

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

In the arbitration proceeding between

LAO HOLDINGS N.V.
AND
SANUM INVESTMENTS LIMITED

Claimants

and

LAO PEOPLE'S DEMOCRATIC REPUBLIC

Respondent

ICSID Case No. ARB(AF)/16/2
ICSID Case No. ADHOC/17/1

PROCEDURAL ORDER NO. 7

(Decision on the Claimants' Applications of November 6, 7 and 9, 2018)

Members of the Tribunal

Ms. Jean E. Kalicki, President of the Tribunal
Prof. Laurence Boisson de Chazournes, Arbitrator
Mr. Klaus Reichert, SC, Arbitrator

Secretary of the Tribunal

Mrs. Mercedes Cordido-Freytes de Kurowski

Date: November 14, 2018

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I. INTRODUCTION

1. The Tribunal sets forth below only the elements of the procedural history that directly relate to three applications filed by Claimants on November 6, 7 and 9, 2018, as described further below.

II. PROCEDURAL HISTORY

2. On November 6, 2018, Claimants filed an Application to Strike a number of exhibits filed by Respondent together with its Rejoinder dated November 1, 2018, as well as certain allegations made by the Respondent therein (“**Claimants’ Application to Strike Rejoinder Exhibits and Argument**”).
3. On November 7, 2018, Claimants filed their Notification of Witnesses/Experts for Cross Examination, which included a request that Mr. Sabh Phommarath’s witness statement be stricken pursuant to Procedural Order No. 1 (“**Claimants’ Application to Strike the Witness Statement of Mr. Sabh Phommarath**”).
4. On November 8, 2018, Claimants requested leave from the Tribunal to file by November 30, 2018, a short rebuttal report from Dr. Joseph Kalt addressing only Respondent’s argument in Rejoinder paragraphs 188-193 (“**Claimants’ Application to Supplement Expert Report**”).
5. Claimants’ Application to Strike Rejoinder Exhibits and Argument, Claimants’ Application to Strike the Witness Statement of Mr. Sabh Phommarath, and Claimants’ Application to Supplement Expert Report are herein also referred to as “**Claimants’ Applications.**”
6. On November 12, 2018, following an invitation from the Tribunal, Respondent filed a response to Claimants’ Applications (“**Respondent’s Response to Claimants’ Applications**”).

7. On November 13, 2018, the Tribunal held a Pre-Hearing Organizational Meeting with the Parties by telephone conference, where the Tribunal heard the Parties' positions regarding Claimants' Applications.

III. THE TRIBUNAL'S DECISION

8. Having considered the Parties' respective positions as developed in their written and oral submissions regarding Claimants' Applications, the Tribunal has decided as follows:

A. CLAIMANTS' APPLICATION TO STRIKE REJOINER EXHIBITS AND ARGUMENT

9. With reference to the "circa 18,000" pages of documents in Exhibit R-253 that Respondent describes as having been reviewed by BDO for purposes of the BDO Expert Report, but which it does not contend that BDO relied on for any specific propositions in its report, the Tribunal grants the application, but embraces Respondent's offer during the Pre-Hearing Organizational Meeting to designate instead a subset of materials from Exhibit R-253 upon which Mr. Kenneth Yeo of BDO actually would seek to rely at the Hearing (which Respondent described as the same binder of materials Mr. Yeo brought to his examination in the SIAC proceeding), with this subset of materials to become the substitute Exhibit R-253. The Tribunal invites Respondent to designate this substitute Exhibit R-253 as soon as possible, but no later than Wednesday, **November 28, 2018**.
10. The Tribunal denies the application to strike from the record the transcripts, PowerPoint presentations and expert reports from prior arbitrations between the Parties, with which both Parties are expected already to be familiar. However, the Tribunal emphasizes that because it does not share this familiarity and given the volume of this additional material, the Tribunal expects the Parties during their arguments at the forthcoming Hearing to draw the Tribunal's attention to any specific passages they consider particularly relevant for purposes of the preclusion issue or otherwise.
11. Finally, the Tribunal denies Claimants' application to strike arguments in the Rejoinder regarding the Bouker allegations.

B. CLAIMANTS' APPLICATION TO SUPPLEMENT EXPERT REPORT

12. The Tribunal grants Claimants' application to file a supplemental report from Dr. Kalt on the issues identified, limited to five pages to be submitted within two weeks (i.e., by **November 28, 2018**).
13. Respondent may, if it so wishes, either designate Dr. Kalt for examination during the forthcoming Hearing, provided that such notice is made by **December 3, 2018**, or may seek leave to file promptly an equally short response not to exceed five pages.

C. CLAIMANTS' APPLICATION TO STRIKE THE WITNESS STATEMENT OF MR. SABH PHOMMARATH

14. The Tribunal denies the application to strike Mr. Phommarath's Statement and will determine for itself what weight to be given to the contents of the statement, taking into account all factors including other relevant evidence and the fact that cross-examination was not possible for reasons outside the control of either Party.

On behalf of the Tribunal,

[Signed]

Ms. Jean Kalicki
President of the Tribunal
Date: November 14, 2018