

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT  
DISPUTES**

**Lao Holdings N.V.**  
**v.**  
**The Lao People's Democratic Republic**  
**(ICSID Case No. ARB(AF)/12/6)**

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**PROCEDURAL ORDER NO 1 AS AMENDED ON THE CONSENT OF THE  
PARTIES**

Judge Ian Binnie, President of the Tribunal  
Prof. Brigitte Stern, Arbitrator  
Prof. Bernard Hanotiau, Arbitrator

*Secretary of the Tribunal*  
Anneliese Fleckenstein

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## **Introduction**

The first session of the Arbitral Tribunal was held on May 8, 2013, in London, U.K.

Present at the session were:

### **Members of the Tribunal:**

Judge Ian Binnie, President of the Tribunal  
Prof. Brigitte Stern, Arbitrator  
Prof. Bernard Hanotiau, Arbitrator

### **ICSID Secretariat:**

Ms. Anneliese Fleckenstein, Secretary of the Tribunal

### **Attending on behalf of the Claimant:**

Mr. David W. Rivkin, Debevoise & Plimpton LLP  
Ms. Catherine M. Amirfar, Debevoise & Plimpton LLP  
Mr. Christopher Tahbaz, Debevoise & Plimpton LLP  
Mr. Todd Weiler, Barristor & Solicitor  
Mr. John K. Baldwin, Lao Holdings N.V.

### **Attending on behalf of the Respondent:**

Mr. David Branson, School of Law, City University of Hong Kong  
Mr. Werner Tsu, LS Horizon, Singapore  
Mr. K.P. Santivong, LS Horizon, Vientiane, Lao PDR

The President of the Tribunal (President) opened the session at 9:30 a.m. and welcomed the participants.

The Tribunal and the parties considered the following:

- The Draft Agenda circulated by the Tribunal Secretary on April 15, 2013,
- The Draft Procedural Order circulated by the Tribunal Secretary on April 15, 2013; and
- The parties' comments on the Draft Agenda and the Draft Procedural Order received on April 29, 2013 and May 6, 2013, indicating the items on which they agreed and their respective positions regarding the items on which they did not agree.

The session was adjourned at 2:15 p.m.

An audio recording of the session was made and deposited in the archives of ICSID. The recording was sent to the Members of the Tribunal and the parties.

Following the session, the Tribunal now issues the present order:

### **Order**

Pursuant to Articles 21 and 28 of the ICSID Arbitration (Additional Facility) Rules, this first Procedural Order sets out the Procedural Rules that the Claimant and the Respondent have agreed and the Arbitral Tribunal has determined shall govern this arbitration.

1. Applicable Law and Arbitration Rules  
*Article 6 ICSID Additional Facility Rules; Articles 1, 28(2), 35 and 54 ICSID Arbitration (Additional Facility) Rules*
  - 1.1. These proceedings will be conducted in accordance with the provisions of the Agreement on Encouragement and Reciprocal Protection of Investments between the Lao People's Democratic Republic and the Kingdom of the Netherlands, entered into force on May 1, 2005 ("BIT") and the applicable rules of international law.
  - 1.2. These proceedings will also be conducted in accordance with the ICSID Additional Facility Rules in force since April 10, 2006.
2. Constitution of the Tribunal and the Tribunal Members' Declarations  
*Article 13 ICSID Arbitration (Additional Facility) Rules*
  - 2.1. The Tribunal was constituted on March 26, 2013 in accordance with the BIT and the ICSID Arbitration (Additional Facility) Rules. The parties confirmed that the Tribunal was properly constituted and that no party has any objection to the appointment of any Member of the Tribunal.
  - 2.2. The Members of the Tribunal timely submitted their signed declarations in accordance with Article 13(2) Arbitration Additional Facility Rules. Copies of these declarations were distributed to the parties by the Secretary on March 26, 2013.
3. Fees and Expenses of the Tribunal Members  
*Article 5 ICSID Additional Facility Rules; Administrative and Financial Regulation 14; ICSID Schedule of Fees; Memorandum on the Fees and Expenses of ICSID Arbitrators (July 6, 2005)*
  - 3.1. The fees and expenses of each arbitrator shall be determined and paid in accordance with the ICSID Schedule of Fees and the Memorandum on

Fees and Expenses of ICSID Arbitrators in force at the time the fees and expenses are incurred.

- 3.2. Under the current Schedule of Fees, each arbitrator receives:
    - 3.2.1. US\$3,000 for each day of meetings or each eight hours of other work performed in connection with the proceedings or *pro rata*; and
    - 3.2.2. subsistence allowances, reimbursement of travel, and other expenses pursuant to Regulation 14 of the ICSID Administrative and Financial Regulations.
  - 3.3. The Members of the Tribunal shall submit their claims for fees and expenses to the ICSID Secretariat on a quarterly basis.
  - 3.4. Each Member of the Tribunal shall receive a fee equivalent to 25% of the hearing time reserved but not used due to postponement or cancellation of a hearing at the request of one or both parties less than 30 days prior to commencement of the hearing. Non-refundable expenses incurred in connection with the hearing as a result of such postponement or cancellation shall be reimbursed.
4. Presence and Quorum  
*Articles 22(2) and 28(1)(a) ICSID Arbitration (Additional Facility) Rules*
- 4.1. The presence of all Members of the Tribunal constitutes a quorum for its sittings, including by any appropriate means of communication. In the event of the incapacity of a member of the Arbitral Tribunal, the proceedings shall be, or remain, suspended until the vacancy has been filled.
5. Decisions of the Tribunal  
*Article 24 ICSID Arbitration (Additional Facility) Rules*
- 5.1. Decisions of the Tribunal shall be taken by a majority of the Members of the Tribunal.
  - 5.2. In cases of urgency, the President may decide procedural matters alone, upon reasonable consultation with the remaining members of the Tribunal.
  - 5.3. Article 24(2) ICSID Arbitration (Additional Facility) Rules applies to decisions taken by correspondence.
6. Delegation of Power to Fix Time Limits  
*Article 33 ICSID Arbitration (Additional Facility) Rules*
- 6.1. The President has the power to fix and extend time limits for the completion of the various steps in the proceeding.

6.2. The power to extend time limits may be exercised by the President upon reasonable consultation with the remaining members of the Tribunal.

7. Representation of the Parties

*Article 26 ICSID Arbitration (Additional Facility) Rules*

7.1. Each party shall be represented by its respective counsel listed below and may designate additional agents, counsel, or advocates by notifying the Tribunal and the ICSID Secretariat promptly of such intended designation.

7.2. Each may designate additional agents, counsel, or advocates by notifying the Tribunal and the Secretary of the Tribunal promptly of such intended designation, subject to the approval of the Tribunal.

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8. Apportionment of Costs and Advance Payments to ICSID  
*Article 5 ICSID Additional Facility Rules; Administrative and Financial Regulation 14; Articles 28(1)(f) and 58 ICSID Arbitration (Additional Facility) Rules*
  - 8.1. The parties shall defray the direct costs of the proceeding in equal parts, without prejudice to the final decision of the Tribunal as to the allocation of costs.
  - 8.2. By letter of March 27, 2013, ICSID requested that each party pay US\$125,000 to defray the initial costs of the proceeding. ICSID received the Claimant's payment on April 10, 2013 and the Respondent's payment on May 2, 2013.
  - 8.3. ICSID shall request further advances as needed. At the end of the case, the financial statement will include a breakdown of each arbitrator's fees and expenses.
9. Place of the Arbitration  
*Articles 19 and 20 ICSID Arbitration (Additional Facility) Rules*
  - 9.1. Singapore shall be the place of the proceeding. The Tribunal can hold hearings at any other place that it considers appropriate after consulting with the parties. The Tribunal may deliberate at any place it considers convenient.
  - 9.2. Claimant requested from Respondent a signed waiver of its sovereign immunity for all purposes related to this proceeding, including but not limited to for purposes of enforcement. In the event Respondent declines to provide such an undertaking, Claimant reserves the right to renew before the Tribunal its designation of the place of arbitration.
10. Procedural Language(s)  
*Administrative and Financial Regulation 30(3) and (4); Article 30 ICSID Arbitration (Additional Facility) Rules*
  - 10.1. English is the procedural language of the arbitration. Documents filed in any other language must be accompanied by a translation into English. If the document is lengthy and relevant only in part, it is sufficient if only the relevant parts are translated, provided that the Tribunal may require a fuller or a complete translation at the request of any party or upon its own initiative. Translations need not be certified, unless there is a dispute as to the content of a translation provided and the party disputing the translation specifically requests a certified version.
  - 10.2. A witness may testify in a language other than the procedural language with simultaneous interpretation into the procedural language.

10.3. Simultaneous interpretation shall be arranged by the ICSID Secretariat and charged to the case account, without prejudice to the Tribunal's final allocation of costs. The parties shall inform the ICSID Secretariat of interpretation requirements at least four weeks in advance of the hearing.

11. Means of Communication and Copies of Instruments  
*Administrative and Financial Regulations 24 and 30; Articles 31 and 32 ICSID Arbitration (Additional Facility) Rules*

a) Communications:

11.1. Each party's written communications shall be transmitted by email or other electronic means to the Tribunal, the opposing party and to the ICSID Secretariat. Electronic versions of communications ordered by the Tribunal to be filed simultaneously shall likewise be transmitted to the Tribunal, the opposing party and to the ICSID Secretariat. The Secretary shall not be copied on direct communications between the parties when such communications are not intended to be transmitted to the Tribunal.

11.2. The parties may communicate directly with the Tribunal by email, with copies to the opposing party and the ICSID Secretariat.

b) Instruments/Submissions:

11.3. The parties shall:

11.3.1. by the relevant filing date, submit by email to the Tribunal, the ICSID Secretariat, and the opposing party an electronic version [without exhibits] of pleadings, witness statements, and expert reports,<sup>1</sup> and upload these documents with exhibits to the FTP server created for this case;

11.3.2. courier to the ICSID Secretariat by the following business day:

11.3.2.1. one unbound hard copy in A4/Letter format of the entire submission, including signed originals of the pleading, witness statements, and expert reports, together with exhibits (but not including legal authorities);

11.3.2.2. one hard copy in A4 format, double-sided of the entire submission, including the pleading, witness statements, expert reports, and exhibits (but not including legal authorities);

11.3.2.3. two USB drives, CD-ROMs or DVDs, with full copies of

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<sup>1</sup> Please note that the World Bank server does not accept emails larger than 10 MB.



the entire submission, including the pleading, witness statements, expert reports, exhibits, and legal authorities.

11.3.3. at the same time, courier to the Tribunal and the opposing party at the address(es) indicated under paragraph 7.1:

11.3.3.1. one hard copy in A4 format, double-sided of the entire submission, including the pleading, witness statements, expert reports, and exhibits (but not including legal authorities); and

11.3.3.2. one USB drive, CD-ROMs or DVD, with a full copy of the entire submission, including the pleading, witness statements, expert reports, exhibits, and legal authorities.

11.4. Submissions shall be made available in stand-alone binders.

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11.5. For email, mail, and courier/parcel deliveries to the ICSID Secretariat, the contact details are:

Ms. Anneliese Fleckenstein  
ICSID  
MSN U3-301  
3301 Pennsy Dr.  
Landover, MD 20785-1606  
USA  
Tel.: + 1 (202) 458-4038  
Fax: + 1 (202) 522-2615  
Email: [afleckenstein@worldbank.org](mailto:afleckenstein@worldbank.org)

11.6. For local messenger deliveries, the contact details are:

Ms. Anneliese Fleckenstein  
1800 G Street, NW (“U Building”)  
3<sup>rd</sup> Floor  
Washington, D.C. 20006  
Tel.: + 1 (202) 458-4038

11.7. Upon request by the Tribunal or any member thereof the party submitting a document electronically will provide a hard copy.

11.8. Legal authorities shall be submitted in electronic version only, unless specifically requested by the Tribunal.

11.9. Electronic versions of pleadings shall be text searchable (*i.e.*, OCR, PDF, Word or editable excel format).

11.10. The official date of receipt of a pleading or communication shall be the day on which the electronic version is sent to the Tribunal and ICSID.

11.11. A filing shall be deemed timely if sent by a party by midnight (Washington, D.C.) on the relevant date.

11.12. The Tribunal's decisions on procedural matters may be communicated to the parties through the Secretariat in the form of a letter if needed.

12. Written and Oral Procedures

*Article 36 ICSID Arbitration (Additional Facility) Rules*

12.1. The proceeding shall consist of a written phase followed by an oral phase.

13. Schedule for Submission of Pleadings

*Article 38 ICSID Arbitration (Additional Facility) Rules*

13.1. The schedule for the submission of written pleadings (and all supporting documentation) in this arbitration shall be as follows:

13.1.1. Provisional Measures Schedule:

13.1.1.1. Claimant filed an amendment to its request for arbitration including the request for provisional measures on May 28, 2013;

13.1.1.2. Respondent shall file its response within 45 days of the amendment, *i.e.* July 12, 2013;

13.1.1.3. Claimant shall file its reply within 21 days of the response, *i.e.* August 2, 2013;

13.1.1.4. Respondent shall file its rejoinder 21 days of the reply, *i.e.* August 23, 2013.

13.1.1. In response to Claimant's request for three standstill representations, Respondent has provided a letter dated 6 June 2013. Respondent's representations with respect to Claimant's second and third request have been accepted by the Claimant. Respondent commits to revisit the first request of the application of Amended Tax Law No. 05/NA to any assets in which Claimant and/or Sanum has an interest "in a few months" before the amended tax takes effect in relation to the Claimant or its assets. On this basis Claimant and Respondent agreed to proceed with the above extended schedule for consideration of Claimant's Amended Application.

13.1.2. Jurisdiction and Merits Schedule:

- 13.1.2.1. Claimant shall file its memorial on the merits on July 8, 2013;
- 13.1.2.2. Respondent shall file its counter-memorial on the merits and its objections to jurisdiction on October 8, 2013;
- 13.1.2.3. Claimant shall file its reply on the merits and counter-memorial on the objections to jurisdiction on January 8, 2013;
- 13.1.2.4. Respondent shall file its rejoinder on the merits and reply on jurisdiction on April 8, 2014;
- 13.1.2.5. Claimant shall file its rejoinder on jurisdiction on May 8, 2014.

13.1.3. Once briefing is concluded, the Tribunal shall decide whether a separate jurisdictional hearing is required.

14. Document Production

*Article 41 ICSID Arbitration (Additional Facility) Rules*

- 14.1. The production of documents is subject to the Tribunal's ruling. The Tribunal may be guided by Articles 3 and 9 of the International Bar Association Rules on the Taking of Evidence in International Arbitration (2010) ("IBA Rules").
- 14.2. A party may submit a request in writing to the other party for it to provide relevant information, documents or narrow and specific classes of documents in that party's possession, custody or control. Such request may be submitted at any time, but no later than October 14, 2013.
- 14.3. Where a party objects to such a request to produce, it shall do so in writing no later than October 28, 2013, or within fourteen (14) days of receipt of a request, whichever is earlier. Where a party does not object to a request to produce, it shall provide such information, documents or classes of document within twenty (20) days of receipt of a request.
- 14.4. The party requesting production will have an opportunity to reply to such objections to the production of documents no later than November 4, 2013, or within seven (7) days of receipt of an objection, whichever is earlier.
- 14.5. The parties and the Tribunal may hold a conference call on a date to be fixed by the Tribunal on this matter.
- 14.6. Where a party objects to the production of certain documents, the Tribunal shall undertake its best endeavors to decide no later than

November 11, or within seven (7) days of its receipt of a party's objection, whichever is earlier, whether the information, documents or classes of documents have to be produced by the requested party.

- 14.7. The parties shall submit their request for the Tribunal's decision in the form of a Redfern schedule (Appendix A).
- 14.8. The disclosure of documents under this Part shall be made electronically through an FTP secure site which can be accessed by counsel to the disputing parties, in PDF format or some other similar format to which the disputing parties may later agree.
- 14.9. Correspondence or documents exchanged in the course of this document disclosure process shall not be copied to the Tribunal, except as set out in this Procedural Order.
- 14.10. A party shall produce the documents ordered by the Tribunal no later than December 11, 2013, or within thirty (30) days of the Tribunal's order, whichever is earlier.
- 14.11. The failure to produce as ordered may result in adverse inferences drawn by the Tribunal as regards the credibility of a witness or the merits of the defaulting party's case.
- 14.12. Further requests for the production of documents sought by either party, if any, shall be permitted only at the discretion of the Tribunal. The request must be substantiated with reasons, to which the opposing party has a right of reply.
- 14.13. Introduction by a party of evidentiary materials following the filing of the last written submission will be permitted only in exceptional circumstances at the discretion of the Tribunal upon a reasoned written request followed by observations from the other party. Any such request shall not attach the new evidentiary materials. If the Tribunal admits the new evidentiary materials, the opposing party shall be allowed to submit evidence in rebuttal.
- 14.14. For the avoidance of doubt, Power Point slides, demonstrative exhibits and charts or other similar materials in aid of argument may be used by either party during any oral hearing, subject to the discretion of the Tribunal, and provided always that such slides or materials reflect evidence on the record (with citations to such evidence) and do not constitute or introduce any new evidence, whether directly or indirectly.
- 14.15. The Tribunal may call upon the parties to produce documents or other evidence in accordance with Article 41(2) ICSID Arbitration (Additional Facility) Rules.

15. Evidence: Witnesses and Experts, Written Statements and Reports, Supporting Documentation  
*Articles 42 and 43 ICSID Arbitration (Additional Facility) Rules*

- 15.1. The parties shall include all the evidence on which they intend to rely, including written witness statements, expert opinions or reports, and other evidence in whatever form, with their written submissions and in any case within the time limit fixed for the filing of such submission.
- 15.2. Duly certified copies of documents are not required unless the authenticity of the copy is contested and the Tribunal considers the certification necessary.
- 15.3. Each party shall number the accompanying documentation consecutively throughout the entire proceeding (C-001 or R-001 for documentary evidence and CLA-001 or RLA-001 for legal sources) and shall number the paragraphs of each of their written pleadings.
- 15.4. In their second written submissions, the parties shall include only additional written witness testimony, expert opinion testimony, documents or other evidence that responds to or rebuts matters raised by the opposing party's prior written submission.
- 15.5. Introduction by a party of any evidence or any substantive submission outside of the situations outlined in Sections 13.1.1 and 15.1 above is not permitted, and the evidence and substantive submission shall be deemed inadmissible, unless the submitting party obtains prior express permission from the Tribunal to produce the evidence. When considering whether or not to provide such permission, the Tribunal shall consult the counterparty.
- 15.6. All witness statements or expert reports shall be signed and dated by the submitting factual or expert witness.
- 15.7. The Tribunal may at all times call upon the parties to produce evidence.
- 15.8. No less than thirty (30) days before the hearing, each party will identify the factual and expert witnesses of the opposing party (having filed written statements and expert reports) whom it intends to cross-examine and those presented by the party it intends to examine, even if not called by the counterparty for cross-examination. Shortly after the parties' notifications, the Tribunal will indicate the witnesses and experts not called by the parties that it wishes to question, if any.
- 15.9. Examination by video-conference may be permitted for justified reasons at the discretion of the Tribunal.
- 15.10. The Tribunal may disregard the testimony of a witness or expert called to

testify at the hearing who fails to appear at the hearing without justified reasons.

15.11. The Tribunal may examine the witness or expert at any time during the hearing.

15.12. The direct examination is given in the form of witness statements and expert reports. However, the party presenting the witness may conduct a brief direct examination. Re-direct examination shall be limited to the subject of cross-examination.

15.13. Unless the parties and the Tribunal agree otherwise, factual witnesses shall not be allowed in the hearing room before giving their oral evidence. Expert witnesses shall be allowed in the hearing room at any time.

16. Hearings (including Pre-Hearing Organizational Meetings)  
*Articles 21(2) and 29 ICSID Arbitration (Additional Facility) Rules*

16.1. A hearing on provisional measures shall be held in London on September 2, 2013.

16.2. A hearing on the merits and/or jurisdiction shall be held in Singapore June 23-27, 2014.

16.3. After consultation with the parties, the President of the Tribunal may decide to have a pre-hearing organizational meeting with the parties. Such meeting may be conducted by telephone or video link.

17. Records of Hearings  
*Article 28(1)(g) ICSID Arbitration (Additional Facility) Rules*

17.1. Audio recordings shall be made of all sessions. The audio recordings shall be provided to the parties and the Tribunal Members.

17.2. The Secretary may prepare summary minutes of hearings or sessions upon request, under the direction of the Tribunal.

17.3. Verbatim transcript(s) in the procedural language(s) shall be made of any sessions other than sessions on procedural issues. Unless otherwise agreed by the parties or ordered by the Tribunal, the verbatim transcripts shall be available in real-time using LiveNote or similar software, and electronic rough transcripts shall be provided to the parties and the Tribunal on a same-day basis

17.4. The parties shall attempt to agree on any proposed corrections to the transcripts within 15 days of the date of the receipt of the sound recordings. The agreed corrections may be entered by the parties in the

transcripts (“revised transcripts”). The parties may submit any disagreement concerning proposed corrections to the transcript to the Tribunal within 15 days of the date of receipt of the sound recordings. Any correction decided by the Tribunal shall be entered by the parties in the revised transcripts.

17.5. The cost of any transcripts and recordings shall form part of the costs of the proceedings.

18. Publication

*Article 53(3) ICSID Arbitration (Additional Facility) Rules*

18.1. ICSID shall publish all procedural orders, decisions, and award related to the proceeding.

**Other Matters**

The President of the Tribunal inquired from the parties whether there were any other issues. The parties having confirmed that there were no further issues, the President of the Tribunal adjourned the session at 2:15 p.m.

[Signed]

Judge Ian Binnie  
For the Arbitral Tribunal  
Date: *18 June 2013*



## **APPENDIX A**

