going to take a short break for about 10 minutes or so. I will adjourn.

MR JOHNSTON: Okay. Thank you, Commissioner.

35 **ADJOURNED** [11.31 am]

**RESUMED** [11.34 am]

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

MR BELL: Are you there, Mr Johnston?

45 COMMISSIONER: Yes, he is.

MR JOHNSTON: Yes, I am. Could I perhaps make one point, with the Commissioner's indulgence?

COMMISSIONER: Yes, of course, Mr Johnston.

5

MR JOHNSTON: Sorry. I'm not sure if there is the appropriate time, but, in rereading my statements, I did notice a very small error in my second statement, which I wanted just an opportunity to - - -

10 COMMISSIONER: Yes. And that's the statement dated – that's the 20th of March 2020?

MR JOHNSTON: That's right, yes.

15 COMMISSIONER: And what did you want to indicate, Mr Johnston?

MR JOHNSTON: So, in paragraph 6 - - -

COMMISSIONER: Yes.

20

MR JOHNSTON: - - - about five lines from the bottom, it talks about:

*...and a second tranche six months thereafter.*

25 COMMISSIONER: It says:

*I said words to the effect –*

is that right? No.

30

MR JOHNSTON: No, no. No. The line above says:

*To sell 19.99 per cent.*

35 And then it's – this line, it starts with:

*9.99 per cent and the second tranche circumstance months thereafter.*

COMMISSIONER: Yes.

40

MR JOHNSTON: But I notice that's – that's an error. It was approximately four months thereafter. I'm sorry.

COMMISSIONER: So it was in the September?

45

MR JOHNSTON: Yes, 30 September.

COMMISSIONER: It was going to be 30 September from the May date?

MR JOHNSTON: That's right. Apologises.

5 COMMISSIONER: That's all right. That's noted. Thank you, Mr Johnston. Yes, Mr Bell.

MR BELL: So, Mr Johnston, in addition to the VIP working group, did you also attend ad hoc telephone conferences from time to time with members of the  
10 management of the VIP international business?

MR JOHNSTON: Yes, from time to time they would bring particular issues to me, yes.

15 MR BELL: And did those meetings typically include Mr Felstead, Mr O'Connor, Mr Chen, Mr Theiler and Mr Ratnam?

MR JOHNSTON: Mr Ratnam was an unusual attendee. It would only ever have been a couple that he would have attended. But, typically, they would have included  
20 at least Mr Felstead and Mr O'Connor. Yes.

MR BELL: Now, you knew, in the period up to October 2016, that Mr Packer had a particular interest in the VIP International business?

25 MR JOHNSTON: Yes. He was – I mean, he was pretty interested in the business in totality but, yes, he was interested in the VIP business.

MR BELL: And I take it that, as a loyal employee of CPH and Mr Packer, it was your practice to keep Mr Packer informed of issues in relation to the VIP  
30 International business that you considered important?

MR JOHNSTON: I updated him from time to time on the issues that he had asked me to focus on. Yes.

35 MR BELL: Presumably if something important came to your attention, knowing of his particular interest in the VIP international business, that you would make it your practice to draw those matters to his attention as well?

MR JOHNSTON: Yes. I thought it was worthy of his – his attention. Yes.  
40

MR BELL: Now, in the period 2014 to 2016, did you understand that a business objective of Crown Resorts was to grow the premium direct VIP business from mainland China to the Australian casinos of Crown Resorts?

45 MR JOHNSTON: Yes.

MR BELL: And you knew, I take it, that by 2014, that of all the regions where the VIP international units were conducting business, China was the region with the highest compound annual growth rate?

5 MR JOHNSTON: I believe so. Yes.

MR BELL: And you were aware, by 2014, that there was a corruption crackdown by the Chinese Government?

10 MR JOHNSTON: Yes. About, from memory, around August of 2014. Yes.

MR BELL: And, as you understood it, the aim of the crackdown was to target Chinese citizens who engaged in ostentatious displays of wealth; correct?

15 MR JOHNSTON: Yes.

MR BELL: Including by gambling in Macau?

MR JOHNSTON: Yes.

20

MR BELL: And you believed, did you not, by 2014, that the corruption crackdown by the Chinese Government represented an opportunity to grow the VIP international spending at Crown Resorts casinos in Australia?

25 MR JOHNSTON: I didn't know necessarily immediately that we recognised it as an opportunity, but it certainly became apparent. Yes.

MR BELL: It was apparent by 2014 to you; was it not?

30 MR JOHNSTON: By later in 2014. I think, as I said, from memory, the crackdown was announced around August of 2014. So I think it was later in 2014 that we reflected on that. Yes.

35 MR BELL: Yes, and it occurred to you at the time, in late 2014, that the Chinese VIP gamblers who'd previously gambled in Macau might be persuaded to redirect their business to Crown's casinos in Australia?

MR JOHNSTON: Persuaded, or it would be a natural occurrence. Yes.

40 MR BELL: And, for that reason, you believed, did you not, that there was an opportunity for the Crown Resorts staff based in China to increase the volume of gambling turnover by Chinese VIPs?

45 MR JOHNSTON: That was, yes, certainly one of the working assumptions of the VIP business. Yes.

MR BELL: And you believed, by 2014, that the future success of the Barangaroo VIP restricted gaming facility in Sydney depended upon attracting VIP customers, including VIP customers from mainland China?

5 MR JOHNSTON: They were a component of the business. Yes.

MR BELL: Now, when did you understand that Crown Resorts first employed staff who lived and worked in China as opposed to staff who travelled to China from places like Hong Kong?

10

MR JOHNSTON: I think, when I first became involved in the VIP working group, I think I was aware there were already people that resided in China that were involved in the Crown business. But I'm not sure that I can accurately answer your question.

15 MR BELL: So does that mean it was something of which you were aware by 2013, but not necessarily any earlier than that?

MR JOHNSTON: Yes.

20 MR BELL: Now, you were aware, from that time until October 2016, that there were approximately 20 staff of Crown Resorts or its subsidiary that lived and worked in China; is that right?

25 MR JOHNSTON: I'm not sure if I knew the exact number, but I knew that there was a reasonable number. Yes.

MR BELL: Now, you were aware, in that period, that the staff living and working in China were divided into seven regions, were you?

30 MR JOHNSTON: I'm – I'm sure that would probably have been in a report that I saw somewhere. Yes.

35 MR BELL: Now, you were aware in the period, up to October 2016, that the work done by the China-based staff included encouraging existing and potential new Chinese customers to visit Crown's casinos in Melbourne and Perth?

MR JOHNSTON: Yes. I think that – that's correct. Yes.

40 MR BELL: And you were aware, at the time, that the staff in China organised Chinese citizens to participate in gambling tours to the Australian casinos of Crown?

MR JOHNSTON: I was aware that there were customers of Crown that originated in mainland China that travelled to our resorts in Australia, yes – gaming customers.

45 MR BELL: In tour groups? In tour groups?

MR JOHNSTON: I'm not sure that I'd term it as tour groups. I'm not sure exactly what you mean by that, but there were customers, as I said, gaming customers that originated from China.

5 MR BELL: All right. Well, let me be more precise. You were aware, in that period, that the work done by the China-based staff included assisting VIP customers in China with their travel arrangements to Australia?

MR JOHNSTON: Yes.

10

MR BELL: And you were aware, in that period, that the work done by the China-based staff included assisting VIP based customers in China with obtaining the visas that they required to obtain entry to Australia?

15 MR JOHNSTON: Yes.

MR BELL: And you were aware, in that period, that the work done by the China-based staff included assisting customers in China to apply to Crown Resorts for a line of credit for use whilst gambling at the casinos in Melbourne and Perth?

20

MR JOHNSTON: At that point in time, I wasn't sure how that process worked, but I was aware that credit was extended to Chinese customers. Yes.

25 MR BELL: And you were aware, in the period up to October 2016, that the work done by the China-based staff included encouraging Chinese citizens who had gambled and lost at Crown's casinos to repay their debts?

30 MR JOHNSTON: I'm not sure whether that was done on the ground in China or from Melbourne. I'm sorry. I'm not aware of that. But, certainly, somebody from Melbourne would make contact with customers who had lost and reminded them of the debt. Yes.

35 MR BELL: Are you suggesting that you weren't aware that the staff living and working in China had, as one of their responsibilities, to encourage Chinese gamblers who lost to repay their debts?

MR JOHNSTON: Sorry. As I think about it, you're probably right. I probably would have been aware of that. Yes.

40 MR BELL: And you were aware, in the period up to October 2016, that many of the staff living and working in China were paid bonuses or commissions based on the amount of VIP gambling turnover which they generated?

45 MR JOHNSTON: I wasn't aware of how their bonuses were calculated. I was aware that they were paid bonuses. And I certainly would have been aware that the bonuses would have been in some way dependent upon the performance of the business. I didn't get down into the detail to individual contracts.

MR BELL: All right. Now, at any time up to October 2016, did you read any legal advice provided to Crown Resorts about whether the activities of the staff in China employed by Crown Resorts or its subsidiary complied with the business laws of China?

5

MR JOHNSTON: No, I didn't read any advice. It was relayed to me.

MR BELL: All right. Did you understand, in the period up to October 2016, that neither Crown Resorts nor any subsidiary had any licence or permission from the Chinese Government to conduct any business activities in China?

10

MR JOHNSTON: That wasn't an area I focused on, I'm afraid.

MR BELL: Does that mean you didn't know that?

15

MR JOHNSTON: Yes, I didn't know that. I'm sorry. I will answer your question. No, I did not know that.

MR BELL: Were you aware, in the period up to October 2016, that Chinese business law advice obtained by Crown Resorts was interpreted by management to mean that the staff in China would comply with the business laws of China if they conducted business activities there, as long as they didn't establish an office?

20

MR JOHNSTON: No.

25

MR BELL: Did you believe, in the period up to October 2016, that Crown Resorts had made a conscious decision not to open offices in China?

MR JOHNSTON: I wasn't aware that we had an office in China. I wasn't. That wasn't an issue that had been discussed with me, but I wasn't aware of an office.

30

MR BELL: Did you believe, in the period up to October 2016, that Crown Resorts had made a conscious decision not to open offices in mainland China?

MR JOHNSTON: No.

35

MR BELL: Can I ask you to look at exhibit CJ19. I imagine it's a confidentiality link. CRL.506.007.8870. Now, do you see that – if I could – do you see that this is the board paper which was considered by the board of Crown Resorts for the purpose of responding to the media allegations which had been made in July 2019?

40

MR JOHNSTON: Yes.

MR BELL: If I could ask you to look at page 10, page ending in point 8882.

45

MR JOHNSTON: Yes.

MR BELL: You see that at the top of the page under the number 3, the first bullet point says:

*Crown made a conscious decision not to open offices in mainland China.*

5

MR JOHNSTON: Yes.

MR BELL: Do you see that?

10 MR JOHNSTON: Yes, I do.

MR BELL: Was that something you only learnt when you read the board paper in July 2019?

15 MR JOHNSTON: Yes.

MR BELL: So by 20 - - -

20 MR JOHNSTON: Sorry, the fact – because I was just thinking a little bit more about that. At some point after the China arrests, it may have been brought to my attention by MinterEllison that we didn't – or there was a policy of not having offices. But I can't quite recall. But certainly this document made it clear, yes.

25 MR BELL: Yes. So certainly by July 2019 you understood that the policy of Crown Resorts in the period up to October 2016, for whatever reason, was not to open offices in mainland China; correct?

MR JOHNSTON: That's right.

30 MR BELL: So does that mean that you were not aware, in the period up to October 2016, that despite that decision by Crown Resorts, the company was conducting an unofficial office in Guangzhou in the period from August 2015 to October 2016 without any signage which it was apparently attempting to disguise from the Chinese authorities by leasing it in the name of two employees and then reimbursing them for  
35 the rental?

MR YOUNG: I object to the question.

40 COMMISSIONER: Yes.

MR YOUNG: It has got some propositions in there, multiple propositions. So it's more than one question. But one of the propositions is particularly objectionable, which that was that Crown was attempting to disguise the existence of the office from the Chinese authorities. There's no evidence to support that, and that was not  
45 put to or accepted by any witness.

MR BELL: My learned friend, Mr Young is unfortunately incorrect. Mr Craigie at transcript page 1473 to 1474 accepted that that was the case, and I took him in that regard to exhibit P19. In those circumstances, in my submission, the question is proper.

5

COMMISSIONER: It may proceed.

MR YOUNG: I persist in the objection. Mr Craigie was not aware of this at the time that the events were occurring in China, and he did not say he was.

10

COMMISSIONER: Let's just have a look at the transcript if Mr Young is going to persist.

MR YOUNG: Could I have the reference again, please?

15

MR BELL: Yes, 1473 to 1474. I should say, I'm happy to break the question up, but I consider that I am entitled to ask this part of it.

COMMISSIONER: Yes, I understand. Yes.

20

MR BELL: What day?

MR YOUNG: Where is the reference? Nothing at 1473 to 4.

25 MR BELL: I'm just obtaining a copy of the transcript, Commissioner. My note is 1473 lines 17 to 1474 line 14, but I don't have the transcript in front of me.

MR YOUNG: Yes. Mr Craigie says he was not aware of any of those matters up to October of 2016, and then you put to him that some particular reference appears to be an attempt to disguise, and he went on to say "that was not authorised by me" at the top of 1474. And this appears to be a reference to the Cynthia emails that were completely misunderstood by the inquiry.

30

COMMISSIONER: Are you suggesting that I've misunderstood something, Mr Young?

35

MR YOUNG: There was a series of emails about payments to – about an adjustment to a payment to a staff member. You might recall the name Cynthia.

40 COMMISSIONER: Yes. Yes. But I'm just wanting to know – if you're suggesting that I have misunderstood something, then I would like to know what it is so I can correct my .....

45 MR YOUNG: No, I was suggesting that counsel who asked questions about that misunderstood the emails.

COMMISSIONER: Okay.

MR BELL: Can I read to Mr Young and to you, Commissioner, 1473 line 43 - - -

COMMISSIONER: Yes.

5 MR BELL: - - - 1474 line 1.

COMMISSIONER: Yes.

MR BELL:

10

*MR BELL: And do you agree there appears to have been an attempt to disguise from the Chinese authorities the fact that Crown Resorts was conducting an office in Guangzhou by renting the premises in the names of employees and reimbursing them for the rental?*

15

*MR CRAIGIE: Yes. Yes, and further than that, that was unauthorised certainly by me and I understand by Mr Felstead.*

COMMISSIONER: Mr Young?

20

MR YOUNG: I will go back to the question, Commissioner. The question was directed to what Crown was actually doing on the ground in China prior to October 2016.

25 COMMISSIONER: Yes.

MR YOUNG: Not to some proposition put to Mr Craigie, who knew nothing about those matters at the time. And so when it's inserted into a question that Crown was, prior to October, in fact disguising something, I persist in the objection that there was  
30 no evidence that support that proposition inserted into the question.

MR BELL: Unfortunately, Mr Young has misheard the question. I used the word "apparently" in my question, quite deliberately.

35 COMMISSIONER: Now, Mr Young, please, this has been a civil process so far.

MR YOUNG: Yes.

40 COMMISSIONER: At least between – at least between the legal representatives. So let's keep it that way. Now - - -

MR YOUNG: Yes, well, Commissioner, I do persist because - - -

45 COMMISSIONER: Yes. I know you - - -

MR YOUNG: - - - to insert that into this question is unfair.

COMMISSIONER: No. No, look, Mr Young, I understand you are persisting. If you would just let me rule on it, I would be most grateful.

MR YOUNG: Of course. Of course.

5

COMMISSIONER: Yes, thank you. Now, Mr Bell, you may ask the question with the word “apparent” in it, as you proceed, and would you be kind enough to break it up?

10 MR BELL: Yes. Are you there, Mr Johnston?

COMMISSIONER: Yes, he is.

MR JOHNSTON: Yes, I am.

15

MR BELL: I take it from your earlier evidence that you were not aware, in the period up to October 2016, that despite that decision by Crown Resorts, the company was conducting an unofficial office in Guangzhou in the period from August 2015 to October 2016?

20

MR JOHNSTON: I can't recall that being brought to my attention, no.

MR BELL: And I take it that you are unaware that the unofficial office in Guangzhou in the period from August 2015 to October 2016 had no signage?

25

MR JOHNSTON: I wasn't aware of the office, so I can't be aware of that. So, no.

MR BELL: And I take it that you weren't aware that Mr Craigie agreed that this office was apparently attempting to disguise from the Chinese authorities the fact that it was a Crown Resorts office by leasing it in the name of two employees and then reimbursing the employees for the rental?

30

MR YOUNG: I object to that. He can't have been aware about Mr Craigie agreeing to it, with respect, at the relevant time. I mean, we are jumping around .....

35

COMMISSIONER: No, he can tell me that – if he is aware of the evidence that Mr Craigie gave. That's the import of the question.

MR YOUNG: But – quite. Except that he used the past tense which made it very confusing.

40

COMMISSIONER: I see. Yes. Yes, Mr Bell. Yes, Mr Bell, please. Mr Johnston, you were aware of Mr Craigie's evidence in that regard or not?

45 MR JOHNSTON: No, I wasn't, I'm sorry. When I mentioned earlier I watched snippets, I really have watched snippets of the inquiry.

COMMISSIONER: So that wasn't a snippet that you watched?

MR JOHNSTON: No, it wasn't, I'm sorry.

5 COMMISSIONER: That's okay. All right. Yes, Mr Bell.

MR BELL: Were you aware that Crown Resorts in the period August 2015 to October 2016 was leasing premises, office premises, in the name of two employees and reimbursing them for the rental?

10

MR JOHNSTON: Not to my knowledge, no.

MR BELL: And were you aware in the period up to October 2016 that this unofficial office in Guangzhou was used to process all of the visa applications for all of the VIP gamblers from all over China?

15

MR JOHNSTON: I don't recall it, no.

MR BELL: And were you aware in the period up to October 2016 that this unofficial office in Guangzhou contained computers, gifts and documents containing customer information used by Crown Resorts?

20

MR JOHNSTON: No.

MR BELL: And were you aware in the period up to October 2016 that the Guangzhou premises were described in emails as the Guangzhou office?

25

MR JOHNSTON: No, not that I recall, no. No.

MR BELL: Were you aware in the period up to October 2016 that the premises were described as an unofficial office with no signage?

30

MR JOHNSTON: Again, I don't recall being made aware of that, no.

MR BELL: Were you aware that there had been a previous unofficial office used in Guangzhou from at least 2012 to August 2015.

35

MR JOHNSTON: Again, I don't recall that that was ever brought to my attention, no.

40

MR BELL: Were you aware that this previous unofficial office was operating from premises which were not legally registered in a semi-residential building which an executive described as subject to random checks by authorities and posing many risks?

45

MR JOHNSTON: No. I don't recall ever being made aware of that.

MR BELL: Do you agree that if what I have put to you occurred, this conduct by Crown Resorts was contrary to a fundamental principle Crown Resorts and all of its business affairs be conducted legally, ethically and with strict observance of the highest standards of integrity?

5

MR JOHNSTON: I think – yes. I mean, I think there are multiple assumptions, but assuming all of your assumptions are correct, I would agree with that, yes.

MR BELL: Now, can I ask you to look at exhibit M, tab 30, which is  
10 CRL.545.001.0611.

COMMISSIONER: Yes.

MR BELL: Exhibit M, tab 30.  
15

MR JOHNSTON: Yes.

MR BELL: CRL.545.001.0611. You see it's an email from Mr Chen to Mr  
20 Felstead dated 26 March 2013?

MR JOHNSTON: Yes.

MR BELL: If I could ask you to look at the last main paragraph where Mr Chen  
25 says this:

*This is one thing that it's important to understand when it comes to the China team. They are living in constant fear of getting tapped on the shoulder. In a country where due process is inconsistently applied, it's a risky place to be for all our team.*

30

Do you see that?

MR JOHNSTON: Yes.

MR BELL: In the period up to October 2016, did you consider that the legal system  
35 in China was different from the legal system in Australia?

MR JOHNSTON: Yes.

MR BELL: And did you believe, in the period up to October 2016, that in China  
40 there was a potential for arbitrary action by the Chinese authorities?

MR JOHNSTON: My understanding I think at that time was arbitrary action was  
45 typically politically motivated. But yes.

MR BELL: And did you believe in the period up to October 2016 that China was a  
country where the law could be enforced inconsistently?

MR JOHNSTON: I knew that it had quite a different legal system to our own. As to where – whether that meant it could be enforced inconsistently, I'm not sure I had a view on that.

5 MR BELL: But did you believe in the period up to October 2016 that China was a riskier place for Crown staff to be working than in Australia?

MR JOHNSTON: I would generally consider Crown – sorry, China to be a riskier place than Australia so I suppose that's a reasonable supposition.

10

MR BELL: Were you aware in the period up to October 2016 that the staff in China were stating that they were in constant fear of being approached by the authorities?

MR JOHNSTON: No, I was not.

15

MR BELL: Were you made aware at any time up to October 2016 of fears being expressed by the staff in China as to their safety?

MR JOHNSTON: No, I don't recall being made aware of that.

20

MR BELL: Not at any time?

MR JOHNSTON: No.

25 MR BELL: In the period up to October 2016, did you read any legal advices provided to Crown Resorts about whether the business activities being conducted by Crown Resorts staff based in China complied with Chinese criminal laws in relation to gambling?

30 MR JOHNSTON: No, I did not read any. They were – the substance of it was relayed to me.

MR BELL: Did you ever ask to see any of those legal advices?

35 MR JOHNSTON: No.

MR BELL: Have you read any of those legal advices since October 2016?

40 MR JOHNSTON: No, I haven't. I'm a witness in the class action so I've been careful what I've looked at.

MR BELL: So not even before you joined in approving the board's response to the media allegations, had you read any of the legal advice?

45 MR JOHNSTON: No, I was relying on our lawyers with respect to those statements, who were across the detail.

MR BELL: And did you understand, in the period up to October 2016, that legal advice about the legality of the activities being conducted by Crown Resorts staff based in China was being provided by a Beijing-based law firm called WilmerHale.

5 MR JOHNSTON: Yes, I was.

MR BELL: I assume you have seen a large number of legal advices in your time?

10 MR JOHNSTON: I have seen a reasonable number.

MR BELL: And I assume that you know that it's necessary to understand the factual assumptions on which any legal advice is based?

15 MR JOHNSTON: Yes.

MR BELL: Of course, if the factual assumptions are incorrect then the legal conclusions may also be?

20 MR JOHNSTON: Yes, if they're materially incorrect, yes.

MR BELL: And can I ask you to look at exhibit A221, exhibit AA, tab 221. Confidential hearing room only, CRL.540.001.0277. You see this is a statement that you've signed?

25 MR JOHNSTON: Yes.

30 MR BELL: If I could ask you to look at paragraph 19, page .0280. You say there that during the relevant period, which you say was February 2015 to October 2016, that you understood from discussions with Barry Felstead, Rowen Craigie and Michael Chen, Crown had for many years been taking advice about what was lawful, common practice in China and also about what was prudent from a practical standpoint. So it was always your understanding that Crown subsidiaries operated lawfully in accordance with that advice. Do you see that?

35 MR JOHNSTON: Yes, I do.

40 MR BELL: Is it the case, as you've said in this statement that you've signed, that the sources of your understanding about the Chinese criminal law in the period up to October 2016 were Mr Felstead, Mr Craigie and Mr Chen?

MR JOHNSTON: They were the people that had relayed the substance of the advice to me at various points, yes.

45 MR BELL: Are you aware that Mr Craigie has given evidence to the effect that he never saw any of the legal advices at any time up to October 2016?

MR JOHNSTON: No, I'm not; I'm not aware of that. But that – that's certainly possible, yes.

5 MR BELL: Yes, and I take it you are also therefore not aware that Mr Craigie gave evidence to this Inquiry to the effect that he was relying on what Mr Felstead and Mr Chen had told him?

MR JOHNSTON: I was not aware of that, no.

10 MR BELL: Did you ever ask Mr Felstead, Mr Craigie or Mr Chen to identify the factual assumptions on which the legal advice they were conveying to you was based?

MR JOHNSTON: No, I didn't.

15 MR BELL: Did you ever seek any assurance from Mr Felstead, Mr Chen or Mr Craigie that the factual assumptions being made by the lawyers in their advices were appropriate?

20 MR JOHNSTON: No, I didn't.

MR BELL: You didn't ever ask anyone on the internal legal team at Crown Resorts to review the advice being provided by the external lawyers about Chinese criminal law to confirm that the advice was sound and based upon appropriate factual  
25 assumptions, did you?

MR JOHNSTON: No, I did not.

30 MR BELL: And you didn't ever obtain legal advice from the internal legal team at Crown Resorts in the period up to October 2016 as to whether conduct of the staff in China complied with the criminal law in China?

MR JOHNSTON: When I was being briefed by Mr Craigie on these matters in a CEO meeting, both Michael Neilson and Debra Tegoni were standing next to Mr  
35 Craigie when he was telling me that there had been advices taken, so I had seen that as an opportunity for them to input, if required.

MR BELL: Can we look at exhibit CJ1, WIT.CPH.006.0001.

40 MR JOHNSTON: Yes.

MR BELL: Now, this is hearing room only. This is a statement that you served on the Inquiry on 15 September 2020?

45 MR JOHNSTON: Yes.

MR BELL: After having had the benefit of being briefed on the evidence which had been provided to the Inquiry up to that time?

MR HUTLEY: I object. That question is quite unfair.

5

COMMISSIONER: Yes. That's rejected.

MR BELL: Now, if you have a look at paragraph 76, you see the earlier statement that I took you to a little while ago said that you had relied upon Mr Felstead, Mr  
10 Chen and Mr Craigie; do you recall that?

MR JOHNSTON: Yes.

MR BELL: And you now say, in a statement that you provided on 15 September,  
15 that you can recall a specific CEO meeting of Crown Resorts in 2014 at which there was a discussion about various matters. Do you see that?

MR JOHNSTON: Yes.

20 MR BELL: Do you have a note of that meeting?

MR JOHNSTON: No, I don't. I have a recollection.

MR BELL: Do you say that everything you have been able to recall in paragraph 76  
25 was all said in one meeting?

MR JOHNSTON: No, they were – the references to Mr Felstead and Chen were in different interactions or relate to different interactions.

30 MR BELL: So which is the interaction with Mr Craigie of which you now say you can recall Mr Neilson and Ms Tegoni being present?

MR JOHNSTON: It's the CEO meeting in 2014.

35 MR BELL: And - - -

MR JOHNSTON: Apologies if it's not clear.

COMMISSIONER: Sorry?

40

MR JOHNSTON: I said apologies if it's unclear.

MR BELL: Now, these discussions weren't detailed; is that correct?

45 MR JOHNSTON: Sorry. Which ones are you alluding to now, with Mr Craigie, you mean?

MR BELL: Yes.

MR JOHNSTON: No, it was a broad – it was a broad statement and it related to Asia as opposed to China, specifically.

5

MR BELL: Right.

MR JOHNSTON: It was inclusive of China. And so that was a general statement that Rowen advised that they had taken – when I say “they”, the legal department in Melbourne – had taken advice over a number of years with respect to each of the foreign countries of operation.

10

MR BELL: This wasn’t, specifically, based upon the Chinese gambling laws, though, was it?

15

MR JOHNSTON: No, but it included it.

MR BELL: And were you aware, in the period up to October 2016, that the Crown Resorts internal legal team did not have, prior to October 2016, copies of a good deal of the legal advice provided by the external lawyers to Mr Chen about compliance with Chinese gambling laws?

20

MR JOHNSTON: No. I’m not aware of that, and that would surprise me.

MR BELL: Were you not aware, after October 2016, when the arrests occurred, that the Crown Resorts legal team had to ask WilmerHale and other firms who provided advice to provide copies of all the advices that had been given?

25

MR JOHNSTON: No. I was not aware of that.

30

MR BELL: Was this discussion involving Mr Neilson and Ms Tegoni about appropriate operating protocols?

MR JOHNSTON: It was a discussion in which the VIP – sorry – it included Mr Neilson as well. It was a discussion that was at a CEO meeting, and the operations in Asia were being discussed. And I asked a question about the, you know, whether we were clear that the manner in which we were operating in the Asian countries was lawful?

35

MR BELL: And are you aware that Mr Neilson has given evidence to this Inquiry that he never once, in the period up to October 2016, turned his mind to the question of whether the staff in China were complying with the criminal laws of China?

40

MR JOHNSTON: No, I’m not. I didn’t watch any of his evidence.

45

MR BELL: He was never once asked to do so?

MR JOHNSTON: No. I was not aware of that.

MR BELL: And are you aware that Ms Tegoni has given evidence to this Inquiry to the effect that she first turned her mind to the specifics of compliance with the  
5 Chinese criminal law after October 2016?

MR JOHNSTON: No. I was not aware of that either.

MR BELL: And what date in 2014 does this CEO meeting occur?  
10

MR JOHNSTON: I can't recall the exact date of the meeting, but I can recall it was a CEO meeting in 2014.

MR BELL: I take it Mr Packer was present, was he?  
15

MR JOHNSTON: No. I don't think Mr Packer was present.

MR BELL: So does that mean that Mr Alexander was there, as the deputy chairman?  
20

MR JOHNSTON: I believe so, yes.

MR BELL: And who else was present at this meeting?

MR JOHNSTON: It would have been Barry Felstead. I assume that Ken Barton would have been there. He was normally at CEO meetings. I think, probably, Jason O'Connor.  
25

MR BELL: Now, was it your understanding, in the period up to October 2016, that it would breach the criminal laws of China in relation to gambling if a person organised 10 or more people to participate in an overseas gambling tour and was receiving a kickback or referral fee?  
30

MR JOHNSTON: No. I became aware of – of that interpretation of the law after the arrests.  
35

MR BELL: So do you say that you questioned Mr Craigie, Mr Felstead and Mr Chen on a number of occasions to satisfy yourself that the conduct of the staff in China was in compliance with the criminal laws of China in relation to gambling?  
40

MR JOHNSTON: Yes.

MR BELL: And do you say that – and I take it that you regarded this as a serious issue, which you considered you needed to be assured about; is that right?  
45

MR JOHNSTON: Certainly following the arrests of the Koreans, I thought it was a serious issue and – and, yes, I needed assurance on it. Yes.

MR BELL: And on the occasions when you raised the matter with Mr Craigie and Mr Felstead and Mr Chen, you say they never once told you the reasons why they said the conduct of the staff in China complied with Chinese criminal laws?

5 MR JOHNSTON: No. No, they didn't. But - - -

MR BELL: You never asked them?

10 MR JOHNSTON: - - - to be fair to them, I – I didn't – I didn't inquire. No. I was asking for assurance that they were – we were comfortable we were operating within the law.

MR BELL: So can I ask you to look at exhibit CJ19. CRL.506.007.8870, confidential link.

15 COMMISSIONER: Yes.

20 MR BELL: Now, this is the board paper that you and your colleagues on the board of Crown Resorts relied on for the purpose of the board's media and ASX announcement in response to the media allegations; do you see?

MR JOHNSTON: Yes.

25 MR BELL: And can I ask you to turn to page 9, page .881. You see in the bottom bullet point, it says:

*It was understood, based on legal and government relations advice, that promotion of gambling was that it was not illegal to promote gambling if it was to groups of less than 10 and no kickbacks were being received.*

30 MR JOHNSTON: Yes.

35 MR BELL: Was this something you only learnt for the first time when you read this board paper?

MR JOHNSTON: Yes. I'm sorry. Sorry. I take that back. I think I – that may have been raised earlier post the arrests by MinterEllison at a board briefing. Yes.

40 MR BELL: So, at least, by late July last year, you understood, did you, that the question of whether or not the employees in China were in breach of the criminal law in organising gambling tours to Australia depended on two things: first, whether they were organising more than 10 people to participate in a gambling tour; and, secondly, whether they were receiving a fee for doing so?

45 MR JOHNSTON: Yes, a commission. Yes.

MR BELL: And, in relation to the first aspect of that, do you say that your understanding, at least by July 2019, was that in order to be in breach of the criminal law for organising more than 10 people to participate in gambling tours, it had to be more than 10 people on a single specific occasion rather than, say, 10 people over  
5 two different occasions?

MR JOHNSTON: I was aware that that was the advice that had been received and they were relying on. Yes.

10 MR BELL: So the issue of whether, on this aspect, the employees in China were committing a criminal offence depended on whether, as you understood it, there were more than 10 people on one tour or 10 people on an accumulation of tours?

MR JOHNSTON: That was one of the criteria. Yes.

15 MR BELL: And do you say that it was your understanding, at least by July last year, that the other aspect which determined whether a criminal offence had been committed was whether the person was receiving kickback directly from the gambler?  
20

MR JOHNSTON: Yes.

MR BELL: And it was only received a payment, a person – I'm sorry. I withdraw that. It was only if the person received a payment directly from the gambler that there'd be a breach of the criminal law; is that right?  
25

MR JOHNSTON: Yes, that's my understanding.

30 MR BELL: Yes. And you understood, did you, that it wouldn't be a breach of the criminal law if the person received a payment from his or her employer which was based on the amount of gambling turnover received from the gambler?

MR JOHNSTON: Yes, I wasn't – I didn't believe there to be a connection between bonuses that were calculated in the way that we were calculating them and that  
35 criteria, yes.

MR BELL: So by July '19 at least, you understood that the legality of actions by the employees in China, according to the advice you were getting, depended on those two precise interpretations of Chinese criminal law being correct; there'd be more  
40 than 10 people on one occasion rather than more than one occasion and there had to be a kickback directly from the gambler rather than indirectly from the employer?

MR JOHNSTON: Yes.

45 MR BELL: So a lot hinged, would you agree, on those two precise matters being correct from the point of view of the safety of the staff in China?

MR JOHNSTON: As it transpired, yes.

MR BELL: Now, whatever your understanding of the legal position was in the period up to October 2016, if you believed that there was a potential for arbitrary  
5 action by the Chinese authorities, as you told us you did, and if you believed that China was a riskier place for staff to be working than in Australia, as you told us that you did, it must have been occurred to you that it was essential to take into account any fact that would indicate there was an increased risk to the safety of the staff in China?  
10

MR JOHNSTON: I think just one point of clarification. I think that I had attributed arbitrary action generally to politically motivated actions, but putting that aside, can you repeat your question?

MR BELL: Yes. All right. Well, whatever your understanding of the legal position was in the period up to October 2016, if you believed that there was a potential for arbitrary action in a politically motivated sense, and that China was a riskier place for the staff to be working than in Australia, it must have occurred to you that you  
15 needed to take into account any fact that would indicate that there was an increased risk to the safety of the staff in China.  
20

MR JOHNSTON: Yes.

MR BELL: Now, in or about February or March 2015, you became aware, didn't  
25 you, of reports that the Chinese authorities were cracking down on foreign casinos recruiting Chinese citizens to gamble overseas?

MR JOHNSTON: That's right, yes.

MR BELL: And you reviewed media articles relating to gaming industry topics from time to time in 2015, didn't you?  
30

MR JOHNSTON: Yes.

MR BELL: And you were a subscriber to a media monitoring service called News for Gambling in 2015?  
35

MR JOHNSTON: Yes.

MR BELL: And I take it it was your practice to review the monitoring services?  
40

MR JOHNSTON: I – I read what came through as I got – if and as I got time.

MR BELL: Yes. I just ask you to look at exhibit AB10, exhibit AB, tab 10. It's  
45 confidential CPH.001.0704.4754.

MR JOHNSTON: I'm sorry, that was – tab number again, I'm sorry?

MR BELL: Yes, exhibit AB, tab 10.

MR JOHNSTON: 10, thank you.

5 MR BELL: Do you see this is a News for Gaming media monitoring service provided to you on 7 February 2015?

MR JOHNSTON: Yes.

10 MR BELL: And do you see on the second page, page .4755 - - -

MR JOHNSTON: Yes.

15 MR BELL: - - - it refers to two articles, one from Bloomberg and one from Reuters referring to China cracking down on foreign casinos seeking Chinese gamblers.

MR JOHNSTON: Yes.

20 MR BELL: It's likely, isn't it, that you became aware about the crackdown from the media monitoring service and the newspaper reports?

MR JOHNSTON: No, I don't recall being – becoming aware from this. I recall becoming aware from – in a phone call from the executives of Crown.

25 MR BELL: Pardon me a moment.

COMMISSIONER: Yes, of course.

30 MR BELL: If we look at the Reuters article at exhibit M131, exhibit M, tab 131, INQ.100.001.0003; do you see that it states that:

*China would fight attempts by foreign casinos to lure its citizens abroad.*

35 Do you see that?

MR JOHNSTON: Yes.

40 MR BELL: In the second paragraph it refers to Chinese often travelling to Macau, South Korea, Philippines or Australia, gambling is illegal in mainland China.

MR JOHNSTON: Yes.

45 MR BELL: It goes on to report a statement by the deputy bureau chief at the Ministry of Public Security in China at the bottom of the page that:

*Some foreign countries see our nation as an enormous market and we have investigated a series of cases.*

Do you see that?

MR JOHNSTON: Yes.

5 MR BELL: At the top of the next page, the official is quoted as saying:

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

10

Do you see that?

MR JOHNSTON: Yes, I do.

15 MR BELL: But whether or not you read this article, you were generally aware of the matters that are reported here by Reuters?

MR JOHNSTON: I was made aware by Crown executives that there had been an announcement on – that the Chinese authorities were going to crack down on foreign casinos operating in China.

20

MR BELL: Yes. Can I just ask you to look at your statement that you provided on 15 September 2020 on this Inquiry. Exhibit CJ1, hearing room only, WIT.CPH.006.0001.

25

MR JOHNSTON: Yes.

MR BELL: That's what you have told the Inquiry in your latest statement is your recollection of what you were told at that time; is that right?

30

COMMISSIONER: Which paragraph?

MR BELL: Paragraph 82. My apologies.

35 COMMISSIONER: That's all right. So if you have a look at paragraph 82, Mr Johnston.

MR JOHNSTON: Thank you, Commissioner.

40 MR BELL: You were told in early March or in March 2015 that focus was on South Korean operators, were you?

MR JOHNSTON: Yes, that's my recollection. Yes.

45 MR BELL: Well, are you suggesting that Mr Chen, Mr Felstead and Mr O'Connor told you that it was a focus was on South Korean operators, so there was, effectively, nothing to worry about?

MR JOHNSTON: I think that was the substance of the discussion. Yes.

MR BELL: Now - - -

5 COMMISSIONER: Where did you get the date from?

MR JOHNSTON: There was an entry in my diary, Commissioner, that, interestingly, said “urgent call”. So I got it out of my diary.

10 COMMISSIONER: I’m sure you have a lot of those, though.

MR JOHNSTON: Yes. No, but it was with – with the people involved, which helped – made me – made me understand what it related to.

15 COMMISSIONER: So this is your diary in some time in March, was it?

MR JOHNSTON: Yes, 5<sup>th</sup> – my diary entry was the – yes. It was in March, yes.

COMMISSIONER: Yes. You’ve said 5 March there.

20

MR JOHNSTON: 5<sup>th</sup> of March, that’s right. Yes. Sorry.

COMMISSIONER: Yes, that’s all right.

25 MR BELL: Well, now that we’ve been able to focus in on that date, can I ask you to look at exhibit M154, CRL.545.001.0128. You see an email, at the bottom of the page, from Mr Michael Chen to the lawyer in Beijing, Mr Zhou, dated 24 February 2015, some nine days before your discussion with Mr Chen, Mr Felstead and Mr O’Connor.

30

MR JOHNSTON: Yes.

MR BELL: And do you see that Mr Chen says:

35 *Hi Ken. Climate has gotten quite destabilised. We have competitors that have pulled their entire teams out of China. Would you please advise whether you think our executives should be avoiding entering China, whether we should be pulling staff out?*

40 You see that?

MR JOHNSTON: Yes.

45 MR BELL: And do you see that Mr Zhou replies on the 25<sup>th</sup> of February 2015, saying:

*I agree that it seems prudent to limit travels of senior executives to mainland China at this point, given that the regulatory environment has been tightened up and the picture is not entirely clear. I'm not sure whether it has come to the point that you have to pull the entire team out of China. One option is that you could have some key employees tentatively work outside China, eg, Hong Kong.*

See that?

MR JOHNSTON: Yes, I do.

MR BELL: Now, surely, Mr Chen or Mr O'Connor or Mr Felstead told you, in your urgent telephone call on the 5th of March, some eight days later, that the climate was quite destabilised, in that competitors had pulled their entire teams out of China.

MR JOHNSTON: No. I don't recall him saying that.

MR BELL: You don't have any recollection one way or the other?

MR JOHNSTON: I am sure I would recall it if that's the message that had been delivered to me.

MR BELL: Surely, Mr Chen or Mr O'Connor or Mr Felstead told you that the current legal advice was to limit travels of senior executives to China, given that the regulatory environment was being tightened up?

MR JOHNSTON: No.

MR BELL: Surely, Mr Chen or Mr O'Connor or Mr Felstead told you that they had decided to defer travel to China, because of their concerns for their own personal safety at this time?

MR JOHNSTON: No. They didn't tell me that.

MR BELL: Surely, Mr Chen or Mr O'Connor or Mr Felstead told you, in the telephone conversation on or about the 5th of March, that the external lawyers weren't sure whether the entire team should be pulled out of China, but one option was to have key employees working from Hong Kong?

MR JOHNSTON: No. I can't recall them telling me that either.

MR BELL: You're painting a very different picture of what you were told on the 5th of March from what these emails conveyed some eight days earlier; do you agree?

MR JOHNSTON: Yes. I agree with that.

MR BELL: And I suggest that your recollection of what you were told on the 5th of March cannot be correct.

5 MR JOHNSTON: I mean, I don't accept that. I – I do recall the conversation and, clearly, the conduct of the business or the conduct of those individuals would, to me, seem to indicate that my recollection is correct.

10 MR BELL: That just can't be true, can it, Mr Johnston? You must have been told, at this time, that the executives had decided to defer travel to mainland China because of the risks involved in light of the crackdown?

MR JOHNSTON: No. I can't recall being told that.

15 COMMISSIONER: Some of the things that have happened over the years are, obviously, rather scorching events and can have an effect on what you remember, I know. But, you see, you're talking about Korean staff, aren't you, in this recollection that you have on the 5th of March?

20 MR JOHNSTON: Yes.

COMMISSIONER: That's right?

MR JOHNSTON: That's right, yes.

25 COMMISSIONER: And there is some evidence, no doubt, that Mr Bell will discuss with you, but in respect of what you've just seen, just do you accommodate the possibility that your recollection might have just been of a conversation at a different time and not on the 5<sup>th</sup> of March?

30 MR JOHNSTON: It is certainly possible that I put two and two together in terms of a diary entry and my recollection.

COMMISSIONER: Yes.

35 MR JOHNSTON: It was some time in that time period - - -

MR JOHNSTON: Yes.

40 MR JOHNSTON: - - - when I had – when the issue of – of the change in approach in China first – regarding foreign casinos, first came to the fore. I can recall a conversation around that time, and I can recall being made aware of it by the executives. Now, I may have got the date slightly wrong, perhaps, if I - - -

45 COMMISSIONER: Yes.

MR JOHNSTON: - - - misunderstood my diary.

COMMISSIONER: Because - - -

MR JOHNSTON: Yes.

5 COMMISSIONER: Because, on one view of it, from what you have just been taken  
to, it would be, from, let me tell you, my perspective, a very odd thing for these  
gentlemen or whoever it was that spoke to you after they spoke to them, possibly, to  
tell you what you have recorded on the 5<sup>th</sup> of March when this, in this email, was the  
reality of their concerns. It would be very odd, wouldn't it?

10 MR JOHNSTON: Yes. I accept – that's the first time I've obviously seen those  
emails. But I accept that. Yes.

15 COMMISSIONER: That's all right. Yes. That's all right, Mr Johnston. Yes, Mr  
Bell.

MR BELL: In any event, Mr Johnston, having been made aware of the gist of the  
Reuters article, you must have appreciated that this was a serious warning by the  
Chinese authorities at this time?

20 MR JOHNSTON: Yes, it did cause me some concern. Yes.

MR BELL: And that it was an important issue in relation to the VIP international  
business in China?

25 MR JOHNSTON: Yes.

MR BELL: And because it was escalating the risk to the safety of the staff in China  
for there to be a crackdown on foreign casinos recruiting Chinese gamblers?

30 MR JOHNSTON: Yes.

MR BELL: Now, did you inform Mr Packer of this important issue in relation to the  
VIP international business?

35 MR JOHNSTON: No, I didn't. As I said in my statement, it had been relayed to me  
that they'd taken advice and it was along the lines as described in my statement. So,  
at that point, I didn't see it as being necessary to escalate it further.

40 MR BELL: Did you discuss with the VIP International executives on 5 March what  
steps they'd taken in response to the crackdown?

MR JOHNSTON: No, I didn't. They were relaying advice they had received.

45 MR BELL: And were you aware before that – were you told that one of the  
responses of the VIP International executives was to tell the staff in China they were  
applying for Hong Kong and Singapore work permits for all the China-based staff

without foreign passports so that they could say that they worked out of an overseas location and were on business travel to China?

MR JOHNSTON: No, I wasn't aware of that, no.

5

MR BELL: Do you agree that this proposal by the VIP international executives, if what I've put to you is correct, it could only be construed as an attempt to deceive the Chinese authorities in relation to the work status of the China-based staff?

10 MR JOHNSTON: That – that is a logical conclusion, yes.

MR BELL: And do you agree that, if what I've put to you is correct, that this proposal was inconsistent with Crown Resorts' fundamental principle that all of its business affairs be conducted ethically and with strict observance of the highest standards of integrity.

15

MR JOHNSTON: Yes.

MR BELL: And do you agree that this proposal reflects an unethical culture within the executive team of VIP international at the time?

20

MR JOHNSTON: I mean, I would have to understand the background to it. I saw that for the first time in the material when I was preparing but, yes, if it's as you have portrayed it.

25

MR BELL: In June 2015, you learned through media articles that a number of employees of two South Korean casinos had been arrested in China.

MR JOHNSTON: Yes, that's right.

30

MR BELL: And I ask you to look at exhibit M193, which is INQ.100.001.0297. You see this is an article in Asia Gaming Brief on 21 June 2015 - - -

MR JOHNSTON: Yes.

35

MR BELL: - - - referring to the arrests.

MR JOHNSTON: Yes.

MR BELL: And it refers also back to the announcement by the Chinese Ministry of Public Security in February that Chinese authorities would crack down on casino operators from neighbouring countries that have set up offices to attract and recruit Chinese gamblers.

45 MR JOHNSTON: Yes.

MR BELL: You were aware in June 2015, I take it, that the arrest of the South Koreans was part of a wider crackdown on foreign casino operators trying to recruit Chinese citizens to gamble abroad.

5 MR JOHNSTON: When I became aware of this, yes, it was concerning.

MR BELL: Were you aware at the time that in June 2015 Mr Robert Rankin, who was soon to become the chairman of Crown Resorts, had told the managing director, Mr Craigie, that the company needed to be on high alert for regulatory action by the  
10 Chinese authorities against the Crown Resorts staff in China?

MR JOHNSTON: No. No, I wasn't aware of that.

MR BELL: When did you last have any communication with Mr Rankin, by the  
15 way?

MR JOHNSTON: I think it would be at least three years ago, if I've got the dates correct. Well, at least two and a half years ago, yes.

20 MR BELL: Did you regard the arrest of the South Koreans as an important development in relation to the safety of the staff in China?

MR JOHNSTON: Yes.

25 MR BELL: You did regard it as important enough to inform the board of Crown Resorts about it at a board meeting on 12 August 2015; is that correct?

MR JOHNSTON: Yes. I considered it important, so I did refer – I did bring it up at a board meeting, yes.  
30

MR BELL: And what was the substance of what you say you said?

MR JOHNSTON: I had asked the VIP executives to go and get fresh advice and – which they did and they relayed to me. So I relayed to the board both the fact that  
35 the Koreans had been arrested and the substance of the legal advice that I had understood had been taken.

MR BELL: What was the substance of the legal advice as you understood it at the  
40 time?

MR JOHNSTON: The substance of the legal advice as it had been relayed to me was that the – what Crown was doing was still lawful; that the South Koreans could be distinguished from both Crown and the rests of the industry in terms of what they were doing. They were breaking the currency control rules that were being tightly  
45 enforced in China and were very actively promoting gambling at their casinos.

MR BELL: So by this time you still had no idea what the issues were in relation to the Chinese criminal laws in relation to gambling; is that right?

5 MR JOHNSTON: In terms of the foundations for the advice Crown was taking, you mean?

MR BELL: Well, you told us earlier that you had no idea that the issues involved in relation to the legality of what the Chinese were doing depended upon two factors: (1) whether they were organising more than 10 people to gamble on a specific occasion; (2) whether they were receiving a kickback directly from gambling. Do you recall giving that evidence?

MR JOHNSTON: Yes, I do.

15 MR BELL: But you say you had no idea about that in 2015?

MR JOHNSTON: That's right.

MR BELL: Now, can I ask you to look at the minutes of the board meeting on 12 August 2015 at 10 am, which is exhibit R13.

MR JOHNSTON: Yes.

MR BELL: Confidential link CRL.512.001.7497.

MR JOHNSTON: Yes. I have that.

MR BELL: Yes, thank you. And you see that's the minutes of a meeting on 12 August at 10 am which you are recorded as having attended.

MR JOHNSTON: Yes.

MR BELL: You can take it from me that there is no reference at all in those minutes to any record of a discussion along the lines you have told us about.

MR JOHNSTON: Yes, I understand that.

MR BELL: And if I could ask you, there was a second board meeting on 12 August 2015 at 7 pm, which is at exhibit R14, confidential link CRL.512.001.7698.

MR JOHNSTON: Yes.

MR BELL: You are also recorded as attendance at that meeting.

45 MR JOHNSTON: Yes.

MR BELL: You can take it from me that there's no reference anywhere in those minutes to any discussion or any communication by you along the lines of what you have told us about.

5 MR JOHNSTON: Yes.

MR BELL: Which of these two meetings is the one that you say you raised this issue at?

10 MR JOHNSTON: The earlier of the two.

MR BELL: And are you able to offer any explanation as to why there's no record in the minutes of that communication?

15 MR JOHNSTON: It was – it was not on the agenda and, therefore, I assume that's why the company secretary didn't reflect it in the minutes. The minutes by their nature typically tend to be brief.

MR BELL: Is that a convenient time?

20

COMMISSIONER: Yes. Mr Johnston, it's now the luncheon adjournment. So I will adjourn until 2 pm and we will resume the video link at that time, if you could return just a little before 2.

25 MR JOHNSTON: Certainly. Thank you, Commissioner.

COMMISSIONER: Yes, thank you.

30 **ADJOURNED** [1.04 pm]

**RESUMED** [1.59 pm]

35

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

40 MR BELL: Mr Johnston, you became aware in July 2015 that a Crown Resorts employee in Wuhan had been questioned by the Chinese police about whether he was organising gambling tours; is that correct?

MR JOHNSTON: Yes. I was copied on an email that Mr Felstead had sent. Yes.

45 MR BELL: And did you become aware that this was the second employee in China at this time who had been questioned by the police about involvement in gambling?

MR JOHNSTON: No. I only recall this as being – my recollection is this is the only one I was – I was aware of.

5 MR BELL: If you look at exhibit AB21. Exhibit AB, tab 21. Confidential link CPH.001.242.3531.

MR JOHNSTON: Yes.

10 MR BELL: It's CPH.001.242.3531, confidential link. Do you see that, on Friday, the 10th of July 2015, Mr Felstead sent you an email in relation to the questioning of the staff in Wuhan saying:

*This is what we will be up against in China at the moment.*

15 MR JOHNSTON: Yes.

MR BELL: Now, you said in your recent statement, provided to the inquiry on the 15th of September 2020, that you were overseas on holiday between 2 July and 13 July; is that correct?

20

MR JOHNSTON: That's correct.

MR BELL: Were you back at work on Monday, the 13th of July?

25 MR JOHNSTON: I believe so, yes.

MR BELL: So I take it, in accordance with your practice, when you were back at work on the Monday, you read the chain of emails which Mr Felstead sent you to find out what he was referring to as what:

30

*...we'll be up against in China.*

MR JOHNSTON: I probably would have read them when I was on leave, to be honest.

35

MR BELL: And the VIP international business in China was a business in which you had an interest?

MR JOHNSTON: Yes.

40

MR BELL: Is that correct?

MR JOHNSTON: That's right.

45 MR BELL: And Mr Felstead was the CEO Australian Resorts, the most senior executive with ultimate responsibility for VIP international at the time?

MR JOHNSTON: Well, the second most senior I think. I think the CEO of Crown Resorts was probably the most senior. Yes.

5 MR BELL: All right. And, Mr Felstead, as the second most senior person with responsibility for VIP international obviously thought the issue was important enough to send you an email about it?

10 MR JOHNSTON: I – I'm not sure on his motivation for sending it. But, yes, he sent it to me. I accept that.

MR BELL: And here he was in this email saying:

*This is what we will be up against in China at the moment.*

15 MR JOHNSTON: Yes.

MR BELL: Do you see that?

20 MR JOHNSTON: Yes, I do.

MR BELL: As a careful and diligent director of Crown Resorts you must have been interested to read this email and understand what he was referring to?

25 MR JOHNSTON: Yes. I read the email, as I recall it. Yes.

MR BELL: So if we look at Mr Chen's email, starting at the bottom of page .3531 and going over to page 3532, Mr Chen said:

30 *Our staff member in Wuhan –*

I won't name the person –

*was invited by local police late this afternoon to come in for an interview.*

35 Do you see that?

MR JOHNSTON: Yes, I do.

40 MR BELL: And Mr Chen said that:

*The employee was told by police that a tipster reported that he was organising gaming tours.*

45 Do you see that?

MR JOHNSTON: Yes.

MR BELL: And Mr Chen said that:

*The employee denied it and said he worked for Crown Resorts and assisted in organising leisure trips for customers.*

5

Do you see that?

MR JOHNSTON: Yes.

10 MR BELL: You knew, at the time, that the employees in China were, in fact, organising gambling tours to Australia, didn't you?

MR JOHNSTON: There were people employed in China, as far as I was aware, that would have been doing the sort of function that was described here. But there were  
15 others, of course, that did the functions that you've described. Yes.

MR BELL: And do you see that Mr Chen said that:

*After two hours, the employee was released.*

20

MR JOHNSTON: Yes.

MR BELL: Do you see that?

25 MR JOHNSTON: Yes, I do.

MR BELL: And Mr Chen said that the:

*Police requested that Crown furnish a letter prior to 12 pm tomorrow corroborating his statement.*

30

MR JOHNSTON: Yes.

MR BELL: Do you see that?

35

MR JOHNSTON: Yes, I do.

MR BELL: And Mr Chen said that the employee had reported the incident to Alfred Gomez who had, in turn, reported it to Mr Chen. Do you see that?

40

MR JOHNSTON: Yes.

MR BELL: And that Mr Chen had engaged WilmerHale, who recommended that a letter be produced to the police. Do you see that?

45

MR JOHNSTON: Yes.

MR BELL: And do you see, at page .3532, that the WilmerHale email to the police said that the Chinese police asked the employee what he did. And he said he was an employee of Crown Hotels.

5 COMMISSIONER: Is that the WilmerHale letter from Mr Chen?

MR BELL: Yes.

COMMISSIONER: Yes.

10

MR BELL: Sorry. I should have made that clear. Mr Johnston, I'm drawing your attention now to Mr Zhou's email to Mr Chen at page 3532.

MR JOHNSTON: Yes, yes, yes.

15

MR BELL: Do you see that, in that email, the lawyer says that the police asked the employee who he did. And he said he was an employee of Crown hotels and assisted Chinese tourists who were interested in going to Australia and visit the hotel in preparing visas application materials?

20

MR JOHNSTON: Yes.

MR BELL: And WilmerHale said that the police said that someone had reported that he organised overseas gambling tours and he said he had no knowledge about it.

25

MR JOHNSTON: Yes.

MR BELL: You knew that wasn't true, didn't you?

30 MR JOHNSTON: No. As I said, there were people within Crown China, as far as I was aware, that would have performed the function that he had described. So I didn't – didn't know whether it was or was not true.

35 MR BELL: And do you see that WilmerHale said that the police needed a letter from Crown to confirm that he was an employee of Crown?

MR JOHNSTON: Yes.

40 MR BELL: And the police had said to this employee that it had been reported to them that he was, in fact, organising overseas gambling tours.

MR JOHNSTON: Yes.

45 MR BELL: Do you see that?

MR JOHNSTON: Yes.

MR BELL: And you read all these things when you read this email in July 2015, to understand what Mr Felstead was saying you were up against in China at the time, didn't you?

5 MR JOHNSTON: I didn't see that – that Mr Felstead was expressing anything other than a degree of frustration at what was before him.

MR BELL: Can I ask you the question again, Mr Johnston.

10 MR JOHNSTON: Yes.

MR BELL: You read all of these things - - -

MR JOHNSTON: Yes.

15

MR BELL: - - - when you first read the email in July 2015, to understand what Mr Felstead was saying you were up against in China at the time; correct?

MR JOHNSTON: I'm sorry. Yes. Yes. I'm sorry. I misunderstood your question.

20

MR BELL: And did you ever see the letter which Crown Resorts produced to the Chinese police at the time?

MR JOHNSTON: No, I don't – don't recall seeing it. I – I think this was – was the extent of what was sent to me.

25

MR BELL: You must have appreciated, when you read these things, that this was a serious issue requiring consideration by you?

30 MR JOHNSTON: No.

MR BELL: Why do you say that?

35 MR JOHNSTON: For a couple of reasons. The first is that I wasn't being asked to do anything by virtue of what was sent to me. The second is it seemed as though Crown's Chinese lawyers were dealing with the matter; they weren't raising any alarms. This was in the context of having, as I understood it, just very recently received advice that what Crown was doing in China was lawful, and continued to be lawful. And, also, the email had been directed to Crown's legal department in  
40 Melbourne. So that I – I thought that it was being properly attended to. I wasn't being asked for any particular action. I – I assumed that if there was a problem, Crown's legal department would elevate it, or the Chinese lawyers would have – would have told us so.

45 MR BELL: You understood, didn't you, that Crown's lawyers were dealing with the letter that the Chinese police had required be produced to them?

MR JOHNSTON: I would have found it inconceivable that if the Chinese lawyers were alarmed by this, that they wouldn't have stated so.

MR BELL: Would you do me the courtesy of answering the question, Mr Johnston.  
5 You did understand that Crown's lawyers were dealing with the letter that the Chinese police had required?

MR JOHNSTON: Yes.

10 MR BELL: And you understood that Mr Felstead was sending this email to you; correct?

MR JOHNSTON: Yes.

15 MR BELL: To tell you what he believed Crown Resorts was up against in China at the moment; correct?

MR JOHNSTON: Yes.

20 MR BELL: And whether or not the lawyers were dealing with the letter that the police had required, you must have realised, coming so soon after the arrest of the South Koreans, that this was a serious issue.

MR JOHNSTON: No, I didn't.  
25

MR BELL: Can that be true, Mr Johnston? You were the person who had an involvement in the VIP international business at the time; correct?

MR JOHNSTON: On specific issues, yes.  
30

MR BELL: And you were aware that in 2015 the Chinese authorities had announced a crackdown on foreign casinos; correct?

MR JOHNSTON: Yes, correct.  
35

MR BELL: And were you aware that a few weeks prior to this, the Chinese authorities had arrested 14 South Korean casino employees; correct?

MR JOHNSTON: Yes. Correct.  
40

MR BELL: You were aware that this was in the context of a broader crackdown by the Chinese authorities against foreign casinos luring Chinese citizens to go abroad; correct?

45 MR JOHNSTON: No.

MR BELL: And here you have a few weeks later one of your staff members in China being questioned by the Chinese police and accused of organising gambling tours to Australia; correct?

5 MR JOHNSTON: Yes.

MR BELL: That was plainly a serious issue, was it not?

10 MR JOHNSTON: I am not – no. The answer is no.

MR BELL: Did you care about the safety of the staff in China, Mr Johnston?

MR JOHNSTON: Of course, I did.

15 MR BELL: Well, then, how could you have not thought that this was a serious matter that one of your staff members was being questioned by the police, accused of organising gambling tours and it resulted in the police requiring Crown Resorts to provide a letter in support of what the employee had said. How could that not be serious?

20 MR JOHNSTON: Because I am not – I'm certainly not an expert in doing business in China. The Chinese lawyers were not alerting us to the fact that it was a serious issue. Nor were Crown's local lawyers.

25 MR BELL: Mr Felstead was alerting you to the fact that he thought it was a serious issue by sending you these emails and telling you, "This is what we're up against in China at the moment", wasn't he?

30 MR HUTLEY: I object. That's about three questions.

COMMISSIONER: All right.

35 MR BELL: I will break it up. Mr Felstead, by the terms of his email, was plainly indicating to you that he thought this was a serious issue; correct?

MR JOHNSTON: It's not clear on the face of his email that that's what he was saying.

40 MR BELL: You're not suggesting that you didn't read this email carefully, are you?

MR JOHNSTON: Yes, I did. No, I read it – sorry, I read it quite carefully, yes.

45 MR BELL: Yes. Well, I suggest that with your experience of Crown Resorts, your involvement in VIP and all of the other factors of which you were aware, you must have appreciated that this was a serious issue; do you agree?

MR JOHNSTON: No, I didn't.

MR BELL: You must have appreciated that this was potentially escalating the risk to the safety of your staff.

MR JOHNSTON: No, I didn't.

5

COMMISSIONER: Did you think it was not serious?

MR JOHNSTON: I thought that if it was serious the Chinese lawyers - - -

10 COMMISSIONER: No, did you think it was not serious. Please, Mr Johnston, did you think it was not serious?

MR JOHNSTON: Yes, I didn't think it was serious, based on what I was looking at.

15 MR BELL: That just can't be true, Mr Johnston, can it?

MR JOHNSTON: I believe it is.

20 COMMISSIONER: Mr Johnston, just let me give you this opportunity, I think. I've read your statement and it's clear that you didn't – you said you didn't bring it to the board's attention. Do you remember saying that?

MR JOHNSTON: This particular item, you mean?

25 COMMISSIONER: Yes.

MR JOHNSTON: Yes. Yes. Yes, I did not bring that to the board's attention.

30 COMMISSIONER: And it is a long time ago, I understand that. But I just wanted to ask you whether the fact that you failed to bring it to the board's attention may be colouring – and that's not used pejoratively - it may be colouring what you're saying at the moment, because it does present that when a person is arrested or detained for two hours and questioned about these things in another country about which you have given a description, it would concern a director. That's what is worrying me.  
35 And I think if you were concerned, you may have been concerned at the time and now not concerned or I'm just not sure what your position is. I can't understand why you wouldn't be concerned.

40 MR JOHNSTON: The reason, Commissioner, that I wasn't concerned, was this came very close on the heels of having advice from the very same law firm that what Crown was doing was still lawful, and Crown and the rest of the industry could be distinguished from the Koreans. The email that I got was sending advice - I accept that the advice is on the structure of a reply to the police, but the Chinese lawyers weren't saying, "This is an issue, this is an escalation of risk, we're concerned".  
45 Rather, it seems to be a very perfunctory email and I'm aware that this has gone through to the legal department in Crown whom, I had understood, had previously been involved with the advices and who I knew were aware of the Korean arrests and

the advice that had been obtained. So you know, with the benefit of hindsight, I absolutely should have seen this as more significant but at the time I didn't.

5 COMMISSIONER: Do you think it was because you were on a holiday that you may not have appreciated it?

MR JOHNSTON: I don't think so. I think it was the context of the information being that it was – you know, it had involved the people, I suppose, that I was – in trusting the fact that Crown was doing the right thing.

10 COMMISSIONER: But when you said - - -

MR JOHNSTON: Being the Chinese lawyers and – sorry, I didn't mean to interrupt you.

15 COMMISSIONER: That's all right. When you said "in hindsight", I suppose in hindsight it would be seen to be something that you should have shared with your colleagues on the board - - -

20 MR JOHNSTON: Yes.

COMMISSIONER: - - - to let them know that this had happened, at least, so that those on the board were aware, in particular, when you were talking about - whenever it was that you were talking about the Korean arrests?

25 MR JOHNSTON: Yes. Yes.

COMMISSIONER: Yes. All right. Yes, Mr Bell.

30 MR BELL: So you're aware that Mr Craigie, the managing director and member of the risk management committee of Crown Resorts at the time, has given evidence that this – the information in these emails was an obvious escalation of the risk to the safety of your staff?

35 MR JOHNSTON: No, sorry, I am not aware that he gave that evidence, but I will accept that that's correct, yes.

MR BELL: Are you aware that he gave evidence that it should have been brought to the attention of the board?

40 MR JOHNSTON: Again, no.

MR BELL: Were you aware that Ms Danziger has given evidence that in her view this was an obvious escalation of the risk to the safety of your staff?

45 MR JOHNSTON: Again, no.

MR BELL: Were you aware that she has given evidence that this clearly should have been brought to the attention of the board?

5 MR JOHNSTON: Again, no, I haven't been aware of that. I haven't been watching too much.

MR BELL: But I take it from what you told the Commissioner that, looking at it now, as I'm sure you've done in preparation for giving evidence to this Inquiry, you do agree that the information contained in these emails was, in fact, indicating an escalation to the risk of the safety of the staff?

10

MR JOHNSTON: I think, yes. I mean, I think that, viewed with the benefit of hindsight and what's happened, you can see that this was a step in the escalation process.

15

MR BELL: And are you saying that you made an error of judgment about this?

MR JOHNSTON: I think my error of judgment was perhaps relying on the advisers that I was relying on. I mean, there's no doubt that, if the Chinese lawyers had indicated that they saw this as troubling, that I would have – I would have escalated it, but they didn't.

20

MR BELL: Whatever the lawyers were doing, you knew that China was a riskier place than Australia for your staff to be, didn't you?

25

MR JOHNSTON: In – in terms of what we know – what we knew at that point in time – I mean, we're all wiser now, in terms of China. In terms of what we knew then, I mean, I said earlier, it's a riskier place, but is it – is it materially riskier? I'm not sure that, at that point in time, we necessarily knew how risky it was.

30

MR BELL: Well, you had no trouble answering before lunch to the effect that you understood that China was a riskier place for your staff to be than Australia.

MR JOHNSTON: Yes.

35

MR BELL: Do you still stand by your evidence.

MR JOHNSTON: Yes, I do, but I didn't quantify the level of escalated risk.

MR BELL: And looking at it now, I think you agree that this wasn't a clear escalation of the risk to the safety of staff; correct?

40

MR JOHNSTON: When looked at with the benefit of hindsight, yes.

MR BELL: So are you telling the Commissioner that you made an error of judgment in not bringing it to the attention of your colleagues on the board?

45

MR JOHNSTON: No. I think what I'm saying is that I think I erred in relying, as much as I did, on the Chinese solicitors. So if that leads to the conclusion that you're seeking to get to, then, perhaps that's right.

5 MR BELL: So this has nothing – with respect, this has nothing to do – my question has nothing to do with what the lawyers were advising. You were being told in this email, a few weeks after the arrest of the South Koreans, that one of your staff members was being questioned by the Chinese police and accused of organising gambling tours to Australia; correct?

10 MR JOHNSTON: Yes.

MR BELL: And you were being told in this email that the Chinese police had required a letter from Crown Resorts in support of the employee's statement; correct?

MR JOHNSTON: Correct.

MR BELL: Your error of judgment, I suggest, was in failing to see that this was an obvious oversight – an obvious escalation of the risk to the safety of the staff.

MR JOHNSTON: Yes. I mean, I don't know that I can add much more than say that I was relying on the advice that I was getting. And the advice that I saw from an independent law firm was not indicating it was an escalation of risk.

25 COMMISSIONER: Can I just perhaps, Mr Johnston. The letter that you're referring to, I think, is that letter over there from Mr Kenneth Zhou.

MR JOHNSTON: That's right.

30 COMMISSIONER: Do you see that?

MR JOHNSTON: Yes.

35 COMMISSIONER: Within it, there is a sentence that leaps out at some people, I suppose, and that is that someone in China was reporting on you, that is, reporting on Crown.

MR JOHNSTON: Yes.

40 COMMISSIONER: So you've got this nasty situation where not only has the young man been arrested – or detained for questioning, I should say - - -

MR JOHNSTON: Yes.

45 COMMISSIONER: - - - but you've got another piece of knowledge there, and that is that someone has reported on you, on your company - - -

MR JOHNSTON: Yes.

COMMISSIONER: that he, the employee, is organising tours. So it's all very well to talk about hindsight – and I do understand very fully the comfort of the retro-scope,  
5 Mr Johnston – but, here, I think if you – if you look at Mr Zhou's letter and you look at the facts – if they are facts – that he's reported, and you were sitting around a table with your colleagues at the time you assess it, it's more probable than not that the directors would say, "This seems to be a problem for us," wouldn't you think?

10 MR JOHNSTON: I accept that's a very possible outcome – yes – if I'd done that. Yes.

COMMISSIONER: And I think, in circumstances where – as I say, this is five years ago and it's a long chain of emails, but the fact that you didn't report it to the board  
15 is a fact.

MR JOHNSTON: Yes.

COMMISSIONER: And I understand that you say that you didn't appreciate it, I  
20 think, as an escalation of risk, but that you now see it that it was; is that right?

MR JOHNSTON: Yes.

COMMISSIONER: All right.  
25

MR JOHNSTON: Yes.

COMMISSIONER: Yes, Mr Bell.

30 MR BELL: So - - -

COMMISSIONER: And, I presume, if you had appreciated it, it is certain that you would have reported it to your colleagues at the board; is that right?

35 MR JOHNSTON: That is right, in the same way that I reported the Korean arrests.

MR BELL: Yes. But it wasn't a deliberate decision on your part, was it, to withhold this information from your colleagues on the board?

40 MR JOHNSTON: No, it wasn't.

MR BELL: And it would appear, Mr Johnston, that you were the only director of Crown Resorts who was informed about what you now agree was an escalation of risk; correct?

45 MR JOHNSTON: That is right. Yes.

MR BELL: And – and you did nothing about it; correct?

MR JOHNSTON: I did not inform the board. No.

5 MR BELL: And what do you think that says about your discharge of your duties of care and diligence as a director of Crown Resorts?

10 MR JOHNSTON: I think that – I think that I still believed I was discharging my duties appropriately. I – as I said, I saw that this had gone through to the legal team in Melbourne. So if – if I had missed something, I was – I was assuming that it would be picked up by the lawyers in Melbourne.

15 MR BELL: And as the only director of Crown Resorts who was informed of this matter, and who did nothing about it, what do you think that says about the risk management processes of Crown Resorts at the time?

MR JOHNSTON: I think that, again, with the benefit of hindsight, clearly, this is probably a risk that should have been picked up in the risk processes. Yes.

20 MR BELL: Has it occurred to you that, if you had informed your colleagues on the board about this incident, the board may have put in place mitigation strategies, such as removing the staff to Hong Kong, which could have been prevented the arrests from occurring?

25 MR JOHNSTON: That's possible.

30 COMMISSIONER: When you did report the Korean arrests to the board, it looked, from your statement at least, that, when you did do that, that was after this event. That's right, isn't it?

MR JOHNSTON: Yes, that's correct.

COMMISSIONER: And Mr Felstead was present at that meeting, as you recall it?

35 MR JOHNSTON: I believe he would have been. Yes.

COMMISSIONER: And do you – do you recall that Mr Felstead didn't raise the issue of the young man being detained?

40 MR JOHNSTON: No. There was no discussion about that at the board meeting, Commissioner.

COMMISSIONER: Or any other meeting that you attended?

45 MR JOHNSTON: No.

COMMISSIONER: I see. Yes, Mr Bell.

MR BELL: Were you informed by VIP international executives, in October 2015, that there'd been a news story on Chinese national television about the arrest of the South Korean casino operators?

5 MR JOHNSTON: Not that I recall. No.

MR BELL: Were you informed by the VIP international executives, at this time, that were heightened concerns among the staff in China?

10 MR JOHNSTON: Again, not that I recall.

MR BELL: Now, Mr Packer left the board of Crown Resorts at the end of 2015; is that correct?

15 MR JOHNSTON: Yes, in December 2015.

MR BELL: Why was that?

20 MR JOHNSTON: He had moved out of Australia at the end of 2014, so he was living in the US and I think that it was becoming difficult for him to continue to participate as actively as he would have wanted in board meetings.

25 MR BELL: Can I ask you to look at the minutes of the meeting of the board on 16 December 2015 which is exhibit O40, exhibit O, tab 40; it's on the confidential link, at CRL.512.001.8101. These are actually the papers for the following board meeting but if you turn to page .8103.

MR JOHNSTON: Yes.

30 MR BELL: Do you see that these are the minutes of the meeting of 16 December?

MR JOHNSTON: Yes.

35 MR BELL: And Mr Packer is recorded as attending by teleconference.

MR JOHNSTON: Yes.

40 MR BELL: And at page 2 of the minutes, at page .8104, you see in the fourth paragraph that Mr Packer indicated he had another commitment and apologised that he couldn't stay for the remainder of the meeting, and then left the meeting?

MR JOHNSTON: Yes.

45 MR BELL: He in fact resigned from the board on 21 December 2015, but take it from me there's no indication in these minutes that that was his plan. Are you able to explain why that would be the case?

MR JOHNSTON: No, I can't. I'm not sure if – if it was – I can't recall whether it was known at that point that he was going to resign. But no, I can't – I can't explain that.

5 MR BELL: Now, could I ask you to look at exhibit O44, the same volume, exhibit O, tab 44. Confidential link CRL.525.001.0001. You see that this is a services agreement between Crown Resorts and CPH dated 1 July 2016?

MR JOHNSTON: Yes.

10

MR BELL: You are familiar with this agreement?

MR JOHNSTON: Yes, I am.

15 MR BELL: Is that correct?

MR JOHNSTON: Yes.

MR BELL: Were you involved in the negotiation of this agreement on behalf of  
20 CPH?

MR JOHNSTON: Yes.

MR BELL: And if we look at page .0025, you've signed this agreement on behalf  
25 of CPH; do you see that?

MR JOHNSTON: That's right, yes.

MR BELL: And did you understand that the purpose of this agreement was to  
30 require that Crown Resorts pay CPH for services provided by certain CPH executives to Crown Resorts?

MR JOHNSTON: Yes.

35 MR BELL: And if we look at schedule 1 at page .0024.

MR JOHNSTON: Yes.

MR BELL: You see that you're one of the executives who's providing services  
40 under this agreement?

MR JOHNSTON: Yes.

MR BELL: So if you provided services to Crown Resorts in your capacity as a CPH  
45 executive, you understood this agreement made provision for Crown Resorts to pay CPH for that work?

MR JOHNSTON: Yes.

MR BELL: And could I ask you to look at clause 11.1. You understood that there  
5 was a procedure for resolving any actual or potential conflict of interest arising out of  
the provision of your services; correct?

MR JOHNSTON: Yes.

MR BELL: And if you look at clause 14.4, you also understood that one of the  
10 purposes of the agreement was for CPH and certain CPH executives to be provided  
with confidential information of Crown Resorts so that CPH and the executives  
could provide services to Crown Resorts; correct?

MR JOHNSTON: Yes.

15 MR BELL: Now, you're aware that in May 2016 Crown Resorts progressively sold  
down its shareholding in Melco resorts?

MR JOHNSTON: Yes.

20 MR BELL: And you're aware that in May 2016, Crown Asia Investments  
Proprietary Limited entered into an agreement with Melco Resorts to repurchase  
some of the shares in Melco Resorts?

25 MR JOHNSTON: I'm sorry, can you repeat that question?

MR BELL: Yes. Are you aware that in May 2016, Crown Asia Investments entered  
into an agreement with Melco Resorts to repurchase some of its shares in Melco  
Resorts?

30 MR JOHNSTON: Yes.

MR BELL: And that transaction reduced Crown Resorts shareholding in Melco  
Resorts from about 34 per cent down to about 27 per cent?

35 MR JOHNSTON: Yes.

MR BELL: Correct.

40 MR JOHNSTON: Yes.

MR BELL: And you were also aware that in December 2016 Crown Asia  
Investments entered into two transactions to reduce its shareholding in Melco Resorts  
from about 27 per cent to about 11 per cent?

45 MR JOHNSTON: Yes – sorry, what was the date you gave for that, I'm sorry?

MR BELL: December 2016?

MR JOHNSTON: Yes, that's right. Yes.

5 MR BELL: And one of those transactions was a share sale agreement with Melco International?

MR JOHNSTON: Yes.

10 MR BELL: And the other transaction was a sale of shares to three underwriters whose shares were then offered for purchase to the public via a prospectus issued by Melco Resorts.

MR JOHNSTON: Yes.

15

MR BELL: And you reviewed the draft documentation in relation to those two transactions in December 2016 before they were finalised, didn't you?

20 MR JOHNSTON: The detailed documentation that Crown Asia was entering into, you mean?

MR BELL: Well, do you recall reviewing any draft documentation in relation to the December 2016 transactions?

25 MR JOHNSTON: I was involved in them. I can't recall whether I had reviewed the agreement specifically, but I was involved in those transactions.

MR BELL: And was your involvement in those transactions as a director of CPH or as a director of Crown Resorts?

30

MR JOHNSTON: I believe that was being done as a – pursuant to the services agreement.

35 MR BELL: I see. So you were providing services to Crown Resorts as an executive of CPH for the purpose of those transactions?

MR JOHNSTON: I believe so, yes.

40 MR BELL: Now, can we look at exhibit AA34, exhibit AA, tab 34; confidential link MEL.001.019.3825.

MR JOHNSTON: I'm sorry, what tab was that again, Mr Bell?

45 MR BELL: Tab 34 in exhibit AA.

MR JOHNSTON: Yes.

MR BELL: Do you see that on 10 December 2016 - - -

MR JOHNSTON: Yes.

5 MR BELL: - - - you were one of a group of people who were forwarded a draft prospectus supplement relating to the offering of the shares sold by Crown Asia Investments to the underwriters?

MR JOHNSTON: Yes.

10

MR BELL: And I assume that as you were providing services to Crown Resorts as a CPH executive, you reviewed the draft documents carefully?

15 MR JOHNSTON: I'm not sure - as I said, I'm not sure that's the case. I don't - I - I would have relied on lawyers to be reviewing detailed documents like that.

MR BELL: Well, you're telling the Inquiry that you were reviewing this transaction as a CPH executive providing services to Crown Resorts; correct?

20 MR JOHNSTON: Yes.

MR BELL: For which there was a handsome remuneration arrangement under the services agreement?

25 MR JOHNSTON: I was paid for the hours that I spent on it. Yes.

MR BELL: Yes. And, no doubt, in order to discharge your obligations as an executive providing services to Crown Resorts and having been sent these documents, you reviewed them?

30

MR JOHNSTON: I - my - my role is never as a - to review agreements or prospectuses.

MR BELL: So it was a complete waste of time you being sent this material, was it?

35

MR JOHNSTON: No, not at all. I think that we - my involvement, I would have been advising Crown on the - probably, the taxation aspects of the transactions. I would have been looking at it from an overall perspective in terms of the structuring of the transaction. But I wouldn't have got into the detail of agreements; that's not typically what I would do.

40

MR BELL: Surely you'd be reviewing the prospectus to ensure the statements in it were truthful, to the best of your knowledge?

45 MR JOHNSTON: Well, they were - that was a prospectus of Melco as opposed to of Crown.

MR BELL: So are you saying that you didn't – did not review the prospectus that was sent to you on the 10th of December '16 at all?

5 MR JOHNSTON: I don't recall reviewing it. No.

MR BELL: Well, can we have a look at that prospectus, which is exhibit AA, tab 35. Exhibit AA35. Confidential link MEL.001.019.3827.

10 MR JOHNSTON: Yes.

COMMISSIONER: So what was your specialty at EY?

MR JOHNSTON: I was a taxation partner, Commissioner.

15 COMMISSIONER: Yes. Thank you.

MR JOHNSTON: But – sorry. But I should add to that I was an accountant, not – not a lawyer. So some tax partners are lawyers. I was an accountant.

20 COMMISSIONER: No. I understand. Thank you.

MR BELL: Can we just have a look at page ending in .3858.

25 COMMISSIONER: Operator.

MR JOHNSTON: Yes.

30 MR BELL: If you had, in fact, read this prospectus carefully, you would have seen that Great Respect Limited still had a significant shareholding in Melco International, wouldn't you?

MR JOHNSTON: Yes. That appears to be the case, yes.

35 MR BELL: Yes. And can we have a look at exhibit AA, tab - - -

COMMISSIONER: Just before you go, I do want to follow this evidence. I haven't had that on my screen. That's all right. I'll just wait for it to come up. I'm sorry to hold you up, Mr Johnston.

40 MR JOHNSTON: No. No, not at all.

MR BELL: It's the document reference - - -

45 COMMISSIONER: 3858 is the reference. Exhibit AA, tab 35.

MR BELL: So it's MEL.001- - -

COMMISSIONER: All right.

MR BELL: There it is.

5 COMMISSIONER: Yes. And, Mr Bell, you were referring with Mr Johnston to which part of this document, please?

MR BELL: So, operator, can we blow up note 3. The question of Mr Johnston was that, if you had read this carefully, he would have seen that Great Respect was still a  
10 substantial shareholder in Melco International.

COMMISSIONER: Note 3 says ordinary shares beneficially owned by Mr James Packer.

15 MR BELL: I'm sorry. I do apologise.

COMMISSIONER: That's all right.

MR BELL: It's not note 3, it's note 5.

20

COMMISSIONER: Note 5. All right. I'll have a look at note 5. Are you going to help me with that, operator?

MR BELL: Can you blow up note 5, please.

25

COMMISSIONER: Yes. I can see it.

MR BELL: It doesn't seem we can blow up note 5.

30 COMMISSIONER: It says Mr Ho also has an interest in Great Respect, does it?

MR BELL: Well, it shows Great Respect – do you see, Mr Johnston – still owns approximately 20 per cent of shares in Melco International; do you see that?

35 MR JOHNSTON: Yes.

MR BELL: And you – and I think you agreed earlier that if you had read this carefully, you would have appreciated that fact; is that right?

40 MR JOHNSTON: It – it appears to be stated in here. Yes.

COMMISSIONER: Yes. Thank you.

MR BELL: If we can look at exhibit AA, tab 36, exhibit AA36, on the confidential  
45 link. MPL001.019.4436. It's MEL.001.019.4436. You see that this is an email sent to you and others on 15 December 2016, which you can see from the next page, .

4437, attaching draft documents relating to the sale of shares by Crown Resorts to Melco International at this time?

MR JOHNSTON: Yes.

5

MR BELL: And what was being attached was a draft Melco announcement in relation to the sale of shares; you see that?

MR JOHNSTON: Sorry. Give me one second. Yes.

10

MR BELL: And did you read the draft announcement to the Stock Exchange carefully at the time?

MR JOHNSTON: Is that behind tab 37?

15

MR BELL: Yes, it is. So, Mr Johnston is now looking at exhibit AA37, which is on the confidential link MEL.001.019.4440. My question, Mr Johnston, is whether you read this carefully?

MR JOHNSTON: I'm not sure that I did. No. I mean, there was a you multitude of lawyers, as you can see on all these attachments, that were involved in drafting all this stuff, which was a document for the US.

MR BELL: Okay. But if you can look at page .4447, if you had read this document carefully, you would have seen that Great Respect still had a substantial shareholding in Melco International at this time; correct?

MR JOHNSTON: It appears to be the case. Yes.

MR BELL: Now, Mr Packer came back on to the board of Crown Resorts in 2017. What month in 2017, do you understand, that he returned to the board?

MR JOHNSTON: From memory, I think it was around August, but I'd have to – I would have to check.

35

MR BELL: Is it the case that there was an announcement in January that he was going to be joining the board, but there was some period of months before that became official?

MR JOHNSTON: Sorry. You could very well be right. Yes.

MR BELL: Now – and it's then the case that Mr Packer left the board again in about June 2018; is that right?

COMMISSIONER: You mean the Crown board?

MR BELL: I do mean the Crown board, Commissioner. Sorry.

COMMISSIONER: That was in, possibly, March, wasn't it?

MR JOHNSTON: Yes. I thought it was March. Yes.

5 MR BELL: I see. Thank you. Apologies. And did you assist him to relinquish a number of board positions at that time?

MR JOHNSTON: Yes, I did. Yes.

10 MR BELL: And can I ask you to look at exhibit Y7. Exhibit Y, tab 7. Confidential link CRL.501.050.8325.

COMMISSIONER: Can you remember why Mr Packer came back on the board in the January, Mr Johnston?

15

MR JOHNSTON: In January '17 you mean or - - -

COMMISSIONER: Yes. Or August, when - it was either January or August '17.

20 MR JOHNSTON: Yes. Sorry. Yes, yes. I think - I think, given the - what had happened in China, I think it - - -

COMMISSIONER: Yes.

25 MR JOHNSTON: - - - was considered appropriate that Mr Packer came back on the board to - to have an appropriate degree of influence.

COMMISSIONER: He was still living in the United States, I presume?

30 MR JOHNSTON: Yes, he was. He has lived there since late 2014.

COMMISSIONER: So it was the catalyst - the China arrests were the catalyst of his returning to the board; is that right?

35 MR JOHNSTON: That's my understanding, yes.

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

MR BELL: So Mr Johnston, do you have exhibit Y7?

40

MR JOHNSTON: Yes.

MR BELL: This is a letter which you wrote on behalf of CPH to Mr Barton - - -

45 MR JOHNSTON: Yes.

MR BELL: - - - on behalf of Crown Resorts on 23 August 2018.

MR JOHNSTON: Yes.

MR BELL: And you pointed out in the letter that Mr Packer had resigned as a director of both Crown Resorts and CPH.

5

MR JOHNSTON: Yes.

MR BELL: Do you see that?

10 MR JOHNSTON: Yes, I do.

MR BELL: And that in order to permit Crown Resorts to continue to provide its confidential information to Mr Packer in those circumstances, an amendment to the services agreement was necessary.

15

MR JOHNSTON: Yes.

MR BELL: And you were proposing a new clause 14.4D which acknowledged that Mr Packer had resigned from both the Crown Resorts and CPH boards; do you see that?

20

MR JOHNSTON: Yes, I do.

MR BELL: And which also acknowledged that he remained the controlling shareholder of CPH which effectively was the controlling shareholder of Crown Resorts; correct?

25

MR JOHNSTON: Yes. That's right.

MR BELL: And you understood that the effect of the amendment which you were proposing to the services agreement would be to permit Crown Resorts to continue to provide Mr Packer with confidential information despite him no longer being on either the Crown Resorts or the CPH boards?

30

35 MR JOHNSTON: That's correct.

COMMISSIONER: There is information that has been provided in the public statements, I think, Mr Johnston, that the reason appears to be from Mr Packer's resignation that it was ill health. Is that what you understood?

40

MR JOHNSTON: Yes, early in 2018 he had stepped down due to ill health, yes.

COMMISSIONER: And so he stepped down from Crown and I think there was an announcement in respect of that and was that the same reason that all the resignations occurred across the CPH group?

45

MR JOHNSTON: I think they were a little bit staggered from memory, so the CPH ones came a little bit later. But we - you know, given that he had been living outside of Australia for so long by that point in time, it didn't seem to make sense to continue to have him on the boards of all the Australian companies.

5

COMMISSIONER: So if I am understanding you, it was the ill health that caused the resignation from Crown - - -

MR JOHNSTON: Yes.

10

COMMISSIONER: - - - but there was a combination of things relating to CPH; is that what I understand you are saying?

MR JOHNSTON: Yes. Yes. Yes.

15

COMMISSIONER: So it was the ill health plus the overseas domicile, was it?

MR JOHNSTON: We thought that in order - - -

20

COMMISSIONER: "We" being?

MR JOHNSTON: I'm sorry, we being - sorry, I thought - I thought we - really, Mr Jalland and myself who were the other directors of CPH, I'm sorry.

25

COMMISSIONER: Yes.

MR JOHNSTON: We thought it was appropriate to try and reduce Mr Packer's workload and this was a way of doing it, in CPH.

30

COMMISSIONER: Thank you. Yes, Mr Bell.

MR BELL: So Mr Johnston, if you could look at exhibit Y8, exhibit Y, tab 8, confidential link CRL.501.034.9912, you see that on 19 September 2018, you attended by invitation a meeting of the nomination and remuneration committee of Crown Resorts.

35

MR JOHNSTON: Yes.

MR BELL: And if you look at page .9914; you will see that one of the items of business was a controlling shareholder protocol.

40

MR JOHNSTON: Yes.

MR BELL: And the minutes note that Crown Resorts had received a proposal to amend the services agreement, which was your letter of 23 August, which we've just looked at; correct?

45

MR JOHNSTON: Yes.

MR BELL: And was it because of this item of business that you were invited to this meeting of the nomination and remuneration committee?

5

MR JOHNSTON: No, I quite regularly attended the nom and rem committee as an invitee.

MR BELL: I see. If you look at page .9915, you see that the minutes record that it was proposed that rather than amending the services agreement, it would be preferable for a stand-alone controlling shareholder protocol to be established which didn't link the sharing of information with the provision of services.

10

MR JOHNSTON: Yes.

15

MR BELL: So you were aware, by this time, that your proposal to amend the services agreement had now become a proposal for a stand-alone document called a controlling shareholder protocol which would permit the provision of information to Mr Packer without being linked to the provision of services under the services agreement?

20

MR JOHNSTON: I'm not sure exactly when I became aware of that. I would have stepped out of this meeting for that discussion. I would have left before that started. But it's – at some time around this I certainly would have become of that, yes.

25

MR BELL: There's no record in these minutes of you declaring an interest and excusing yourself, Mr Johnston.

MR JOHNSTON: Yes. No, that doesn't seem to be the case. But I would have excused myself for a discussion like that. I always do.

30

MR BELL: So you are suggesting that the minutes are inaccurate?

MR JOHNSTON: That seems to be the case, yes.

35

MR BELL: Surely a declaration of interest and a person excusing themselves from an item of business would be the very sort of thing you would expect the minutes to accurately record?

MR JOHNSTON: I imagine so, yes.

40

COMMISSIONER: These are drafts.

MR JOHNSTON: Yes.

45

COMMISSIONER: To be fair to Mr Johnston.

MR BELL: True.

COMMISSIONER: But we can get the final ones and there is, you would understand, Mr Johnston, you're sensitive to it, you are sensitive to a conflict, you  
5 would have stepped away in your own mind; is that right?

MR JOHNSTON: That's right. Well, I'm quite sensitive to conflicts, yes.

COMMISSIONER: Yes.  
10

MR BELL: So can we look at exhibit Y6 - - -

COMMISSIONER: Can I just understand, you saw the conflict on this occasion as what particular conflict?  
15

MR JOHNSTON: It – it was an agreement as between CPH and Crown, so I didn't think I should participate in the Crown deliberations.

COMMISSIONER: Because you were, at the time, a proposed beneficiary of fees on behalf of CPH if it went through.  
20

MR JOHNSTON: Yes.

COMMISSIONER: Is that right or what is it?  
25

MR JOHNSTON: Yes, if it went through, it was dealing with a contract as between CPH and Crown and given I was a director of CPH, I didn't believe that it was appropriate I would have participated.

COMMISSIONER: And did anyone else step out at the same time or was it only Crown people who were there, to your recollection?  
30

MR JOHNSTON: I think it would have only been Crown people that were there otherwise. Let me just have a look, Commissioner.  
35

COMMISSIONER: Thank you.

MR JOHNSTON: Yes. Yes, it was only I that was representing - - -

COMMISSIONER: Did you have a register of conflicts - of declared conflicts?  
40

MR JOHNSTON: Not that I'm aware of.

COMMISSIONER: At Crown, I mean?  
45

MR JOHNSTON: No, not that I'm aware of, Commissioner.

COMMISSIONER: And why was that?

MR JOHNSTON: I think we have some standing conflicts, so there might be a  
5 question for Mary Manos or somebody but I'm not aware if such a thing is  
maintained.

COMMISSIONER: Yes. Yes, Mr Bell.

MR BELL: If we look at exhibit Y6, exhibit Y, tab 6, which is confidential link  
10 CRL.506.006.5500.

MR JOHNSTON: Yes.

MR BELL: And you see these are minutes of a meeting of the board of Crown  
15 Resorts Limited on 31 October 2018, which you attended?

MR JOHNSTON: Yes.

MR BELL: And which Mr Jalland attended?  
20

MR JOHNSTON: Yes.

MR BELL: And which Mr Poynton attended by invitation?

25 MR JOHNSTON: Yes.

MR BELL: And if you look at the page ending in .5509, you see that the business of  
the meeting turned to the controlling shareholder protocol?

30 MR JOHNSTON: Yes.

MR BELL: And the minutes record Mr Jalland and Mr Poynton left the meeting.  
Do you see that?

35 MR JOHNSTON: Yes.

MR BELL: And you would understand that they left the meeting at this point  
because the board was considering an agreement with CPH?

40 MR JOHNSTON: Yes.

MR BELL: And that they had a conflict of interest as nominees of CPH?

MR JOHNSTON: Yes.  
45

MR BELL: So why didn't you leave the meeting as well at this point?

MR JOHNSTON: I – I would have left the meeting if I was still in the meeting at that point. There's no way that Mr Jalland and Mr Poynton would have left and I would have stayed.

5 MR BELL: Are you suggesting that these minutes are inaccurate as well.

COMMISSIONER: That is unfair because the previous one was a draft.

10 MR BELL: Let me go back a step, Mr Johnston. I think you told us this morning when we were looking at the minutes of a meeting in 2013 when the board considered the 2013 group consensus approval deed that you said the minutes were inaccurate then. Do you remember saying that?

15 MR HUTLEY: I object. He didn't say they were inaccurate; he said they were open to construction.

COMMISSIONER: Yes. Mr Bell.

20 MR BELL: Well, whatever you may have said before, you're now saying that these minutes are inaccurate; is that right, Mr Johnston?

MR JOHNSTON: Yes.

25 MR BELL: And did you notice that inaccuracy when you saw these draft board minutes as part of the board papers for the next board meeting?

MR JOHNSTON: Clearly not.

30 COMMISSIONER: That's why I asked about registers. You see, when you've got people who are, as you are and Mr Poynton and Mr Jalland apparently are, wearing various hats, it's quite helpful sometimes to have some form of appropriate register  
- - -

35 MR JOHNSTON: Yes.

COMMISSIONER: - - - to tick it off as you go through.

MR JOHNSTON: Yes.

40 COMMISSIONER: But nobody thought of that in this company; is that right?

MR JOHNSTON: Not to my knowledge. But the – we clearly understand when there are issues that there's potential for a conflict.

45 COMMISSIONER: Yes, of course. Sometimes it's not straightforward but other times it's obvious, isn't it?

MR JOHNSTON: Yes, it would be quite obvious in this case, yes. But as I said, it's inconceivable I was still in the meeting.

COMMISSIONER: Yes, thank you.

5

MR BELL: In any event, do you see that the minutes record that Ms Manos told the board in essence that the purpose of the controlling shareholder protocol was to permit Crown Resorts to provide its confidential information to Mr Packer?

10 MR JOHNSTON: Yes.

MR BELL: And whether or not you were present during that item of business, that you were in any event aware of that fact, weren't you?

15 MR JOHNSTON: Yes.

MR BELL: And could I ask you to look at exhibit Y5, confidential link CRL.509.014.8430. You see that this is the controlling shareholder protocol between Crown Resorts and CPH dated 31 October 2018?

20

MR JOHNSTON: Yes.

MR BELL: And if we look at page .8437, you and Mr Jalland have signed this agreement on behalf of CPH?

25

MR JOHNSTON: Yes.

MR BELL: If we look at clause 1.2, page .8431, you understood that the purpose of the protocol, as recorded in that clause was to establish a guide for the sharing of information by Crown Resorts with CPH and with Mr Packer?

30

MR JOHNSTON: Yes.

MR BELL: And if you look at clause 1.5, on the same page, you understood, when you executed this agreement that, to the extent that the protocol dealt with the provision by Crown Resorts of confidential information to Mr Packer, the protocol prevailed over clause 14 of the services agreement to the extent of any inconsistency; correct?

35

40 MR JOHNSTON: Yes.

MR BELL: And if we look at clause 2.3 on page .8432, you understood, when you executed this agreement that in disclosing information under the protocol, each director or officer of Crown Resorts had to act carefully before revealing confidential information.

45

MR JOHNSTON: You had to have regard to the matters described therein, yes.

MR BELL: And is therefore required to act carefully; do you see those words?

MR JOHNSTON: Yes.

5 MR BELL: You understand it's a serious matter for a listed company to reveal confidential information to a third party; correct?

MR JOHNSTON: Yes.

10 MR BELL: So it's not surprising that this agreement records the fact that this was a matter which the directors or officers of Crown Resorts had to consider carefully; correct?

MR JOHNSTON: Yes. Yes.

15

MR BELL: And you understood, at the time you signed this agreement, that the director or officer had to consider whether it was in the best interests of Crown Resorts to disclose the information?

20 MR JOHNSTON: Yes.

MR BELL: Is that correct?

MR JOHNSTON: Yes.

25

MR BELL: And you understood that the director or officer had to consider whether the disclosure was to the detriment of Crown Resorts or to someone else's benefit?

MR JOHNSTON: Yes.

30

MR BELL: And you understood, when you signed this agreement, that the director or officer of Crown Resorts had to consider whether the disclosure was improper?

MR JOHNSTON: Yes.

35

MR BELL: And I would ask you to look at clause 2.6 on this page. You understood that the protocol made provision for price sensitive information to be provided to CPH or Mr Packer; correct?

40 MR JOHNSTON: Yes.

MR BELL: And if you could look at clauses 2.7 and 2.8 which go over to the next page, page .8433, you understood when you agreed to this protocol that it permitted Crown Resorts to disclose confidential information to Mr Packer. He had provided  
45 an undertaking to CPH to maintain the confidentiality of the information; correct?

MR JOHNSTON: Correct.

MR BELL: And if I could ask you to look at clause 2.10 at page .8433, you understood when you signed this protocol that apart from the directors and officers, there was provision for others such as key management personnel and the persons occupying the positions indicated in clause 2.10(a) who were authorised to provide confidential information to Mr Packer under this agreement.

MR JOHNSTON: Sorry, did you say that they're the people that are authorised?

MR BELL: Well, I'm just drawing your attention to clause 2.10 and I'm ask whether you understood at the time you signed this agreement that the persons within categories in subparagraph (a), (b) and (c) were all authorised representatives who could provide confidential information to Mr Packer.

MR JOHNSTON: Yes.

MR BELL: And if you look at clause 2.12, you understood at the time that you agreed to this protocol, that before disclosure of confidential information, Crown Resorts required its authorised representatives to assess the request for confidential information and to be satisfied that the disclosure would be appropriate having regard to the protocol; correct?

MR JOHNSTON: Yes. Correct.

MR BELL: And you understood that this was an important obligation on the representatives of Crown Resorts?

MR JOHNSTON: Yes.

MR BELL: And if you look at clause 2.15, which starts at page .8433 and goes over to page .8434, you understood at the time that you agreed to this protocol that CPH, its executives and Mr Packer were obliged, not whilst they were in the possession of inside information to do anything which would be reasonably likely to contravene the insider trading provisions of the Corporations Act.

MR JOHNSTON: Yes.

MR BELL: Correct.

MR JOHNSTON: Yes.

MR BELL: And you were aware that after the date of this agreement on 31 October 2018 a number of senior executives of Crown Resorts regularly provided confidential information to Mr Packer under the authority of this protocol?

MR JOHNSTON: Yes.

MR BELL: And you were aware that those senior executives included Mr Barton, Mr Felstead and Mr Alexander; correct?

MR JOHNSTON: Yes.

5

MR BELL: And you were often copied in on those communications, weren't you?

MR JOHNSTON: Yes.

10 MR BELL: And you were aware that Mr Barton was providing financial information to Mr Packer on an almost daily basis after 31 October 2018 under the authority of this protocol?

MR JOHNSTON: Yes.

15

MR BELL: And if I can ask you to look at exhibit AA87, exhibit AA, tab 87; on the confidential link it's CRL.501.067.1156. Do you see that, on the 3rd of January 2019, Mr Barton, in an email to Mr Packer, you, Mr Jalland and Mr Alexander, provided the December month results for Crown Resorts?

20

MR JOHNSTON: Yes.

MR BELL: And you understood that Mr Barton was providing this information to Mr Packer under the authority of the controlling shareholder protocol; correct?

25

MR JOHNSTON: Yes.

MR BELL: Now, could I ask you to look at exhibit AA94. Exhibit AA, tab 94, on the confidential link CRL.506.006.5552. You see that these are minutes of a meeting of the board of Crown Resorts on the 19th of February 29, which you attended?

30

MR JOHNSTON: Yes.

MR BELL: And if you look at page 5555, you see that the CEOs report was taken as read?

35

MR JOHNSTON: Yes.

MR BELL: And if we look at the CEO report at exhibit AA89. Exhibit AA, tab 89. Confidential link CRL.501.040.8377. Do you see that the CEO report for that meeting – I'm sorry, I withdraw that. Can we turn to page .8411.

40

MR JOHNSTON: Yes, yes.

45 MR BELL: You can see that the CEO report for this meeting on February 2019 referred to both the VIP gaming management agreement and the Crown Group consents and approvals deed?

MR JOHNSTON: Yes.

MR BELL: And identified that there are a number of undertakings to the New South Wales regulator which were required in relation to its interest in Melco Resorts and Entertainment; correct?  
5

MR JOHNSTON: Yes, yes.

MR BELL: So, as recently as February 2019, both of these regulatory agreements were being drawn to your attention as part of the board papers for the February 2019 board meeting; correct?  
10

MR JOHNSTON: Well, the undertakings relate to Crown's interest in Melco Resorts and Entertainment. Yes.  
15

MR BELL: Right. So, in 2019 you regarded yourself, didn't you, as having a good knowledge of the undertakings which Crown Resorts had given to the New South Wales Government in relation to the development of Barangaroo?

MR JOHNSTON: I had the knowledge of the undertakings that we looked at earlier, back in 2014, from memory.  
20

MR BELL: Could I ask you to look at exhibit AA220. Exhibit AA, tab 220. Confidential link CRL.568.002.4716.  
25

MR JOHNSTON: I'm sorry. The tab number again, Mr Bell?

MR BELL: Yes. Exhibit AA, tab 220.

MR JOHNSTON: 220. All right.  
30

MR BELL: You see that when Mr Dixon retired from the board of Crown Resorts in October 2019, you offered yourself as his replacement on the Sydney subcommittee?  
35

MR JOHNSTON: Yes.

MR BELL: And you put forward your credentials on the basis that you'd be able to bridge the knowledge of the committee as to the numerous undertakings given to the New South Wales Government as part of the bid process?  
40

MR JOHNSTON: Yes.

MR BELL: Now, in late April 2019, you became aware that Mr Lawrence Ho telephoned Mr Packer expressing interest in Melco Resorts acquiring shares in Crown Resorts from CPH; correct?  
45

**CONTINUED IN TRANSCRIPT-IN-CONFIDENCE**

**CONTINUED FROM TRANSCRIPT-IN-CONFIDENCE**

MR BELL: And Mr Barton said you, Mr Alexander and Mr Kady had indicated that you'd like a few days to review it and provide comments.

5

MR JOHNSTON: Yes.

MR BELL: And that Mr Barton would be – should be in a position to take Mr Packer through it the following week; do you see that?

10

MR JOHNSTON: Yes.

MR BELL: So can I ask you to look at exhibit AB33. Exhibit AB, tab 33. Confidential link CRL.568.027.0463.

15

MR JOHNSTON: What tab is that?

MR BELL: Exhibit AB, tab 33. You see this is your email to Mr Barton, copying in Mr Alexander, Mr Felstead and Mr Packer, of the 21st of May 2019?

20

MR JOHNSTON: Yes.

MR BELL: And you said that you were setting out some discussion points for a call that evening; do you see that?

25

MR JOHNSTON: Yes, I do.

MR BELL: And these were discussions points in relation to the financial plan which Mr Packer had been requesting, and which had been provided to you by Mr Barton the previous Friday, the 17th of May; correct?

30

MR JOHNSTON: Yes, this was our normal budget process, but - yes.

MR BELL: Yes. And you were suggesting some changes to the financial plan?

35

MR JOHNSTON: Well I was suggesting some points to discuss. Yes.

MR BELL: Well – and in point 3, you said:

40

*I think the revenue growth assumptions for FY21 and FY22 currently assumed at 3.6 per cent in each year should be higher.*

Do you see that?

45

MR JOHNSTON: Yes.

MR BELL: And so you were suggesting that the revenue growth assumptions for those years should be higher; is that right?

MR JOHNSTON: That's right.

MR BELL: And point 4 you were suggesting that the VIP gaming machine growth should also be higher; correct?

5

MR JOHNSTON: Well, I was questioning whether they should be. As I said, these were discussion points as opposed to directions.

MR BELL: I'm not suggesting they were directions but they were clearly suggestions, weren't they? You said "VIP gaming machine growth should be higher". That was a suggestion of yours, wasn't it?

10

MR JOHNSTON: Yes, I was certainly putting it forward for discussion.

MR BELL: And at point 5, you were suggesting for Perth only that:

15

*We should assume a more significant impact on the tap and go initiative for FY21 and beyond.*

Do you see that?

20

MR JOHNSTON: Yes.

MR BELL: And the changes which were you suggesting in paragraphs 3, 4 and 5 of your email would have had the effect of making the financial forecasts more optimistic; correct?

25

MR JOHNSTON: Obviously not for FY19 or FY20 because there's no comment with respect to those years.

30

MR BELL: Obviously, yes, for F21 and F22; correct?

MR JOHNSTON: Minor impact for F21 but larger for '22, yes.

COMMISSIONER: Just pardon me for a moment, I'm sorry, Mr Bell. Mr Johnston, you said that this was part of the normal budget process.

35

MR JOHNSTON: Yes.

COMMISSIONER: Do you remember telling me that?

40

MR JOHNSTON: Yes.

COMMISSIONER: And I wanted to ask you, just before Mr Bell takes you to the next point, these are documents that you were dealing with in the normal budget process on a yearly basis, was it?

45

MR JOHNSTON: Yes. The normal budget cycle for Crown, the budget to put together during May and I would normally comment on them at that time.

5 COMMISSIONER: And is it sent to you as for comment as the finance person on the committee or on the board?

MR JOHNSTON: No, I provide this assistance under the services agreement, I believe.

10 COMMISSIONER: What, every year?

MR JOHNSTON: Yes. Yes.

15 COMMISSIONER: I see. So when you're commenting on the normal budget process, you're providing it as an executive of – for which CPH is paid. Is that what you are saying?

MR JOHNSTON: Yes, that's right.

20 COMMISSIONER: I see. Is that normal?

MR JOHNSTON: Yes – well, sorry, that's normally how it's done, yes. We – I provide assistance as an agreed service under the services agreement.

25 COMMISSIONER: Is that documented?

MR JOHNSTON: There have certainly been charges for it, yes.

30 COMMISSIONER: And that's for doing the normal budget process?

MR JOHNSTON: Yes.

COMMISSIONER: Yes, Mr Bell.

35 MR BELL: But Mr Johnston, hadn't you understood that this was a financial plan which Mr Packer had specifically requested, limited to three financial years only?

40 MR JOHNSTON: Well, I think we normally do four years or in prior iterations we've done four years. The reality is the fourth year doesn't do much so it didn't surprise me that the request was for three years.

45 MR BELL: But you were commenting on, and you understood that you were commenting on, a financial plan which Mr Packer had specifically requested in his email of 3 May; correct?

MR JOHNSTON: Yes, but he understood that this was the normal budgeting cycle, too.

MR BELL: I'm not asking you whether you think Mr Packer understood. I'm asking you what you understood that you were commenting on a financial plan, which Mr Packer had specifically requested of Mr Barton?

5 MR JOHNSTON: Yes.

MR BELL: And you understood that Mr Packer's right to that information flowed from the controlling shareholder protocol which you had negotiated and signed on behalf of CPH; correct?

10

MR JOHNSTON: Yes.

MR BELL: And you knew that Mr Packer had said in his email of 3 May that he wanted a financial forecast that Mr Barton believed in; correct?

15

MR JOHNSTON: Yes.

MR BELL: And you were suggesting changes to that plan which would make the financial forecasts more optimistic; correct?

20

MR JOHNSTON: Well, which is I think why I described it as discussion points as opposed to anything else.

MR BELL: So in suggesting these changes to the financial plan, were you acting in your capacity as a director of Crown Resorts or in your capacity as a director of CPH?

25

MR JOHNSTON: I believe I was doing it under the services agreement so that would have been in the CPH capacity.

30

MR BELL: Right. So - - -

MR JOHNSTON: But for Crown, if that makes sense.

35 MR BELL: So you're suggesting that – I withdraw that. You're saying that you made these suggestions in your capacity as an executive of CPH?

MR JOHNSTON: Providing services to Crown.

40 MR BELL: And if you were acting in your capacity as an executive of CPH, it must have occurred to you that you should have declared CPH's interest in the financial forecast because it was in the late stages of negotiating a sale of its Crown Resorts shares or a large parcel of them.

45 MR JOHNSTON: I didn't believe there was a conflict because there was no change to – well, firstly, this was a downward movement from prior forecasts that was being

talked about here. And secondly, I didn't think that there was a conflict because all of these numbers were consistent with consensus views in the market.

5 MR BELL: Well, let's just deal with that step-by-step. You firstly said that this was a downward movement in forecast, but you were suggesting changes to the forecast which would make them more optimistic, weren't you?

10 MR JOHNSTON: There were no changes being proposed for '19 or '20. The only changes that were being proposed in the out years and they were relatively minor in any event.

15 MR BELL: Why are you having difficulty agreeing with the proposition that the changes which you were proposing would make the forecast more optimistic. That's obviously the case, isn't it?

MR JOHNSTON: More optimistic compared to what? So this was a draft - - -

MR BELL: Sorry, go on.

20 MR JOHNSTON: This was a draft which was far less optimistic than the prior plan.

MR BELL: Well, you were suggesting changes to the document you had in front of you, which would make the forecasts in that document more optimistic than they were at that time. That's obviously correct, isn't it?

25 MR JOHNSTON: Well, as I said, I don't know that I was suggesting changes. I was putting points up for discussion, which is a normal part of the budgetary process.

30 COMMISSIONER: Mr Johnston, if your suggestions had been taken up and agreed with, it would have become more optimistic, would it not?

MR JOHNSTON: Yes.

35 COMMISSIONER: All right. Let's move on.

MR BELL: Let's deal with the second point. You were very sensitive to conflicts of interest between CPH and Crown Resorts, you have told us; correct?

40 MR JOHNSTON: Correct.

MR BELL: And that sensitivity extended not just to actual conflicts of interest but the perception of conflicts of interest as well, did it not?

45 MR JOHNSTON: Yes, I would not have wanted – sorry, the answer is yes.

MR BELL: Yes. So in circumstances where you, in your capacity as an executive of CPH, were involved in the negotiation of a sale of CPHs Crown shares at the time,

I suggest that to avoid that perception, it was necessary for you to disclose that fact to Mr Barton.

5 MR JOHNSTON: Well, I suppose the first point is I wasn't involved in the negotiations on the sale contract.

MR BELL: Mr Johnston, you were a director of CPH; correct?

10 MR JOHNSTON: Correct.

MR BELL: You were the sole director of CPH Crown gaming - - -

COMMISSIONER: Crown Holdings.

15 MR BELL: Crown Holdings, the company which was in the midst of negotiations to sell shares in Crown Resorts; correct?

MR JOHNSTON: Yes.

20 MR BELL: You were being kept informed by Mr Jalland of the status of those negotiations; correct?

MR JOHNSTON: Yes.

25 MR BELL: In those circumstances, I suggest to you that to avoid the perception of a conflict of interest, it was incumbent upon you to disclose that fact to Mr Barton; do you agree?

30 MR JOHNSTON: Sorry, I'm - I don't think that I do agree. I don't - didn't see there being a conflict of interest given I was just commenting on this in the same way that I would comment on it in any budgetary process.

MR BELL: So I just want to be clear on this. Firstly, you say you're very sensitive to conflicts of interest; is that right?  
35

MR JOHNSTON: Yes.

40 MR BELL: Secondly, you are telling the Commissioner, on your oath, are you, that you don't see even a potential conflict of interest in you suggesting positive amendments to financial forecasts whilst at the same time your company is involved in negotiations to sell its Crown Resorts shares?

45 MR JOHNSTON: Given that I was not inputting into the pricing discussions, no, I didn't.

MR BELL: And that's a serious answer, is it, Mr Johnston?

MR JOHNSTON: Yes.

COMMISSIONER: Mr Johnston, if you had been sitting around the Crown board table and this document had come on to the table, it's almost impossible to believe  
5 that you wouldn't, as you did previously, stand up and say, "I've got to get out of here, I have an interest in this, at the moment. I can't tell you why. I'm negotiating to sell the shares in a company of which I am the sole director and I don't think I should see these figures at the moment." Isn't that what you do?

10 MR JOHNSTON: I didn't see the conflict because I wasn't inputting into the pricing discussions. They were - - -

COMMISSIONER: That's a different question.

15 MR JOHNSTON: Yes. No, I appreciate that, but I think it's relevant to – sorry, Commissioner.

COMMISSIONER: You are the sole director of the vendor; correct?

20 MR JOHNSTON: Yes, I am. Yes.

COMMISSIONER: And you know that there are advanced negotiations?

MR JOHNSTON: Yes.

25

COMMISSIONER: You know that Lawrence has spoken to James - Lawrence Ho has spoken to James Packer about it, don't you?

MR JOHNSTON: Yes, I do.

30

MR BELL: All of that information is in your head at the board table.

MR JOHNSTON: Yes.

35 COMMISSIONER: And on one view of it, it's quite possible that that arrangement will end up in a deal; would you agree with that?

MR JOHNSTON: Yes. It was possible.

40 COMMISSIONER: So, knowing that the deal is possible, and you're about to opine on how the figures are going to look and what the figures are right now, just before the deal is done, you would be sensitive to it, wouldn't you, so that there wouldn't be a perception, surely?

45 MR JOHNSTON: I suppose I was looking at whether there was an actual as opposed to a perception. I didn't see there being an actual conflict.

COMMISSIONER: But you didn't look at the perception?

MR JOHNSTON: No, I didn't look at the perception at that point.

5 COMMISSIONER: I see. I understand now.

MR BELL: Now, Mr Johnston, whilst you say that you believed you were acting in your capacity as an executive of CPH, you were, in fact, a director of Crown Resorts at this time, weren't you?

10

MR JOHNSTON: Yes, I was.

MR BELL: And you knew that, as the chief financial officer of Crown Resorts, Mr Barton had serious obligations under the controlling shareholder protocol to decide whether it was appropriate to provide this information to Mr Packer with or without the suggestions you had made; correct?

15

MR JOHNSTON: Yes. Yes.

MR BELL: And, as a director of Crown Resorts, I suggest that you had a duty to assist Mr Barton to decide whether he should provide this information to Mr Packer, particularly in circumstances where the information was price-sensitive and CPH was in the late stages of negotiating a sale of the shares.

20

MR HUTLEY: I object. The witness hasn't agreed that it's price-sensitive information.

25

MR BELL: Well, it's true. Mr Johnston, this information is obviously price-sensitive information, isn't it?

30

MR JOHNSTON: No. I don't believe it is.

MR BELL: You don't believe financial forecasts of Crown Resorts are price-sensitive information?

35

MR JOHNSTON: Not – not when they're in – their consistent with market consensus views. No.

MR BELL: Whether they were consistent or not with market forecasts, the fact that this was a deliberation being made at senior levels of Crown Resorts as to the forecasts, it meant that this information, if disclosed to the market, would clearly be price-sensitive; would it not?

40

MR JOHNSTON: I don't believe so, no.

45

MR BELL: And why do you say that?

MR JOHNSTON: Because it's in line with market consensus views.

MR BELL: What, because the forecast is in line with market consensus, the fact that Crown is considering this forecast is not price sensitive. Is that a serious  
5 answer?

MR JOHNSTON: Yes.

COMMISSIONER: So what do you see is the definition of "price sensitivity"?  
10

MR JOHNSTON: I think something that, if the market becomes aware of it, would be understood to move the price.

COMMISSIONER: Would be understood to what?  
15

MR JOHNSTON: To move the – the share price.

COMMISSIONER: So if you've got figures that look optimistic – more optimistic than they might otherwise have been on the present position – they might be price  
20 sensitive; is that right?

MR JOHNSTON: Well, just to put it into context, there were no - - -

COMMISSIONER: Could you just answer that question.  
25

MR JOHNSTON: If they were - - -

COMMISSIONER: If you have – if you have figures that look more optimistic, that might be price sensitive?  
30

MR JOHNSTON: If they were materially more optimistic. Yes.

COMMISSIONER: Yes. And so when you say "materially", I understand that from an accounting point of view, but if they look more optimistic to the dealer – I  
35 withdraw that – to the trader and to the person who's looking at the information for the purposes of working out whether to buy some shares or not - - -

MR JOHNSTON: Yes.

COMMISSIONER: - - - if you get information that's more optimistic than what you're seeing down the road at the ASX, then that might be sensitive?  
40

MR JOHNSTON: But – sorry. I – I can only answer that by giving you some information around the outcome of the points that I describe here. So the - - -  
45

COMMISSIONER: All right. Well, just wait – just wait for the next question then.

MR JOHNSTON: Okay.

COMMISSIONER: I'll wait until Mr Bell asks you another question. Yes, Mr Bell.

5 MR BELL: Whether or not the information was price sensitive, you understood that Mr Barton had a duty to consider whether it was appropriate to provide this information to Mr Packer; correct?

MR JOHNSTON: Yes.

10

MR BELL: You understood that he had to consider the matter carefully; correct?

MR JOHNSTON: Yes.

15 MR BELL: You had to consider whether the matter was in the best interests of Crown Resorts; correct?

MR JOHNSTON: Yes.

20 MR BELL: You had to consider whether, by providing the information, Crown Resorts might suffer a detriment or someone else might obtain a benefit; correct?

MR JOHNSTON: Yes.

25 MR BELL: You had to consider whether the disclosure of information was improper; correct?

MR JOHNSTON: I'm – can you take me back to those criteria again. I'm trying to do all this by memory. You are throwing a lot of - - -

30

COMMISSIONER: It's CRL.509.014.8430.

MR JOHNSTON: I'm sorry. Which volume is that, again, Mr Bell?

35 MR BELL: It's exhibit Y5. It's at Y, tab 5. Confidential link CRL.509.014.8430.

COMMISSIONER: 2.3.

MR BELL: Clause 2.3(c) is the clause I was referring to, Mr Johnston.

40

MR JOHNSTON: 2.3(c). Yes.

MR BELL: So you understood that Mr Barton had to consider all of those matters before deciding whether it was appropriate to provide this information to Mr Packer; correct?

45

MR JOHNSTON: Yes.

MR BELL: And I suggest to you that you had a duty, as a director of Crown Resorts, to assist Mr Barton to make that decision carefully by providing him information which was relevant to that decision; namely, that CPH was in the process of negotiating a sale of the shares in Crown Resorts. Do you agree?

5

MR JOHNSTON: Well, I think that it's – given the benefits that Crown has historically got from Mr Packer's involvement with the business, I think it was still quite possible to meet these criteria.

10 MR BELL: That's not what I asked you. I asked you whether you appreciated that you, as a director of Crown Resorts, had a duty to inform the chief financial officer of Crown Resorts of the proposed sale of CPHs shares in Crown Resorts to assist Mr Barton to make a decision which he had an obligation to make under the controlling shareholder protocol; do you agree?

15

MR JOHNSTON: No.

MR BELL: Did you have the call with Mr Barton that was contemplated in your email, exhibit AB33?

20

MR JOHNSTON: I believe we had a brief call.

MR BELL: Who else was in on the call?

25 MR JOHNSTON: I think Brad Kady, from memory. I can't recall who else.

MR BELL: And were the financial plans modified in accordance with any of your suggestions?

30 MR JOHNSTON: I believe there was one modification which related to the table games in Melbourne, not as much as I was suggesting, but some modification.

MR BELL: Which of the five points in your email does that relate to?

35 MR JOHNSTON: Sorry. What tab number?

MR BELL: Sorry. Exhibit AB, tab 33, CRL.568.027.0463.

MR JOHNSTON: Point 3.

40

MR BELL: All right. And – sorry – just to be clear, what modification was made to the plans, precisely?

45 MR JOHNSTON: In the outer years, there was a slightly higher assumed growth rate in table game revenue.

MR BELL: And after those plans were modified, were they then provided to Mr Packer, you and Mr Kady?

MR JOHNSTON: Yes, they would have been.

5

MR BELL: And did you provide any of the information in the financial plans to Melco Resorts prior to the share sale agreement being signed?

MR JOHNSTON: No.

10

MR BELL: Did you provide any price-sensitive confidential information about Crown Resorts to Melco Resorts prior to the share sale agreement being signed?

MR JOHNSTON: We did provide a disclosure letter, which I'm not sure that it was price – I don't believe it was price-sensitive. But we did provide a disclosure letter, which indicated, for the FY19 and FY20 year, where management's forecasts were relative to consensus.

15

MR BELL: Why wouldn't that be price-sensitive, Mr Johnston?

20

MR JOHNSTON: Because the information was – the indications were that – that the material was very close to market consensus.

MR BELL: So leaving to one side the debate we're having about whether it was or was not price-sensitive, is it your evidence to this Inquiry that, prior to the sale of Crown Resorts shares to Melco Resorts, you provided confidential information regarding Crown Resorts to Melco Resorts?

25

MR JOHNSTON: Yes. Mr Jalland and I did.

30

MR BELL: Yes. And was that financial information which you provided?

MR JOHNSTON: It was guidance. It was not detailed financial information.

MR BELL: But could I just be precise – could I have some precision about what the guidance was that you provided to Melco Resorts prior to this deal being consummated?

35

MR JOHNSTON: Yes. So we indicated that, for FY19, the financial performance contemplated by management was within, I think, from memory, about two per cent of broker consensus and, for FY20, it was – I forget the exact number, but it was, again, less than five per cent. It was a relatively small variance.

40

MR BELL: And was that information which was included in the financial plans which you had received from Mr Barton shortly after the 21st of May 2019?

45

MR JOHNSTON: Yes – well - - -

MR BELL: Is that a convenient time?

MR JOHNSTON: Sorry. It was based on it. I'm sorry.

5 MR BELL: Please – please finish your answer.

MR JOHNSTON: Sorry. It – that was relevant to giving those estimations. Yes.

MR BELL: Is that a convenient time, Commissioner?

10

COMMISSIONER: Yes, it is. Mr Johnston, we're going to conclude today's proceedings. And so what will happen now is I'll ask you to return a little bit before 10 on Monday, so that we can make sure the technology is connected appropriately.

15 MR JOHNSTON: Yes.

COMMISSIONER: So I'll now adjourn. I'll now adjourn the proceedings, or the Inquiry, until 10 am – I'm sorry – on Monday. And anything further? No. I'll adjourn.

20

MR JOHNSTON: Thank you.

<THE WITNESS WITHDREW

25

**MATTER ADJOURNED at 4.05 pm UNTIL MONDAY, 28 SEPTEMBER 2020**

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