



COMMONWEALTH CASINO COMMISSION

Commonwealth of the Northern Mariana Islands

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Minutes March 25, 2021

I. PRELIMINARIES:

A. Call to Order

Chairman Edward DeLeon Guerrero called the meeting to order at 10:10 am on Thursday, March 25, 2021 at the Commission's 2nd Floor Main Conference Room at the Springs Plaza in Gualo Rai, Saipan. The meeting was also on video conference.

B. Roll Call

Commissioners present at the meeting were: Edward DeLeon Guerrero (Chairman), Rafael Demapan (Vice Chairman), Ramon Dela Cruz (Secretary), Mariano Taitano (Treasurer) and Diego Songao (Public Affairs).

C. Adoption of Agenda

Commissioner Dela Cruz made a motion to amend the agenda to include Public Comments as item II, seconded by Commissioner Taitano.

Discussion: Legal Counsel Ernest clarified that the Commission will not be adopting a final order in the cases being deliberated, noting that a final order would have to be adopted in public session and would also have to be properly noticed on the agenda. Counsel Lowrey proposed that a draft order be written after the Commission's deliberation and entertained in a public hearing with an up or down vote by the Commission.

The Chairman inquired if the Commission can further amend the agenda to include a decision on the complaints based on the deliberations that will take place in executive session. Counsel Lowrey advised that more notice would be due to IPI. Counsel Ernest replied that his opinion is that it is possible, however, the Attorney General is of the opinion that the Commission cannot take final action on an item that was included in the agenda by amendment. He also noted that Attorney Tiberius Mocanu, who represents IPI, is not present and would likely object to the Commission acting on a decision without proper notice. He recommended that a special meeting be called to adopt the final order.

Both Counsel Ernest and Counsel Lowrey said that it was their understanding that the Commission would only be deliberating in executive session on the proposed orders submitted by both parties in order to reach a determination without wholly adopting either proposed order. Counsel Ernest advised that after deliberations, a final draft order should then be prepared as a result of the deliberations for the Commission to adopt in a properly noticed meeting. The Chairman concurred and noted that a final order and sentencing will not be entertained during the March 25, 2021 Commission meeting.

The motion to adopt the agenda was put to a vote and unanimously approved. The agenda was adopted as amended.

II. PUBLIC COMMENT

Michael Ernest, Assistant Attorney General and Legal Counsel for the Commission spoke on behalf of the Executive Director, informing the Commission and the public that prior to the Commission's order in the last meeting, the Commission had ordered the parties, IPI and CCC, to provide their draft of the final orders. He announced that both the CCC and IPI have already provided the Commission with their drafts which should be open and available to the public.

Counsel Ernest divulged that in the same communication, Attorney Mocanu sent a letter addressed to the Executive Director and cc'd to the Commissioners on March 15th, signed by Mr. Ray Yumul. Counsel Ernest clarified that although the letter was on IPI letterhead, there was no title or claim of authority. He stated that if the Commissioners decide to officially accept the document, it may do so in Public Comment, noting that the Executive Director felt it was important that the public have knowledge that this occurred since it was circulated to the Commissioners in a non-public meeting. The Chairman, on behalf of the Commissioners, acknowledged that the March 15th letter from IPI is hereby submitted as part of the public comment.

The Chairman asked Counsel Ernest if it is his position that the proposed orders from both parties, IPI and the CCC, can be considered public information. Counsel Ernest replied that Attorney Mocanu should be present to have an opportunity to object, but noted that in a normal court case, the proposed findings of fact would become part of the court filed and discoverable by anyone. He added that there may be a litigation privilege because the Commissioners are sitting as an administrative panel, therefore informing the public that the communications exist is not improper. He also noted that it would be an Open Government Act request and the Commissioner's counsel could decide if a privilege existed. Counsel Ernest then stated that he did not want to take a side as he does not want the opposing counsel to say that he had an ex parte conversation. Counsel Ernest stated that he does not believe that the Executive Director would have any objections with the public seeing their position on the matter. The Chairman stated that IPI was properly informed of the meeting and the fact that their legal counsel is not present is on them. He also noted that the meeting is easily accessible online. He then called out if anyone from IPI was present for the meeting on video conference, to which no one responded.

III. REPORTS:

A. Report by the Chairman

Chairman DeLeon Guerrero mentioned that the hearing has caused a lot of serious issues since the Commission is dealing with an entity that has multiple and very negative public concerns including federal court orders and hearings, unsatisfied Commission orders and others. He stated that if the orders are not complied with, there are consequences involved that the Commission has the responsibility to enforce inclusive of the laws, regulations and agreement. He said that the meeting agenda was kept short in order to allow the Commissioners more time to deliberate.

The Chairman shared that there are other physical constraints caused by the recent coronavirus community spread. He announced that the Commission was informed that two of its staff have been identified through contact tracing for possible exposure. He noted, however, that he is unaware if these staff have tested positive, but in an abundance of caution, the Commission through its Director decided to issue a 14-day self-quarantine for all the staff and allow time for the entire office to be thoroughly disinfected. He thanked everyone involved in the cleaning of the office.

The Chairman announced that the presence of over \$500MIL from the Federal Government rescue may be a solution in assisting the Commission with its budget problems. He shared that he is hopeful that the Governor will assist the Commission and that the borrowed \$2MIL of Commission funds will be returned. The Chairman noted that he would like to hold more

discussions on personnel matters in executive session in light of the Commission's continuing financial struggles and the possible course of action as a result of it.

The Chairman reported that he has been monitoring movement at the legislature in reference to the discussions on internet gaming. He suggested that the Legal Counsel provide the Commission an update on the Tenth Circuit Court's ruling on the Wire Act because it may have an implication on the future of gaming.

Commissioner Taitano asked if the employees will be paid during the 14-day self-quarantine. The Chairman answered that payroll will not be affected as the employees are encouraged to work from home. He added that there is also a requirement for the employees to do a PCR test and receive vaccination before returning to work on March 31, 2021, with proof of their vaccination. Commissioner Songao asked if the Commissioners are also required to provide a copy of their vaccination record, the Chairman answered that it should also be applicable to the Commissioners, and that he is aware that all the members have already received their vaccination. He asked that they all provide copies of their shot cards to HR for recordkeeping purposes.

Commissioner Taitano inquired on the Governor's directive on reinstating the 80-hour workweek. The Chairman explained that while the directive brings good news for the government, it does not apply to the Commission due to its autonomy. He stated that the Commission's current budget is insufficient to reinstate the full hours due to the non-payment of the annual Casino Regulatory Fee, therefore, reinstating an 80-hour workweek would not be a practical move. He further added that the Commission is seeking financial assistance from the Governor's office and if approved, the 80-hours workweek will most likely be reinstated.

Commissioner Dela Cruz shared that he received a call from the Secretary of Finance, who was actually trying to contact the office. He mentioned that the call was in regards to a transfer of funds, so he referred him to Chairman DeLeon Guerrero. The Chairman mentioned that there are ongoing discussions with the SOF on a several topics: the return of the Commission's funds, the establishment of the Commission's bank account, and the Commission's assistance in the regulatory enforcement of poker and e-gaming jointly with the Department of Finance.

Legal Counsel Ernest announced that he got a hold of Attorney Mocanu who mentioned that he was not present at the meeting because he is advising at the PSS board meeting as part of his normal responsibility.

B. Report by the Acting Executive Director

Mr. Vicente B. Babauta, Manager of the Division of Enforcement and Investigations and currently the Acting Executive Director of the Commission, shared that he has several items to report.

- **CCC Budget:** For the month of February 2021, the Commission's total expense was \$180,778.00.
 - 75.36% Personnel Wages and Benefits
 - 14.98% Board & Other Compensation
 - 9.66% Office Rental and Other Operational Costs

He noted that with the recent resignation of Mr. Erwin Encinares, Communications Specialist, the current head count of FTEs is at 40 including the Legal Counsel.

- **Payroll Monitoring:** The Acting Director reported that IPI's payroll delay has been resolved and that they are now up to date, with Payroll #7 to be released tomorrow, March 26, 2021. He shared that there was rumor that Payroll #5 was only partially paid out, but it

was confirmed that that was due to the need to verify the accuracy of work hours based on the submission of timesheets.

- **Public Law 21-38:** The Acting Director shared that he and some of the staff had a conference call with the Secretary of Finance (SOF) to discuss the necessary transfer of funds for the Commission to establish its bank account as required by law. The SOF confirmed that he will assist with the bank account once he returns from off island, and also noted that there will be no disruption in the Commission's payroll.
- **Senate Bill 22-09:** Acting Director Babauta shared that Executive Director Yeom sent the Commission's response on the bill on March 16, 2021 to the House Gaming Committee Chairman, Representative Ed Propst. He noted that he will not go into detail as the Commissioners were already provided a copy of the letter, adding that he will answer any questions in reference to the letter.
- **Notice of Non-Compliance of the IGF Implementation Schedule:** The Acting Director shared that the Governor sent a response letter to IPI dated February 26, 2021 requiring compliance with certain conditions and submission of documents to support those conditions. The deadline the Governor provided IPI is 120 calendar days from the date of his letter making the deadline June 26, 2021. The Acting Director further noted that in a recent meeting with IPI, they stated that document preparation has begun and that they have not provided a written response to the Governor. He suggested that IPI be asked to provide an update on the matter in during today's (March 25, 2021) meeting.

Commissioner Dela Cruz said that it would be helpful if the Commission can work jointly with the Governor's Office in monitoring the submission of documents and to ensure that the submissions are complete. The Chairman informed the Commission that this matter is an item in the agenda under New Business, therefore further discussion can be taken up during the appropriate time in the meeting.

- **CCC Administrative Hearing:** The Acting Director shared that the proposed orders from both parties have been submitted on time and deliberations will soon be scheduled.
- **CCC Personnel 14-day self-quarantine:** The Acting Director reported that due to the recent community spread, the Commission has followed the COVID-19 Task Force protocol on office operations for the safety of the community as well as the Commission staff. He noted that all employees are currently under a 14-day home quarantine and are expected to work from home until March 30, 2021. He further added that all employees are required to undergo PCR testing and at least have the first dose of the vaccination before returning to work on March 31, 2021.

Commissioner Taitano asked for a summary of the contents of SB 22-09. The Chairman explained that the bill strips the Casino Commission of any authority on construction and also proposes changes to the Commissioners' compensation. The bill will require Commissioners to choose between their retirement pay and benefits, if a CNMI Government Retiree, or the Commission compensation. He noted that the comments submitted by the Director stated that the Commission currently does not have the authority over construction of hotels and golf courses and that the authority is with the Department of Public Works. In regards to the Commissioners compensation, the Chairman stated that there seems to be a misunderstanding as based on the explanation of the bill, the Commissioners would be considered public employees. The Chairman compared the intent to the members of the Legislature, who are in fact public employees and have an option to choose which compensation to receive. He explained that PL 19-24 clarified that the members of the Commission are not public employees and are therefore not entitled to any benefits such as leave hours and health insurance and others. He further shared his concern about the swift passage of the bill in the Senate and the quick transmittal to the House and noted that to his knowledge, the bill is still with the House Gaming Committee for further deliberation.

Vice Chairman Demapan asked if there are any updates on the Order issued to IPI by the District Court and whether the employees are back to work. Acting Director Babauta replied no to both questions.

Commissioner Songao asked if the repatriated employees have already received the wages they were owed. Acting Director Babauta answered that he will need to follow up with IPI management, but noted that during the last meeting with IPI, it was made clear that they will first address the wages of the current employees. Commissioner Songao mentioned that the Commission had discussed this matter with IPI before and they had promised to provide a list of all the separated and repatriated employees who are still owed wages and severance pay.

Commissioner Taitano suggested that the Commission formulate a position on future proposed bills by the legislature. The Chairman explained that the Commission usually does but for this particular bill, he decided not to participate for reasons he would like to discuss in executive session. Legal Counsel Ernest interjected to share that the bill was introduced and immediately voted on during a session on Tinian while the CCC was still in the process of formulating its response. The action of the Senate on the bill was prompt and the bill's transfer to the House was expeditious, he said. The Chairman added that the bill initially covered only the Commission's authority over construction, and that the proposed changes to the compensation was included through a floor amendment. Counsel Ernest stated that if the Commission would like a more formalized notice of proposed bills, he can put in a request with the Senate Clerk, the House Clerk, and the Legislative Bureau. The request would ask the legislature to notify the Commission of the bill calendar before each session, he explained. The Chairman agreed and asked Counsel Ernest to proceed in making the request.

IV. NEW BUSINESS:

- A. Governor's letter to IPI, dated February 26, 2021, regarding Notice of Non-Compliance of the Initial Gaming Facility Implementation Schedule. Requirements for submission of Compliance and Certification documents.

The Chairman stated that in Amendment No. 6 of the Casino License Agreement (CLA), there is a requirement for IPI to complete construction of the Initial Gaming Facility no later than February 28, 2021. Unfortunately, that requirement was not met and IPI has submitted another request for extension at the last minute. He noted that the Governor, in his response to IPI, has reiterated what the CLA requires and granted a conditional approval provided that IPI meets certain conditions and submits required documents by the deadline of June 26, 2021. He further stated that IPI has yet to provide a response, but that he is hopeful that they will do so in a timely manner.

- B. Covid-19 Task Force protocols on Commission operations (undergoing 14-day quarantine with mandatory vaccination & PCR testing before returning to work).

The Chairman reiterated that the employees of the CCC are required to be vaccinated and to provide proof to HR upon returning to work on March 31, 2021. Additionally, due to the recent community spread, employees are also required to undergo PCR testing before returning to work.

- C. Other New Business Matters

Commissioner Songao suggested that now would be a good time for Commission staff to undergo professional development training since operations have slowed down due to the closure of the casino. The Chairman mentioned that this has been a topic of discussion

recently, more specifically involving law enforcement training for the DEI staff. He noted that the Acting Director has been in communication with DPS to discuss training options. He asked the Acting Director to provide a brief overview to the Commissioners.

Acting Director Babauta reported that DEI has obtained quotations for equipment and training, as well as formulating the law enforcement regulations. The Chairman suggested that the Commission put together a training schedule with the assistance of local experts from the different agencies in the government such as the Office of the Attorney General (OAG), Office of the Public Auditor (OPA), Department of Public Safety (DPS), and possibly presentations from former or current judges and justices and the division managers of the Commission. The Acting Director stated that everything is in place as far as the training schedule and that he just needs to reach out to the potential instructors to secure their attendance for the training dates. The Chairman suggested also getting someone to cover electronic poker and e-gaming in anticipation of the Memorandum of Understanding (MOU) to assist the Department of Finance (DOF) in regulating such establishments. Vice Chairman Demapan mentioned that DPS is currently in its final recruitment stage for the upcoming police academy and suggested that the Commission coordinate with them to include the CCC's DEI staff.

Acting Director Babauta replied that it would be difficult to include the Commission's DEI staff in the police academy because there are certain criteria that need to be met and there's the fee of \$8,000 that would be assessed. He noted that the plan, as the Chairman earlier suggested, is to gather experts from the different agencies to reduce training cost.

Commissioner Taitano shared concern that with all the news involving shootings in the mainland, the Commission should highly consider setting up security at the main doors to ensure that members of the public do not enter with firearms. The Chairman agreed and added that not only will the Commission need to develop a staff policy on firearms, it would also need to work with the landlord as there is a provision on the rental agreement which disallows firearms in the building.

V. EXECUTIVE SESSION:

Commissioner Dela Cruz made a motion to enter into executive session to consult with Legal Counsel, to discuss CCC personnel matters, and to continue deliberation on the consolidated Administrative Hearings for Cases 20-001 and 20-003.

Legal Counsel Ernest announced that he will be involved in the first item of the executive session but would certainly have no involvement in the deliberation, and will not be in the room when it occurs. Counsel Lowrey noted that even without Counsel Ernest's announcement, he would make sure he is not in the room when deliberation occurs.

The motion was seconded by Commissioner Taitano and was put to a roll call vote with all Commissioners voting yes. Executive session began at 11:33 am.

- A. Consult with Legal Counsel
- B. CCC Personnel Matters
- C. Continuation of Deliberation on consolidated Administrative Hearings Case Nos. 2020-001 and 2020-003.

Chairman DeLeon Guerrero called the meeting back to order at 4:44 pm. All Commissioners were present.

The Chairman shared that the Commission met with the CCC's Legal Counsel to discuss pending issues that are facing the industry. The Commission also discussed internal matters regarding COVID-

19 protocols, personnel matters, and the future of the Commission's financing. The Chairman stated that the Commission spent a vast amount of time in deliberating on the five administrative complaints and has determined the remedy in terms of sanctions and the issue of suspension. He noted that they have instructed Counsel Lowrey to begin the final written order for further discussion in the next Commission meeting, which will include a final vote on the matter. He then announced that the next Commission meeting will be held on Thursday, April 22, 2021.

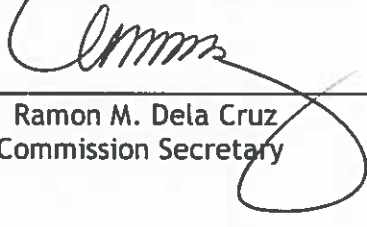
VI. ADJOURNMENT

Commissioner Dela Cruz made a motion to adjourn the meeting, seconded by Commissioner Taitano. The motion was put to a vote and unanimously approved. Meeting was adjourned at 4:48 pm on March 25, 2021.

Prepared by:  Date: 4/20/2021
Elicia San Nicolas, Executive Secretary

And  Date: 04/20/2021
Ruth Ann P. Sakisat, Executive Assistant

APPROVED AND ADOPTED ON: 22nd day of April, 2021.

 Date: 04/22/2021
Ramon M. Dela Cruz
Commission Secretary