



# COMMONWEALTH CASINO COMMISSION

Commonwealth of the Northern Mariana Islands

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## Minutes June 24, 2021

### I. PRELIMINARIES:

#### A. Call to Order

Chairman Edward DeLeon Guerrero called the meeting to order at 10:04 am on Thursday, June 24, 2021 at the Commission's 2<sup>nd</sup> 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 adopt the agenda, seconded by Commissioner Taitano. The motion was put to a vote and unanimously approved.

#### D. Adoption of Minutes: May 27, 2021

Commissioner Taitano made a motion to adopt the minutes of the May 27, 2021 meeting, seconded by Vice Chairman Demapan.

Chairman DeLeon Guerrero stated that there are some items in the minutes that appear to be outstanding every month. He noted that IPI continues to inform the Commission that they will report on items or submit documents in the next meeting or at a later date, but to no avail. He said he hopes that IPI does not wait again for the next monthly meeting to provide what has been requested in the past.

The motion was put to a vote and unanimously approved. The minutes of the May 27, 2021 were adopted as presented.

### II. PUBLIC COMMENTS - None

### III. REPORTS:

#### A. Report by the Chairman

The Chairman shared that the Executive Director has issued the notice of termination to about 20 employees of the CCC. He stated that based on the CCC's Personnel Regulations, furlough does not apply, therefore a 60-day termination notice without cause was served to the affected employees. He added that the funding situation is dire, so there is a need to contain the funds that are left while allowing employees the opportunity to seek other employment. The Chairman disclosed that the termination notices were issued on June 9th, and the contract termination date will be August 9, 2021. He encouraged the Director to communicate with the different department heads to seek assistance in carrying over the effected employees. He also noted that when the budget returns, he would like for the Director to

bring back the terminated employees. He said that in the past six years, the Commission has afforded training opportunities to the employees, including gaming courses at the University of Nevada Las Vegas (UNLV) among others. He emphasized that the Commission will suffer a tremendous loss if it were to permanently lose these employees. He noted that if funding becomes available before July 31<sup>st</sup>, the Director should consider a rescission of the termination notices as quickly as possible. On the other hand, he added that if the funding problems continues, the Commission will need to find more ways to reduce costs such as holding meetings via video conference and conserving power within the office. He elaborated that ways to save money should be explored in order to continue the existence of the Commission.

The Chairman shared that as indicated on the agenda, there will be a discussion on House Bill 22-47, which would allow the Senatorial Districts to establish and regulate internet gaming. He stated that the Commission received a request for comments on June 15, 2021 from the Chairman of the House Committee on Gaming. The letter indicated a deadline of June 29, 2021 to submit comments. Chairman DeLeon Guerrero said that the topic of internet gaming has been discussed in the past and that if the CNMI is really serious about it, he believes internet gaming does have a role. He stressed that should the legislation push through, it is necessary for the Commission to assist the legislature by providing them information on the regulatory aspects of this type of gaming industry. He noted that further discussion on the matter will be taken up in the appropriate section of the agenda.

Chairman DeLeon Guerrero shared that the Commission received a letter from Representative Ed Propst which requests for documents as per Title 1 Section 1308-1309 of the Commonwealth Code. The Chairman noted that he requested that the Executive Director consult with Legal Counsel to see how the Commission can address the different request for documents stated in the letter. He is concerned that with a deadline of ten days, tomorrow (June 25) would be the deadline to provide the requested documents. He suggested that the Director request an extension to allow additional time to assemble the documents being requested. The Chairman pointed out that there are certain requests stated in the letter of which the Commission has no knowledge of. He stated that the parties that may have the information are the Lottery Commission and the Office of the Governor. He explained that the Commission is only a third-party source and he is unsure as to the timeline on when the documents will be provided.

The Chairman recommended that in addition to a request for extension, the Director and Legal Counsel should attempt to request a narrower scope of the documents. He further added that there are other government agencies that are involved with IPI such as the Department of Public Works (DPW), Bureau of Environmental and Coastal Quality (BECQ), Zoning, Department of Labor (DOL), Department of Fire and Emergency Medical Services (DFEMS) and the Department of Public Safety (DPS). As such, there may be parts of this request that would have to be addressed to the different entities, the Chairman explained. He also noted that the Commission's website can be another source of information. The Chairman noted that they will discuss the requests further in the appropriate section of the agenda.

The Chairman disclosed that he and two other Commissioners recently met with the Governor to apprise him of the Commission's financial crisis due to IPI's failure to pay the annual casino regulatory fee which was due on October 1, 2020.

The Chairman reported that the Governor's Task Force has moved the COVID-19 pandemic threat level to green which eliminates the curfew hours, allows for home quarantine for those vaccinated, and relaxes the requirement on wearing a mask. He noted, however, that anyone in the room concerned about their health or experiencing any flu-like symptoms, should wear a mask or leave the room.

The Chairman shared that he is concerned that IPI does not have anyone as a point of contact, as they currently do not have a licensed Casino Key Employee. This, he added, is a violation

of the casino regulations and casino orders. He further noted that Mr. Dongting Zheng is the sole Director of IPI CNMI, and efforts should be made to communicate with him and subject him to licensure. The Chairman stated that it was Mr. Zheng who provided the certification that IPI is in good financial standing, so he needs to be held accountable for that statement. He encouraged the Director to consult with the Legal Counsel to see how the Commission can get Mr. Zheng involved in the ongoing discussions with the Commission. The Chairman also noted that based on documents he reviewed, Mr. Zheng is the sole Director of other companies connected to IPI that have agreed to collateralize their assets. He reiterated the importance of subjecting Mr. Zheng to some sort of licensure and in holding him accountable in the position which he holds.

## B. Report by the Executive Director

The Director reported the following:

- **CCC Budget:** For the month of April 2021, the Commission's total expense was \$165,192.00.
  - 71.41% Personnel Wages and Benefits
  - 16.38% Board & Other Compensation
  - 12.21% Office Rental & Other Operational Costs
- **Staff Reduction:** The Director announced that due to budgetary constraint, the decision was made to serve termination notices to approximately 60% of the Commission's personnel. As the Chairman earlier mentioned, furlough was not an option under the current personnel regulations as confirmed by the Attorney General through a legal services request on the matter. The 60-day termination notices were served on June 9, 2021 to about 20 employees. Simultaneously, several employees on their own accord submitted resignation letters as they found employment elsewhere. This leaves the Commission with only 16 staff members who are the critical bodies to carry on the regulatory duties, which include himself and the Legal Counsel.
- **House Bill 22-47:** HB 22-47 intends to allow each senatorial district to establish and regulate internet gaming, as a separate source of revenue independent of tourist arrivals. Representative Ed Propst, Gaming Committee Chairman, asked for the Commission for comments on the bill with a deadline of June 29, 2021. The Commission intends to request a 30-day extension due to shortage of staff and austerity measures.

The Director briefly explained what the Commission plans to include in its comments:

### A. Summarize the online gambling/casino market:

- There is a need to visualize the current online casino market
- Will be based on market research from various credible sources
- Explore the international pool (Asia Pacific, Europe, North America)

### B. Spell out the Pros:

- Market potential/revenue
- Opportunity for Online to Offline (O2O) Marketing

### C. Spell out the Cons/Concerns:

- Always on guard for Wire Act
- Clarification on online license
  - i. Separate from exclusive license?
  - ii. Check with AG on legality surrounding current license
  - iii. Possible amendment of PL 18-56, 19-24 and 21-38, etc.
  - iv. Include language to ensure licensee is in good operable condition
  - v. Will license for private entities be entertained?
  - vi. Fees

He elaborated that there are many concerns that need to be clarified before this bill can be entertained, as listed in the above examples. The Commission will continue to identify the critical areas of concern in a pragmatic sense. The Commission agrees with the bill's intent in capitalizing the market potential which can generate significant revenue. However, there are still many areas of concern to be ironed out before the bill can move forward.

- **Request for Documents:** The Director shared that Representative Ed Propst, Chairman of the House Gaming Committee, sent a long list of requests in his June 15, 2021 letter. He noted that the letter gives the Commission 10 days to comply, which makes it due on June 25, 2021. The Director pointed out that some of the requested documents date back to 2015, a span of six years to track and review. It will be a lot of work and time consuming to review all of the documents in the Commission's possession to determine if any of them relate to the requested documents. In addition to the broad scope, the nature of the requested content is also broad in general.

The Director stated that he is looking at possibly three months just to gather the information. He said that it is for this reason that he requested to meet with Representative/Chairman Propst and Representative/Vice Chairperson Tina Sablan, along with the CCC's Legal Counsel, Michael Ernest. He shared that in the meeting with the heads of the Gaming Committee, he explained that the Commission has recently downsized a significant portion of its staff, and are still under austerity measures at 64 hours per pay period. He also explained that the Commission is faced with court appearances surrounding IPI's appeal against the Commission on their license suspension. He also informed the Committee heads that there's a possibility that the Commission will be filing more enforcement actions/complaints against IPI. He stressed that the request for an extension of time to submit the documents is for all the above listed reasons in addition to the possibility of narrowing the scope of documents being requested. The Director divulged that Representative Propst agreed to consider the Commission's request and will be holding discussions with the other committee members on the matter. He noted that he plans to revisit the conversation once the letter of request is received.

- **IPI Employee License Status:** The Director shared that due to the nonpayment of the regulatory fee, the Commission cannot issue IPI a new or renewed Casino Key Employee (CKE) license or any regular employee license. He said that this leaves both the Commission and the Licensee in a peculiar position, as IPI is running out of persons authorized to submit reports or discuss important matters. The Commission management is becoming more concerned about how to proceed in carrying out their duties as far as discussing matters with the licensee and accepting submissions without violating its own regulations. The Director disclosed that the Commission will proceed in processing the registration of IPI's non-gaming employees such as the HR Director, Ms. Redie Dela Cruz, and SVP of Public Affairs, Mr. Tao Xing. He added that while this is a borderline approach, it is still valid because the registration of non-gaming employees is free of charge and is within the regulations and as clearly stated on the application.

The Director explained that there is still the concern that the Treasury Director, Ms. Frances Mafnas, is the only one who can sign and submit documents on behalf of the company, but she is not a licensed CKE. The Director shared that IPI has submitted reports without a signature after being informed that Mr. Ray Yumul, who had previously signed the submissions, is not a licensed or recognized CEO. This presents another issue, the Director stated, as the documents may be considered invalid due to the lack of signature by an authorized representative of the company. He added that the Commission is reviewing the regulations and the MICS to determine if such action is a violation. The Director returned to the conversation of Mr. Dongting

Zheng's licensure as the sole Director of IPI CNMI, and pointed out that it is yet another concern that can't be addressed in the absence of the regulatory fee payment. He stated that he hopes that a solution will be found to address all the ambiguous problems currently at hand.

Commissioner Taitano asked the Director if he communicated with the other government agencies about absorbing the terminated employees. The Director replied that Ms. Ruth Ann Sakisat, Executive Assistant to the Commission, has reached out to a few government agencies on the matter. Ms. Sakisat confirmed that she reached out to the Secretaries of the Department of Community and Cultural Affairs (DCCA) and the Department of Finance (DOF), and the Special Assistant for Administration. She noted that she provided a listing of the affected employees in hopes of getting assistance in placing them with the other agencies.

Commissioner Songao asked the Director if he consulted with the Legal Counsel on the matters he found to be ambiguous. He then asked him if the ambiguities are in the statute or the regulations. The Director responded that it is in the regulations, as it specifically states that the documents submitted are required to have a signature from an authorized representative, which is usually a CKE. He added that the only reason the Commission continues to accept the documents is that IPI doesn't currently have a licensed CKE. Commissioner Songao asked if an amendment to the regulations can be made to remove the ambiguity. The Director answered that it can be dealt with that way, but it may also cause another dilemma as that option would only favor IPI when what they really need to do is resolve their issues by making the overdue payments.

Commissioner Dela Cruz pointed out that the CCC's Division of Enforcement and Investigations' (DEI) Monthly Summary Report indicates that there's one (1) CKE license for IPI. He asked for the identity of the license holder. Mr. Vince Babauta, DEI Manager, informed him that the individual is in charge of credit and collection and is stationed in Macau.

Chairman DeLeon Guerrero stated that the regulations provide a separation of duties between CKE and a regular casino employee, by which the CKE would have decision making authority including signing off on documents. He mentioned that in the last two months, reports were being submitted by an unlicensed employee, the CEO. When this was brought to IPI's attention, they continued to submit the required documents but removed the signatory, which would make the submission invalid. He is concerned whether it is more appropriate to accept or deny the documents that they continue to submit. He noted that this matter will be discussed further in executive session.

#### **IV. MISCELLANEOUS MATTERS:**

##### **A. Casino Licensee - Imperial Pacific International (CNMI), LLC ("IPI") - Updates:**

###### **1. Imperial Pacific Resort & Hotel ("IPR").**

- a) Status of IPI's request to the Governor for extension of the IGF construction deadline per CLA Amendment #6.**

Chairman DeLeon Guerrero asked for an update on the status of the construction deadline extension request, and who from IPI can report on the matter. Ms. Frances Mafnas confirmed that as of meeting day (June 24, 2021), there's nothing to update the Commission on the matter. She offered to follow up and report back at a later date. The Chairman reminded Ms. Mafnas that the Governor's temporary extension gave them up to sixty (60) days, which ends on Saturday, June 26, 2021. He commented that the extension request needs to be revisited, as it only specifies allowing an extension to

submit the documents, but it does not address the additional five years (5) IPI is requesting to complete construction. He then asked Ms. Mafnas who will she get an update from to which she responded Mr. Ray Yumul, IPI's CEO.

2. IPI Personnel Matters:

- a) Status of Employee Payroll
- b) Status of unpaid payroll & severance pay for employees already off-island
- c) Others

Commissioner Dela Cruz reminded IPI that in previous Commission meetings, he had requested a list of all the employees who have separated from IPI and are still awaiting the payment of their wages or severance pay. He said that the requested list has yet to be provided. Ms. Mafnas replied that she will follow up with HR as they handle such information. She further noted that the only item she will be reporting under Personnel Matters is the update on payroll; all other items will be reported by the HR Director once she is licensed or registered. Ms. Mafnas informed the Commission that payroll is up to date up to payroll 13 and that an updated report is also being provided to the federal court by Attorney Michael Dotts.

B. Annual Audit Reports and IPI Financial Matters

Ms. Mafnas first announced the presence of Mr. David Burger from the Burger Comer Magliari (BCM) Accounting Firm. She stated that BCM handled IPI's 2020 audited financial report and Mr. Burger will be touching on the matter.

Ms. Mafnas informed the Commission that she has no updates on the regulatory payment, annual license fee, and the collection efforts for the accounts receivable. She noted that she had communicated with management based in Hong Kong on those matters. The Chairman asked if the Chinese criminalization of gaming has become an obstacle in the collection efforts of the receivables. Ms. Mafnas replied that she isn't sure she can answer that.

Mr. Vince Babauta, DEI Manager, said that he is aware that Ms. Remy Mafnas, Compliance Administrator, is reporting on information that is privy only to CKEs. He asked who Ms. Mafnas reports to and who certifies the information being reported to the Commission. Ms. Frances Mafnas answered that she provides the accounts payable aging report and the master vendor list to Ms. Remy Mafnas, who then forwards it to the Commission. She noted that in the past, these reports were normally prepared and provided by the compliance department but she assumed the duty when the gaming operations have ceased. Mr. Babauta inquired who the highest ranking official of IPI CNMI is that they report to. Ms. Mafnas replied that they report to the CEO, Mr. Ray Yumul.

Commissioner Dela Cruz asked who is in charge of the FinCEN inquiries, Ms. Mafnas answered that the legal team together with the CEO and Mr. Tao are handling that matter. Commissioner Dela Cruz highlighted the importance of IPI providing the necessary documents to FinCEN. He stated that if IPI is non-compliant with FinCEN, it will be the end of the gaming industry on Saipan - at least for IPI.

Commissioner Dela Cruz asked Ms. Mafnas if the payroll update she reported includes the employees who were repatriated. Ms. Mafnas replied no, noting that the payroll is just for the currently active employees. The Chairman asked when IPI plans to fully satisfy the pending compensation for those repatriated employees. Ms. Mafnas replied that she does not have a definitive answer but noted that IPI does plan to resolve the issue as soon as they are able to do so.

The Chairman asked if Ms. Remy Mafnas is a licensed employee, Ms. Mafnas replied yes, that she holds a regular license. The Chairman mentioned that the regulations state that employees who do not hold a CKE license cannot share any kind of gaming information. However, he

understands the significant challenges to the definition, as the information is being internally processed. He stressed that whoever authorizes the transfer of gaming information to an unauthorized person is committing a violation of the regulations. He suggested that IPI should consult with its Legal Counsel on the matter.

The Chairman inquired if Mr. Dongting Zheng plays any role in the process. Ms. Mafnas disclosed that as far as any request for approval, Mr. Zheng is involved. The Chairman asked Ms. Mafnas if she's aware that pursuant to an order, Mr. Zheng issued a certification stating that IPI is in good financial standing and has the necessary capital to satisfy its obligations, to which Ms. Mafnas answered no. The Chairman informed Ms. Mafnas that it is necessary for her to communicate with Mr. Zheng to help him understand the current situation and to make an effort to move forward. He said that both the Commission and IPI cannot move forward while regulations are being violated, noting that IPI must comply with the requirements and pay the necessary fees to renew its employees licenses.

The Chairman announced that he reviewed the stockholder alert which stated that IPI has appealed the Commission's decision to the CNMI Superior Court for failing to identify COVID-19 as a force majeure, and if the decision returns in their favor, it could mean an immediate forgiveness from paying the \$15M annual license fee. He asked Ms. Mafnas if she's aware of this and if so, who is giving the corporate office legal advice as the information was incorrectly reported; Ms. Mafnas replied that she had no knowledge.

Vice Chairman Demapan asked Ms. Mafnas if payroll 13 is the latest payroll and how many employees were paid out. Ms. Mafnas answered yes, noting that payroll 14 will be due next week. She noted that the payroll includes the security team of about 50 to 60 employees.

The Chairman asked who is handling all the remediation to maintain the safety and the condition of the building. Ms. Mafnas replied that Eric Poon is still currently managing the construction. The Chairman asked Ms. Mafnas to invite Mr. Poon to the next Commission meeting. He then asked her to update the Commission on the future plans, in reference to the five-year extension request submitted to the Governor. The Chairman noted that there was no mention in the plan of any funding source to complete the project. He stated that the report only mentioned \$2M in revenue from the crane removal, but nothing was raised on how IPI plans to pay for construction. Additionally, the Chairman noted that the report referenced paying personnel who are currently owed wages, but the plan did not indicate how that will be accomplished.

The Chairman brought up that IPI is facing other obstacles such as being barred from the CW and H2B programs, and there are lawsuits in the federal court for its failure to pay vendors and contractors. He agreed that the report submitted clearly documented the damages suffered, but it left out the important factors on how the licensee plans to move forward with the construction and completion of the project as it relates to funding, time, and manpower. Commissioner Songao concurred, and questioned the authenticity of the information IPI is providing, since it's not coming from a licensed key employee. The Chairman stated that IPI is free to submit what it wants to the Governor's Office, but when submitting to the regulatory body, it needs to come from an authorized representative.

Commissioner Taitano asked for a status update on the stop work order issued by the court. Ms. Mafnas replied that it remains in effect as it has not been lifted. The Chairman inquired what conditions need to be met before it is lifted. Ms. Mafnas disclosed that she is aware of one which is the removal of the crane, but she is not sure about the other conditions. She suggested that HR might be aware of the rest. The Chairman advised Ms. Mafnas to discuss this matter with IPI management and inform the Commission of what the pending issues are.

The Chairman asked if the attorney handling the FinCEN inquiries is being paid, to which Ms. Mafnas replied yes.

Commissioner Dela Cruz shared that he is concerned that the other cranes still remain at the construction site. He elaborated that typhoon season is speedily approaching. Additionally, he brought up that in the last meeting, there was discussion that the crane is quickly corroding. He suggested that Mr. Eric Poon be asked to look at the crane's condition and report back to the Commission at the next meeting or an earlier time. He noted that leaving the cranes hanging is dangerous and can pose serious liabilities for IPI. The Chairman agreed, adding that there are four storms expected to pass, with one brewing in the next 30 to 45 days.

Director Yeom asked Ms. Mafnas to ensure that the accounts payable and receivable reports are submitted. He stated that although he is aware that there's nothing much Ms. Mafnas can do, he advised that she contact the Macau office to get frequent updates, and if there are none, then it should be properly reported to the Commission. He reminded Ms. Mafnas that the reports are due monthly and that he does not want to have to file a complaint for non-submission or late submission. Ms. Mafnas stated that she has been submitting the reports, but they have been the same since the close of operations. The Director clarified that the report has to specifically elucidate that there were no activities for the month.

The Chairman explained that even just noting no activity may be insufficient as in the past IPI provided inaccurate reports which stated no activity when in fact, the Commission later found that IPI collected about \$137M from its accounts receivable. He further noted that the last time he looked at the receivables, there were over a billion dollars still uncollected, of which \$700M are considered problematic loans that are likely uncollectable. The remaining \$300M, he noted, can still be collected and would help IPI alleviate some of the issues it's facing. He advised Ms. Mafnas to get an update on the matter and report back to the Commission.

The Chairman welcomed Mr. Burger and asked if he has a copy of the final IPI CNMI amended audit report, as the Commission has only received a draft copy. Mr. Burger said he believes they did issue a final report, but he did not bring it with him. He mentioned that he cannot remember everything in the report so he will be speaking in broad terms but if the Commission needs details they can refer them to Ms. Mafnas. The Chairman mentioned that the report incorrectly identifies the regulatory fee as \$15M per year when it should be \$15.5M to account for the Consumer Price Index (CPI). He asked if that information was updated on the final report. Mr. Burger said that to his knowledge, it has not been updated.

Mr. Burger shared a little background by explaining that BCM's first involvement with IPI was in May 2019 when they were hired by the Department of Labor to be their independent payroll monitor, an engagement that lasted a year. He disclosed that he is aware that the company's 2019 audit was done by Ernst & Young. Mr. Burger explained that BCM was first engaged by IPI to conduct an interim audit on the company's September 30, 2020 numbers, because IPI was talking to potential investors at the time. However, the yearend rolled around, and the numbers for September 30, 2020 weren't completed and there was no information on the potential investors so it was decided to go ahead and do the full year audit of 2020. He said that since IPI CNMI is a subsidiary of a publicly traded entity in Hong Kong, the signature of a Hong Kong auditor was necessary.

Mr. Burger further explained that BCM had to report to the Hong Kong auditor and that there were a lot of programs and checklists that were sent to BCM that they had to fill out and send back to Hong Kong. He disclosed that the reason he is sharing background information is because sometime in April 2021, his discussions with the Hong Kong auditors indicated to him that they were leaning towards a disclaimer of opinion, and that the main reason for that is a going concern issue. Mr. Burger expounded that under the Hong Kong standards, if there's a going concern issue, it would be a disclaimer; however, under US standards, it is something you could consider and document but it does not necessarily lead to a disclaimer. Mr. Burger elaborated that when the Hong Kong auditors told him they were going to disclaim, he discussed the matter with someone named Ivan from IPI Hong Kong who was ok with the disclaimer (no opinion). He informed the Commission that BCM's report on the audited financial statement will show a disclaimer which means that there are no opinions. Furthermore, he



stressed that he is not giving anyone any assurance on any number. He shared that his office did the work and that the Hong Kong side did the confirmation on the guaranteed deposits and receivables. BCM did not feel that they would get responses to receivable confirmations from IPI CNMI, he said. He said that in reviewing the financial statements, there are a lot of big numbers so it leads them to a materiality calculation which is very high. He pointed out that the materiality number was around \$2.4MIL.

The Chairman explained that he had planned to ask Mr. Burger what he thinks of IPI's financial position but Mr. Burger had earlier stated that he cannot render an opinion. Mr. Burger replied that they've already pointed out the going concern issue. The Chairman stated that it is indicated in the report that if nothing is resolved after 12 months, it would be an issue. He then asked if IPI is a going concern or a problem. Mr. Burger answered that BCM thinks there is substantial doubt about the ability to continue as a going concern. The company has suffered a significant negative equity and loss as a result of the casino's closure in March 2020. He added that as far as materiality in looking at a financial statement, benchmarks have to be used such as total assets and revenues. He noted that BCM made a decision that although the gaming receivables are assets, they are hard to collect. He added that in a normal year, revenues can be used, but for 2020, there was \$4M in revenue. BCM determined that it was best to base the materiality on the expenses for this audit, which is primarily what happened because IPI incurred expenses. Mr. Burger noted that there's a big number on receivables and there's also another number on guaranteed deposits. He disclosed that some people have authorized the use of the guaranteed deposit to offset the debt, if the money cannot be collected. He said that the balances are being confirmed through the Hong Kong auditors. He explained that what BCM did on the financial statements is indicate all the account receivables and the deposits that can be used to offset the accounts receivables, therefore, showing a net number that was reserved. From an auditor standpoint, he stressed that the net after the offset is zero, therefore, there is no asset to report which removes the risk on BCM's side.

The Chairman stated that the requirement of the law is that the exclusive licensee be financially suitable at all times. He asked Mr. Burger if he is unsure of that based on the audit. Mr. Burger explained that the financial statements are black and white. He elaborated that due to the significant loss and the significant negative equity, IPI CNMI's financial statements are terrible. The Chairman asked Mr. Burger if he believes IPI is able to collect on the receivables based on his experience as a CPA. Mr. Burger answered that to his understanding, they are not legally allowed to enforce a gambling debt in China. He stated that in his opinion, none of the gaming receivables have a chance of collection. He stressed that financials are terrible, and that he does not have any expectations that the receivables will be collected. He further expressed that if the entity wants to prove it has the financial capabilities to continue its venture, it will not be coming from IPI CNMI.

The Chairman asked Mr. Burger if he came across the \$250M loan facility that is available to IPI, if needed, to which he replied no and that he is not aware of it. The Chairman explained that there was a \$500M loan facility issued to IPI of which \$350M remains available to be used as needed. The Chairman stated that he assumed the company could make use of the funds to finish the building and pay off its obligations. Mr. Burger clearly agreed that if the gaming debts can be collected, things would be a lot different. He added that BCM received letters from four different attorneys regarding litigations and the claims that are out there, and that it is the longest list he's ever seen.

The Chairman asked Mr. Burger if he is aware of the Commission's final order which resulted in a \$6.6M penalty which to date has not been complied with. The order stipulated that IPI is to maintain three months' worth of payroll and it must pay all uncontested vendors who are owed over 90 days. The Chairman disclosed that IPI was granted six months from the date of the order to satisfy the \$6.6M penalty. The Chairman asked Mr. Burger if the Commission order was factored into the financial statements. Mr. Burger explained that what they did in reference to cases of unpaid fees, fines and penalties was take the maximum number and set it up as a liability. He noted that at least it's recorded but as far as getting paid, the funds will

definitely not come from IPI CNMI.

The Chairman inquired if bankruptcy is something Mr. Burger would suggest to a company. Mr. Burger said that it's an avenue that's worth consideration especially with the whole going concern issue, but the management's plans have to be considered. He added that the question would be what are its plans to get out of the going concern issues and are they realistic. He stated that the Hong Kong auditors have more responsibility on this matter than BCM because the money is supposed to come from that side. However, it seems that they've concluded that they cannot see a way out of it, stated Mr. Burger. He added that whatever the Hong Kong management disclosed to the Hong Kong auditors was insufficient to allow them to resolve the going concern issue, so they just walked away from the opinion. The Chairman told Ms. Mafnas that the Commission would like to see the report after all the corrections are made, particularly on the anticipated payment of the license fee as required by Public Law 18-56. He reiterated that they need to correct the amount to include an adjustment based on the Consumer Price Index (CPI).

The Chairman asked if IPI is capable of being salvaged, based on Mr. Burger's honest opinion. Mr. Burger replied that while he has no idea what's behind the Hong Kong side, what he saw in IPI CNMI is not good. The Chairman asked Mr. Burger if he communicates directly with the Hong Kong office. He replied that as part of the audit, he communicated with Frances and two other individuals (Ivan & John) from IPI Hong Kong office. The Chairman asked if Ivan and John from the Hong Kong office are involved in the efforts to collect on the receivables, to which Ms. Mafnas replied not really. The Chairman stated that there's a part in the regulations that requires that IPI must make an active effort to collect on the receivables that over 365 days old. He added that IPI understands that it is a violation of the regulations to not take action. He further mentioned that when the VIP program started, IPI had the names of all players with corresponding amounts owed and the amount of credit granted. He explained that every two weeks, the Commission would go over the list with IPI and ask what efforts have been made to collect and what documents, if any, they can provide to support their efforts. However, this practice has discontinued citing that it is now a criminal act to collect gaming debt in China, stated the Chairman.

The Chairman stated that he does not have the answer on how IPI plans to resolve the issue but he noted that at the end of the day, IPI still has an obligation to pay the annual exclusive license fee, the regulatory fee, and its employees. He said that the Commission is constantly reminded that its jurisdiction should focus only gaming, but there's quite a lot of violations that are non-gaming. He further mentioned that IPI is required to abide by both federal and state laws, and the regulations, adding that every casino must have its own internal controls. He then asked Mr. Burger if BCM was asked to audit IPI's internal controls. Mr. Burger responded that as part of every audit, you must gain an understanding and document the system of internal controls. He assured that BCM conducted a lot of testing on the expenditure side. He explained that on the revenue side, BCM selected certain days, tested the internal controls, and tested the accumulation of information. He divulged that they did not do a lot of work on the CTRs or SARs and that they are aware of the FinCEN issue because BCM spoke with the attorney who was handling it. The Chairman asked if IPI is responding to the assigned attorney handling the FinCEN requests. Mr. Burger replied that in April 2021, BCM received copies of proposals from two firms interested to conduct the work, but he is not aware if either of the firms was hired. The Chairman asked if IPI is performing as required, other than trying to secure a third-party contractor. Mr. Burger said he believes IPI is ready for someone to come in and look at the documents to determine whether the CTRs and SARs were being filed. He shared that he visited the facility where the documents are stored and they are ready to be examined. He noted, however, that there are some issues with accessing the computers that store the data because there are license fees that have to be paid. In order for the investigation to proceed, the license fees for the software has to be paid, he said.

The Chairman noted that he would like to take the opportunity to discuss with Mr. Burger how the rolling chip program came about. He explained that when the rolling chip program started,

the Commission was approached by IPI to allow the implementation of a loyalty program. IPI did not want to use the word commission on how much is being rolled because they believed it would be subjected to tax when the word commission is used. IPI requested the Commission's approval to allow 1.4% of which .1% would be reserved as complimentary to give to the player under the loyalty program. The Chairman continued noting that a year later, IPI once again approached the Commission requesting to raise the ceiling to 1.8% plus .1% as a complimentary. On the table of discussion with the CEO, CFO, and other management, the Chairman noted that there was an understanding that the loyalty rebate or commission are subject to tax and can be deducted later on as advertising or marketing costs, but it cannot be deducted from gaming revenue. He explained that the gross gaming revenue is whatever is collected minus the payout to the winning vendor. He stated that the loyalty is not part of a winning to the vendor because win or lose, the vendor is eligible and entitled to the commission. The gross gaming revenue does not include that particular commission as it is not connected to the true value, stated the Chairman.

The Chairman stated that over the years, IPI elected to reverse the practice based on the advice of their Legal Counsel, and the amounts are deducted from revenue, non-recognition of that revenue. He noticed that BCM's audit report stated that the payout of loyalty programs will be reduced from the gross gaming revenue subject to tax. He asked Mr. Burger for his understanding on commissions and asked whether they should be subject to tax on the rolling chip program. Mr. Burger explained that BCM looked at it as a discount and that the American Institute of Certified Public Accountants (AICPA) has an audit and accounting guide specifically for gaming operations. He said that under AICPA's guidance, the amounts are deducted from revenue for financial reporting purposes. He added that it cannot be deducted twice as a marketing cost at the end of the year. The Chairman explained that the Commission has informed IPI that if it chooses to continue violating the agreement, the Commission has the option to completely abolish the program.

Mr. Burger mentioned that he believes there was a settlement between IPI and the Division of Revenue and Taxation (DRT) in which it agreed to pay taxes on it. He disclosed that there was an \$18M settlement of which \$10M was transferred from the Department of Public Lands (DPL) to DRT as a partial payment; there's still remains a balance of \$8M. Mr. Burger stated that he views it as a discount. He disclosed that he met with DRT's legal counsel on the very issue and his comment was that it is a marketing expense. He also discussed it with another CPA who has over 20 years of experience in gaming, who disagreed that it is marketing expense, but rather a rebate. A rebate, he said, is the same thing as a discount and under AICPA guidance, it comes out of gross revenue.

Legal Counsel Ernest interjected to say that the Executive Director's position is unchanged and IPI's own auditor is making its position, which is the complete opposite of what IPI had agreed on, not only with the Commission, but with the Department of Finance as well. He said that the Director feels it is irrelevant, and that he does not plan on taking action based on Mr. Burger's statements in the meeting regarding the marketing expenses or revenue status of the commission. The Director noted that the DRT tax code has a new or amended definition of the gross gaming revenue and it is currently being passed into the DRT regulations.

Commissioner Taitano referenced page nine of the audit report where it states that the company determined that no event or change in circumstance indicates the impairment of the long-lived assets. He asked if this includes the gaming machines, as reported by Chief Babauta in the last meeting. In Chief Babauta's statement, he stated that the machines are moldy due to lack of air-conditioning, lights and the lack of maintenance under normal standards. Commissioner Taitano stated that it is inaccurate for the company to determine that there is no impairment to the machines. The Chairman asked for the definition of long-lived assets. Mr. Burger replied that it is anything over a year used for life. He noted that the analysis of impairment of long-lived assets is the present value of expected future cash flows from use of that asset. He explained that so as long as IPI can dispose of those machines without a substantial breakdown, then no adjustment would be needed. Mr. Burger noted that he does

not know what IPI's plans are with the gaming machines but because it is a Hong Kong publicly traded element, a June 30, 2021 review has to be conducted which he has not been approached about.

The Chairman asked how doubtful accounts are defined, other than the fact that it is believed to be accounts that are uncollectible. Mr. Burger explained that he's been auditing for a long time and there are rules of thumb used on every audit to determine if a receivable is collectible or not. He said generally, he is not worry about anything that is current up to 90 days old, but once it is older than that, they start looking at it a bit harder. Over the years in Micronesia, he said, they have been lenient if the receivable is from a local government agency as they know it takes more time to process due to cash flow issues. He said otherwise, if it is over 90 days old and there is no collection or plans for collection, the client would be asked to provide justification why it is uncollectible. If the client does not provide concrete plans, promissory notes, evidence of subsequent collection or collateral, then they would reserve it as doubtful, stated Mr. Burger. In IPI's case, he stated that it is 100% doubtful so everything was reserved.

### C. Other Miscellaneous Matters

Legal Counsel Ernest shared that the attorney for the Commonwealth Utilities Corporation (CUC), Mr. Jose Mafnas, reached out to him asking if he could have someone from IPI contact CUC to discuss that issue regarding the ten feet of sewer pipe in Garapan that needs to be built. The Chairman asked if someone could have Mr. Poon contact CUC lawyer's. Ms. Mafnas offered to relay the message to Mr. Poon.

Counsel Ernest apologized that he would not be attending the afternoon portion of the meeting due to a two o'clock meeting with the CNMI Cannabis Commission. The Chairman asked Mr. Lowrey if he will be returning to which he replied yes, but noted that his ability to fill in for Counsel Ernest is limited.

Counsel Ernest mentioned that in regards to HB 22-47, the case in Delaware has been resolved in the Circuit Court of Appeals and the state won. He said the Department of Justice's (DOJ) opinion was overruled, adding that he has a pending inquiry with the DOJ regarding whether they are going to be changing their opinion or enforcing it in the Ninth Circuit more directly. He noted that he is awaiting a response, although he doesn't expect he would get one. The Chairman shared that based on his reading, the DOJ under President Biden's administration is not inclined to appeal to the Supreme Court ruling. Counsel Ernest said that the Chairman's reading is correct, adding that the same was true for the previous administration. He said they were not going to apply the interpretation to state lotteries, which undercuts the argument that it applies to all gaming, adding that the Third and Fifth Circuits have ruled that it only applies to sports betting.

The Chairman asked if it is safe to proceed with internet gaming, Counsel Ernest answered that it is safe to address the bill, and while the DOJ could be right, it is looking less likely. The Chairman asked for Counsel Ernest's opinion on whether a license could be issued for internet gaming to a non-casino, or if it would be restricted to only the licensee. Counsel Ernest replied that he believes IPI would have one answer and that the legislature, after reading its draft, would likely have another. The Chairman asked if he thinks internet gaming would be applicable if the legislature were to allow more than one casino license, or if the internet operators would be separate from that. Counsel Ernest responded that the legislature allowing three casino licenses right now is moot, as the conditions have not yet occurred. He said that there is an exclusive casino gaming license and the exclusivity appears to be for casino gaming activities only, adding that it does not apply to video poker or e-gaming as those laws are defined. He clarified that the legislature cannot impair contracts and that their ability is limited by the applicable portions of the Commonwealth law and US Constitution. He noted that the only way to go about this is if the license were revoked or if IPI would agree as part of a settlement to allow for the amendment.

In regard to the request for documents from Chairman Propst, Counsel Ernest shared that at the end of the meeting, the Commission asked that a revised request be put in writing as discussed. He said the written letter of request was submitted this morning (June 24, 2021) and Representative Propst was informed of the submission. Counsel Ernest acknowledged that Chairman Propst was in the gallery attending the Commission's meeting.

Commissioner Songao asked if Counsel Ernest will be present today when the Commission discusses the appeal, to which he replied no, adding that he will have no part of any discussion the Commission may or may not have with its attorney. Counsel Lowrey clarified that any discussion regarding the appeal should be between the Commissioners and himself, noting that Counsel Ernest is representing the Executive Director, who is an actual party to the appeal and separate from the Commission's adjudicative role.

V. OLD BUSINESS: None

VI. NEW BUSINESS:

- A. House Bill 22-47: *"To allow Senatorial Districts to establish and regulate internet gaming; and for other purposes"*. Request for comments received on June 15, 2021. Deadline for comments is June 29, 2021.

The Chairman stated that both the Director and Counsel Ernest briefly touched on this earlier in the meeting. He then asked if the comments are ready to be submitted by June 29, 2021. The Director answered that he will be requesting for an extension and Chairman Propst was already informed. He said the reason for the extension is that an extensive market research with meaningful data has to be conducted by the Commission in order for the legislature to fully understand what it means to allow internet gaming. The Chairman asked where the Commission stands on the matter. Commissioner Songao answered that the Commission can support it, but there are a lot of details as earlier mentioned by Director that need to be addressed. The Chairman asked the Commission for their thoughts on whether the licensee should be restricted to brick and mortar casinos. Commissioner Songao answered that they first need to find out whether the exclusive license includes internet gaming. The Director mentioned that brick and mortar is definitely something to think about. He said there's time for the bill to be amended, as he believes it would take some time before it is finalized and passed into law. Simultaneously, he believes it is important to first deal with the issues surrounding IPI and its license, whether it would be revoked or if they would even pay their license fee. The Director stated that smartest way to deal with this is to allow the potential licensee or applicant's financial standing to be the judge of their suitability to acquire a license. The Chairman added that although internet gaming is not specified right now, sports betting is allowed under PL 18-56. The problem is, he noted, that the Wire Act does not allow for sports betting but it appears that gambling is allowed in other ways.

Mr. Leni Leon, Technical Compliance Specialist, stated that there is a lot of ambiguity with the bill itself. He shared that the bill, as it is now stands, is only four pages long. He questioned whether it was intended to be an amendment to HB 21-31, which was a bill that never became law. The Director agreed that HB 22-47 seems to be incomplete as there are a lot of definitions and clarification needed. The Chairman requested that the Commissioners be apprised of the Commission's comments before the letter is submitted to the Gaming Committee. He said in principle, the Commission is in support of the bill but reserves concern on what the legislature's intent is.

Mr. Ian Morrell, IT Manager, shared that to his knowledge, the Wire Act only applies to taking bets across borders. He said that if the sports betting platform is anchored to Saipan, then only people that are vacationing tourists or residents who are in Saipan can bet on these games, as

long as the money isn't crossing any state, interstate, or international borders. Counsel Lowrey recommended that the Commission consult with its Legal Counsel, Michael Ernest, on that, as it doesn't sound accurate to him. He once again stated that for the record, he is only providing advice on procedural matters related to the Commission's adjudication of the administrative actions against IPI, and that he is not the Commission's general lawyer.

Commissioner Songao shared that he is not familiar with how internet gaming operates, and asked that someone, perhaps the Director, educate him. He said that he would like further knowledge on the matter so he can formulate an opinion on the regulatory requirements and others. The Director agreed, stating that the passage of the bill or the necessary regulations would be best served if everyone gains the proper understanding of the market potential and how it works.

- B. Request for Documents. Letter from Representative Edwin K. Propst, Chairman of the House Standing Committee on Gaming, dated June 15, 2021 (Title 1, Sections 1308-1309).

The Director shared that he sent a letter to Representative Propst requesting a deadline extension. In addition to the extension, the Director noted that he requested that the Gaming Committee narrow down the scope of their request, as it seems to be quite broad and some date back to six years prior. He said once an agreement is reached with the heads of the Gaming Committee, there are plans to have another discussion to determine what is feasible. The Chairman asked that the Commissioners be updated on the response from the Gaming Committee. He said he would like to know what documents are being requested as he believes there are some areas of the request which pose an issue of confidentiality. He noted that there's a possibility that a subpoena is needed in order for the Commission to release certain documents, if it is found to be absolutely necessary. He added that the Commission needs to ensure that it does not violate anyone's rights to privacy in complying with the Committee's request.

## VII. EXECUTIVE SESSION:

Commissioner Dela Cruz made a motion to enter into executive session to consult with Legal Counsel, to hear reports by the CCC's Compliance, Audit and Enforcement Divisions, and to discuss personnel matters. The motion was seconded by Commissioner Songao, and was put to a roll call vote with all Commissioners voting yes. Executive session began at 2:34 pm.

- A. Consult with Legal Counsels
- B. Report by the CCC Divisions (Compliance, Audit and Enforcement)
- C. CCC Personnel Matters

Commissioner Taitano made a motion to exit from executive session, seconded by Commissioner Dela Cruz. The motion was put to a vote and unanimously approved. Chairman DeLeon Guerrero called the meeting back to order at 4:08 pm.

The Chairman summarized that during the executive session, the Commissioners had the opportunity to discuss with Counsel Lowrey some of the legal issues that are ongoing with the appeals. He added that the Commissioners also received reports from the different divisions of the CCC, and heard the Director's presentation on personnel matters which was discussed with the Commissioners.

## VIII. 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 4:09 pm.

Prepared by: *San Nicolas* Date: 7/26/2021  
Elicia San Nicolas, Executive Secretary

And *R. Sakisat* Date: 7/26/2021  
Ruth Ann P. Sakisat, Executive Assistant

APPROVED AND ADOPTED ON: 29<sup>th</sup> day of July, 2021.

*R. Dela Cruz* Date: 7/29/2021  
Ramon M. Dela Cruz  
Commission Secretary