

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

MASSACHUSETTS GAMING COMMISSION

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| _____ |) |
| <i>In the Matter of:</i> |) |
| _____ |) |
| Wynn MA, LLC |) |
| _____ |) |

PHASE I SUITABILITY DECISION

Wynn MA, LLC (hereinafter "Applicant") submitted a Phase 1 application for a gaming license to the Massachusetts Gaming Commission (hereinafter "Commission" or "MGC"). This decision results from the adjudicatory proceeding conducted by the Commission on December 16, 2013 at the Boston Convention and Exhibition Center, 415 Summer Street, Boston, MA. At the direction of the Chair, the entire Commission presided over the matter. At the hearing, the applicant was represented by William Weld, Esq. from the law firm Mintz Levin and Kimmarie Sinatra, General Counsel for Wynn Resorts, Limited. The Investigations and Enforcement Bureau (hereinafter "IEB") was represented by David Mackey, Esq. and Mina Makarious, Esq., from the law firm Anderson & Kreiger. For the reasons set forth below, the Commission finds by a unanimous vote that the Applicant, Wynn MA, LLC, has met its burden of proof with respect to its application and accordingly is issued a **POSITIVE** determination of suitability in accordance with 205 CMR 115.00. This determination is subject to certain conditions which are set forth below.

Further, the Commission hereby issues a **POSITIVE** determination of suitability to all individual and entity qualifiers referenced in the Report of Suitability of Applicant Entities and Individual Qualifiers dated December 6, 2013 as follows:

Entity Qualifiers

Wynn MA, LLC
Wynn Resorts, Limited

Individual Qualifiers

| | |
|--------------------|-------------------|
| Stephen A. Wynn | Matthew O. Maddox |
| Kimmarie Sinatra | John Strzemp |
| Alvin V. Shoemaker | D. Boone Wayson |
| Robert J. Miller | Elaine P. Wynn |
| Dr. Ray R. Irani | J. Edward Virtue |
| John J. Hagenbuch | |

I. Background

The application for a gaming license consists of two parts. See 205 CMR 110.01. The first, called the Phase 1 application, essentially focuses on the qualifications and suitability of the Applicant and its qualifiers to hold a gaming license. See G.L. c. 23K, §12(a) and 205 CMR 115.00 through 117.00. The Phase 2 application focuses on the site, design, operation and other attributes of the gaming facility itself. See generally 205 CMR 118.00 and 119.00. “The commission shall not entertain a Phase 2 application for any applicant unless and until the commission has issued a positive suitability determination on that applicant.” 205 CMR 110.01; see also 205 CMR 115.05(4) and 118.01(1) (a). This hearing involved the Phase 1 segment of the process.

The Applicant initiated the Phase 1 application process on January 14, 2013. Upon receipt of the application, the Commission instructed the IEB to commence an investigation into the suitability of the Applicant. See G.L. c.23K, §12(a). The investigation was to include all qualifiers associated with the Applicant. See G.L. c. 23K, §14 and 205 CMR 116.00. The IEB conducted such an investigation and reported its findings and recommendations to the Commission by way of a Report of Suitability of Applicant Entities and Individual Qualifiers (hereinafter the “Report”). See 205 CMR 115.03(2).

The Report contains information relative to the following areas:

- (1) the integrity, honesty, good character and reputation of the Applicant;
- (2) the financial stability, integrity and background of the Applicant;
- (3) the business practices and the business ability of the Applicant to establish and maintain a successful gaming establishment;
- (4) whether the Applicant has a history of compliance with gaming licensing requirements in other jurisdictions;
- (5) whether the Applicant, at the time of application, is a defendant in litigation involving its business practices;
- (6) the suitability of all parties in interest to the prospective gaming license, including affiliates and close associates and the financial resources of the Applicant; and
- (7) whether the Applicant is disqualified from receiving a license under G.L. c.23K, §16.

“All applicants for a Phase 1 suitability determination must establish their qualifications by clear and convincing evidence.” 205 CMR 115.01(2); see also G.L. c.23K, §13(a). “Clear and convincing proof involves a degree of belief greater than the usually imposed burden of proof by a fair preponderance of the evidence, but less than the burden of proof beyond a reasonable doubt imposed in criminal cases. It has been said that the proof must be ‘strong, positive and free from doubt’, and ‘full, clear and decisive.’” Stone v. Essex County Newspapers, Inc., 367 Mass. 849, 871 (1975) (internal citations omitted).

A copy of the Report was provided to the Applicant along with a notice of this adjudicatory proceeding. See 205 CMR 115.04(1). The adjudicatory hearing was noticed for and convened on the Commission’s own initiative on December 16, 2013. See 205 CMR 115.04(3). Karen

Wells, the Director of the Bureau, appeared and testified at the hearing on behalf of the Bureau. Stephen Wynn, Kimmarie Sinatra, Jay Schall, and James Stern testified on behalf of Applicant. All witnesses were duly sworn and found to be credible.

II. Exhibits

The exhibits identified below were taken into evidence at the proceeding without objection. All exhibits were considered, in conjunction with witness testimony, in reaching the final decision.

IEB Exhibits

- EXHIBIT 1: Notice of Adjudicatory Proceeding for Wynn MA, LLC dated December 12, 2013
- EXHIBIT 2: Memorandum Regarding Adjudicatory Proceeding for Wynn MA, LLC
- EXHIBIT 3: Cover Letter to MA Gaming Commission from IEB Director Karen Wells, regarding the Suitability Investigation for Wynn MA, LLC dated December 6, 2013
- EXHIBIT 4: Report of Suitability of Applicant Entities and Individual Qualifiers for Wynn MA, LLC dated December 6, 2013-Redacted
- EXHIBIT 5: Boston Business Journal article, *Everett casino site could be a gamble for Wynn*, Galen Moore (December 14, 2012)
- EXHIBIT 6: Email correspondence between Dustin DeNunzio and Kim Sinatra dated January 17, 2013
- EXHIBIT 7: Letter from Kevin Tourek to Dustin DeNunzio dated August 1, 2013 and responsive letter from DeNunzio to Tourek dated August 12, 2013
- EXHIBIT 8: Corporate Investigations report re: due diligence of FBT Everett LLC (7 pages)
- EXHIBIT 9: Annual Report for 2011 filing year re: FBT Everett Realty LLC filed with Secretary of the Commonwealth

Applicant Exhibits

None.

III. Findings and Discussion

The Report, which is available at: <http://massgaming.com/wp-content/uploads/IEB-Report-Wynn-MA-LLC.pdf>, contains a description of the investigation conducted by the IEB and detailed findings of fact. The Commission generally adopts the findings of fact contained in the Report though certain facts, particularly those that were elucidated at the hearing, are set forth below for purposes of discussing the specific areas of focus at the hearing. On the whole, it is clear from the Report that the Applicant has created a dynamic within its company that promotes strict regulatory compliance. The IEB's recommendation that the Applicant be issued a positive determination of suitability is subject only to the condition that the Applicant demonstrate at the hearing that it engages in responsible business practices in Macau. For the reasons articulated

below we find that it has. In addition, the Applicant clearly and convincingly demonstrated that it had dealt in a satisfactory manner with three other issues discussed below.

In sum and for the following reasons, the Commission finds that the evidence collectively demonstrates that the Applicant has met its burden of proving its qualification for licensure by clear and convincing evidence.

A. Suitability of Individuals

It is important to clarify the manner in which determinations are made as to the suitability of individual qualifiers; that is, how one's integrity, honesty, good character and reputation are evaluated. As the Commission has noted in past decisions, the New Jersey Casino Control Commission has best described the standard for evaluating the good character, honesty and integrity of an individual applicant. We look to that standard for guidance. In *In re Bally's Casino Application*, 10 N.J.A.R 356, 393 (1981), the New Jersey Casino Control Commission stated:

The law requires us to judge each applicant's character. We find this a most difficult task for several reasons. First "character" is an elusive concept which defies precise definition. Next we can know the character of another only indirectly, but most clearly through his words and deeds. Finally, the character of a person is neither uniform nor immutable.

Nevertheless, we conceive character to be the sum total of an individual's attributes, the thread of intention, good or bad, that weaves its way through the experience of a lifetime. We must judge a [person's] character by evaluating his words and deeds as they appear from the testimony and from all of the evidence in the record before us. We must focus particularly on those attributes of trustworthiness, honesty, integrity and candor which are relevant to our inquiry.

In employing the principles articulated in the *Bally's* decision we find that the individual qualifiers identified in the Report have satisfactorily demonstrated their good character, honesty, and integrity. Based upon the factual findings contained in the Report, we find that each has satisfied their burden of proving their suitability.

B. Macau

Wynn Macau, a destination resort casino located in Macau, opened in 2006. In 2010 the resort was expanded to include the Encore at Wynn Macau. The entire resort casino is operated by Wynn Macau, Limited of which 72.3% is owned by Wynn Resorts, Limited and the remainder is traded on the Hong Kong Stock Exchange. Wynn Resorts, Limited is also the parent entity of the Applicant here, Wynn MA, LLC, and of Wynn Las Vegas, LLC.

As outlined in the Report, Macau is a Special Administrative Region of the People's Republic of China consisting of a peninsula extending from mainland China and located 37 miles southwest

of Hong Kong. The Report, at pages 16-41, contains an excellent description of the history of gaming in Macau pre and post 1999 and how the Wynn Macau came to be.

When distilled to its essence, the issue now before the Commission is whether the Applicant's business practices in Macau meet the requirement of "responsible business practices in any jurisdiction" contained in G.L. c. 23K, §12(b)(ii); if the business practices do not meet that standard the Applicant would be deemed unsuitable to do business in Massachusetts. The specific area of focus in this regard centers on the operation and role of gaming promoters, and subjunkets, as they relate to Wynn Macau. In reviewing this issue, it is critical to consider that Wynn Macau is in good standing with the DICJ, the regulatory body in Macau.¹ Further, given the stringent background checks performed on the gaming promoters and on-site employees of the promoters by the DICJ and Wynn Macau, Wynn Macau's compliance with the rigorous Federal Anti-Money Laundering, Politically Exposed Persons, and Foreign Corrupt Practices statutes, and Wynn Macau's institution of its own related policies at its Macau property, the Commission is satisfied that the Applicant's practices in Macau comport with the requirement that it engage in "responsible business practices in any jurisdiction" it does business as required under G.L. c. 23K, §12(b)(ii).

It is helpful to understand some of the history of casino gaming in Macau in order to put the Applicant's practices into context. Gaming has been legal in Macau since 1847 when Macau was under Portuguese control. In 1937 the first casino franchise, essentially a monopoly, was granted by Macanese authorities. In 1961, the Macanese government enacted legislation to open up the existing casino monopoly to a public bidding process. There were two bidders. The winning group was a consortium of businessmen led by Stanley Ho, a Hong Kong developer. For forty years this group dominated the gaming market in Macau. During this period, the gaming promoter/junket operator system was introduced into Mr. Ho's properties. Under this system, the gaming promoter exercises substantial control over portions of the casino, typically known as VIP rooms, under revenue sharing arrangements with the casino owner. Among other things, the system allows the gaming promoter to offer credit to its customers and shifts to the promoter the risk of financial loss arising out of the credit extensions.

In the 1980s, Asian organized crime groups known as triads became prominent in the junket operations at Stanley Ho's casinos. Large scale violence erupted between rival Macau triads vying for control of the junket operations in the 1980s and 1990s. Hong Kong triads also moved into the battle for control of the junket operations in Macau in the later 1990s. This history has been more fully described in the United States China Commission ("USCC") Annual Report.

In 1999, Macau reverted to Chinese sovereignty. In 2001, the Macau government opened a bidding process for three gaming concessions, thus ending the prior monopoly market. In 2002, three companies were awarded concessions: Sociedade de Jogos de Macau ("SJM"), which is owned by Stanley Ho's company Sociedade de Turismo e Diversoes de Macau ("STDM"); Wynn Resorts; and Galaxy Casino. Each company was allowed to sell sub-concessions. Galaxy sold a sub-concession to Las Vegas Sands. SJM sold a sub-concession to MGM Grand Paradise, a partnership between Pansy Ho (Stanley Ho's daughter) and MGM Resorts International. Wynn Resorts sold a sub-concession to Melco PBL Jogos (Macau) now known as Melco Crown.

¹ DICJ is the acronym of the Portuguese title of the Macanese *Gaming Inspection and Coordination Bureau*.

Following Macau's reversion to Chinese sovereignty in 1999, China took strong steps to curtail triad violence in Macau. This resulted in an immediate and steep drop in violent crime. Since then, gaming revenues have risen dramatically. Nevertheless, concerns about organized crime and its participation in the gaming industry in Macau remain. The USCC Annual Report acknowledges ongoing concerns about organized crime in Macau, specifically money laundering, abusive debt collection practices by junket operators through threats of violence, and other non-judicial means and added risks for United States licensed companies with Macau operations arising from the junket operators historical affiliation with organized crime. The USCC Annual Report noted that these concerns have prompted United States licensed companies to take additional steps to prevent illegal activity at their properties in Macau.

The focus of our review of the Applicant's business practices in Macau centered on the gaming promoter system. The system, briefly described above and more extensively described in the Report at pages 30-41, was also discussed by the Applicant at the hearing. Essentially, as referenced above, the promoter organizes player trips to the casino, extends credit to the players, and collects money from the players. Wynn Macau presently has a contract with 12 promoters.² Each of the promoters has its own gaming space within the facility. The promoter is responsible for bringing players into its space and for operating the financial center (the "cage") of the space including the monitoring of Anti-Money Laundering efforts. Wynn Macau supplies all of the gaming, surveillance, and security personnel. Further, Wynn Macau provides training and annual refreshers to gaming promoter employees at the establishment relative to Anti-Money Laundering protocols. Each of the promoters is licensed by the DICJ prior to entering into a contract with Wynn Macau.

The owners and principals of the gaming promoter go through a formal application process with the DICJ to become licensed. The process includes provision of a detailed personal history and a full criminal background check. The gaming promoter license is subject to annual renewals. The Applicant explained that it imposes additional requirements on its promoters above and beyond those required by the DICJ. They include initial intensive background checks that are updated semi-annually. In addition, Wynn Macau is selective in the gaming promoters with which it chooses to do business and has created a high-level junket committee to review prospective promoters. Further, Wynn Macau conducts background checks on all employees of the promoter who work in the casino. The checks on those employees mirror those that it conducts on its own employees who work on the gaming floor and in the VIP rooms.

The gaming promoters are able to recruit and supply customers to their VIP rooms at the Wynn Macau through what are known as collaborators or subjunkets. Depending upon the size of the promoter's operation, there may be multiple levels of subjunkets. Those individuals are not licensed by the DICJ or investigated by Wynn Macau. Oftentimes their identities are not even known. The system of promoters to subjunkets was described as a pyramid or tree starting with the promoter and branching out into multiple subjunkets.

² There are approximately 200 licensed gaming promoters in Macau. It is clear that Wynn Macau exercises great care and circumspection in determining which promoters to do business with.

Though the use of subjunket providers is not closely regulated under Macanese law, the general concern with these often unidentified and unknown individuals and entities is that, left unchecked, they may be able to utilize the gaming establishment as a conduit to engage in money laundering activities, currency control evasion, extortionate credit extension, and questionable collection practices. The Wynn Macau, however, has in place a comprehensive set of protocols and compliance standards to help ensure that no such objectionable practices are able to easily infiltrate the gaming establishment. Wynn Macau's strict compliance with both its own corporate compliance standards as well as existing Macanese law satisfy the Commission that concerns surrounding the subjunkets are being adequately mitigated.

In particular, the Wynn Macau has Anti-Money Laundering policies and protocols in place (including the filing of High Value Transaction Reports and Suspicious Transaction Reports), an audit program for junket transactions, surveillance of the promoters' VIP rooms, and makes use of non-transferrable chips that have no value if not bet. All of these measures serve to protect against the issues referenced above. Further, Wynn Macau conducts due diligence investigations regarding any possible Politically Exposed Persons on the premises, maintains a PEP Committee to review any patrons of concern, and enforces and frequently updates a Foreign Corrupt Practices Act policy that is overseen by a property level compliance committee. These measures are described in the Report on pages 38-41. Ultimately, Ms. Sinatra generally described the Applicant's compliance process as dynamic and anticipatory. Those appear to be apt descriptors of the process governing the gaming promoter operation at the Wynn Macau and leave us satisfied that the Applicant engages in "responsible business practices" in Macau.

C. Project Land in Everett

On December 13, 2013 the Commission held a public meeting to review the Applicant's proposed resolution to concerns raised by the IEB in its Report regarding potentially undisclosed ownership interests in the land under option by the Applicant for the location of the Applicant's proposed gaming establishment. One of the IEB's concerns was that an undisclosed owner or owners had a criminal background. At that meeting the Commission³ voted 4-0 to accept the proposed resolution submitted by the Applicant to address the issues raised in the Report relative to the land transaction in Everett. The vote entailed three main components: (1) that the sale price of the property be \$35 million (\$10 million of which is to be deposited into a fund for the environmental clean-up of the site) which reflects the fair market value of the site for commercial use without a casino, (2) that the three members of FBT Everett Realty, LLC who will receive the proceeds of the sale of the property sign a notarized statement under oath affirming that no parties other than those three will receive any of the proceeds of the sale, and (3) that the entire IEB investigatory file of the land deal be forwarded to the offices of the U.S. Attorney, Attorney General, and local District Attorney for review and pursuit of any warranted action. It was further made clear that there is no evidence or indication whatsoever that the Applicant was in any way knowledgeable or involved in the issues of concern articulated in the Report relative to the ownership of the land.

³ Chairman Crosby recused himself from the proceedings and vote relative to this matter.

While the previous vote resolved the broader concern (that is, whether unsuitable individuals might directly profit from this land transaction) the process itself offers some insight into the suitability of the Applicant in two important respects. While it could be argued that the Applicant did minimal due diligence on the ownership of the land when it first executed its option, it is clear that once the Applicant was made aware of the IEB's concerns relative to FBT Everett Realty, LLC, it took immediate action to cure the situation. This type of responsiveness serves to corroborate the Applicant's demonstrated history of compliance with gaming licensing requirements in both Nevada and Macau. Second, the Applicant has taken steps to enhance its control procedures relative to the payment of vendors in order to reduce the risk that hidden interests may be the real recipients of those payments. On the whole, the Applicant's handling of this difficult situation has served to further highlight its demonstrated record of engaging in sound business practices.

D. Okada

Wynn's relationship with Kazuo Okada gave rise to a number of lawsuits. The relationship and nature of the suits are amply detailed in the Report at pages 42-47. The primary conclusion the Commission draws from those details is that the actions taken by the Applicant to separate Mr. Okada from the Board of Directors of the company demonstrates the quality of sound corporate governance that should be expected of a gaming company. After careful review of the facts and circumstances, and upon belief that Mr. Okada's involvement in the company may jeopardize the company's suitability, decisive action was taken to address the issue. As such, without commenting on the merits of any of the pending litigation, the Applicant's actions in the Okada matter support the overall suitability of the Applicant.

E. Compliance Committee

Wynn Resorts, Limited has in place a Gaming Compliance Program. One of the stated purposes of the Program is to "monitor compliance with gaming laws applicable to the Gaming Operations of Wynn Resorts and its affiliate companies" The Program appears to be examined and improved on a regular basis. Implementation and administration of the Program with respect to all gaming operations at Wynn Resorts is centrally controlled by a Compliance Committee. The Committee is comprised of three members; one who is not an employee of the company and two who are executives of the company. The Committee meets on a quarterly basis. The number of recorded regulatory infractions is remarkably low. In fact, Wynn Las Vegas has received only two citations from the Nevada Gaming Control Board in the past three years, neither resulting in a fine. It is clear that the Program has been successfully implemented. While recognizing this noteworthy success and while cognizant of the maxim that one should resist efforts to fix processes that are not broken, the Commission observes that a majority of the Compliance Committee is comprised of employees of the company. Where it is critically important that this Committee be empowered to address all compliance issues with total independence, thought might be given to adjusting the composition of the committee from a majority of inside members to a majority of outside members. The present committee members obviously are doing an excellent job. From an institutional perspective, the likelihood that their eventual successors will be equally successful would be increased by an added measure of independence.

IV. Conclusion

Based upon the testimony provided to the Commission at the hearing as well as the exhibits provided by the IEB the Commission, by unanimous vote, finds that the Applicant has satisfied its burden of proving by clear and convincing evidence that it meets the standards for suitability under M.G.L. c. 23K, §12. It is accordingly issued a positive finding of suitability. This finding, however, is conditioned upon the following:

1. Documents and information provided by the Applicant to regulators in any U.S. jurisdiction relative to Macau operations must also be provided to the Commission in a timely manner;
2. Applicant must provide the Commission with notice of any change in its corporate governance structure including but not limited to changes in the membership of the audit and/or compliance committees and the addition of any new board members;

In light of this positive determination of suitability, the Applicant will be eligible to submit an RFA-2 application in accordance with 205 CMR 118.01(1).

SO ORDERED.

MASSACHUSETTS GAMING COMMISSION



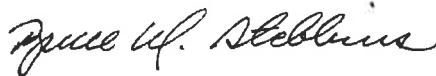
Stephen P. Crosby, Chairman



Gayle Cameron, Commissioner



James F. McHugh, Commissioner



Bruce Stebbins, Commissioner



Enrique Zuniga, Commissioner

DATED: December 27, 2013