

Instrument of appointment to preside at an inquiry under section 143 of the *Casino Control Act 1992* (NSW)

To: **The Honourable Patricia Bergin SC**

Background

1. The Independent Liquor and Gaming Authority (the **Authority**) has functions under the gaming and liquor legislation identified in section 4 of the *Gaming and Liquor Administration Act 2007* (NSW) (**Gaming Act**). In July 2014, the Authority granted a casino licence relating to the Barangaroo restricted gaming facility to Crown Sydney Gaming Pty Limited (**Licensee**). The Licensee is a wholly owned subsidiary of Crown Resorts Limited (**Crown Resorts**).
2. The Authority is required to have regard to the primary objects of the *Casino Control Act 1992* (NSW) (**Casino Control Act**) in exercising its functions (section 4A(2) of the *Casino Control Act*). Those primary objects of the *Casino Control Act* are identified in section 4A(1). They are:
 - (a) ensuring that the management and operation of a casino remain free from criminal influence or exploitation;
 - (b) ensuring that gaming in a casino is conducted honestly; and
 - (c) containing and controlling the potential of a casino to cause harm to the public interest and to individuals and families.
3. The Authority has such functions as are necessary or convenient to enable it to achieve its objects under the *Casino Control Act* (section 141(1)). Without limiting its functions, the Authority has the specific function to keep under constant review all matters connected with casinos and the activities of casino operators, persons associated with casino operators, and persons who are in a position to exercise direct or indirect control over the casino operators or persons associated with casino operators (section 141(2)(c) of the *Casino Control Act*).
4. Pursuant to section 143 of the *Casino Control Act*, for the purpose of the exercise of its functions under that Act, the Authority may arrange the holding of inquiries in public or in private presided over by a person appointed by the Authority.

5. On 14 August 2019 the Authority issued an Instrument of Appointment to the Honourable Patricia Bergin SC (the **Commissioner**) to preside at an inquiry under section 143 of the *Casino Control Act* into the matters referred to in the Instrument of Appointment.
6. In or about late May or early June 2019:
 - (a) Melco Resorts & Entertainment Limited (**Melco**) entered into a Share Sale Agreement (**SSA**) with CPH Crown Holdings Pty Ltd (**CPH**) to acquire approximately 19.99% of the shares in Crown Resorts;
 - (b) CPH, in accordance with the terms of the SSA, disposed of approximately 9.99% of the shares in Crown Resorts to Melco's nominee, MCO (KittyHawk) Investments Limited (**KittyHawk**), a company registered in the Cayman Islands;
 - (c) Melco announced its proposal to increase its shareholding in Crown Resorts;
 - (d) Melco announced its proposal to seek representation on the board of Crown Resorts by any combination of Mr Lawrence Ho, Mr Geoff Davis, Ms Stephanie Cheung, Ms Akiko Takahashi, Mr Evan Winkler, and Mr Clarence Chung; and
 - (e) Melco announced its proposal that it and Mr Lawrence Ho, Mr Geoff Davis, Ms Stephanie Cheung, Ms Akiko Takahashi, Mr Evan Winkler, and Mr Clarence Chung become close associates of the Licensee.
7. On or about 28 August 2019 Melco entered into a deed with CPH to amend the SSA which made the sale of the remaining 9.99% of the shares in Crown Resorts (**Second Tranche**) subject to conditions that:
 - (f) there was no finding or recommendation by the Authority or by the Commissioner which would, or which could reasonably be expected to, restrict completion of the sale of the Second Tranche occurring and the Authority not otherwise objecting to completion; and
 - (g) Melco received written notice from each of the Authority, the Victorian Commission for Gambling and Liquor Regulation and the Western Australian Gaming and Wagering Commission that Melco was a suitable person to be

associated with the management of a casino, each such notification either being unconditional or on conditions acceptable to Melco acting reasonably.

8. On or about 5 September 2019 Melco notified the Authority that Melco was only seeking representation on the board of Crown Resorts by Mr Evan Winkler and Mr Geoff Davis.
9. On or about 6 February 2020 Melco:
 - (a) entered into an agreement with CPH Crown which terminated its obligation to purchase the Second Tranche;
 - (b) announced that it did not currently intend to increase its existing shareholding in Crown Resorts; and
 - (c) announced that it did not intend to seek representation on the board of Crown Resorts.
10. On 3 April 2020, as an interim procedure, the Authority decided and directed the Commissioner pursuant to s143(5) of the Casino Control Act that most of the work of the inquiry established by the event referred to in paragraph 5 be deferred until further direction.
11. On 29 April 2020 it was announced on the Australian Stock Exchange that “an entity owned by funds managed or advised by The Blackstone Group Inc. and its affiliates” had purchased shares representing 9.99% shareholding of the issued capital in Crown Resorts, from Melco. On 1 May 2020 it was announced on the Australian Stock Exchange that Kittyhawk and other group companies named in the announcement including Melco ceased to have a relevant interest, or voting power, in Crown Resorts.
12. On 23 June 2020, the Authority decided and directed that from 23 June 2020 the work of the inquiry established by the event referred to in paragraph 5 resume.

Amendment

13. Pursuant to section 143 of the *Casino Control Act* the Authority directs that the matters into which the Commissioner is to inquire and report upon are amended as follows.

Part A Suitability Review

14. On and from 27 July 2019, the Nine Network, the Sydney Morning Herald, The Age and other media outlets have broadcast or published material which raised various allegations into the conduct of Crown Resorts and its alleged associates and business partners and raised questions as to whether the Licensee remains a suitable person to hold a restricted gaming license for the purposes of the *Casino Control Act (Allegations)*.
15. The Allegations include, but are not limited to, allegations that Crown Resorts or its agents, affiliates or subsidiaries:
 - (a) engaged in money-laundering;
 - (b) breached gambling laws; and
 - (c) partnered with junket operators with links to drug traffickers, money launderers, human traffickers, and organised crime groups.
16. In response to the Allegations, the Commissioner is to inquire into and report upon **(Suitability Review)**:
 - (a) whether the Licensee is a suitable person to continue to give effect to the Barangaroo restricted gaming licence;
 - (b) whether Crown Resorts is a suitable person to be a close associate of the Licensee;
 - (c) in the event that the answer to either (a) or (b) above is no, what, if any, changes would be required to render those persons suitable;
 - (d) whether or not the disposal of shares held by CPH in Crown Resorts to Melco or KittyHawk, on or around 6 June 2019, constituted a breach of the Barangaroo restricted gaming licence or any other regulatory agreement;
 - (e) whether or not the agreement by CPH to dispose of a second tranche of shares in Crown Resorts to Melco or KittyHawk on or before 30 September 2019 constituted a breach of the Barangaroo restricted gaming licence or any other regulatory agreement;

- (f) whether the transfer of the shares in Crown Resorts referred to in (d) above, constituted a breach of the Barangaroo restricted gaming licence or any other regulatory agreement; and
- (g) any matter reasonably incidental to these matters.

Part B - Regulatory Framework and Settings

17. The Commissioner is to:

- (a) inquire into and report upon the efficacy of the primary objects of the *Casino Control Act* in an environment of growing complexity of both extant and emerging risks for gaming and casinos;
- (b) undertake a forward-looking assessment of the Authority's ability to respond to an environment of growing complexity of both extant and emerging risks for gaming and casinos;
- (c) identify recommendations in order to enhance the Authority's future capability, having regard to the changing operating environment; and
- (d) in so inquiring and reporting in respect of paragraphs 17(a) to 17(c), take into account domestic and international best practice with respect to gaming operation and regulatory frameworks.

Powers

- 18. The Commissioner has the powers, authorities, protections and immunities conferred on a commissioner by Division 1 of Part 2 of the *Royal Commissions Act 1923* (NSW).
- 19. The Commissioner has the powers and authorities conferred on a commissioner by Division 2 of Part 2 of the *Royal Commissions Act 1923* (NSW) (except for sections 17(4) and (5)).
- 20. The Commissioner is directed to hold the hearings in public unless the Commissioner is satisfied that is convenient to conduct hearings in private.

21. The Commissioner may be required to inquire into any other matter which the Authority requests in writing from time to time during the term of the inquiry.

Report

22. The Commissioner is to report to the Authority in writing in relation to the matters for inquiry by 1 February 2021.