

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. 12

Judge Ian Binnie, C.C., Q.C., President of the Tribunal
Professor Brigitte Stern, Arbitrator
Professor Bernard Hanotiau, Arbitrator

Secretary of the Tribunal
Catherine Kettlewell

Date: June 26, 2018

The Tribunals are in receipt of the application of the Government of the Lao People's Democratic Republic (the "Government") to have three of its witnesses testify by video-link namely:

- 1) Minister Sinlavong Khoutphaythoun (two statements),
- 2) Minister Chaleune Yiapaoheu, and
- 3) Kambay Damlath

The Claimants do not oppose the application in respect of Kambay Damlath¹ but seek to have the two Ministers appear in Singapore in person. In each case, the Minister's statement(s) largely consist of denials of various statements attributed to each of them by Mr Baldwin. In the case of Minister Yiapaoheu, the allegations relate to alleged interference in Sanum's case against the ST Group. The situation with respect to ST has changed considerably since 2014. The Tribunal will have before it by way of fresh evidence the SIAC Award in which, the Tribunal is advised, Sanum was successful in its claim against the ST Group.

The Claimants suggest that as the Tribunal in 2014 rejected the Government's application to have these Ministers testify by video-link, the Tribunal should do so again. However, the circumstances of the hearing in Singapore in September 2018 are different from those that prevailed in June 2014. The issues between Sanum and ST have, it seems, been clarified by the SIAC Award. Further, in 2014 two weeks had been set aside for a hearing, which (after deducting a day for opening and a day for closing) left eight days for testimony. Here the parties have scheduled three days only of the five-day hearing for witnesses. The cross examinations will necessarily be more compressed than was contemplated in 2014. The available video-link technology has improved in the last four years.

In their Reply of June 18, 2018, the Claimants respond vigorously to the Government's arguments in support of its application (related essentially to the amount of time that would be required for the Ministers to absent themselves from their work in Laos in order to testify in Singapore) but there is little to show real prejudice to the Claimants.

In the result the Tribunal concludes that, unlike in 2014, an appropriate balancing of benefits and burdens favours the Government.

¹ See Claimant's letter dated June 8, 2018.

CONCLUSION

The Government's application is granted in respect of Kambay Damlath (on consent) and (notwithstanding the objection by the Claimants) also in respect of Minister Khoutphaythoun and Minister Yiapaoheu. The Tribunal will be in touch with counsel for the parties to ensure that appropriate arrangements are made for the video link.

[Signed]

The Honourable Ian Binnie, C.C., Q.C., President
For the Arbitral Tribunal
Date: June 26, 2018