



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**VIA CERTIFIED MAIL**

Mr. Kwan Man, President  
Hong Kong Entertainment  
1 Broadway  
P.O. Box 468  
Tinian, MP 96952

AUG 01 2019

RE: MUR 7624  
Hong Kong Entertainment

Dear Mr. Man:

In the normal course of carrying out its supervisory responsibilities, the Federal Election Commission (the “Commission”) became aware of information suggesting that Hong Kong Entertainment may have violated the Federal Election Campaign Act of 1971, as amended (the “Act”). The Commission, on July 25, 2019, found reason to believe that Hong Kong Entertainment violated 52 U.S.C. § 30121(a)(1)(A) by making foreign national contributions. The Factual and Legal Analysis, which formed a basis for the Commission’s finding, is enclosed for your information.

In order to expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed toward reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Pre-probable cause conciliation is not mandated by the Act or the Commission’s regulations, but is a voluntary step in the enforcement process that the Commission is offering to you as a way to resolve this matter at an early stage and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that you violated the law. Enclosed is a conciliation agreement for your consideration. [REDACTED]

[REDACTED]

[REDACTED]

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Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519.

If you are interested in engaging in pre-probable cause conciliation, please contact Elena Paoli, the attorney assigned to this matter, at (202) 694-1548 or (800) 424-9530, or [epaoli@fec.gov](mailto:epaoli@fec.gov), within seven days of receipt of this letter. During conciliation, you may submit any factual or legal materials that you believe are relevant to the resolution of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, we may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within sixty days. *See* 52 U.S.C. § 30109(a); 11 C.F.R. Part 111 (Subpart A). Conversely, if you are not interested in pre-probable cause conciliation, the Commission may conduct formal discovery in this matter or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's "Guidebook for Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's website at [http://www.fec.gov/em/respondent\\_guide.pdf](http://www.fec.gov/em/respondent_guide.pdf).

Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.<sup>1</sup>

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed Designation of Counsel form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and 30109(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act.

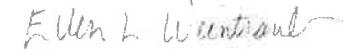
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<sup>1</sup> The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

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We look forward to your response.

On behalf of the Commission,



Ellen L. Weintraub  
Chair

Enclosures  
Factual and Legal Analysis



**FEDERAL ELECTION COMMISSION**  
**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Hong Kong Entertainment MUR 7624

## 6 I. INTRODUCTION

7 This matter was generated based on information ascertained by the Federal Election  
8 Commission (“Commission”) in the normal course of carrying out its supervisory  
9 responsibilities. *See 52 U.S.C. § 30109(a)(2).*

## 10 II. FACTS

11 The Commonwealth of the Northern Mariana Islands (“CNMI”) is a commonwealth  
12 government comprised of 14 islands in the West Pacific. Following World War II, the United  
13 Nations established the “Trust Territory of the Pacific Islands,” which included the CNMI, the  
14 Republic of Palau, the Marshall Islands, and the Federated States of Micronesia. The United  
15 States initially functioned as a trustee over the Trust Territory, with the CNMI eventually  
16 seeking to form its own relationship with the United States, apart from the other islands.  
17 Negotiations between U.S. and CNMI representatives resulted in the creation of a governing  
18 document, the Covenant to Establish a Commonwealth of the Northern Mariana Islands in  
19 Political Union with the United States of America (the “Covenant”), which, *inter alia*, sets forth  
20 the applicability of U.S. laws to the CNMI. CNMI voters adopted the Covenant in 1975, and it  
21 was signed into law on March 24, 1976.<sup>1</sup>

<sup>1</sup> See Covenant, 48 U.S.C. § 1801 et seq.

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1        The Covenant establishes that “[T]he CNMI is under the sovereignty of the United States  
 2        but retains ‘the right of local self-government.’”<sup>2</sup> In relevant part, section 502(a) provides that  
 3        “laws of the United States in existence on the effective date of this Section and subsequent  
 4        amendments to such laws will apply to the Northern Mariana Islands, except as otherwise  
 5        provided in this Covenant.”<sup>3</sup> The Covenant does not exclude the Federal Election Campaign Act  
 6        of 1971, as amended (“Act”), and states that the CNMI will be subject to U.S. laws “which are  
 7        applicable to Guam and which are of general application to the several States as they are  
 8        applicable to the several states.”<sup>4</sup>

9                Hong Kong Entertainment is a Chinese subsidiary corporation and was doing business in  
 10        the CNMI as the Tinian Dynasty Hotel and Casino.<sup>5</sup>

### 11        **III.        LEGAL ANALYSIS**

12                The Act and Commission regulations prohibit any “foreign national” from directly or  
 13        indirectly making a contribution or donation of money or other thing of value, or an expenditure,  
 14        independent expenditure, or disbursement, in connection with a federal, state, or local election.<sup>6</sup>  
 15        The Act’s definition of “foreign national” includes an individual who is not a citizen or national

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<sup>2</sup>                *CNMI v. United States*, 399 F.3d 1057, 1058 (9th Cir. 2005) (explaining that the United States has paramount interest in submerged lands adjacent to CNMI) (citations omitted).

<sup>3</sup>                Covenant, § 502.

<sup>4</sup>                *Id.* § 502(a)(2).

<sup>5</sup>                Hong Kong Entertainment did not respond to the Commission’s notification.

<sup>6</sup>                52 U.S.C. § 30121(a)(1); 11 C.F.R. § 110.20(b), (c), (e), (f). Courts have consistently upheld the provisions of the Act prohibiting foreign national contributions on the ground that the government has a clear, compelling interest in limiting the influence of foreigners over the activities and processes that are integral to democratic self-government, which include making political contributions and express-advocacy expenditures. *See Bluman v. FEC*, 800 F. Supp. 2d 281, 288-89 (D.D.C. 2011), *aff’d* 132 S. Ct. 1087 (2012); *United States v. Singh*, 924 F.3d 1030, 1040-44 (9th Cir. 2019).

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1 of the United States and who is not lawfully admitted for permanent residence, as well as a  
 2 “foreign principal” as defined at 22 U.S.C. § 611(b), which, in turn, includes a “partnership,  
 3 association, corporation, organization, or other combination of persons organized under the laws  
 4 of or having its principal place of business in a foreign country.”<sup>7</sup>

5 In the Bipartisan Campaign Reform Act of 2002 (“BCRA”),<sup>8</sup> Congress expanded the  
 6 Act’s foreign national prohibition to expressly prohibit “donations” in addition to contributions.  
 7 It also codified the Commission’s longstanding interpretation of the prohibition, expressly  
 8 applying it to state and local elections as well as to federal elections.<sup>9</sup>

9 Commission regulations implementing the Act’s foreign national prohibition provide:

10 A foreign national shall not direct, dictate, control, or directly or  
 11 indirectly participate in the decision-making process of any person,  
 12 such as a corporation . . . with regard to such person’s Federal or  
 13 non-Federal election-related activities, such as decisions concerning  
 14 the making of contributions, donations, expenditures, or  
 15 disbursements. . . . or decisions concerning the administration of a  
 16 political committee.<sup>10</sup>

17  
 18 The regulations also provide that no person shall “knowingly provide substantial  
 19 assistance” in the solicitation, making, acceptance, or receipt of a prohibited foreign national

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<sup>7</sup> 52 U.S.C. § 30121(b); 22 U.S.C. § 611(b)(3); *see also* 11 C.F.R. § 110.20(a)(3).

<sup>8</sup> Pub. Law 107-155, 116 Stat. 81 (Mar. 27, 2002).

<sup>9</sup> See 52 U.S.C. § 30121(a); Contribution Limits and Prohibitions, 67 Fed. Reg. 69,928, 69,940 (Nov. 19, 2002) (“Prohibitions E&J”); *see also* Advisory Op. 1999-28 (Bacardi-Martini USA) at 2 (quoting *United States v. Kanchanalak*, 192 F.3d 1037 (D.C. Cir. 1999) (recognizing that the Commission had “consistently interpreted . . . since 1976” the foreign national prohibition to extend to state and local elections)).

<sup>10</sup> 11 C.F.R. § 110.20(i). The Commission has explained that this provision also bars foreign nationals from “involvement in the management of a political committee.” Prohibitions E&J, 67 Fed. Reg. at 69946; *see also* Advisory Op. 2004-26 at 2-3 (Weller) (noting that foreign national prohibition at section 110.20(i) is broad and concluding that, while a foreign national fiancé of the candidate could participate in committees’ activities as a volunteer without making a prohibited contribution, she “must not participate in [the candidate’s] decisions regarding his campaign activities” and “must refrain from managing or participating in the decisions of the Committees.”).

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1 contribution or donation, or the making of a prohibited foreign national expenditure, independent  
 2 expenditure, or disbursement.<sup>11</sup>

3 The Commission has consistently found a violation of the foreign national prohibition  
 4 where foreign national officers or directors of a U.S. company participated in the company's  
 5 decisions to make contributions or in the management of its separate segregated fund,<sup>12</sup> or where  
 6 foreign funds were used by a U.S. subsidiary of a foreign corporation to make contributions or  
 7 donations in connection with U.S. elections.<sup>13</sup>

8 **A. Jurisdiction**

9 Section 502 of the Covenant provides that the CNMI is subject to laws "in existence on  
 10 the effective date of this Section and subsequent amendments to such laws . . . which are  
 11 applicable to Guam and which are of general application the several States as they are applicable  
 12 to the several States."<sup>14</sup> The Act, including the provision containing the prohibition on foreign  
 13 national contributions in local elections, applies to "the several states," was enacted prior to the  
 14 March 24, 1976 effective date of the Covenant, and was not specifically excluded in the

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<sup>11</sup> 11 C.F.R. § 110.20(h). The Commission has explained that substantial assistance "means active involvement in the solicitation, making, receipt or acceptance of a foreign national contribution or donation with an intent to facilitate successful completion of the transaction." Assisting Foreign National Contributions or Donations, 67 Fed. Reg. 66928, 66945 (Nov. 19, 2002). Moreover, substantial assistance "covers, but is not limited to, those persons who act as conduits or intermediaries for foreign national contributions or donations." *Id.* at 66945.

<sup>12</sup> See, e.g., Conciliation Agreement, MUR 6093 (Transurban Grp.) (U.S. subsidiary violated Act by making contributions after its foreign parent company's board of directors directly participated in determining whether to continue political contributions policy of its U.S. subsidiaries); Conciliation Agreement, MUR 6184 (Skyway Concession Company, LLC) (U.S. company violated Act by making contributions after its foreign national CEO participated in company's election-related activities by vetting campaign solicitations or deciding which nonfederal committees would receive company contributions, authorizing release of company funds to make contributions, and signing contribution checks); Conciliation Agreement, MUR 7122 (American Pacific International Capital, Inc. ("APIC")) (U.S. corporation owned by foreign company violated Act by making contribution after its board of directors, which included foreign nationals, approved proposal by U.S. citizen corporate officer to contribute).

<sup>13</sup> See MUR 6203 (Itinere North America).

<sup>14</sup> Covenant § 502(a)(2).

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1      Covenant.<sup>15</sup> The Covenant also applies to “subsequent amendments to such laws.”<sup>16</sup>

2      Furthermore, the Commission has previously applied the Act’s foreign national prohibition to

3      corporate contributions of a respondent in Guam.<sup>17</sup>

4      As the court in *Bluman v. FEC* explained:

5                [P]olitical contributions . . . are an integral aspect of the process by  
 6                which Americans elect officials to federal, state, and local  
 7                government offices. . . . [Section 30121] serves the compelling  
 8                interest of limiting the participation of *non-Americans* in the  
 9                activities of democratic self-government. A statute that excludes  
 10                foreign nationals from political spending is therefore tailored to  
 11                achieve that compelling interest.<sup>18</sup>

12

13      Here, not only has CNMI accepted the application of the Act through the Covenant, but

14      the Act’s purposes are furthered by such application. Just like in the 50 states, the CNMI holds

15      elections for governor and lieutenant governor every four years and for representatives to its

16      lower house every two years, and the CNMI and the states administer their elections as they

17      desire, limited by Constitutional considerations.<sup>19</sup> But Congress’s interest in protecting the

18      political process from foreign influence is as important to democratic self-governance in the

19      CNMI, as it is everywhere else in the United States. Like the District of Columbia, the CNMI

20      elects a non-voting Member of the U.S. House of Representatives. Thus, the Act, its

<sup>15</sup>      See also FEC Act Amendments of 1974, Pub. L. No. 93-443, § 101(d), 88 Stat. 1263, 1267.

<sup>16</sup>      Covenant § 502(a)(2).

<sup>17</sup>      See MUR 3437 (The Guam Tribune) (Commission found reason to believe that respondent violated prohibition on corporate contributions; closed after investigation).

<sup>18</sup>      800 F. Supp. 2d 281, 288-89 (D.D.C. 2011), *aff’d* 132 S. Ct. 1087 (2012) (emphasis added); *see also* *Singh*, 924 F.3d 1030 (upholding constitutionality of section 30121(a)(1) as to state and local elections based on Congress’s broad powers over foreign affairs and immigration and citing *Bluman* as precluding appellant’s First Amendment challenge).

<sup>19</sup>      *See, e.g., Bush v. Gore*, 531 U.S. 98 (2000) (holding, in part, that Florida’s method of selecting electors violated the Constitution).

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1 amendments, and corresponding Commission regulations are applicable to the financing of local  
2 elections in the CNMI, including the prohibition regarding foreign national contributions.

3 **B. Contribution**

4 On January 11, 2015, Hong Kong Entertainment, a foreign national, made a \$15,000  
5 contribution to CNMI gubernatorial candidate Ralph Torres. Therefore, the Commission finds  
6 reason to believe that Hong Kong Entertainment violated 52 U.S.C. § 30121(a)(1)(A).