

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)

PROCEDURAL ORDER NO. 10

The Honourable Ian Binnie, C.C., Q.C., President
Professor Brigitte Stern, Arbitrator
Professor Bernard Hanotiau, Arbitrator

Secretary of the Tribunal
Anneliese Fleckenstein

Date: March 29, 2018

Lao Holdings N.V.
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Procedural Order No. 10

WHEREAS on March 21, 2018, a pre-hearing conference was held by telephone, in which representatives of both Parties, the President of the Tribunal on behalf of the Tribunal, and the Secretary of the Tribunal (in addition to the Presiding Arbitrator and two representatives of the PCA of the related *Sanum Investment Limited* Arbitration), participated; and

WHEREAS on March 6, 2018, an agenda for the conference was communicated to the Parties;

ON THE BASIS OF THE PARTIES' VIEWS AS EXPRESSED IN A LETTER FROM THE GOVERNMENT DATED MARCH 18, 2018, AND A LETTER FROM THE CLAIMANTS DATED MARCH 19, 2018, AND DURING THE PRE-HEARING TELEPHONE CONFERENCE, THE TRIBUNAL NOW DECIDES AND ORDERS:

1. Claim Dismissal

On consent, the Claimants are to give notice of dismissal of any claims by March 26, 2018. After receipt of the Claimants' notice, the Government has until April 6, 2018, to drop any defences.

2. Hearing schedule

- i. The hearing shall take place from September 3-7, 2018, at Maxwell Chambers, 32 Maxwell Road #03-01 Singapore 069115, from 9:00 AM to 5:30 PM, with a lunch break (one and one quarter hours), two fifteen-minute breaks, and all appropriate breaks for the court reporter and interpreters. The Tribunals may extend the length of any hearing day.
- ii. The Parties shall have three and a half hours each for their opening statements. The Claimants will have from 9 a.m. to 12:45 [including a 15 minute break]. The Respondent will have from 2 pm to 5:45 [including a 15 minute break].
- iii. On the final day of the hearing, the Parties shall have two hours each for their closing statements and the Tribunal shall have two hours for questions. Each Party is free to take less than its allotted time.
- iv. ICSID will provide time-recording at the hearing.

3. Procedure for witness examination

- i. In their direct examination, the witnesses for the Claimants shall be allowed to respond to new matters arising from the submissions of the Respondent made on June 4, 2014. For these new matters, the Claimants

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

Procedural Order No. 10

are to give notice to the Respondent before July 15, 2018. The Respondent may reply on or before July 25, 2018.

- ii. If the scope of the direct examination is, with leave of the Tribunal, to go beyond the scope of what is written in the statement of that witness, the examining party is to make application for leave at least 7 days before the commencement of the hearing, and, if leave be granted, to give the other party at least one day's notice of the additional material to be covered.
- iii. The scope of the re-direct examination shall be limited to matters discussed in the cross-examination.
- iv. Fact witnesses (except for witnesses that are Party representatives) are allowed in the hearing room only after they give testimony. Expert witnesses may be in the hearing room before and after giving testimony.
- v. Witnesses who provided witness statements in English only shall testify in English subject to specific and needed assistance from a translator.

4. Testimony of several of the Respondent's witnesses by video-link

- i. The parties are to submit preliminary witness lists by Wednesday May 16, 2018. The government is to indicate by Thursday May 31, 2018, which of the government's witnesses sought to be cross examined by the Claimants the government wishes to have testify by video link and the specific reasons why the witness cannot or will not be able to testify in Singapore. The Claimants will have until Friday June 8, 2018, to respond. Thereafter the Respondent will have until Friday June 22, 2018, for its reply. The Claimant may seek leave of the Tribunal to submit a rejoinder, if the Respondent's reply contains new material.
- ii. The Tribunal notes that the Claimant has agreed to Mr. Kambay Damlath (Governor of Khammouane Province) testifying via video-link.

5. Exhibits and other materials required by the Tribunal

- i. The Tribunal does not require a hard copy of the entire record, but does require a USB key containing the entire record. The parties will confer prior to July 15, 2018, to settle on the contents of a "*hearing bundle*" which will contain complete copies of all the documents and authorities the parties *intend to rely on* at the hearing. The USB key and the list of contents of the hearing bundle will be delivered to the Tribunal and members of the Tribunal by Wednesday August 1, 2018. Thereafter each of the parties will prepare a *book of extracts* containing extracts from exhibits, etc. that are reproduced in their entirety *in the hearing bundle* and

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

Procedural Order No. 10

to which counsel actually *intend to refer* during the hearing. A hard copy and electronic copy of the book of extracts will be delivered to the Tribunal and its members no later than the opening of the hearing. There may be additional “*bundles*” to be used in the cross examination of particular witnesses that are also limited to extracts from the contents of the “hearing bundle”. Cross examination bundles will be filed with the Tribunal at the beginning of the cross-examination to which the bundle relates.

- ii. The Parties are to ensure that each member of the Tribunal and the Secretariat, as well as the interpreters and the court reporter, have a copy of the document to which the Party refers at the hearing.

6. PowerPoint presentations and demonstrative exhibits

- i. Each Party is to provide the other Party with copies of potential demonstrative exhibits to be used at the hearing a day before their use.
- ii. Each Party shall make available to the Tribunal, the Secretariat, the interpreters and the court reporter electronic and hard copies of all PowerPoint presentations and demonstrative exhibits used.

7. Court reporter

- i. Each Party is to be provided with four LiveNote connections, as requested, but only if such Party has paid in advance for LiveNote services and access. No Party is entitled to access LiveNote services without its prior payment for the same into the Costs Deposit.

8. Fresh Evidence

- i. The government wants to adduce the evidence of Mr. Shawn Scott, the SIAC arbitration award, and various excerpts from Mr. John Baldwin’s cross examinations, etc. all of which have come into existence since June 14, 2014, when the record was “frozen”. The government is to file its application to adduce fresh evidence, including an outline of the evidence it seeks to adduce, the reason such evidence was not available earlier with due diligence [obvious in the case of after generated evidence], the reasons why the fresh evidence should be adduced [but NOT the evidence itself, except to the Claimants] on or before Tuesday May 15, 2018, and the Claimants will file their response by Wednesday May 30, 2018, and the Respondent its reply by Friday June 15, 2018.

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

Procedural Order No. 10

9. Other matters

- i. Pursuant to ICSID Administrative and Financial Regulation 14, the court reporter and interpreters, as well as all other hearing expenses, shall be paid through the Parties' deposits to the Centre.
- ii. The parties shall deliver preliminary witness lists by Wednesday May 16, 2018, as above. Final lists are to be submitted within 7 days after the Tribunal rules on any outstanding issues pertaining to Mr. Shawn Scott and various new evidence applications.
- iii. Regarding the estimated hearing schedule, the Claimants shall submit their proposal by July 15, 2018 and the Respondent will respond by July 25, 2018.
- iv. The Respondent does NOT withdraw the witness statement of Mr. Charles Perrotta. Mr. Detwiler's report remains part of the hearing record.
- v. The Respondent DOES withdraw the witness statement of Mr. Gerald Yingling.

If the parties wish to consolidate the above dates to suit their mutual convenience the Tribunals will agree subject to the overall timetable being kept.

Place of arbitration: Singapore

[Signed]

The Honourable Ian Binnie, C.C., Q.C., President
For the Arbitral Tribunal
Date: March 29, 2018