EXHIBIT 3

AT THE SINGAPORE INTERNATIONAL ARBITRATION CENTRE

IN THE MATTER OF AN ARBITRATION UNDER THE ARBITRATION RULES OF THE SINGAPORE INTERNATIONAL ARBITRATION CENTRE SIAC RULES (5TH EDITION, 1 APRIL 2013) ("SIAC RULES 2013")

ARB No. 143 of 2014

Between

THE GOVERNMENT OF THE LAO PEOPLE'S DEMOCRATIC REPUBLIC
(Claimant)

And

(1) LAO HOLDINGS N.V.
(2) SANUM INVESTMENTS LIMITED
(Respondents)

FINAL AWARD

Dated this 29th day of June 2017

Registered in SIAC Registry of Awards as:
Award No. 077 of 2017
on 30 June 2017

AT THE SINGAPORE INTERNATIONAL ARBITRATION CENTRE

IN THE MATTER OF AN ARBITRATION UNDER THE ARBITRATION RULES OF THE SINGAPORE INTERNATIONAL ARBITRATION CENTRE
(5th EDITION, 1 APRIL 2013)

Arbitration No. 143 of 2014 (ARB143/14/MV)

BETWEEN:

THE GOVERNMENT OF THE LAO PEOPLE'S DEMOCRATIC REPUBLIC

Claimant

And

1. LAO HOLDINGS N.V.
2. SANUM INVESTMENTS LIMITED

Respondents

FINAL AWARD

ARBITRAL TRIBUNAL:

Judge Rosemary Barkett (Presiding Arbitrator)
Mr. William Laurence Craig
Ms. Carolyn B. Lamm

29 June 2017

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1. This Award determines a dispute between the Parties, as defined below, which when originally filed, concerned the management, taxation, and sale of a jointly owned casino in Lao People's Democratic Republic. The Parties' obligations concerning these aspects of the casino were contained in a contract known as the Deed of Settlement, dated 15 June 2014 ("Deed" or "Deed of Settlement") and a Side Letter dated 18 June 2014 ("Side Letter."), under which this Arbitration was commenced.

I. PARTIES

2. This Arbitration was commenced by Claimant, the Government of the Lao People's Democratic Republic ("Laos" or "Government").

3. The named contact of Claimant is as follows:

Ministry of Planning and Investment
Souphanouvong Road
Vientiane Lao PDR 01001

Attention: Mr. Outakeo Keodouangsinh, Deputy Director General,
Investment Promotion Department.

4. Claimant is represented in this Arbitration by David J. Branson, Esq.; by Womble Carlyle Sandridge & Rice LLP, One Wells Fargo Center, 301 South College Street, Suite 3500, Charlotte, NC 28202-6037, USA, and in particular by Mr. Kurt Lindquist II, Mr. John D. Branson, Mr. Russ Ferguson, and Ms. Emily C. Doll; and by Drew & Napier LLC, 10 Collyer Quay, 10th Floor Ocean Financial Centre, Singapore 049315, and in particular by Mr. Cavinder Bull SC and Ms. Gerui Lim.

5. First Respondent is Lao Holdings N.V., established under the laws of Aruba, Netherland, and Second Respondent is Sanum Investments Limited, established under the laws of the Macau Special Administrative Region of the People's Republic of China.

6. The contact information for First Respondent and Second Respondent, respectively, is as follows:

Lao Holdings N.V.
L.G. Smith Boulevard 62
Miramar Building
Suite 304
Oranjestad, Aruba

Sanum Investments Limited

Avenida da Amizade
No. 1321
Edf. Hung On Center, 7 andar X, Macau SAR

7. First and Second Respondents will collectively be referred to as "Respondents" or "Sanum," unless the context requires they be identified in their individual capacity in which case they will be referred to separately as Lao Holdings N.V. and Sanum Investments Limited.

8. Respondents are represented in this Arbitration by Debevoise & Plimpton LLP, 919 Third Avenue, New York, NY 10022, USA and in particular by Mr. David Rivkin, Mr. Christopher Tahbaz, Mr. Carl Micarelli, and Ms. Blair Albom; by Ms. Samantha Rowe from Debevoise & Plimpton, 65 Gresham Street, London EC2V 7NQ, UK; and also by Ms. Deborah Deitsch-Perez from Lackey Hershmann LLP, 3102 Oak Lawn Avenue, Suite 777, Dallas, Texas 75219-4241, USA.

9. Claimant and Respondents are hereinafter referred to as the "Parties."

II. PROCEDURAL HISTORY

10. Although the Parties are involved in related arbitrations before different tribunals, the procedural history that follows concerns only the pleadings and matters submitted in this Arbitration.

11. This Arbitration was commenced on 19 August 2014, pursuant to Paragraph 35 of the Deed of Settlement (see paragraphs 61 and 65 below) and Rule 3.1 of the Arbitration Rules of the Singapore International Arbitration Centre (5th Edition, 1 April 2013) ("SIAC Rules"), by a Notice of Arbitration dated 11 August 2014, as amended by the Amended Notice of Arbitration dated 3 June 2016. Respondents filed their Response to the Notice of Arbitration and Brief Statement of Counterclaims on 16 September 2014, as amended by their Amended Response to Notice of Arbitration and Brief Statement of Counterclaims on 8 May 2015 and by their Second Amended Response to Notice of Arbitration and Brief Statement of Counterclaims on 3 June 2016.

12. In accordance with Paragraph 35 of the Deed of Settlement (see paragraph 65 below), this Arbitration is subject to the SIAC Rules and administered by the Singapore Arbitration Centre ("SIAC"). The seat of Arbitration, is Singapore and, consequently, the *lex arbitri* is Singapore law.

A. Appointment of the Arbitral Tribunal

13. Claimant nominated Mr. W. Laurence Craig, of Orrick, 31 ave Pierre 1er de Serbie Paris 75782, Cedex 16, France, in its Notice of Arbitration.

14. Respondents jointly nominated Ms. Carolyn Lamm, of White & Case LLP, 701 Thirteenth Street, NW, Washington, DC 20005-3087, USA, in their Response to the Notice of Arbitration and Brief Statement of Counterclaims.

15. Judge Rosemary Barkett, of the Iran-United States Claims Tribunal, Parkweg 13, 2585 JH, The Hague, Netherlands, accepted her nomination as Presiding Arbitrator on 12 November 2014.

16. Dr. Michael C. Pryles, the President of the Court of Arbitration, appointed Mr. Craig and Ms. Lamm as Co-arbitrators, pursuant to SIAC Rule 6.3, on 29 September 2014 and 30 September 2014, respectively. On 13 November 2014, Dr. Pryles appointed Judge Barkett as Presiding Arbitrator, pursuant to the agreement of the Parties, and properly constituted the tribunal in this Arbitration ("Tribunal"). The Parties were then notified of the constitution of the Tribunal and raised no objections to the appointment of any member of the Tribunal.

B. Respondents' Motion to Stay Proceedings

17. As part of their Response to the Notice of Arbitration and Brief Statement of Counterclaims, dated 16 September 2014, Respondents included a Motion to Stay Arbitration before this Tribunal pending the resolution of applications before two separate investment arbitrations: one arbitration brought under the ICSID Rules, and one *ad hoc* arbitration under the UNCITRAL Rules (referred to collectively as "BIT Arbitrations" and "BIT Tribunals") (see paragraphs 61–63 and 83–90 below for an abbreviated summary of the procedural history of the BIT Arbitrations).

18. Following the constitution of the Tribunal, this Tribunal held a preliminary conference call with the Parties on 24 November 2014, during which the Parties were invited to propose a briefing and hearing schedule on Respondents' Motion to Stay Arbitration. The Tribunal issued **Procedural Order 1** on 26 November 2014 setting a briefing schedule and providing for a hearing on 8 January 2015 regarding all matters necessary to resolve Respondents' Motion to Stay Arbitration, including the question of jurisdiction

and whether this Tribunal has exclusive, concurrent, or no jurisdiction over the matters presented before it.

19. On 7 December 2014, the Tribunal issued **Procedural Order 2** confirming the hearing on 8 January 2015 regarding Respondents' Motion to Stay Arbitration and other procedures for this Arbitration.

20. The Tribunal held a one-day hearing on Respondents' Motion to Stay Arbitration on 8 January 2015 at the International Dispute Resolution Centre ("IDRC"), 70 Fleet St, London EC4Y 1EU, UK. On 12 January 2015, the Tribunal issued **Procedural Order 3**, containing, *inter alia*, the following conclusions:

    a. The Tribunal temporarily deferred ruling on the Respondents' Motion to Stay Arbitration pending the results of the BIT Arbitration rulings.

    b. The Parties agreed that the Tribunal was properly constituted on 13 November 2014.

    c. The Parties agreed that New York law governs the substance of the dispute.

    d. The place of Arbitration is Singapore, as set forth in the Deed and as confirmed by the Parties.

    e. The Parties agreed that English is the language of the proceedings.

C. The Parties' Provisional Measures Applications and Requests for Interim Relief

21. On 16 April 2015, Respondents filed before this Tribunal a Provisional Measures Application seeking interim relief ordering Claimant to (a) retract its letter of 16 April 2015 seizing the casino, (b) not to take any steps towards the sale of the casino and (c) not to take any steps that would alter the status quo of the dispute. The Tribunal issued **Procedural Order 4** on 22 April 2015 identifying questions necessary to resolve Respondents' Application for Provisional Measures and permitting Claimant to file a Rebuttal to Respondents' Provisional Measures Applications and Respondents to file a Reply to Claimant's Response to Respondents' Provisional Measures Applications.

22. On 1 May 2015, the Tribunal held a conference call with the Parties discussing immediate steps given Respondents' request for interim relief and developments with the BIT Arbitrations.

23. On 3 May 2015, the Tribunal issued **Procedural Order 5** setting a hearing for 16 June 2015 on all pending matters and the following briefing schedule in advance of the hearing, which was followed by the Parties:

    a. 8 May 2015: Respondents submitted an Amended Response to the Notice of Arbitration and Brief Statement of Counterclaims and an Amended Provisional Measures Application.

    b. 29 May 2015: Claimant submitted its Response to Respondents' Amended Provisional Measures Application.

    c. 8 June 2015: Respondents submitted their Reply to Claimant's Response to the Amended Provisional Measures Application.

    d. 15 June 2015: Claimant submitted its Rejoinder to Respondents' Amended Provisional Measures Application.

24. On 24 May 2015, the Tribunal issued **Procedural Order 6**, requesting Claimant to forthwith identify the witnesses it intended to call during the hearing on Respondents Amended Provisional Measures Application (which had been due on 15 May 2015). The Order also clarified that, in keeping with the agreement reached by the Parties during the telephone conference of 1 May 2015,

> all witness testimony will be supplied by written statements only and the witness will be produced at the hearing for oral examination only if the presence of the witness is requested by the adverse party for the purpose of cross examination. If either party wishes to vary this traditional procedure, that party may apply to the Tribunal to do so, showing good cause.

25. The hearing on Respondents' Amended Application for Provisional Measures was held, as scheduled, on 16 June 2015 at the IDRC, 70 Fleet St, London EC4Y 1EU, UK. The hearing was limited to one day, and the Tribunal heard extensive and helpful argument by counsel for both Parties and also heard testimony from one witness, Mr. John K. Baldwin, majority owner and Chairman of Sanum. However, the evidence submitted by the Parties, including the witness statements, presented directly contradictory versions of the facts and, accordingly, the Tribunal was unable to

determine contested merits issues, which the Parties would be entitled to develop fully with documentary and witness testimony subject to lengthier cross examination at the Final Hearing.

26. On 30 June 2015, the Tribunal issued the **Order on Respondents' Amended Application for Provisional Measures**, denying the application to the extent that it sought the return of the operation of the casino to Respondents because the record was not sufficiently complete to award all relief requested on an interim basis. However, the Tribunal did require Claimant to provide Respondents with regular and ongoing financial information pertaining to the operation of the casino. The order scheduled a Final Hearing on the merits of this Arbitration for 21 March 2016.

27. On 23 June 2015, Respondents filed an application with this Tribunal seeking (1) the appointment of a forensic expert to evaluate whether Claimant had, while managing the casino, viewed privileged documents of Respondents, as well as (2) the enjoinment of the 28 U.S.C. §1782 proceedings that Claimant had initiated against Respondents and a declaration that such proceedings breached the Deed. (The submission was entitled Respondents' Application for: (1) Appointment of Forensic Expert (2) Enjoinment of 28 U.S.C. §1782 Proceedings.) On 3 July 2015, the Tribunal requested Claimant to voluntarily defer the hearing on the Application for Issuance of Subpoenas, related to its §1782 action, until the Tribunal could rule on the issue and to permit both Parties to fully brief this issue. On 3 July 2015, Claimant agreed to defer the hearing, and on 30 July 2015, Claimant submitted its Response to Respondents' Provisional Measures Application of 23 June 2015.

28. The Tribunal issued the **Order on Respondents' Applications for (1) The Appointment of Forensic Expert (2) Enjoinment of 28 U.S.C. §1782 Proceedings** on 17 August 2015. The order denied Respondents' request for the appointment of a forensic expert because, on the record before the Tribunal, there was insufficient evidence that the documents were privileged. The order also denied Respondents' requests related to Claimant's 28 U.S.C. §1782 proceedings given the incomplete factual record, but the Tribunal requested Claimant to continue its deferment of the §1782 action.

29. Immediately prior to its Order on Respondents' Applications for (1) The Appointment of Forensic Expert (2) Enjoinment of 28 U.S.C. §1782 Proceedings, the Tribunal

issued **Procedural Order 7** on 13 August 2015 requesting (a) the Parties to submit additional evidence and witness statements and a briefing schedule in preparation for the Final Hearing on the merits scheduled for 21 March 2016 and (b) Claimant to report to the Tribunal and to Respondents the steps taken to provide Respondents with ongoing financial and marketing information concerning the casino as required under the Tribunal's Order on Respondents' Amended Provisional Measures Application.

30. On 29 August 2015, the Parties jointly requested the Tribunal to continue the Final Hearing until November 2016. On 15 September 2015, the Tribunal granted the continuance, scheduling the Final Hearing to begin on 14 November 2016 in Singapore.

31. On 16 December 2015, the Tribunal held a one-day procedural hearing at the offices of White & Case, 200 S. Biscayne Boulevard, Miami, FL. The hearing concerned the following requests and correspondence submitted by the Parties:

    a. 29 September 2015: Respondents requested, among other relief, that this Tribunal order the Claimant to provide additional financial, tax and corporate information with respect to the casino as well as to order Claimant to establish an escrow account for the proceeds of the sale.

    b. 20 October 2015: Respondents further alleged by way of an additional email letter both that Claimant had released marketing materials for the sale of the casino without considering Respondents' comments or input and that Claimant expanded its § 1782 action in disregard of this Tribunal's request of 17 August 2015.

    c. 24 October 2015: Claimant responded to Respondents' submissions of 29 September and 20 October 2015 and requested this Tribunal to order a stay of all motion and discovery practice until the sale of the casino was complete.

    d. 7 November 2015: Respondents replied to Claimant's submission of 24 October 2015 requesting that the Tribunal deny Laos' motion for a stay of discovery and motion practice and reiterating their earlier requests for relief.

    e. 12 November 2015: Claimant replied to Respondents' submission of 7 November 2015 and reiterated its request for its motion to stay discovery and motion practice.

f. 14 November 2015: Respondents replied to Claimant's 12 November 2015 submission and reiterated their requests for relief contained in Respondents' earlier submissions.

32. During the hearing of 16 December 2015, the Parties agreed on many of Respondents' requests for financial and tax information. Based on the hearing and the various submissions of the Parties, the Tribunal issued the **Order on Respondents' Requests for Provisional Measures and Claimant's Motion for a Stay of Discovery and Motion Practice** on 6 January 2016, resolving the remaining requests as follows:

    a. The Tribunal ordered the Parties to work together to establish an escrow account by 30 March 2016.

    b. The Tribunal denied Respondents' request to require Claimant to provide written reasons for the rejection of any of Respondents' suggestions on the marketing materials.

    c. The Tribunal declined to take any further action regarding Claimant's §1782 action beyond its request of 17 August 2015.

    d. The Tribunal denied Claimant's Motion for a Stay of Discovery and Motion Practice.

33. On 30 March 2015, Respondents submitted a request via email to extend the deadline for establishing a joint escrow account to hold the proceeds of the sale, to which Claimant responded via email on 1 April 2016. In response, on 7 April 2016, the Tribunal issued **Procedural Order 8** denying Respondents' request for an extension, and, while not precluding the Parties from reaching an agreement, required both Parties to each submit a proposed escrow agreement. The order also requested the Parties to advise whether they desired a hearing on this matter and requested Claimant to provide an anticipated schedule of the sale of the casino. On 20 April 2016, both Parties submitted their proposed escrow agreements and Claimant provided additional information on the sale of the casino, and, on 25 April 2016, both Parties submitted a response regarding the other Party's proposed escrow agreement. Neither Party requested a hearing on the matter of the escrow agreement at this time.

34. On 3 May 2016, the Tribunal issued **Procedural Order 10**, requesting further briefing from the Parties on the issue of the amount to be deposited into the escrow and inquiring

whether the Parties would desire to bifurcate the Final Hearing and hold a full evidentiary hearing on all issues related to the escrow agreement in advance.

35. Parallel to the submissions on the escrow agreement, on 25 April 2016, Claimant submitted an Application for Urgent Interim Relief regarding Respondents' conduct towards potential bidders and counsel for Claimant and requesting this Tribunal to enjoin Respondents from filing a Second Material Breach Application before the BIT Arbitrations. On 27 April 2016, the Tribunal requested Respondents to submit any response by 2 May 2016, which Respondents promptly requested be extended until 16 May 2016. The Tribunal issued **Procedural Order 9** on 28 April 2016, denying in part and granting in part Respondents' request for an extension and denying Claimant's request to enjoin Respondents from filing a Second Material Breach Application before the BIT Tribunals.

36. On 8 May 2016, this Tribunal requested that the Parties simultaneously identify all pending issues that each Party believed should be resolved before the Final Hearing in November of 2016 and submit a proposed briefing schedule. The Parties did so in their submissions of 24 May 2016 and 25 May 2016. On 30 May 2016, the Tribunal issued **Procedural Order 11** directing the Parties to file submissions on outstanding issues to be resolved prior to the Final Hearing and to attend a hearing on same on 8 July 2016. The issues included:

    a. The continuing jurisdiction of the Tribunal in light of Respondents' Second Material Breach Application filed before the BIT Tribunal.

    b. Issues related to the amount to be placed in escrow.

    c. Respondents' request for the preservation and production of evidence on the casino's servers.

37. The hearing of 8 July 2016 was held at the International Chamber of Commerce, 112 avenue Kléber, 75016 Paris, France, and based on the previous submissions of the Parties and the hearing, the Tribunal issued the **Order on Interim Measures Concerning the Establishment of an Escrow Agreement and Respondents' Requests to Stay the Proceedings and to Preserve and Produce Evidence** on 22 July 2016, concluding as follows:

    a. The Parties agreed the Tribunal has jurisdiction to continue to grant or deny

interim relief.

b. The Tribunal denied Respondents' Motion to Stay the Proceedings pending resolution of their Second Material Breach Application before the BIT Tribunal because the principles of justice, equity, judicial efficiency and judicial economy would not have been served by granting such a request so close to this Tribunal's Final Hearing.

c. The Tribunal instructed the Parties to establish an escrow account agreement consistent with the determination that any amount designated as past due taxes are to be excluded from the escrow.

d. The Tribunal ordered preservation of the servers as agreed to by the Parties at the hearing.

D. Document Production and Respondents' Motion to Continue the Final Hearing

38. On 28 July 2016, the Parties filed a joint submission containing each Party's Redfern Schedule, detailing over 20 lengthy disputed document requests, complete with subparts, to be resolved by the Tribunal. Given the scope of the disputed requests, on 29 July 2016, the Tribunal required the Parties to meet and confer to resolve some of the disputed claims.

39. Respondents made email submissions on 22 July 2016, 27 July 2016 and 5 August 2016 requesting access to all information on three of the casino's servers that predate 22 April 2015, and Claimant, in turn, filed responsive submissions. On 18 August 2016, the Tribunal issued the **Order on Respondents' Request for Emergency Interim Relief Regarding the Three Additional Servers**. Given the broad scope of Respondents' request, the order required Respondents to file a submission by 24 August 2016 detailing what specific material they believed was contained in the servers that was not already in their possession and their relevance and materiality to the claims at issue. The order permitted Claimant to file a response by 30 August 2016. Additionally, in light of the overlap between the disputed Redfern Requests and the material contained on the three servers, the Tribunal requested the Parties to submit a revised, joint Redfern Schedule listing any outstanding disputed requests by 30 August 2016.

40. On 24 August 2016, as required by the Tribunal's order of 18 August 2016, Respondents

filed a request for five categories of documents that Respondents alleged were contained on the three disputed servers.

41. On 27 August 2016, the Tribunal issued the **Order on Respondents' Request for a Continuance of the Final Hearing**, stating that, if the sale of the casino did not finally and completely close on or about 31 August 2016, the Final Hearing scheduled for 14 November 2016 would be continued. The Tribunal also requested the Parties to brief specific issues to determine whether a bifurcation of the Final Hearing, and maintaining the November 2016 schedule, would be possible. The order also extended the Parties' deadline to submit a revised, Joint Redfern Schedule to 1 September 2016 and required the Parties to meet and confer in good faith to resolve the outstanding document production disputes.

42. On 31 August 2016, the Tribunal ordered Claimant to establish an escrow agreement with TMF Trustees Singapore Limited ("TMF Trustees") in accordance with the draft proposal submitted by Claimant and the Tribunal's comments thereto.

43. The Parties submitted their joint Redfern Schedule on 1 September 2016, in accordance with the Tribunal's prior order of 18 August 2016. The joint Redfern Schedule included a total of nine disputed requests (seven raised by Respondents and two raised by Claimant). The cover letter represented that the 30 August 2016 Joint Redfern Schedule contained the only remaining disputed items. Apparently, there were some requests that the Parties agreed to produce, but the Tribunal was not advised further concerning the "undisputed" requests.

44. The Tribunal resolved all remaining document discovery disputes on 8 September 2016, issuing the **Order on Disputed Redfern Document Production Requests**, with a partial dissent. In this order, the Tribunal granted Claimant's document requests, with the exception of documents protected by attorney-client privilege. A majority of the Tribunal granted one of Respondents' requests but denied six other requests of Respondents, noting that Claimant had represented it had already complied with those requests. The Tribunal also required that "[a]ny documents excluded from production on the basis of privilege must be listed in a privilege log."

45. On 22 September 2016, the Tribunal issued the **Order on (1) Respondents' Request for Production of Materials in Three Disputed Servers (2) Respondents' Request for a Continuance, (3) The Request to Modify the Escrow Agreement and (4) Claimant's**

Motion for Sanctions, resolving the Parties' various disputes and requests raised via email submissions during August and September 2016 as follows:

a. Regarding the three servers, the Tribunal granted in part and denied in part Respondents' document production requests.

b. The Parties had previously both agreed that bifurcation of the Final Hearing was not possible, and the Tribunal indicated its willingness to continue the Final Hearing, as requested by Respondents, provided the Parties could agree to a new date in early 2017.

c. The Tribunal granted the modifications to the escrow agreement as agreed to by the Parties and provided specific instructions for other modifications to the agreement.

d. The Tribunal denied Claimant's request of 4 September 2016 to impose sanctions on Respondents for alleged misconduct in document production.

46. On 28 and 29 September 2016, the Tribunal granted Respondents' Motion to Continue the Final Hearing, scheduling the Final Hearing for the week of 22 January 2017 and requested the Parties to submit, by 3 October 2016, an agreed briefing schedule and an agreed location for the Final Hearing.

47. Subsequent to the Tribunal's order of 8 September 2016, Claimant and Respondents both submitted privilege logs and multiple email submissions responding to the other Party's privilege log. On 1 November 2016, the Tribunal issued its decision on the Parties' claims of privilege with the **Order on Parties' Motions Concerning Privilege Logs**, to which there was a partial dissent by Ms. Lamm.

48. On 21 October 2016, both Parties submitted Supplemental Document Production Requests, which the Tribunal resolved in the **Order on Disputed Supplemental Document Production Requests** of 9 November 2016.

49. On 5 December 2016, the Tribunal issued the **Order on Motion for Reconsideration of Order of 1 November 2016; Motion for Sanctions for Breach of Confidentiality; Response to 1 November 2016 Order**, in which the Tribunal:

a. Denied Respondents' requests of 3 and 11 November 2016 to reconsider its Order of 1 November 2016 concerning privilege logs;

b. Denied Respondents' request of 2 November 2016 for sanctions against Claimant for violating a confidentiality provision of this Arbitration; and

c. Required additional document production based on clarifying submissions of the Parties.

50. On 15 and 30 December 2016, Respondents submitted to the Tribunal, via email, requests that the Tribunal order Claimant to comply with their document production requirements, that the Tribunal reverse a prior ruling on disputed document production concerning the contents of an email account, and that the Tribunal overrule Claimant's claim of privilege over certain documents. Claimant responded on 23 December 2016, and the Parties reached agreement on some issues of document production and privilege.

51. On 7 January 2017, the Tribunal issued the **Order on Respondents' Motion to Compel**, with a partial dissent by Ms. Lamm, instructing the Parties to abide by their agreement, requiring Claimant to produce the document that was unintentionally not produced, and denying Respondents' document production request concerning the email server for lack of specificity, materiality and relevance.

52. On 9 January 2017, the Tribunal issued the **Order on Claimant's Motion to Exclude Respondents' Expert Report from CBRE and Witness Statement of Leslie Gare**, granting Claimant's request of 28 December 2016 to exclude the Expert Report from CBRE due to the prejudice caused by its late filing and the proximity of the Final Hearing but denying Claimant's request to exclude the Witness Statement of Leslie Gare due to lack of prejudice.

53. On 3 January 2017, Respondents requested the Tribunal to permit two of their expert witnesses who Claimant had not called for cross-examination to be present at the Final Hearing and be available for examination by the Tribunal. Claimant opposed this request in its submission of 10 January 2017. On 14 January 2017, the Tribunal issued, by majority, the **Order on Respondents' Request to Have Kalt and Fisher Present at the Final Hearing** denying Respondents' request because the Parties had agreed that only witnesses called for cross-examination could be present at a hearing, as memorialized in Procedural Order 6 (see paragraph 24, above), and, given the principles of fairness, expediency, and efficiency, no good cause was shown to vary the agreed procedure.

54. On 12 January 2017, the Tribunal issued **Procedural Order 12 – Pre-Hearing Order**,

which was based on the Parties' previously submitted proposed pre-hearing orders, and established, *inter alia*, the hearing schedule, timekeeping guidelines, procedure for witness and expert examination, procedure for the translation of oral testimony, requirements of the hearing bundles and hearing materials, the Parties' agreement of no post-hearing briefs, and the deadline to submit post-hearing cost submissions.

E. Final Hearing and Submission of Memorials

55. The Parties simultaneously filed their Opening Memorials on 14 October 2016, their Counter-memorials on 2 December 2016, and Rejoinders on 22 and 23 December 2016, along with expert reports, witness statements, and documentary evidence.

56. The Parties provided the Tribunal with hearing bundles containing all evidence to be relied upon during the Final Hearing prior to the commencement of the Final Hearing, as required by Procedural Order 12.

57. The Final Hearing on the merits of this Arbitration was held at Espace Vinci, 25 rue des Jeuneurs, 75002 Paris, France, commencing at 09:30 on 22 January 2017 and concluding on 28 January 2017. No hearing took place on 27 January 2017. The following witnesses were present and cross-examined at the Final Hearing:

Claimant's Witnesses:

a. Mr. Sheldon Trainor-DeGirolamo
b. Dr. Bounthavy Sisouphanthong
c. Mr. David John Green
d. Mr. Joao Julio Janela Baptista da Silva
e. Mr. Kenneth Yeo

Respondents' Witnesses

a. Mr. John K. Baldwin
b. Mr. Angus Noble
c. Mr. Phillip James
d. Mr. William Bryson

e. Mr. Premjit Dass[1]

Non-Party Witness

a. Mr. Quin Va[2]

58. Pursuant to SIAC Rule 28.1, the Tribunal closed the proceedings by notice to the Parties and to SIAC on 25 April 2017 via its **Notice of the Closing of Proceedings**.

F. Cost Submissions

59. As agreed by the Parties and Tribunal at the Final Hearing, the Parties submitted their cost submissions on 15 February 2017. Respondents also submitted, on 15 February 2017, material clarifying testimony at the Final Hearing. On 17 February 2017, Respondents submitted an objection, via email, to Claimant's cost submissions.

60. In addition to the procedural history set forth above, the Parties submitted minor disputes via email, which were resolved by the Tribunal.

III. FACTUAL CONTEXT PRIOR TO THIS ARBITRATION

61. Prior to this Arbitration, Laos and Sanum jointly owned the Savan Vegas Hotel and Casino ("Savan Vegas" or "Casino") located in Savannakhet, Laos. The Casino was owned by Savan Vegas and Casino Co. Ltd., which in turn was owned 80% by Sanum, whose majority owner and Chairman is Mr. John K. Baldwin, and 20% by Laos. The Parties' rights and obligations with respect to the Casino were contained in a Project Development Agreement dated 10 August 2007 ("2007 PDA").[3] There were other, earlier agreements between the Parties; however, the Deed, established new obligations and supersedes those agreements. Although the Dissenting Opinion of Ms. Lamm has added additional facts regarding the conduct of the Parties prior to the Deed, the Majority considers that what is primarily relevant is the performance by the Parties of their obligations under the Deed.

62. The relationship between the Parties became acrimonious and, in 2012, led to Sanum

[1] Although Claimant chose in the end not to cross-examine Mr. Dass, the Tribunal asked questions of this witness.
[2] Although Claimant requested that Mr. Va testify, he was not a witness for Claimant. Respondents first examined Mr. Va, followed by Claimant and questions from the Tribunal.
[3] C-003, Project Development Agreement on Savan Vegas Entertainment Hotel and Casino in Savannakhet Province, between The Government of The Lao People's Democratic Republic and Sanum Investments Ltd., Xaya Construction Co., Ltd., and Mr. Xaysana Xaysoulivong, 10 August 2007 [hereinafter "2007 PDA"].

Investments Limited and Lao Holdings N.V. filing identical but separate arbitrations against Laos alleging treaty violations (referred to herein as the "BIT Arbitrations" and the tribunals for these arbitrations as the "BIT Tribunals").[4] In the BIT Arbitrations, Sanum alleged that certain actions taken by Laos negatively impacted Savan Vegas and constituted violations of Laos' treaty obligations, causing investment losses to Sanum of between US$690,000,000 and US$1,000,000,000.

63. As explained hereafter, the Parties settled the BIT Arbitrations by entering into the Deed of Settlement, and Claimant commenced this Arbitration in order to enforce the terms of that settlement.[5]

64. The Deed set forth steps to be taken by both Parties to accomplish the primary goal of selling the Casino to a third party within approximately ten months. To accomplish this goal, the Deed provided for a time period within which Sanum was to sell the Casino, and a process for which a new tax rate for Savan Vegas was to be set and paid. It also provided that management of the Casino would be monitored during this period and transferred to a third-party gaming operator should Sanum fail to sell the Casino by the specified deadline. The specific provisions in the Deed relevant to those purposes are as follows:

> 5. Laos and the Claimants [Sanum] each confirm that the equity ownership of the Savan Vegas and Casino Co., Ltd. gaming project in Savannakhet Province is held 80% by the Claimants [Sanum] and 20% by Laos.
>
> 6. Laos shall treat the Project Development Agreement ("PDA") dated 10 August 2007 in respect of the Savan Vegas Casino, Lao Bao Slot club (located at the Lao border at Lao Bao) and Savannakhet Ferry Terminal Slot Club (located at the Savannakhet / Mukdahan checkpoint) all in Savannakhet Province (collectively, the "Gaming Assets") and each of the licenses issued in respect of the Lao Bao Slot Club and the Savannakhet Ferry Terminal Slot Club, as being restated as of the Effective Date [15 June 2014], with a term in each case of fifty (50) years as from the Effective Date.

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[4] Lao Holdings N.V., which is incorporated in Aruba, brought arbitration under the ICSID (Additional Facility) Rules, alleging breaches by Laos of the Agreement on Encouragement and Reciprocal Protection of Investments Between the Lao People's Democratic Republic and the Kingdom of the Netherlands. Sanum, which is incorporated in Macau in the People's Republic of China, brought an *ad hoc* arbitration under the UNCITRAL Rules alleging breaches by Laos of the Agreement Between the Government of the People's Republic of China and the Government of the Lao People's Democratic Republic Concerning the Encouragement and Reciprocal Protection of Investments (this arbitration was eventually referred for administration to the Permanent Court of Arbitration). The arbitrations alleged that Laos had expropriated and otherwise violated Respondents' investment treaty rights with regard to their investments.

[5] The full text of the Deed of Settlement is attached hereto as Appendix A.

7. Laos shall forgive and waive any and all taxes and related interest and penalties due and payable by the Claimants [Sanum] and the Gaming Assets up to 1 July 2014 in respect of the Gaming Assets, provided, however, that taxes shall be due and payable as from 1 July 2014 as provided in Section 8 below. The taxes covered herein are all taxes and fees including but not limited to those that are specifically indicated in Article 1 of the previously signed FTA attached as Annex D hereto.

8. Laos and the Claimants [Sanum] agree that a new flat tax ("FT") shall be promptly established in accordance with the procedure described in Section 9 below, and such FT shall be applied to the Gaming Assets with retroactive effect dating back to 1 July 2014. The FT shall apply throughout the fifty (50) year term of the PDA. Such FT shall be escalated by five percent (5%) at the fifth (5th) anniversary of the Effective Date [15 June 2014] and by five percent (5%) on every five (5) year anniversary thereafter throughout the term.

9. Laos shall appoint RMC Gaming Management LLC ("RMC") not later than ten (10) days after the Effective Date [15 June 2014], on the terms and conditions attached hereto as Annex E. If RMC does not accept the appointment within 4 days of the Effective Date [15 June 2014], Laos shall appoint another agent to assist it in the matter as described in Annex E. Within ten (10) days of the Effective Date [15 June 2014], the Claimants (collectively) [Sanum] shall nominate one person and Laos shall nominate one person (which may be an employee of RMC) to be members of a Flat Tax Committee (the "FT Committee"). Within ten (10) days after the Effective Date [15 June 2014], the two persons nominated by the Claimants [Sanum] and Laos to the FT Committee shall nominate a mutually acceptable third FT Committee member. If the two FT Committee members fail to reach agreement on such third FT Committee member within such deadline, the third FT Committee member shall be appointed in the sole discretion of the President of the Macao Society of Registered Accountants. Within forty five (45) days of the Effective Date [15 June 2014], the duly composed, three-member FT Committee shall determine a new fair and reasonable FT applicable to the Gaming Assets, taking into due consideration all relevant information submitted to the FT Committee by the Claimants [Sanum] and Laos.

10. Following the establishment of the FT as provided in Section 9 above, the Claimants [Sanum] shall take steps to establish and expeditiously carry out a sale of the Gaming Assets (the "Sale") in compliance with applicable Lao laws. The Claimants [Sanum] shall grant RMC access to all Sale related information and documents as stated in Annex E and shall keep RMC fully informed in regard to all matters related to the Sale. RMC shall have the right to share such Sale related information with Laos. RMC's point of contact in respect of such matters shall be Mr. Clay Crawford or his successor.

11. The Claimants [Sanum] shall have the right to continue to manage and operate the Gaming Assets in compliance with applicable laws through the completion of the Sale, subject to monitoring and oversight of RMC in accordance with the provisions of Annex E, and provided, however, that such Sale shall be completed not later than ten (10) months after the Effective Date [15 June 2014], and provided, further, that if prior to the end of such ten (10)

> month period the Claimants [Sanum] have signed an MOU with a proposed buyer to complete such Sale, then such ten (10) month period shall be extended by the term of the MOU but not more than an additional ninety (90) days within which to complete the Sale (the "Sale Deadline").
>
> 12. If the Sale Deadline is missed, the Claimants [Sanum] and Laos shall have the right to appoint RMC or any other qualified gaming operator to: (i) step in and manage and operate the Gaming Assets in place of the Claimants [Sanum] until the Sale is completed, and (ii) complete the Sale; provided that such gaming operator shall have a fiduciary duty to each the Claimants [Sanum] and Laos as interested parties in the Gaming Assets. If the Claimants [Sanum] and Laos have not agreed on who that operator shall be 30 days before the Sale Deadline, they shall submit the matter to the FT Committee for final decision such that the operator can take over by the Sale Deadline.
>
> 13. The Sale shall be completed on a basis that will maximize Sale proceeds to the Claimants [Sanum] and Laos, provided, however, that the winning bidder shall be either: (i) a recognized gaming company or junket operator duly licensed to operate a gaming casino, or (ii) any entity approved by the FT Committee as possessing the requisite degree of integrity, character and fitness to own, manage and operate the Gaming Assets in accordance with applicable Lao laws. The FT Committee shall respond within two (2) weeks of receipt from the Claimants [Sanum] of notice of a proposed purchaser as to whether such proposed purchaser meets the standards set forth herein.

65. In addition to these provisions, the Deed contains three provisions addressing the resolution of disputes which might occur between the Parties:

> 32. The Claimants [Sanum] shall only be permitted to revive the [BIT] arbitration in the event that Laos is in material breach of Sections 5–8, 15, 21–23, 25, 27 or 28 above and only after reasonable written notice is given to Laos by the Claimants [Sanum] of such breach and such breach is not remedied within 45 days after receipt of notice of such breach. The Sale Deadline and any other relevant time periods herein shall be extended by the length of time required to cure such breach. In the event that there is a dispute as to whether or not Laos is in material breach of Sections 5–8, 15, 21–23, 25, 27 or 28 above, the Tribunals shall determine whether or not there has been such a material breach and shall only revive the [BIT] arbitration if they conclude that there has been such a material breach.
>
> 35. In the event that the Claimants [Sanum] fail to comply with their obligations under this Deed, Laos shall be entitled to commence a fresh arbitration to enforce the terms of this Deed. Such arbitration shall be conducted in Singapore in accordance with the Arbitration Rules of the Singapore International Arbitration Centre for the time being in force. The seat of the arbitration shall be Singapore. The Tribunal shall consist of three arbitrators. Each Party shall nominate one arbitrator and the two nominated arbitrators shall nominate the presiding arbitrator. In the event that the two nominated arbitrators are unable to agree on a presiding arbitrator, the presiding arbitrator shall be appointed by the President of the SIAC Court of

Arbitration. The language of the arbitration shall be English.

42. This Deed shall be governed by and construed solely in accordance with the laws of New York. Any dispute arising out of or in connection with this Deed, including any question regarding its existence, validity, or termination, shall be referred to and finally resolved by arbitration in Singapore in accordance with the Arbitration Rules of the Singapore International Arbitration Centre for the time being in force, including its emergency arbitration rules. The seat of the arbitration shall be Singapore. The Tribunal shall consist of three arbitrators. Each Party shall nominate one arbitrator and the two nominated arbitrators shall nominate the presiding arbitrator. In the event that the two nominated arbitrators are unable to agree on a presiding arbitrator, the presiding arbitrator shall be appointed by the President of the SIAC Court of Arbitration. The language of the arbitration shall be English.

66. The Deed further contains the following three provisions relating to its interpretation and application:

37. This Deed shall be construed as a whole according to its fair meaning and none of the Parties (nor the Parties' respective attorneys) shall be deemed to be the draftsman of this Deed in any action which may hereafter arise between the Parties.

38. The Parties agree to act in good faith in relation to the performance of each Party's obligation under this Deed and not to make any false statements against each other.

48. Time shall be of the essence of this Deed.

67. On 17 June 2014, two days after the Deed was signed, Sanum refused to submit the Deed to the BIT Tribunals. Sanum alleged that it had been procured by fraud. The fraud that was alleged consisted of an allegation that certain language in the signed Deed of Settlement was "not what [Sanum's lawyers] remember[ed] seeing" when the two Parties were preparing the provisions.[6]

68. In response, Laos argued that Sanum's counsel had read and signed the Deed of Settlement and, therefore, any provisions that were not in the executed agreement could not constitute fraud. Laos commenced an arbitration the next day, 18 June 2014, in SIAC Case No. ARB 114/14 pursuant to Paragraph 42 of the Deed of Settlement seeking a declaration that the Deed of Settlement was not procured by fraud but was valid and enforceable.

69. On the same day, 18 June 2014, the Parties executed a Side Letter, reaffirming and

[6] R-006, Hr'g Tr. at 11, *The Government of the Lao People's Democratic Republic v. Sanum Investments Ltd et al*, SIAC Arb. No. 114/14 MV, 18 June 2014 (reading prior testimony of Respondents' counsel).

clarifying the language of the Deed of Settlement.[7] Sanum also acknowledged that Laos had not committed fraud, and a sole Arbitrator in SIAC Case No. ARB114/14 issued a Consent Award stating that the Deed of Settlement, its annexes, and the Side Letter were valid, enforceable and binding and, most importantly, had not been procured by any fraud on the part of Laos.[8]

70. These two documents, the Deed and the Side Letter are to be read together. This Arbitration arises out of and pursuant to the terms of the Deed and Side Letter, and the performance of the obligations contained therein is the focus of this Arbitration.

71. Nine days after the Consent Award was entered (see paragraph 69), Sanum again alleged a breach of the Deed by Laos, which is detailed in paragraphs 75 to 89 of this Award. Laos denied any breach and filed its Notice of Arbitration on 11 August 2014 seeking enforcement of the Deed. From the date the Deed was executed on 15 June 2014, there ensued countless submissions, pleadings, and production pertaining to the obligations in the Deed both in the BIT Arbitrations and in this Arbitration, as discussed in the Procedural History of this Award. Specifically, Sanum filed eight applications for interim relief before the BIT Tribunals and this Tribunal.[9] Laos responded to those applications and filed two applications for interim relief before this Tribunal.[10] Additionally, there were many disputes regarding document production and other requests for interim resolution. As explained more fully below, when Sanum's time period to sell the Casino under the Deed expired, Laos seized the Casino and hired a casino management company to operate and immediately sell the Casino, which was all accomplished by August 2016. These actions generated more claims and counterclaims.

72. The Tribunal now turns to setting out the basic chronology relevant to the claims and counterclaims made by both Parties, followed by the Tribunal's conclusions which include any additional facts necessary for the resolution of those claims.

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[7] The full text of the Side Letter is attached hereto as Appendix B.

[8] C-076, Consent Award, *The Government of the Lao People's Democratic Republic v. Lao Holdings N.V. and Sanum Investments Limited*, SIAC Case No. ARB 114/14/MV, 18 June 2014.

[9] Before the BIT Tribunals, Respondents filed two Material Breach Applications (dated 4 July 2015 and 26 April 2016) and two Provisional Measures Applications (one prior to the Deed of Settlement and one dated 19 January 2015). Before this Tribunal, Respondents have filed two Provisional Measures Applications (dated 16 April 2015 and 8 May 2015); an Application to Enjoin §1782 Proceedings in the United States (dated 23 June 2015); and an Emergency Application (dated 22 July 2016).

[10] Claimant filed a Request for Interim Measures (dated 25 April 2015) and a Motion to Sanction (dated 4 September 2015) before this Tribunal.

IV. FACTUAL SUMMARY RELEVANT TO THIS ARBITRATION

A. Establishment of the FT Committee and Events Prior to Laos' Seizure of Savan Vegas

73. Immediately following the execution of the Deed, Sanum, and in particular Mr. Baldwin, continued to operate the Casino under the Deed's obligation to sell the Casino within ten months with RMC monitoring the process.

74. Pursuant to the Parties' obligation to form the FT Committee, Laos nominated Mr. Robert Russell (the CEO of RMC) on 20 June 2014 to serve on the FT Committee, and Sanum nominated Mr. Steve Rittvo (Chairman of Innovation Group and adviser to and expert witness for Sanum) on 25 June 2014.[11]

75. However, on 27 June 2014, nine days after the Consent Award was issued and the Side Letter was executed, Sanum submitted a Material Breach Notice to Laos alleging that Laos was in material breach of the Deed and this "entitle[d] [Respondents] to revive the international arbitration proceedings"[12] under Paragraph 32 of the Deed.[13]

76. Sanum's Material Breach Notice alleged that the Government had violated Paragraph 6 of the Deed[14] by granting a gaming license to a rival casino or casinos within Sanum's area of exclusivity. Sanum advised in their Material Breach Notice that their claim was based on the reference to a casino in "announcements made in [the newspaper] *The Nation* and reported elsewhere." Sanum attached copies of the following to their Material Breach Notice:

    a. An internet article in *The Nation*'s "Business" section, stating "Asean Union Group has launched its second venture overseas—the Asean Paradize Savan City—in Laos with a total investment of US$10 billion . . ., comprising an offshore financial centre, entertainment, casino, and communities for foreigners" as well as "a commercial area, . . ., retail, entertainment complex, duty free, and hotels," and "an international school, residences, and

[11] C-079, Flat Tax Committee – Independent Member Position Compensation Package, 20 June 2014.
[12] R-083, Material Breach Notice, *Lao Holdings N.V. v. Lao People's Democratic Republic*, ICSID Case No. ARB(AF)/12/27, p. 2, 6 June 2014.
[13] *See supra* paragraph 65 (providing the text of Paragraph 32).
[14] Paragraph 6 provides, in relevant part, that "Laos shall treat the [PDA] . . . as being restated as of the Effective Date, with a term in each case of fifty (50) years as from the effective date." Sanum argued that by authorizing a competing casino, Laos violated the 2007 PDA's guarantee of monopoly gaming rights to Savan Vegas.

hospital."[15]

b. An internet post on asiagamblingbrief.com, entitled "Laos to get $10 bln casino resort complex," citing the above referenced article in *The Nation* as its source.[16]

c. Asean Paradize's site design, posted on their web site, for "The Autonomous Economic Zone and Entertainment City."[17]

77. Sanum further stated in their Material Breach Notice that the "breach is not susceptible to cure due to the irreversible impact on the pool of buyers for the asset."[18]

78. However, at the same time, Sanum also concluded their Material Breach Notice by stating that, according to their interpretation, under Paragraph 32 of the Deed "all deadlines in the Deed and Side Letter are extended by the length of time required to cure this breach."[19]

79. After sending its Material Breach Notice, Sanum sent Laos an email letter five days later, on 2 July 2014, notifying Laos that although

> "***[n]either the Deed nor the Side Letter expressly addresses what happens with respect to the parties' performance during the 45-day cure period contemplated by Section 32 of the Deed***," Sanum had "suspend[ed] further performance under the Deed and Side Letter, at least until we have [Laos'] response to the Material Breach Notice. (emphasis added.)

In that email, Sanum specifically indicated that it was suspending "(i) the current work of the FT Committee to appoint a third member, and (ii) further monthly payments of RMC's fees under Annex E of the Deed."[20]

80. That same day, 2 July 2014 and approximately one-week after appointing Mr. Rittvo, Sanum expressly instructed Mr. Rittvo **not** to participate in the FT Committee.[21]

81. Laos responded by sending Sanum an email, also on 2 July 2014, asserting that Sanum was in material breach of the Deed for failing to pay RMC as required under Paragraph 9

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[15] R-083, Material Breach Notice, *supra* note 12, at Annex A.
[16] *Id.*
[17] *Id.*
[18] *Id.* at 2.
[19] *Id.*
[20] C-084, Email Letter to Minister of Planning and Investment and Werner Tsu from David Rivkin, p. 1, 2 July 2014 (emphasis added).
[21] C-089, Email from Robert Russell to Steve Rittvo, 6 July 2014 (noting that Mr. Rittvo had notified Mr. Russell that he was "told to stop work on the progress of the FT Committee efforts" on 2 July 2014).

and Annex E of the Deed. Laos further stated that, if RMC were not paid, Laos would be required to file a Notice of Arbitration terminating the Deed and installing RMC to take control of the Casino and to sell it.[22]

82. One day later, on 3 July 2014, Sanum again advised Laos by email that they would not perform any of the steps set out in the Deed to accomplish the sale of the Casino, asserting that, in their view, "it follows generally from Section 32 that the parties' performance under the Deed and Side Letter is to be suspended at least while a notice of material breach is pending."[23]

83. On 4 July 2014, Sanum filed its official **Application for Finding of Material Breach of Deed of Settlement and for Reinstatement of Arbitration** in the BIT Arbitrations, citing Paragraph 32 of the Deed and alleging, as they had in their Material Breach Notice to Laos, that, according to news reports, Laos had materially breached the Deed by approving and licensing a rival casino in violation of Paragraph 6 of the Deed. The Application claimed that the alleged breach had an irreversible impact on the pool of buyers for the asset.[24]

84. Accompanying their submissions, it appears Sanum included, in addition to those documents attached to their Material Breach Notice, an article from the *Times Reporter* entitled "Savan city project to create international gateway to Asean," which included a picture of the signing ceremony for the project. The article did not mention the word "casino," describing the project as an "Integrated Entertainment Resort." The article discussed the financing of the project and its other goals of creating an international school and encouraging trade and investment.[25] Sanum argued that the title "Integrated Entertainment Resort" meant "casino."

85. Three days later, on 7 July 2014 (and within ten days of receiving Sanum's Material Breach Notice), Laos submitted to the BIT Tribunal a letter from Dr. Bounthavy Sisouphanthong, Vice-Minister of Planning and Investment, Vientiane Laos, denying the allegation that a competing casino license had been issued, specifically stating:

> [Sanum] rel[ies] entirely on a press report apparently based upon a press release mentioned in the article issued by a private party. The Government

[22] R-011, Emails between Christopher Tahbaz and David Branson, p. 2, 2-3 July 2014.
[23] *Id.* at 1.
[24] R-020, Material Breach Application, *Lao Holdings N.V. v. Lao People's Democratic Republic*, ICSID Case No. ARB(AF)/12/27, p. 9, 4 July 2014.
[25] R-644, *Savan City Project to Create International Gateway to Asean*, TIMES REPORTERS, 30 June 2014.

> was not involved in that press release or publication. . . . [T]he Government of the Lao P.D.R. has not issued [a] gaming license for any new casino in Laos.[26]

86. Notwithstanding Dr. Bounthavy Sisouphanthong's official letter that no competing casino license had been issued, Sanum continued to decline to perform their obligations under the Deed, and, two days later on 9 July 2014, RMC sent the Government a "stop work notice" due to Sanum's nonpayment of RMC's outstanding invoice of 1 July 2014.[27]

87. On 11 July 2014, Laos submitted to the BIT Tribunal its official response to Sanum's Material Breach Application, asserting that:

> In fact, there has been no grant of a license, no grant of permission, no grant of any kind that will allow the operation of a new casino in Savannakhet, Laos. That is a fact. The Government attaches letters from the relevant officials who have personal knowledge of the recent transactions that state unequivocally that there is no casino in the new development plans.[28]

88. As referenced in the submission to the BIT Tribunal, Laos attached the following documents to their submission:

    a. The letter from Dr. Bounthavy Sisouphanthong dated 2 July 2014 (quoted above).

    b. A letter from Thongxay Xayavongkhamdy, Deputy Director of the Board of Management, Savan-Seno Special Economic Zone (that is, Site A) who had contracted with the developer of the Savan City project. The letter stated:

    > These agreements do not cover Casino activities at all. Meanwhile Asian Union Company did not release any news about Casino, but the Website of The Nation released news on 27 June 2014 stating that there was Casino activities to be included in these projects. This news does not reflect the truth, and it is considered that this news release is a regular issue of the news via internet means (on- line news) in the globalization era.[29]

    c. A news release from the developer of the project, ASEAN Union Company,

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[26] C-085, Letter from Dr. Bounthavy Sisouphanthong to David Rivkin, 2 July 2014 (the letter transmitted to Mr. Rivkin on 7 July 2014, according to R-013, Letter from David Branson to the BIT Tribunal, *Lao Holdings N.V. v. Lao People's Democratic Republic*, ICSID Case No. ARB(AF)/12/6, p. 3, 11 July 2014.).
[27] R-013, Letter from David Branson to the BIT Tribunal, *supra* note 26, at 3.
[28] *Id.*
[29] C-083, Letter from Thongxay Xayavongkhamdy to Deputy Prime Minister, p. 2, 30 June 2014.

which did not mention a casino.[30]

d. A letter from Mr. Chanchai Jatupakorn, the Director of Administrative Committee, Savan City Company Ltd., the joint-venture operator which partnered with the ASEAN Union in the new development, which had been referenced in the news reports submitted by Sanum. The letter stated that there is no casino in development and that they have complained to *The Nation* to correct the reporting error.[31]

e. A news article published in the *Vientiane Times* after the Joint Venture signing ceremony, which also did not mention a casino as part of the project.[32]

f. The Joint Venture Agreement (dated 26 June 2014) that was the subject of the press notice, and which did not mention casino activity.[33]

89. Additionally, Laos later submitted to the BIT Tribunal a witness statement from Mr. Khampheth Viraphondet, Director General of the Law Department in the Prime Minister's office and the senior legal advisor in the Prime Minister's office, which likewise stated that no casino rights were granted and detailed the Government's efforts to remove the misleading articles.[34]

90. Notwithstanding these official statements, Sanum maintained its Material Breach Application and continued to decline to perform any of their obligations under the Deed.

91. Laos then filed the **Notice of Arbitration** in this case on 11 August 2014, pursuant to Paragraphs 35 and 42 of the Deed,[35] and the Arbitration commenced on 19 August 2014. Laos sought an order directing Sanum to comply with their obligations under the Deed; a declaration that Sanum breached the Deed by refusing to perform its obligations; a declaration that the waiver of overdue taxes contained in Paragraph 7 of the Deed was no longer binding because Sanum refused to comply with the requirements of Paragraphs 8 and 9 (to proceed with the setting of a flat tax committee and cooperating with RMC's monitoring of the sale of the Casino); and an order requiring payment of certain money

[30] *See* R-013, Letter from David Branson to the BIT Tribunal, *supra* note 26, at 4 (referencing this news release and noting it is attached to the letter as Exhibit D).
[31] C-090, Letter from Chanchai Jatupakorn to Than Buatha Katthiya, 8 July 2014.
[32] *See* R-013, Letter from David Branson to the BIT Tribunal, *supra* note 26, at 4 (referencing this news article and noting it is attached to the letter as Exhibit E).
[33] *See id.* (referencing this agreement and noting it is attached to the letter as Exhibit F).
[34] C-096, Witness Statement of Khampheth Viraphondet, 8 Aug. 2014.
[35] *See supra* paragraph 65 (providing the text of Paragraphs 35 and 42 of the Deed).

damages, fees, costs and interest on all monies due.

92. On 16 September 2014, Sanum filed its responsive pleading in this Arbitration titled **Response to the Notice of Arbitration and Brief Statement of Counterclaims**. Sanum's response made the same claim that they made in their 4 July 2014 application to the BIT Tribunal; that is, their allegation that Laos had breached the agreement by granting a license to another casino in violation of Sanum's monopoly rights as granted by the 2007 PDA and Paragraph 6 of the Deed. Sanum's response also contained counterclaims which Sanum "intend[ed] to pursue in the unlikely event that they do not prevail in the material breach proceedings . . . ."[36]

93. In addition, Sanum's Response to the Notice of Arbitration requested that the proceedings before this Tribunal be stayed pending resolution of the Material Breach Applications before the BIT Tribunal. Sanum suggested that if the BIT Arbitrations were revived based on Sanum's allegations of material breach, the Deed would be "of no further force and effect, eliminating the basis for proceeding with this arbitration."[37] Sanum included the following alternative requests for relief in their submission:

    a. a declaration that the Deed is void *ab initio* as a result of Claimant's alleged fraudulent inducement and that the ICSID and PCA Arbitrations are therefore no longer suspended and an award of monetary damages in an amount to be determined during the course of this proceeding;

    b. or, in the alternative, rescission of the Deed as a result of a finding of Claimant's material breach of the Deed and a finding that the ICSID and PCA Arbitrations are therefore no longer suspended;

    c. or, in the alternative, an award of monetary damages in an amount to be determined during the course of this proceeding.

94. As stated in paragraph 20 above, on 12 January 2015, this Tribunal temporarily deferred ruling on the Respondents' Motion to Stay this Arbitration pending the results of the BIT Arbitration rulings.

95. Approximately six months after the Deed had been executed and taxes to Laos were overdue, Laos wrote to the President of the Macau Society of Registered Accountants

[36] Response to Notice of Arbitration and Brief Statement of Counterclaims, p. 1, 16 Sept. 2014.
[37] *Id.* at 7.

("Macau Society") on 5 December 2014, explaining that a three-member committee was to be formed to determine a flat tax and requesting that the President assist in "secur[ing] the appointment of the third member of the Committee." Laos further specified the requirement that "[t]he person will be a member of your Society familiar with the taxation of casinos."[38]

96. As it appeared the deadline to sell the Casino might arrive without a sale, Laos wrote Sanum on 24 December 2014 requesting they

> begin the orderly process of the exchange of control due on 15 April 2015, in the event Sanum/LH does not complete a sale or have in place an MOU [memorandum of understanding], as stated in the Deed.[39]

97. After this letter, Laos sent a notice to Mr. Baldwin and Sanum's counsel on 29 December 2014 stating that Savan Vegas' taxes were past due and that if Respondents did not participate in forming the FT Committee, Laotian tax law would apply:

> The Ministry of Finance has been requested by the Committee Supervising the Sanum Settlement to assist in compliance with the tax aspects of the Deed of Settlement (Deed). According to the Deed, the parties were to have agreed to a procedure to set a Flat Tax for Savan Vegas and Casino Co. (Savan Vegas). We understand that Sanum Investments Limited (Sanum) and Lao Holdings NV (LH) are refusing to comply with that procedure.
>
> It is not acceptable to the Government of the Lao PDR that a large gaming establishment operating with the good licenses of the Government simply refuses to pay taxes to the Government. . . .
>
> The Ministry of Finance requests compliance by Sanum, LH and Savan Vegas with the laws of the Government of the Lao PDR in connection with proper taxation of the gross gaming revenues of the Savan Vegas casino, operated in Savannakhet Province of the Lao PDR.
>
> . . .
>
> ***A failure to execute a Flat Tax Agreement within 30 days as required by your agreement with the Government will lead to the imposition of tax according to the laws, based upon the requested financial reports.***
>
> We call to your attention that by Presidential Decree, dated 24 October 2014, amending Article 20, point 2, of the Tax Law, the tax rate on Savan Vegas gaming revenues has been set to 35%. In addition 10% VAT applies to such revenues.
>
> If there is no cooperation in submitting the financial reports within 15 days, a

[38] C-115, Notificacao Judicial Avulsa, Registration No. 04/2015, p. 5, 28 Jan. 2015 (including a letter from David Branson to the President of the Macau Society dated 5 Dec. 2014).
[39] C-102, Letter from Dr. Bounthavy Sisouphanthong to John Baldwin and Christopher Tahbaz, 24 Dec. 2014.

> Tax Order will be sent to Savan Vegas for the last six months of 2014, based upon the new Tax Law and the above stated estimate of revenue for 2013. If after payment of taxes so imposed, the parties later agree to a Flat Tax with retroactive effect, the Ministry will make adjustments accordingly.[40]

98. Sanum did not act to establish the FT Committee.

99. On 6 January 2015, responding to Laos' earlier inquiry, RMC indicated that it had previously terminated its services "as a result of the lack of cooperation and payment from Savan" and would not be willing to act as the qualified gaming operator of Savan Vegas, should Sanum fail to sell the Casino by the deadline of 15 April 2015.[41] However, RMC provided an Interim Review and Assessment dated January 2015 recommending that San Marco Capital Partners LLC ("San Marco") and its president, Ms. Kelly Gass, be appointed as the operators charged with managing and selling Savan Vegas. RMC described their qualifications as follows:

> ***San Marco . . . is fully capable of taking operational control of the Savan Vegas Casino***. . . . In addition, ***San Marco . . . has the regional knowledge and expertise in marketing gaming properties in the Asian gaming markets*** (including Indochina) and was identified as a broker of the property post the initially proposed monitoring period.[42]

100. Having received various communications that Laos intended to have a gaming operator manage the Casino if Sanum's Sale Deadline of 15 April 2015 were not met, Sanum, on 19 January 2015, filed their **Second Application for Provisional Measures** before the BIT Tribunal. The application reported that Laos intended to take over the Casino for, *inter alia*, the non-payment of taxes and asked the BIT Tribunal to prohibit Laos from (a) applying Laotian tax law to Savan Vegas, (b) seizing the Casino, and (c) taking any steps that would alter the status quo of the dispute pending the BIT Tribunal's resolution of Sanum's First Material Breach Application.[43]

101. On 7 March 2015, the President of the Macau Society responded to Laos' request of 5 December 2014 to secure the appointment of a third member of the FT Committee, appointing Mr. Quin Va, a Macau registered accountant and auditor, to be the Chair.[44] At

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[40] C-103, Letter from Laos' Ministry of Finance to John Baldwin and Christopher Tahbaz, 29 Dec. 2014 (emphasis added).
[41] C-105, Email from Robert Russell (RMC) to David Branson, 6 Jan. 2015.
[42] C-108, Draft Interim Review and Assessment, San Marco Capital Partners, p. 2, Jan. 2015 (emphasis added).
[43] R-099, Claimant's [Sanum's] Application for Provisional Measures, *Lao Holdings N.V. v. Lao People's Democratic Republic*, ICSID Case No. ARB(AF)/12/6, 19 Jan. 2015.
[44] C-123, Letter from Lok Tan Cheng [Stella Lok], President Macau Society of Registered Accountants, to David Branson, 7 March 2015. Prior to the appointment, Mr. Branson and Ms. Lok corresponded over email

this juncture, Sanum was still declining to participate in the FT Committee. As discussed below, Laos did not formally retain Mr. Va until 15 May 2015.[45]

102. The BIT Tribunal held a telephone hearing on 10 March 2015 on Sanum's Second Application for Provisional Measures. During this hearing, Laos informed the BIT Tribunal and Sanum of its intention to form the FT Committee without Sanum:

> The Government contends . . . that it is open to the Government to have the Flat Tax Committee constituted without the cooperation of [Sanum] by resorting under Article 9 of the Deed of Settlement, to the President of the Macao Society of Registered Accountants.[46]

103. Thereafter, Sanum did not offer to participate in the FT Committee.

104. On 18 March 2015, the BIT Tribunal denied Sanum's Second Application for Provisional Measures stating in relevant part:

> In the Tribunal's view, the Claimant has not established a case for relief from the collection of the 45% tax on gross gaming revenues enacted in October 2014.[47]
>
> . . .
>
> The Tribunal notes that the Government was quite prepared to proceed with the renegotiation of a Flat Tax Agreement under the Terms of the Settlement and in fact appointed its nominee early in July 2014. The Claimant has refused to participate as part of its broader disagreement with the Government of Laos over the status of the Deed of Settlement.
>
> When the Flat Tax Agreement expired on 31 December [2013], Savan Vegas became subject to the applicable tax laws of Laos. It is common ground that although Savan Vegas has continued to do business in Laos, it has not paid taxes either directly or in escrow since 1 January 2015. While it now offers to pay in escrow the sum of US$429,300 per month retroactive to 1 January 2015, there is no obligation on the Government to agree to such a figure or to any escrow arrangement.[48]
>
> . . .
>
> . . . [F]or so long as the Claimant continues to do business in Laos, it can reasonably expect to be bound by the Laotian income tax laws applicable to gambling casinos unless and until a new Flat Tax Agreement is negotiated.[49]

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discussing the approximate time commitment and travel requirements to set the flat tax, and Ms. Lok relayed this information to Mr. Va. C-120, Emails between Mr. Branson and Ms. Stella Lok, 9-11 Feb. 2015; C-121, Emails between Quin Va and Stella Lok and between Stella Lok and David Branson, 25-27 Feb. 2015.

[45] C-144, Flat Tax Committee Appointment Agreement between Laos and Quin Va, 15 May 2015.

[46] C-124, Decision on Claimant's Second Application for Provisional Measures, *Lao Holdings, N.V. v. The Government of the Lao People's Democratic Republic*, ICSID Case No. ARB(AF)/12/6, ¶ 33, 18 March 2015.

[47] *Id.* at ¶ 27.

[48] *Id.* at ¶¶ 31–32.

[49] *Id.* at ¶ 34.

105. On 30 March 2015, Dr. Bounthavy Sisouphanthong wrote to Mr. Baldwin and Sanum's counsel noting Laos' earlier correspondence of 24 December 2014 and reiterating the Government's intention to take control of Savan Vegas on 15 April 2015 unless Sanum had completed a sale or had an MOU for the purchase of Savan Vegas in place that would extend Sanum's Sale Deadline.[50] The letter also referenced the decision of the BIT Tribunal and noted that:

> the Government is not enjoined from proceeding to complete the takeover of the Gaming Assets (and further not enjoined from enforcing the outstanding tax invoices sent to Savan Vegas in January 2015). . . . We trust Sanum/LH will now agree to cooperate to ensure a peaceful turnover.

The letter concluded by inviting Sanum:

> to be in contact with the Ministry of Planning and Investment . . . to set forth [Sanum's] proposed compliance with these important terms of the Deed.

106. Again, Sanum did not offer to participate in the FT Committee.

107. On 13 and 14 April 2015, the BIT Tribunal held a hearing on Sanum's Material Breach Application in Singapore. While this hearing was occurring, Mr. Shawn Scott, Mr. Baldwin's partner, initiated a discussion with a Mr. Angus Noble about an MOU for the purchase of the Casino, which is discussed *infra* at paragraphs 189 to 191.

108. At the hearing, Mr. Baldwin testified that during the last ten months while Sanum was in control of Savan Vegas, he had not taken steps to sell the Casino:

> The reason I haven't signed engagement letters, the reason I haven't tried, it's not selling the casino, it's selling the casino for the highest possible price. Can Savan be sold? Savan can be sold anytime.[51]

109. The evening of 14 April 2015 at 21:18, after the hearing had concluded, the BIT Tribunal emailed both Parties the following:

> The Tribunal is seized of [a] request for Provisional Measures in support of the Claimant's Material Breach Application. Having deliberated . . . the Tribunal concludes that the Claimant [Sanum] has failed to establish all of the requisite elements for such an order, and therefore dismisses the application, with reasons to follow.[52]

110. That evening, at 23:04, and minutes before the deadline to sell the Casino expired,

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[50] R-052, Letter from Dr. Bounthavy Sisouphanthong to John Baldwin and Christopher Tahbaz, 30 March 2015.
[51] R-157, Hr'g Tr. at 64, *Lao Holdings N.V. v. Lao People's Democratic Republic*, ICSID Case No. ARB(AF)/12/6, 14 April 2015 (cross-examination of Mr. Baldwin).
[52] R-351, Email from Judge Ian Binnie to Christopher Tahbaz, 14 April 2015.

Sanum submitted to Laos an MOU signed by Mr. Angus Noble on behalf of his company, MaxGaming Consulting Services, Ltd ("MaxGaming"), to purchase the Casino, the facts of which are elaborated below in paragraphs 189 to 191. (The MOU is hereinafter referred to as the "Noble MOU".)

B. Laos' Seizure and Sale of the Casino

111. Laos rejected the Noble MOU, deeming it to be fraudulent and thus void. On 16 April 2015, one day after Sanum's deadline to sell the Casino expired with no sale and one day after Sanum was to turn over complete control of the Casino to a third party under Paragraph 12 of the Deed, Laos took control of the Casino in order to appoint an independent gaming operator that would manage and operate the Casino and would complete a sale and dispense the proceeds in accordance with the 80/20 ownership of Sanum and Laos. That same day, Sanum filed before this Tribunal their first **Application for Provisional Measures** that essentially mirrored the Second Provisional Measures Application that the BIT Arbitration had denied on 18 March 2015. Sanum sought an Interim Award from this Tribunal ordering Laos to (a) retract its letter of 16 April 2015 seizing the Casino; (b) not take any steps towards the sale of the Casino; and (c) not take any steps that would alter the status quo of the dispute. As of the date of the Application, Sanum still had not performed any of the obligations under the Deed.

112. While this Application for Provisional Measures and the BIT Tribunal's full written Decision on the Material Breach Application were pending,[53] Sanum's counsel, Ms. Deitsch-Perez, and Mr. Branson exchanged a series of emails regarding the sale of Savan Vegas:

On 1 May 2015, Ms. Deitsch-Perez wrote,

> While I would still like to talk to you about taxes, per my earlier email,[54] I also would like to follow up about potential buyers. In connection with the Government's repeated assurances that it intends to sell Savan Vegas consistent with the terms of the Deed of Settlement, I wanted to bring to your attention three immediate opportunities to find a potential buyer [listing Tak Chun, MaxGaming and Greg Bousquette].

On 4 May 2015, Mr. Branson responded,

[53] The BIT Tribunal had communicated its decision to the Parties on 14 April 2015, with reasons to follow. *See supra* paragraph 109.
[54] The referenced "earlier email" is not in the record.

> The government [sic] is committed to selling the casino and dividing the proceeds as I said to the Tribunal; the effort will not be a joint effort; The Government will adopt a procedure to have a due diligence room, and create a fair process for accepting bids and evaluating them; the Government hopes to develop this process over the next month or two, depending on events not all in the Government's control; the Government will not allow interested individuals to have access outside of that process nor will it allow Mr. Crawford on the premises. He is free of course to meet anyone off the property and say what he wishes, but he must not be offered as an agent or emissary of the Government.

On 5 May 2015, Ms. Deitsch-Perez requested that Mr. Branson work with Respondents in the sale process:

> Please give me a call about trying to work together to sell the property . . . . I understand from your comments at the hearing that the GOL is still committed to selling the casino in a way that maximize not only the government's 20% but Sanum's 80% . . . . [55]

113. However, three days after the email exchange, Sanum filed an **Amended Application for Provisional Measures** on 8 May 2015 before this Tribunal requesting that Laos return the Casino to Sanum's control; reinstate Clay Crawford as CFO of Savan Vegas; re-instate the prior Board of Directors of Savan Vegas; not assess taxes in a manner inconsistent with the Deed; and not terminate the 2007 PDA.

114. On 15 May 2015, Laos formally engaged Mr. Va to be the sole member of the FT Committee and to determine a tax rate to be applied to Savan Vegas.[56] Laos provided Mr. Va with three documents: (i) the BDO Gaming Tax Recommendation that described tax rates in other Asian jurisdictions; (ii) the Report to Flat Tax Committee that described the tax situation with the other two casinos in Laos; and (iii) Expert Taxation Opinion of Professor Rose.[57] No documents were provided to Mr. Va by Sanum.

115. One week after Laos had engaged Mr. Va and Mr. Va had begun his work, Sanum's counsel wrote a letter to Laos, on 23 May 2015, indicating that they might re-form the FT Committee conditionally:

> In the event that the ICSID tribunal denies the Material Breach Application, then that suspension [of performance of the Deed] comes to an end and

[55] R-115, Emails between Deborah Deitsch-Perez and David Branson, 1–5 May 2015.
[56] C-144, Flat Tax Committee Appointment Agreement between Laos and Quin Va, 15 May 2015.
[57] C-155, Report of Flat Tax Committee from Quin Va, p. 1, 9 June 2015 (noting that Mr. Va had received these documents).

> performance of the Parties' obligations under the Settlement resumes . . . . On this basis . . . our clients write with regard to the immediate steps that should be taken by the Parties to move forward now with the Settlement.
>
> > 1. FT Committee. . . . Prior to the suspension of the Deed in June 2014, the Government had appointed Robert Russell of RMC Consulting to sit on the Committee, while our clients had appointed Steven Rittvo . . . . Please confirm that Mr. Russell remains the Government's nominee to the Committee. As soon as we receive that confirmation, Mr. Rittvo will reach out to Mr. Russell in order to agree to the third FT Committee Member.[58]

116. Laos responded to Sanum's letter on 30 May 2015, rejecting this proposal and asserting its view that Sanum could not be trusted to honor their commitments.[59]

117. On 29 May 2015, Laos submitted its **Response to Respondents' Amended Provisional Measures Application** to this Tribunal, which asserted that it had seized the Casino in order to comply with the Deed's requirement of selling the Casino and included an outline for how it intended to do so:

> (1) the Government will terminate the Savan Vegas PDA;
>
> (2) the Government will form a Newco;
>
> (3) the Government will grant Newco a 50 year concession agreement to operate the casino, a gaming license and land concession the day it terminates the [2007] PDA;
>
> (4) the Government will have an independent expert set a flat tax which will be enshrined in the Newco concession agreement;
>
> (5) on completion of the audit, the Government will put Newco on the market for sale by auction; the audit should be complete by mid-July;
>
> (6) When the bids are evaluated and the highest bid is selected, Newco will be sold;
>
> (7) The Government will pay Sanum its share of the proceeds;
>
> (8) The Government expects to close the sale before year-end.[60]

118. On 9 June 2015, Mr. Va produced his report on the taxation of Savan Vegas. The report considered the existing Laotian taxation system and government policies, the taxation policy of other countries in the region and their competitive advantage in gaming, the current size of Savan Vegas, the current market position of Laos in the Asian

[58] R-522, Letter from Christopher Tahbaz to the Minister of Planning and Investment and David Branson, pp. 1–2, 23 May 2015.
[59] R-523, Email from David Branson to Christopher Tahbaz, 30 May 2015.
[60] Claimant's Resp. to Resp'ts Amended Appl. for Provisional Measures, pp. 6–7, 29 May 2015.

gaming industry and the impact of the gaming policies of Thailand (Savan Vegas' largest source of gamblers), and recommended that Savan Vegas be taxed at the rate of 28% on gross gaming revenue ("GGR").[61] During the period between his appointment (15 May 2015) and the issuance of his report (9 June 2015), the evidence reflects that, other than receiving the three reports referenced in paragraph 114, Mr. Va had no discussions or communications with the Government or Sanum.[62]

119. Confirming its earlier email to the Parties (referenced in paragraph 109 above), the BIT Tribunal, on 10 June 2015, explained its specific denial of Sanum's Material Breach Application on the merits, addressing Sanum's claims as follows:

a. The claim that Laos had approved a new casino on a plot of land across the road from Savan Vegas was not supported by the evidence, which consisted largely of misleading newspaper reports and blog posts.[63]

b. "[T]he Government did respond promptly to the 26 June 2014 misreporting in the media about a rival casino and made it clear to the private developers in Savan City that no permission for a casino had been or would be approved or granted."[64]

c. "Mr. John Baldwin . . . acknowledged in cross-examination that he had no personal knowledge of any such Government approval [of the issuance of a competing license]."[65]

d. "The Claimant [Sanum] points out that this Directive did not purport to preclude the Prime Minister's office from granting permission. On the other hand, the bureaucratic road to the Prime Minister's office lies through Madam Bouatha, who testified that no application for a casino was made by or on behalf of the developers of Site A. There is no evidence of anyone following a different path to the Prime Minister's office and the Tribunal cannot proceed on the basis of Mr. Baldwin's unsupported speculation and innuendo that some such "unofficial" approach *may* have been made."[66]

e. "Further, even if it were accepted, *arguendo*, that some of the evidence is

[61] C-155, Report of Flat Tax Committee from Quin Va, pp. 1–2, 9 June 2015.
[62] Final Hr'g Tr. at 654–55, 24 Jan. 2017 (testimony of Mr. Va).
[63] C-156, Decision on the Merits, *Lao Holdings, N.V. v. The Government of the Lao People's Democratic Republic*, ICSID Case No. ARB(AF)/12/6, at ¶¶ 6 ,10, 34–35, 10 June 2015.
[64] *Id.* at ¶ 98.
[65] *Id.* at ¶ 52.
[66] *Id.* at ¶ 75.

suggestive of some sort of "tacit" signal of approval to rival entrepreneurs, all of which is denied by the Government, it is the Tribunal's conclusion that any such alleged conduct was "cured" by the Government within 45 days."[67]

f. "The Tribunal does not accept the Claimant's [Sanum] argument that a misleading article in a Thai newspaper and subsequent and related postings inflicted such destruction on the value or marketability of Savan Vegas as to make the so-called breach incurable. Newspapers are known to most people to make mistakes. Blogs sometimes privilege speed over accuracy. The Government moved promptly to clarify its prohibition to the Savan City promoters. . . . Serious buyers would not be put off by cyber-gossip."[68]

g. "[T]he Tribunal was satisfied at the conclusion of the evidence on 14 April, after deliberation, that the Claimant [Sanum] had not established even a *prima facie* right to the relief sought."[69]

120. Because intervening events appeared to change the contours of both the dispute before us and the interim relief requested, and in light of the actions Laos took to tax, operate and prepare to sell the Casino, this Tribunal asked the Parties to clarify their pleadings and attend a hearing on 16 June 2015 regarding all pending interim relief sought by Sanum.

121. At that hearing before this Tribunal, both Laos and Sanum specifically reiterated their desire to enforce the Deed to effectuate the sale of the Casino and agreed that the Deed's fundamental purpose was to sell the Casino at the maximum price possible and divide the proceeds 80/20 between Sanum and Laos.[70] Laos also stated that it had appointed Mr. Va to unilaterally determine the tax rate and that he had already done so.[71]

122. On 18 June 2015, Laos terminated the 2007 PDA with Sanum, asserting its right to do so "pursuant to the terms of the PDA, the provisions of the Law on Investment Promotion (2009) and other applicable laws of the Lao PDR" and citing, among other reasons, Sanum's nonpayment of taxes.[72]

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[67] *Id.* at ¶ 12.
[68] *Id.* at ¶ 100.
[69] *Id.* at ¶ 110.
[70] *See* R-283, Hr'g Tr. at 122–23 (statement of Mr. Branson), 168 (statement of Mr. Rivkin) 16 June 2015.
[71] *Id.* at 87 (statement of Mr. Branson).
[72] C-159, PDA Termination Notice, 18 June 2015.

123. On 30 June 2015, as discussed in paragraph 26 above, this Tribunal issued its Order on Respondents' Amended Application for Provisional Measures. The Tribunal held that it had insufficient evidence to make any findings of fact regarding the competing factual claims. The Tribunal also denied Sanum's Application for Provisional Measures to the extent they sought to return the operation of the Casino to Sanum or to prohibit any action by Laos pertaining to the 2007 PDA. However, the Tribunal did require Laos to provide Sanum with regular and ongoing financial information pertaining to the operation of the Casino and to the efforts to sell the Casino including marketing. Laos was also to comply with the principles of Annex E to the Deed by retaining and assisting a broker to market and sell the Casino.[73] In this regard, this Tribunal also observed that Laos had acknowledged that it had, as did its agents such as Ms. Gass, a "fiduciary duty to Sanum in managing the casino and making efforts to obtain the maximum price at a sale."[74] The kind and extent of any fiduciary duty are only before us to the extent it affected the ultimate sale price of the Casino.

124. After Laos seized control of Savan Vegas on 16 April 2015, it unilaterally appointed Ms. Gass and San Marco as the Casino's operators in accordance with RMC's recommendation of January 2015, described above in paragraph 99. On 28 September 2015, Laos then issued a decree transferring all assets owned by Savan Vegas to Savan Lao, a new entity that was solely owned by Laos, in order to accomplish the sale.[75]

125. As casino operators, San Marco and Ms. Gass began preparing to sell the Casino, by among other efforts, retaining the following individuals:

a. Matias Vega of Curtis Mallet Prevost Colt & Mosle to lead the Laos' corporate team and to oversee the sale generally;

b. two gaming law experts to advise on gaming law special issues that might affect the sale process; and

c. other specialists to prepare for the sale including: IT specialists to prepare a data room; marketing experts to assist publishing marketing materials; and retaining Agenda Group, an international firm with expertise in investigating companies in the gaming industry (potential buyers).

[73] Following the Order on Provisional Measures, Sanum, in June, September and October, requested additional interim relief and document production, which this Tribunal denied.
[74] Order on Respondents' Amended Application, ¶ 34, 30 June 2015.
[75] C-176, Ministry of Finance Declaration, 28 Sept. 2015.

126. Additionally, Ms. Gass and San Marco drafted the following documents to be used in the sale:

a. the Solicitation of Interest ("SOI"), which would announce the sale process, describe the business being sold, and invite buyers to submit an expression of interest and complete a non-disclosure agreement (NDA);

b. the Request for Offer ("RFO"), which would provide bidders with additional information about the assets, sales process, and procedures necessary to enter the bid; and

c. the Project Development Agreement, which would provide the terms and conditions governing the 50-year concession of Savan Vegas and the terms of the investment between Laos and the new buyer (the "New PDA").

127. After receiving draft versions of these documents at the end of September 2015, Sanum objected to their contents, filing a submission before this Tribunal alleging, *inter alia*, that Laos failed to include the Lao Bao Slot Club and Savannakhet Ferry Terminal Slot Club ("Slot Clubs") in the sale and that Laos' draft of the New PDA had less favorable terms than the 2007 PDA between Laos and Sanum.[76]

128. On 19 October 2015, San Marco published the SOI,[77] which was also announced on several websites.[78] A few days later, on 23 October 2015, San Marco distributed a copy of the RFO to the 13 companies that had submitted a statement of interest and an NDA.[79] Agenda Group, which had been retained by San Marco to help vet potential bidders, then began diligencing these companies. In March 2016, based on the analysis of Agenda Group, six were approved to bid on Savan Vegas. Those companies were Macau Legend Development Ltd. ("Macau Legend"), Silver Heritage Ltd. ("Silver Heritage"), RGB Ltd. ("RGB"), PGP Investors LLC ("Peninsula Pacific"), Groupe Lucien Barrière, and Iao

[76] Sanum, on 20 October 2015 and 7 November 2015, filed before this Tribunal submissions requesting that Laos be ordered to provide written reasons for every comment or edit it did not incorporate into the documents. After a hearing on this issue, the Tribunal denied Sanum's request on 6 January 2016, noting that any evidence that Laos did not act in good faith could be addressed and remedied at the final hearing.
[77] C-185, Solicitation of Interest, 19 Oct. 2015.
[78] C-187, *Savan Vegas invites buyers*, ASIA GAMING BRIEF (19 Oct. 2015), http://agbrief.com/news/savan-vegas-invites-buyers - Corrected; C-188, *News Headlines*, ASIA GAMING BRIEF (19 Oct. 2015), http://agbrief.com/news-headlines; C-194. *Savan Vegas casino hotel in Laos up for sale*, GGR ASIA (20 Oct. 2015) http://www.ggrasia.com/savan-vegas-casino-hotel-in-laos-up-for-sale/; C-197, David Snook, *Laos Casino for Sale*, INTERGAME (21 Oct. 2015), http://intergameonline.com/casino/news/14642/laos-casino-for- sale.
[79] C-199, Ministry of Planning and Investment Request for Offers to Purchase and Operate the Savan Vegas Hotel and Entertainment Complex, 23 Oct. 2015 [hereinafter "Request for Offers"].

Kun Group Holding Company Limited ("IKGH").[80]

129. At the end of March, the six approved bidders were notified that the data room, which included all of Savan Vegas' financial information, was available to them.[81] Prior to the scheduled auction of 10 May 2016, an informational meeting for interested prospective bidders was held in Vientiane on 7 April 2016. Macau Legend, Silver Heritage, and RGB attended that meeting.[82]

130. During the meeting in Vientiane, the Government met privately with each of the three bidders present. According to the testimony and witness statement of Dr. Bounthavy Sisouphanthong, during the private session with Macau Legend, Macau Legend provided a project design book proposing a US$300 million development for the 300-hectare land parcel adjoining the Casino (known as "Site A") which they were interested in developing in conjunction with purchasing the Casino.[83]

131. Shortly after the meeting in Vientiane, on 19 April 2016, Laos met with representatives of Macau Legend in Hong Kong, including Mr. Sheldon Trainor-DeGirolamo (Executive Director and Board Member of Macau Legend). Mr. Govinda Singh (Laos' internal valuation expert) and representatives from Union Gaming (Macau Legend's investment banker) were also present. According to the Witness Statement of Mr. Trainor-DeGirolamo, Mr. Singh and Union Gaming were in agreement that the value of Savan Vegas was approximately US$32.5 million.[84]

132. During this meeting in Hong Kong, Mr. David Branson and Mr. Sheldon Trainor-DeGirolamo also separately met in Macau with the CEO of Macau Legend, Mr. David Chow. According to Mr. Trainor-DeGirolamo, Mr. Chow advised that Macau Legend was interested in developing Site A and would purchase Savan Vegas for US$40 million, provided the auction was cancelled and Macau Legend was given investment rights in

[80] C-211, Agenda Group Report of Macau Legend Development Limited, 20 Jan. 2016; C-212, Agenda Group Report of Groupe Lucien Barrière, 5 Feb. 2016; C-213, Agenda Group Report of Silver Heritage Limited, 7 Feb. 2016; C-214, Agenda Group Report of RGB Ltd., 10 Feb. 2016; C-218, Agenda Group Report of PGP Investors, LLC, 18 Feb. 2016 (updated 3 March 2016); C-216, Agenda Group Report of Iao Kung Group Holding Company Limited, 13 Feb. 2016.

[81] R-555, Email Exchange between Steve Croxton and Kelly Gass, 17–29 March 2016 (when asked when the financial information would be provided, Ms. Gass responds on the same day that they "will be sending out the instructions for accessing the data room Wednesday or Thursday USA time.")

[82] *Id.* (noting the date of the meeting); First Witness Statement of Dr. Bounthavy Sisouphanthong, ¶ 34, 14 Oct. 2016.

[83] First Witness Statement of Dr. Bounthavy Sisouphanthong, ¶ 35; Witness Statement of Mr. Sheldon Trainor-DeGirolamo, ¶ 16, 29 Nov. 2016.

[84] Witness Statement of Mr. Sheldon Trainor-DeGirolamo, ¶¶ 18–20.

Site A.[85]

133. Mr. Chow made this offer to the Government formally one week later, on 29 April 2016. The Deputy Prime Minister and Minister of Finance, Minister Somdy, rejected the offer, not wanting to interfere with the auction process.[86]

134. However, a few days after receiving the offer from Mr. Chow, Laos received an email on 3 May 2016 from RGB advising that RGB was not able to comply with the RFO's requirement that, prior to the auction, bidders execute a model of the New PDA and letter of record, which, among other terms, required bidders to guarantee a US$1 million payment. RGB explained that it needed shareholder approval to perform these actions, which would take three to four months to accomplish and would only be initiated after RGB had been announced as the winning bidder. In order to bid on Savan Vegas, RGB requested that it be exempt from the requirements.[87] At about this time, Laos also learned that Silver Heritage was still attempting to raise funds or to find a partner who could fund their bid.[88]

135. According to Dr. Bounthavy Sisouphanthong, Laos worried that, in light of the developments with RGB and Silver Heritage, Macau Legend would be the only bidder at the auction and thus offer a low bid. Dr. Bounthavy Sisouphanthong testified that, for this reason, the Prime Minister met with the Ministers of the Sanum Committee and decided that Laos would accept Macau Legend's offer, provided the sales price was increased from US$40 million to US$42 million.[89]

136. On 6 May 2016, Macau Legend accepted the counter-offer,[90] and, on the same day, Laos advised this Tribunal that it had entered into an agreement with Macau Legend for the sale of Savan Vegas, terminating the auction process. Macau Legend and Laos executed the New PDA and the letter of record shortly thereafter, on 13 May 2016.[91] The two parties also concluded a tax agreement, pursuant to which Macau Legend would pay US$10 million annually in taxes for the next three years, which would increase thereafter,

[85] *Id.* at ¶¶ 24-26.
[86] *Id.* at ¶ 29; First Witness Statement of Dr. Bounthavy Sisouphanthong, ¶¶ 36–37.
[87] C-235, Email from Karine Goh (RGB Gaming) to Kelly Gass, 3 May 2016.
[88] First Witness Statement of Dr. Bounthavy Sisouphanthong, ¶ 38.
[89] *Id.* at ¶¶ 39–41.
[90] *Id.* at ¶ 42; Witness Statement of Mr. Sheldon Trainor-DeGirolamo, ¶ 31.
[91] C-238, PDA between Laos and Macau Legend, 13 May 2016; C-239, Letter of Record for Savan Vegas Hotel, 13 May 2016.

and Macau Legend would also invest in certain infrastructure projects in Laos.[92]

137. While the sale process was underway, there were various submissions by both Parties made before this Tribunal and the BIT Tribunal concerning the opposing Party's conduct.[93]

138. Additionally, while the sale to Macau Legend was being finalized and approximately nine months after the SOI and the RFO had been released, ST Vegas Enterprise Ltd ("ST Group"), a Lao company owning several slot clubs that had previously partnered with Sanum and had initially invested in the Casino, indicated its interest in purchasing Savan Vegas, writing to the "Chairman of National Assembly Justice Committee" on 29 July 2016, claiming to be the "original shareholders" in Savan Vegas, and "submit[ting] [their] request . . . for consideration in order to appropriately buy this business back in compliance with the regulations on investment."[94] However, all preliminary documents for the sale had already been signed with Macau Legend several months before in May 2016. ST Group again wrote to Laos on 15 August 2016, "request[ing] to buy our properties and business of Savan Vegas and Casino, Ltd . . . with a proposed price of US$100,000,000 (one hundred million dollars), with additional payments of US$380 million denominated as taxes over the next twenty years."[95]

139. On 19 August 2016, Macau Legend and Laos executed all remaining documents with

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[92] C-238, PDA between Laos and Macau Legend, at Annex C, 13 May 2016.

[93] Respondents filed a Second Material Breach Application before the BIT Tribunal on 26 April 2016, alleging that Laos had materially breached the Deed by: (a) expropriating Savan Vegas beginning with its physical seizure of the casino in April 2015, in violation of Paragraphs 5-6 and 19 of the Deed; (b) failing to conduct the sale of Savan Vegas consistent with Paragraphs 6-10 and 15 of the Deed; (c) failing to discontinue criminal and tax investigations of Sanum/Savan Vegas as required under Paragraphs 23 and 27 of the Deed; (d) failing to waive and forgive pre-settlement taxes as required under Paragraph 7 of the Deed; and (e) failing to negotiate a land concession in good faith, as required under Paragraph 22 of the Deed. Sanum also requested the BIT Tribunal to declare that Laos had materially breached Sections 5–8, 15, 22, 23, 27 of the Deed and, once again, to revive the BIT Arbitration proceedings. As of the date of this Award, that Application was pending before the BIT Tribunal.

Before this Tribunal, Respondents alleged that Laos failed to include Respondents' comments on the SOI and RFO in good faith, requested the Tribunal to order Claimant to preserve and produce evidence contained in Savan Vegas' electronic servers and documents prior to Macau Legend obtaining control, and requested the Tribunal to stay its proceedings until the BIT Tribunal has ruled on the Second Material Breach Application. Resp'ts Submissions of 20 Oct. 2015, 7 Nov. 2015, and 25 May 2016. Claimant, on the other hand, alleged that Respondents were interfering with the sales process. Claimant's Appl. for Provisional Measures, 25 April 2016. The Tribunal declined to stay its proceedings. The Parties subsequently agreed to the preservation of the Savan Vegas servers and to provide reasonable access to them. Order on Interim Measures, 22 July 2016.

[94] R-431, Letter of Request from ST Group to Laos, 29 July 2016.

[95] R-436, Letter of Intent from ST Group, 15 Aug. 2016.

respect to Macau Legend's purchase of Savan Vegas and land concession in Site A.[96] On 31 August 2016, Macau Legend funded the Asset Purchase Agreement and took possession of Savan Vegas.

V. JURISDICTION OF THE TRIBUNAL

140. The Tribunal has jurisdiction over the disputes before it pursuant to Paragraphs 35 and 42 of the Deed.[97] However, the Tribunal notes it is a tribunal of limited jurisdiction under both Paragraphs 35 and 42 of the Deed. The Tribunal is limited to deciding disputes "arising out of or in connection with" the Deed under the applicable law: the substantive law is New York law and the *lex arbitri* is the law of Singapore as that is the seat of the arbitration. While the Tribunal has considered the issue of the Government's takeover of the Casino in order to effectuate its sale in connection with the Parties' obligations under the Deed, it did not consider any issue of public international law treaty obligations.

VI. CLAIMS, COUNTERCLAIMS AND TRIBUNAL CONCLUSIONS

141. This Award is made by a majority of the Tribunal, pursuant to SIAC Rule 28.5. In arriving at its findings and conclusions on the claims asserted by both Parties, the Majority has carefully considered all of the evidence and arguments of the Parties and, where applicable, the points asserted in the Dissenting Opinion of Ms. Lamm.

142. As noted in the Procedural History, both Parties filed their respective final Opening Memorials on 14 October 2016, Counter-memorials on 2 December 2016, and Rejoinders on 22 and 23 December 2016.[98] Consistent with the Parties' protracted disputes, the Parties have asserted some overlapping claims, counterclaims, and defenses, spanning the period starting from the execution of the Deed to the conclusion of the sale of Savan Vegas.

143. Laos maintains that Sanum breached the Deed by failing to perform their obligations under the Deed and seeks (1) specific performance for the division of the costs and proceeds of the sale; (2) indemnification for damages caused by Respondents' alleged

[96] C-255, Executed PDA between Macau Legend and Laos, 19 Aug. 2016 (including annexes with the Asset Purchase Agreement and Flat Tax Agreement).
[97] *See* paragraph 65, *supra*, for the full text of Paragraphs 35 and 42 of the Deed.
[98] Additionally, in the months preceding the Final Hearing, both Parties filed a multitude of document production requests and motions, which were ruled on by the Tribunal.

breaches; and (3) 100% of its arbitration costs and expenses. Additionally, Laos alleges that Sanum committed various frauds resulting in other damages to Laos. As a result of Sanum's alleged actions, Laos claimed a total of US$ $13,846,115.50 in damages, in addition to all costs and fees.[99]

144. Sanum, on the other hand, claims that Laos breached the Deed by taking unilateral action to manage and tax Savan Vegas and failed to maximize the sale proceeds, and seeks either (1) monetary damages to restore Sanum to the economic position it would have held absent the alleged breaches; or (2) rescission of the Deed, which Sanum argues requires monetary damages to restore them to their position prior to the Deed and permits Sanum to restart the BIT Arbitrations; and (3) 100% of their arbitration costs and expenses. As a result of Laos' alleged actions, Sanum claimed damages in an amount ranging between US$354,520,000 and US$394,000,000, in addition to all costs and fees.[100]

145. We first set forth Claimant's specific allegations of breach, followed by Respondents' responses thereto. Thereafter, the Tribunal sets forth its findings and conclusions on the issues relevant to Claimant's allegations of breach.

146. After resolving the question of whether Respondents breached the Deed as alleged by Claimant, the Tribunal will turn to Claimant's allegations of fraud, Respondents' responses thereto, and the Tribunal's conclusions.

147. The Tribunal will then address Respondents' counterclaims alleging breach by Claimant, followed by Claimant's responses thereto, and thereafter by the Tribunal's findings and conclusions regarding Respondents' counterclaims.

148. Based on the Tribunal's conclusions regarding the various claims and counterclaims, the Tribunal will then address any relevant damage and cost claims of the Parties.

A. Claimant's Allegations of Breach

149. The essence of Laos' case is that Sanum breached the Deed, causing damages to Laos, as follows:

a. Sanum specifically instructed their nominee to the FT Committee to stop any work on the committee shortly after he was appointed, and, for approximately

[99] Claimant's Rejoinder, ¶ 132, 22 December 2016.
[100] Respondents' Rejoinder to Claimant's Counter-Memorial, ¶181, 23 December 2016.

11 months, Sanum refused to work with Laos to re-form the FT Committee. Based on these actions, Laos alleges Sanum violated Paragraphs 8 and 9's requirement to form an FT Committee.

b. Sanum caused Savan Vegas to pay no taxes to Laos beyond 1 July 2014, which Claimant alleges violated Paragraph 7's requirement that taxes on Savan Vegas be paid to Laos as of 1 July 2014.

c. Sanum took no steps to sell Savan Vegas during the ten months it retained control of the Casino. Laos alleges this inaction violated Paragraph 10 of the Deed, which permitted Sanum to retain control of Savan Vegas for ten months (until 15 April 2015) only so that it could "take steps to establish and expeditiously carry out a sale" of Savan Vegas, and permitted Laos to seize the Casino to uphold Paragraph 12's requirement that a qualified gaming operator "take over [the Casino] by the Sale Deadline."

d. Sanum failed to accept and pay RMC as an agent and monitor the operation and sale of Savan Vegas, which Laos asserts is a violation of both Paragraph 9 and Annex E's requirements that Sanum accept and pay RMC as monitor and agent.

B. Respondents' Responses to Claimant's Allegations of Breach

150. Sanum does not dispute that "[b]etween June 2014 and April 2015, [Sanum] suspended all performance under the Deed of Settlement."[101] Thus, factually, a case has been made for Respondents' breach.

151. However, Sanum first argues that Paragraph 32 of the Deed, which provides for the reinstatement of the BIT Arbitrations if a material breach occurs and is not cured within 45 days,[102] suspends Sanum's obligations under the Deed until after the question of material breach is decided. Thus, Sanum asserts that when they filed their Material Breach Application on 4 July 2014 alleging that Laos approved and licensed a competing casino, they were excused from performing any obligations under the Deed until the BIT Tribunal decided their Material Breach Application (which was ultimately denied on 10 June 2015). Additionally, Respondents argue that, after their Material Breach

[101] Final Hr'g Tr. at 1896, 28 Jan. 2017 (statement of Ms. Rowe).
[102] *See supra* paragraph 65 (providing the language of Paragraph 32 of the Deed).

Application was decided and denied, any performance was still rendered impossible due to the actions taken by Claimant in the interim.

152. Alternatively, Sanum argues that, given the circumstances, their actions either constitute performance or performance was impossible given the actions taken by Laos to establish the FT Committee and manage and sell the Casino.

C. Tribunal Conclusions Regarding Claimant's Allegations of Breach and Respondents' Responses Thereto

153. The analysis and conclusions that follow reflect the views of the Majority, except where indicated below or in Ms. Lamm's Dissenting Opinion.

154. It is undisputed that (1) Sanum instructed their nominee to the FT Committee to stop work on that Committee; (2) Sanum failed to have Savan Vegas pay any taxes to Laos beyond 1 July 2014; (3) Sanum took no steps to sell Savan Vegas during the 10 months it controlled the Casino; and (4) Sanum did not pay RMC its total fees for monitoring the operation and sale of Savan Vegas. Accordingly, under the totality of the facts and evidence submitted, the Majority finds that Claimant has established a *prima facie* case of Respondents' breach. The Tribunal turns to Sanum's legal defenses that either performance of their obligations under the Deed was suspended or, alternatively, that they did not breach the Deed.

155. Regarding Sanum's argument that Paragraph 32 validly suspends their obligation to perform under the Deed, we begin with the plain language of the Deed. Paragraph 32 reads, in relevant part:

> The Claimants [Sanum] shall only be permitted to revive the arbitration in the event that Laos is in material breach . . . and only after reasonable written notice is given to Laos by the Claimants [Sanum] of such breach and such breach is not remedied within 45 days after receipt of notice of such breach. The Sale Deadline and any other relevant time periods herein shall be extended by the length of time required to cure such breach. In the event that there is a dispute as to whether or not Laos is in material breach . . . the Tribunals shall determine whether or not there has been such a material breach and shall only revive the arbitration if they conclude that there has been such a material breach.

156. New York law requires that "words and phrases . . . be given their plain meaning, and the contract . . . be construed so as to give full meaning and effect to all of its

provisions."[103]

157. Here, nothing in the plain language of Paragraph 32 states that the Parties are relieved from performing their obligations while a decision as to material breach is pending. Rather, Paragraph 32 quite clearly limits any suspension of performance only if a breach occurred and then only to "the length of time required to cure such breach."

158. Respondents themselves recognized this omission and the limits imposed in Paragraph 32 in their letter of 2 July 2014, saying:

> Neither the Deed nor the Side Letter expressly addresses what happens with respect to the parties' performance during the 45-day cure period contemplated by Section 32 of the Deed.[104]

159. The Majority concludes that there is nothing in the plain language of the Deed suspending Respondents' performance while a Material Breach Application is pending. This conclusion, as noted in paragraph 158, is conceded by Respondents. The Dissenting Opinion of Ms. Lamm's contrary conclusion does not refer to any plain language in the Deed supporting its conclusion.

160. Finding that the plain language does not suspend Respondents' obligations, we turn to whether the provisions of the Deed can be interpreted to suspend Respondents' obligations.[105] The ultimate purpose of the Deed was to complete a sale of the Casino within ten months (or 13 at the latest) so that the Parties' joint-ownership and relationship could end. Various provisions of the Deed confirm that the sale and the Parties' related obligations were to be performed without delay: Paragraph 7 requires that Laos be paid taxes as of 1 July 2014; Paragraphs 8 and 9 require that the FT Committee be "promptly" formed and establish a tax by 31 July 2014; and Paragraph 48 unequivocally states that "[t]ime shall be of the essence of this Deed." Finally, the Deed provides in Paragraphs 35 and 42 that "all disputes" arising from the Deed shall be resolved by this SIAC arbitration, reinforcing the intent of the Parties to ensure compliance with the Deed.

161. Thus, the Majority concludes that to interpret Paragraph 32 to suspend performance

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[103] *Process America, Inc. v. Cynergy Holdings*, 839 F.3d 125, 133 (2016) (internal quotations omitted).
[104] C-084, Email Letter from David Rivkin to Minister of Planning and Investment and Werner Tsu, 2 July 2014.
[105] The Majority has resolved the meaning of Paragraph 32 on the basis of its plain language and the interpretation of the entire document, which resolves all ambiguities. Even if the Tribunal had to resort to parole evidence regarding the intent of Paragraph 32, no such evidence is present or alleged in this record. Indeed, both Parties' arguments regarding the meaning of Paragraph 32 involve only the language of the Deed.

would plainly not "give full meaning and effect to all of the [Deed's] provisions" requiring prompt performance, especially Paragraph 48's requirement that "[ti]me shall be of the essence of this Deed", which, by its reference to the entirety of the Deed, applies to all provisions of the contract. Moreover, to interpret Paragraph 32 as automatically suspending performance while any material breach application is pending before the BIT Tribunal—regardless of the application's merit or whether, if there were a breach, it was cured—would render Paragraph 42's requirement that this SIAC Arbitration resolve "all disputes arising out of or in connection with [the] Deed" meaningless as the resolution of disputes within this Tribunal's jurisdiction could be left pending indefinitely. Furthermore, Respondents' interpretation of Paragraph 32 would also make it ripe for abuse, permitting Respondents to file serial material breach applications before the BIT Tribunal simply as a tactic for delaying or obstructing performance. This cannot be deemed a viable interpretation of Paragraph 32, particularly when, like here, the asserted material breach is meritless. Indeed, the BIT Tribunal found no material breach, noting

> the Tribunal cannot proceed on the basis of Mr. Baldwin's unsupported speculation and innuendo that some such "unofficial" approach *may* have been made [to seek a competing license].[106]

162. Perhaps even more importantly, the evidence presented proved that even if the online reference to a rival casino might be sufficient evidence of breach, any such breach would have been cured by the direct statements of the Government's officials denying the cyber-gossip and correcting the misleading newspaper articles within approximately two-weeks of the Notice of Material Breach.[107]

163. In response to Sanum's submission of one internet article in *The Nation* (which simply adds the word "casino" to a list of diverse financial, entertainment, and educational services), an article in the *Times Reporter* (which describes a development but does not mention a "casino"), and the developer's site design for only an "Autonomous Economic Zone and Entertainment City,"[108] Laos produced three written witness statements of the relevant Laotian Ministers denying that any such license was granted, as well as statements from the developers correcting and clarifying that there was

[106] C-156, Decision on the Merits, *supra* note 63, ¶ 75 (emphasis in original).
[107] *See id.* at ¶ 12 ("Further, even if it were accepted, *arguendo*, that some of the evidence is suggestive of some sort of "tacit" signal of approval to rival entrepreneurs, all of which is denied by the Government, it is the Tribunal's conclusion that any such alleged conduct was "cured" by the Government within 45 days.")
[108] *See supra* notes 15–17 and accompanying text. Respondents also submitted an internet article from asiangamblingbrief.com, but that article bases its information on the announcement in *The Nation*.

no agreement to develop a casino.[109] Even Mr. John Baldwin admitted "in cross-examination that he had no personal knowledge of such Government approval [of the issuance of a competing license]."[110]

164. In light of the totality of the evidence, the Majority finds it to be unreasonable to excuse Respondents' nonperformance and penalize Laos, who had not granted any competing gaming license. It is even harder to justify Respondents' continued nonperformance after Laos submitted its witness statement denying any rival casino license within two weeks after receiving Sanum's Notice of Material Breach.

165. Furthermore, the Majority cannot credit Respondents' argument that the consequence of a material breach would be rescission of the Deed. Paragraph 32 contemplates the opposite—that a material breach could be cured, and that, after a cure, the Parties were to immediately continue performance of the Deed as contemplated. Suspending performance during the pendency of a material breach application directly undercuts the stated purpose of continued cooperation after cure, as any momentum would be lost, taxes would have accrued, and potential buyers could lose interest, all of which ultimately create avoidable delay, loss, and damage.

166. Under the evidence in this case, as did the BIT Tribunal, the Majority finds that that even if Laos could possibly be deemed to have breached based on Sanum's allegation, any breach was cured within approximately two weeks of Sanum's Notice of Material Breach. After having received the witness statements of the relevant Laotian ministers that no "competing license" had been issued, Sanum had no reasonable basis to continue to refuse to participate in the FT Committee or to refuse to perform their other obligations, even if Respondents believed they were initially excused for a few weeks from performance. The Dissenting Opinion agrees with this conclusion, but, nevertheless, concludes that Respondents were still entitled to suspend performance until the BIT Tribunal decided the Material Breach Application. The Majority finds no support for such a conclusion when Laos quickly provided overwhelming evidence refuting—or curing—any alleged breach.

167. Accordingly, the Majority concludes that the plain language of Paragraph 32 expresses no indication to suspend performance, as Respondents have acknowledged in

[109] *See supra* notes 26, 29–34 and accompanying text.
[110] C-156, Decision on the Merits, *supra* note 63, ¶ 52.

writing.[111] In addition, the terms of the Deed, read as a whole, do not permit any inference that the Parties intended to suspend performance during the pendency of a material breach application. Moreover, this Tribunal, as did the BIT Tribunal, concludes that the alleged breach did not occur, and that, assuming *arguendo*, Respondents had been able to prove a breach, the breach would have been cured within two weeks of Respondents' Notice of Material Breach.

168. Having rejected Respondents' general argument about their nonperformance, the Tribunal turns to Respondents' defenses specific to each of Claimant's allegations of breach under specific provisions of the Deed.

i. Paragraphs 8 and 9: Establishment of the FT Committee

169. The Parties' obligation to establish the FT Committee, set out in Paragraphs 8 and 9 of the Deed, consists primarily of nominating a member to the FT Committee.[112] Sanum first argues that they complied with the requirements of Paragraphs 8 and 9 because they appointed Mr. Rittvo to the FT Committee on 25 June 2014.

170. The Majority rejects this argument because, one week after appointing Mr. Rittvo, Sanum instructed him not to participate in the FT Committee. It is baseless to argue that the initial appointment complied with their obligation when, almost immediately, Sanum effectively rescinded it. The BIT Tribunal similarly characterized Sanum's behavior during these months, finding in its Second Provisional Measures Award of 18 March 2015 that

> . . . the Government was quite prepared to proceed with the renegotiation of a Flat Tax Agreement under the Terms of the Settlement and in fact appointed its nominee early in July 2014. [Sanum] has refused to participate as part of its broader disagreement with the Government of Laos over the status of the Deed of Settlement.[113]

171. Sanum's second argument is that they complied with the Deed because, on 23 May 2015, they emailed Laos offering to re-form the FT Committee *if* the BIT Tribunal denied their Material Breach Application.[114] However, during the 11 months prior to making what was only a conditional offer, Sanum continually refused to participate in the FT

[111] *See supra* note 104 and accompanying text.
[112] *See supra* paragraph 64 for the text of Paragraphs 8 and 9 of the Deed.
[113] C-124, Decision on Claimant's Second Application for Provisional Measures, *supra* note 46, at ¶ 31.
[114] *See* R-522, Letter from Christopher Tahbaz to the Minister of Planning and Investment and David Branson, *supra* note 58, and accompanying text.

Committee despite Laos' communications of 29 December 2014 and of 30 March 2015 requesting Sanum's participation[115] and despite the BIT Tribunal's observation of 18 March 2015:

> . . . [F]or so long as the Claimant [Sanum] continues to do business in Laos, it can reasonably expect to be bound by the Laotian income tax laws applicable to gambling casinos unless and until a new Flat Tax Agreement is negotiated.[116]

172. Moreover, Sanum's offer cannot be construed as a concrete proposal but rather a conditional offer to re-form the committee if, and then only sometime after, the Material Breach Application was denied.

173. On this record, the Majority cannot say that Sanum's initial appointment of Mr. Rittvo and their conditional proposal later to re-form the FT Committee constitute performance. Thus, the Majority concludes that this defense does not excuse nonperformance, and Sanum breached Paragraphs 8 and 9 of the Deed in a material and substantial way. The Dissent appears to agree that Respondents did not perform their obligations with respect to the FT Committee, but fails to attach any consequences to that nonperformance.

174. Sanum also claims that Laos proceeded to have Mr. Va appointed and set the tax in secret and without providing any notice to Sanum, preventing them from participating in the FT Committee. This assertion is specifically echoed in the Dissenting Opinion of Ms. Lamm. However, the evidence does not support this contention. As stated in paragraph 171, Laos informed Sanum on 29 December 2014, six months before Mr. Va was retained, that Sanum was required to either participate in the FT Committee or be subject to Laotian tax laws. Then, on 10 March 2015, during the hearing before the BIT Tribunal on Sanum's Second Provisional Measures Application, and two months before Mr. Va was retained, "[t]he Government contend[ed] . . . that it is open to the Government to have the Flat Tax Committee constituted without the cooperation of [Sanum] by resorting under Article 9 of the Deed of Settlement, to the President of the Macao Society of Registered Accountants."[117] Thus, Laos made clear its view that it had the right to proceed unilaterally under the Deed to have the appointee of Macau Society establish the flat tax—and intended to do so—before officially engaging Mr. Va. Despite this notice

[115] *See supra* notes 40 and 50 and accompanying text.
[116] C-124, Decision on Claimant's Second Application for Provisional Measures, *supra* note 46, at ¶ 34.
[117] *Id.* at ¶ 33.

and the BIT Tribunal's observation that Sanum would be taxed either pursuant to a new flat tax agreement or, if one were not formed, pursuant to Laotian tax laws, Sanum still refused to participate in the FT Committee. In light of the totality of the evidence, the Majority does not find Respondents' assertions to constitute an adequate defense to their nonperformance. Thus, the Majority finds that Respondents breached the Deed in a material and substantial way.

175. Sanum has made related assertions pertaining to the appointment of Mr. Va in their counterclaims, which the Majority will address in its discussion of Sanum's counterclaims, *infra*.

ii. Paragraph 7: Payment of Taxes

176. We now turn to the claim that Sanum breached Paragraph 7 of the Deed by failing to have Savan Vegas pay taxes as of 1 July 2014. It is undisputed that no taxes on Savan Vegas were paid to Laos between 1 July 2014 and 15 April 2015, the ten months Respondents were in control of Savan Vegas.

177. As this Tribunal previously noted in its Order of 22 July 2016:

> there has never been a debate that the enterprise, Savan Vegas, owned by both Respondents and Claimant, was ever completely relieved of the obligation to pay any tax. Nor have Respondents suggested that they were to be relieved of all tax liabilities whatsoever.[118]

Likewise, the BIT Tribunal observed that

> for so long as [Sanum] continues to do business in Laos, it can reasonably expect to be bound by the Laotian income tax laws applicable to gambling casinos unless and until a new Flat Tax Agreement is negotiated.[119]

Additionally, at the Final Hearing, counsel for Respondents reiterated that Sanum was always expected to pay taxes:

> I don't think anybody has ever said that we shouldn't be paying tax or that taxes shouldn't be assessed against us. The [Deed] is clear, the taxes apply retroactively. There's no sort of gap where we're not required to pay taxes.[120]

Finally, Mr. Baldwin also testified at the Final Hearing that the duty to pay Laotian taxes was absolute:

> We had an absolute duty to pay tax and as soon as the tax committee, the properly formed tax committee under the Settlement Deed met and set a tax

[118] Order on Interim Measures, ¶ 10, 22 July 2016.
[119] C-124, Decision on Claimant's Second Application for Provisional Measures, *supra* note 46, at ¶ 34.
[120] Final Hr'g Tr. at 231-32, 22 Jan. 2017 (statement of Ms. Rowe).

we were obligated to pay whatever that amount was.[121]

178. However, Sanum argues that their obligation to cause Savan Vegas to pay taxes was never triggered because Paragraph 7 requires the FT Committee to determine the tax rate, and the FT Committee was never formed. The Majority cannot countenance this defense as it was Respondents themselves who precluded the establishment of the FT Committee by refusing to participate in it, despite Laos' specific requests for cooperation. Respondents cannot now benefit from their own prior nonperformance, particularly given that the requirement to pay Laos, a sovereign state, some amount of taxes was never in dispute.

179. Additionally, Sanum contends that although they never caused Savan Vegas to pay taxes to Laos while they were in control of the Casino, they did place a total of US$4.3 million in one of their U.S. accounts to which only they had access. Sanum asserts that they believed this figure would cover whatever tax liability was eventually deemed due and owing. The Majority also rejects this defense. By their own admission, Sanum never distributed this amount to Laos, nor did they ever place the amount in escrow under the control of a third party. Rather, Sanum temporarily set aside this money for taxes but then used it to pay themselves money they had assertedly loaned to Savan Vegas. Sanum has failed to explain how temporarily placing money in an account to which only they have control satisfies the unambiguous requirement that taxes be paid to Laos.

180. The undisputed evidence is that taxes were not paid, and the Majority concludes that Respondents' defense does not excuse their failure to perform Paragraph 7 of Deed. Certainly, the nonpayment of any taxes constitutes a material and substantial breach of the Deed.

iii. Paragraph 9 and Annex E: Appointment and Payment of RMC

181. Paragraph 9 of the Deed requires that Laos appoint RMC within ten days from the execution of the Deed to supervise the operation and sale of the Casino during Sanum's ten-month period of control. Annex E of the Deed, in turn, stipulates that RMC's monthly retainer was to be US$150,000, with payment guaranteed for a minimum of six months, and which was to be paid by Savan Vegas within 14 days of receipt of an invoice.

182. Respondents admit that, while Sanum controlled Savan Vegas, the only payment they

[121] Final Hr'g Tr. at 1111, 25 Jan. 2017 (cross-examination of Mr. Baldwin).

made to RMC was on 26 June 2014 in the amount of US$50,000.[122] Notwithstanding the payment schedule contained in Annex E, Clay Crawford, the CFO of Savan Vegas at that time, explained that only US$50,000 was paid because "John Baldwin represented to me that we were paying RMC's fee on a pro-rated basis, and that this amount was enough for RMC to start work."[123]

183. Respondents defend their subsequent nonpayment by once again relying on their interpretation of Paragraph 32 of the Deed to legally suspend their performance of this obligation. For the reasons discussed above, this defense has been rejected by the Majority, and Sanum's failure to pay RMC the guaranteed payment required under Annex E of the Deed constitutes a breach of the Deed. Because RMC was to monitor the operation of the Casino during Sanum's ten-month period of control and was to step in and completely take over the operation and sale of the Casino if Sanum did not meet its Sale Deadline, Sanum's nonpayment and noncooperation constitutes a material and substantial breach. Indeed, had Sanum met its obligations with respect to RMC, RMC would have been monitoring the Casino, and when Sanum's ten months of management passed without a sale, control would have transferred to RMC in order to effectuate the requisite sale.

iv. Paragraphs 10 and 11: Respondents' Sale Deadline

184. Paragraphs 10 and 11 of the Deed gave Respondents ten months to operate and "to take steps to establish and expeditiously carry out" the sale of Savan Vegas. This Sale Deadline of 15 April 2015 could be extended by at most three months (until 15 July 2015) in order to complete a sale in the event Respondents received an MOU for the purchase of the Casino. If no sale occurred by the Sale Deadline, then Paragraph 12 required that a qualified gaming expert, such as RMC, be appointed to manage and sell the Casino as of the Sale Deadline, thus terminating Sanum's management of Savan Vegas.

185. Claimant alleged that Sanum failed to take any steps to sell the Casino during the ten months they were in control of the Casino, in violation of Paragraphs 10 and 11 of the Deed, and the evidence is unrebutted that Sanum took no steps to complete a sale by the Sale Deadline (15 April 2015). Mr. Baldwin admitted that he did not try to sell the

[122] Fifth Witness Statement of Clay Crawford, ¶ 3, 2 Dec. 2016; R-496, Savan's General Ledger, Sheet 5, Row 15694, 31 Dec. 2014.
[123] Fifth Witness Statement of Clay Crawford, ¶ 3.

Casino during those ten months, testifying that "[t]he reason I haven't signed engagement letters, the reason I haven't tried, it's not selling the casino, it's selling the casino for the highest possible price. Can Savan be sold? Savan can be sold anytime."[124]

186. However, Respondents argue their Sale Deadline was extended beyond 15 April 2015 for three alternative reasons:

a. First, Respondents point to the language in the Side Letter stating that "the Sale Deadline . . . shall be extended by the same number of days beyond the 45-days . . . for the FT Committee to make its decision on the FT." Relying on this language, Respondents argue again that, because the FT Committee never set the flat tax, the Sale Deadline had not yet lapsed.

b. Alternatively, Respondents assert that their task was not just to sell Savan Vegas, but to sell Savan Vegas in a way that maximized the sale price. They argue that this was rendered impossible while their Material Breach Application was pending because buyers would make low bids, believing that Laos had licensed a competing casino.

c. Finally, Respondents assert that the deadline was extended to 15 July 2015 because they received an MOU from Angus Noble for the purchase of the Casino on 14 April 2015 (the day before the Sale Deadline of 15 April 2015 was to expire).

The Majority addresses each of these arguments in turn.

187. First, Respondents' reliance on the Side Letter language is misplaced. As discussed above in paragraph 178, Respondents themselves prevented the formation of the FT Committee. Respondents are not entitled to benefit from their prior nonperformance and cannot rely on it to extend their Sale Deadline.

188. Additionally, Respondents' impossibility argument must be rejected because, like the BIT Tribunal, we do not

> accept [Sanum's] argument that a misleading article in a Thai newspaper and subsequent and related postings inflicted such destruction on the value or marketability of Savan Vegas . . . Serious buyers would not be put off by

[124] R-157, Hr'g Tr., *supra* note 51, p. 64.

cyber-gossip.[125]

Respondents' argument that prospective buyers would make low bids believing that Laos had licensed a competing casino is belied by the flimsy basis asserted for such a belief, the many witness statements submitted by Government officials specifically denying the issuance of any competing license, and the lack of substantial evidence that serious buyers were deterred by rumors.[126] Moreover, Laos provided proof within days of Respondents' Notice of Material Breach that there was no truth to the newspaper's reference to a competing casino.[127] Had Respondents not remained intransigent in the face of this evidence and instead performed its obligations, any possible ambiguity would have lasted only a few days.

189. Finally, turning to the issue of the Noble MOU, the overwhelming evidence indicates that Angus Noble and Sanum never signed the document with the intention of negotiating MaxGaming's purchase of the Casino, as the Noble MOU explicitly represented. Under the facts surrounding the Noble MOU, the Majority, as well as the Dissenting Opinion of Ms. Lamm, cannot credit it as valid or *bona fide* or therefore as extending the Sale Deadline by three months. The evidence surrounding the acquisition of the Noble MOU is as follows:

a. As discussed above, on 13 and 14 April 2015, Mr. Baldwin and his lawyers were attending the hearing before the BIT Tribunal in Singapore on Sanum's Material Breach Application. On that day, Mr. Baldwin testified that he did not have any written offers to purchase Savan Vegas.[128] Neither he, nor anyone else, made any mention of any possible MOU extending the next day's 15 April 2015 Sale Deadline.

b. On the evening of 14 April 2015, after the hearing had concluded, the BIT Tribunal emailed both Parties at 21:18, stating:

> [T]he Tribunal concludes the Claimant [Sanum] has failed to establish all of the requisite elements for such an order, and therefore dismisses the application, with reasons to follow.[129]

c. On the same day, at 23:04, Sanum sent Laos an MOU signed by Angus Noble

[125] C-156, Decision on the Merits, *supra* note 63, at ¶ 100.
[126] *See supra* notes 26, 29–34 and accompanying text; *supra* paragraphs 162–164.
[127] *See supra* notes 26, 29–34 and accompanying text.
[128] R-157, Hr'g Tr., *supra* note 51, p. 64.
[129] R-351, Email from Judge Ian Binnie to Christopher Tahbaz, 14 April 2015.

on behalf MaxGaming, in which MaxGaming represented itself as the buyer and offered to purchase the Casino for US$220 million with a US$30 million down payment.[130]

d. In Mr. Noble's First Witness Statement to this Tribunal, he claimed that he began his discussions with Mr. Shawn Scott, Mr. Baldwin's partner, about purchasing Savan Vegas in February 2015. He also claimed that on 21 February 2015, the two had "met in Phnom Penh, Cambodia and had a lengthy discussion about the potential opportunity."[131]

e. However, in his Second Witness Statement, Mr. Noble admitted that his first statement to this Tribunal was not true and that he and Mr. Scott had not discussed the purchase of Savan Vegas in February 2015:

> Mr. Scott and I did not discuss the sale or purchase of Savan Vegas ***until mid-April, just before I signed the Memorandum of Understanding*** for the purchase of Savan Vegas (the "MOU"). It was at this time, and not in February, when Mr. Scott approached me about the possibility of purchasing Savan Vegas.[132]

f. The emails between the parties confirm that Mr. Noble's First Witness Statement was not true. It was on 8 April 2015 when Mr. Noble first emailed Mr. Scott seeking employment, advising that his current employment in sales was being terminated:

> . . . . I will be leaving IPG at the end of April, they have decided to concentrate on their revenue share operations side of the business and with draw [sic] from sales side of the business and will not need my services. It was not well handled and a bit sudden but it is amicable and I understand the business decision.
>
> They will still want to sell you the reconditioned machines, and installation services and there will be some form of formal hand over [sic] at some stage soon.
>
> I will be returning to my apartment . . . and doing independent consulting work in Macau and the region, as I mentioned to you in our breakfast, I have been based in Macau since 2007. Since that time, I have been doing sales, business development

[130] C-133, Email from Deborah Deitsch-Perez to David Branson, 14 April 2015 (with a time-stamp of 11:04pm); C-125, Memorandum of Understanding between Max Gaming and Sanum, 14 April 2015.
[131] First Witness Statement of Angus Noble, ¶ 5, 8 June 2015.
[132] Second Witness Statement of Angus Noble, ¶ 6, 14 October 2016 (emphasis added).

> and project management work for major region gaming companies, and worked on long term assignments with Progressive gaming (systems company), Aristocrat, Weike gaming, and IPG, in project management, business development and sales.
>
> As I am soon to be independent, I would like to offer my services, for your upcoming projects in Saipan, I have extensive experience in Project management [sic], business development and operations, and would welcome the opportunity to assist you with the projects on maybe a short term project management basis, if you think I can be of benefit to you. . . .
>
> If you have any interest in having more discussions on how I might be able to assist you, I would welcome that . . . .[133]

It is now undisputed that it was only on 13 April 2015 when Mr. Noble first learned from Mr. Scott, via email, of the "opportunity" to purchase Savan Vegas. Mr. Scott's email apologized for the delay in responding to Mr. Noble's email of 8 April 2015 seeking employment and stated

> I am in Singapore [where the hearing before the BIT Tribunal was occurring] and have a ***very interesting opportunity to discuss with you***.[134]

Mr. Scott provided no other details—financial or otherwise—about the Casino.

g. The next day, on 14 April 2015, Mr. Scott sent Mr. Noble an email asking for "Gus's" full name and the name of his company. Mr. Noble responded on the same day, providing both, and also stating

> I understand that this needs to be done very quickly and I am ok with that, but can you walk me through the details, so I am clear on what we [are] trying to get done and any legal ramifications.[135]

h. Later on 14 April 2015, one day after Mr. Scott first mentioned the "very interesting opportunity," and having never seen the Casino or any of its financial information, Mr. Noble signed the MOU to purchase Savan Vegas for US$220 million, representing that his company, MaxGaming, was the

[133] C-281, Email from Paul Zak to Victoria Scott (transmitting email from Angus Noble to Shawn Scott), 8 April 2015.
[134] C-282, Email from Shawn Scott to Angus Noble, 13 April 2015 (emphasis added).
[135] C-283, Emails between Shawn Scott and Angus Noble, 14 April 2015.

buyer. The MOU was signed exactly as it had been prepared for him by Sanum.[136]

i. In his testimony before this Tribunal at the Final Hearing, Mr. Noble described a phone call he had with Ms. Deborah Deitsch-Perez on the night of 14 April 2015, explaining that he had no intention of entering into a binding agreement to purchase the Casino and also that he had no financiers to buy it:

> President: . . . . Are you saying you had a phone call with Ms. Deborah Deitsch Perez?
>
> The Witness: Yes, I did, on that night of the 14th.
>
> President: You didn't just sign [the MOU], scan it, and sent it back.
>
> The Witness: No, no, I spoke to her before I signed it.
>
> The President: And had a long discussion?
>
> The Witness: Not a long discussion, a short discussion specifically around the binding or nonbinding nature of the agreement because that's what I would be principally concerned about because I didn't want to sign a binding agreement to something that I hadn't done any, done any formal due diligence on and hadn't found financiers for.[137]

j. It was not until 22 April 2015 that Mr. Noble even received "some very basic financial information . . . gross revenue and net revenue for past two years." At this time, he was also directed to a YouTube link to see the Casino for the first time.[138]

k. The evidence reflects that Mr. Noble did not obtain independent legal or financial advice about this US$220 million investment. Neither did he have the funds to purchase the Casino nor any firm investors to fund the purchase. Nonetheless, Mr. Noble, again, put his signature on a letter drafted by a Sanum representative saying exactly the opposite. On 1 May 2015, Mr. Noble was instructed to "print[,] sign[,] scan[,] and send [the] letter," which was then transmitted to the Government and asserted the following:

> I have reconfirmed that our funds are available and allocated for this acquisition. My partners in the acquisition are eager to complete the

[136] Final Hr'g Tr. at 1471–72, 26 Jan. 2017 (cross-examination of Mr. Noble).
[137] *Id.* at 1472–73 (Tribunal Question).
[138] C-289, Email from Gene McCain to Shawn Scott, 22 April 2015.

> purchase and move forward . . . .
>
> . . .
>
> Our funding source has targeted June 10th for funding and closing the acquisition.[139]

However, there were no partners or funds available. When asked at the Final Hearing about whether this portion of the letter was true, Mr. Noble replied as follows:

> Q: Is any of that true?
>
> A: No, it is not.
>
> Q: Wasn't true?
>
> A: No.
>
> Q: Did have any partners?
>
> A: No. This letter was an attempt to –
>
> Q: You didn't have any funds available?
>
> A: No, I did not.
>
> Q: Were you used to signing fraudulent letters and sending them back to your business partners?
>
> A: No. This letter, as I said in my witness statement, this letter was an ill-conceived attempt to . . . get some action on recognition on the MOU. I shouldn't have signed the letter, and I regret signing the letter.[140]

Likewise, Mr. Noble testified in his Third Witness Statement that this letter, like his First Witness Statement, was wrong and misleading:

> With respect to a letter addressed to Mr. Baldwin and Mr. Scott, which Gene McCain asked that I sign on 1 May 2015 . . . I did so quickly. . . . However, I appreciate that the letter inaccurately gave the impression that our preparations for the deal were more advanced than in fact they were, in the hopes it would trigger a positive reaction by the Government. . . . In hindsight, however, I regret having signed the letter without further consideration or revision of its content.[141]

At the Final Hearing, he added the following:

> Q: This is the exact word for word copy of the letter that Gene McCain had sent to you?

---

[139] C-298, Emails between Angus Noble and Gene McCain, 1 May 2015 (attaching the executed letter dated 29 April 2015).
[140] Final Hr'g Tr. at 1484–85, 26 Jan. 2017 (cross-examination of Mr. Noble).
[141] Third Witness Statement of Angus Noble, ¶ 16, 16 Dec. 2016.

A: Yes, it was.

Q: You didn't change a word?

A: No, I didn't.

Q: You just signed it and sent it back to him?

A: Yes.[142]

l. Regarding the Noble MOU's requirement that he pay a US$30 million down payment within 90 days, he testified at the Final Hearing as follows:

A: I did not have funds to purchase the company myself.

Q: Did you have one million that could have invested in Savan Vegas, liquid funds?

A: Liquid funds, no.[143]

m. Finally, Mr. Noble indicated that, contrary to the express terms of the Noble MOU, he only intended to broker the sale[144] and never intended to purchase the Casino. In his Second Witness Statement, Mr. Noble stated:

> . . . [M]y intention was always to find investors to raise the funds to purchase Savan Vegas. Obviously, MaxGaming was not intending to invest US$220 million in Savan Vegas on its own; ***nor would Mr. Scott and Mr. Baldwin, both seasoned businessmen in the gaming industry, have found me to be a credible buyer had I represented MaxGaming to be the sole purchaser.***[145]

At the Final Hearing, Mr. Noble agreed that having investors purchase Savan Vegas rather than MaxGaming was contrary to the language of the MOU:

Q: [Reads the above excerpt from Mr. Noble's Second Witness Statement] That's not what the [Noble] MOU says, does it?

A: The [Noble MOU] states that MaxGaming will be the buyer of the casino.[146]

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[142] Final Hr'g Tr. at 1483, 26 Jan. 2017 (cross-examination of Mr. Noble).
[143] *Id.* at 1454–55.
[144] C-141, Email from Angus Noble to John Baldwin et al., 29 April 2015 (forwarding an email between Angus Noble and Andy Tsui of Entertainment Gaming reads as follows:

> as discussed my company have [sic] a mandate to sell a Casino in Indo China. If your company is interested, we would need to sign NDA and have a high level agreement on my finders [sic] fee then we can proceed with detailed discussions . . . . This is a rare opportunity and once it is know[n] its [sic] up for sale there will be considerable interest so I encourage you to look at the opportunity as soon as possible. The proposed sale price is $220,000,000 and my companies [sic] fee is 2.5%.).

[145] Second Witness Statement of Angus Noble, ¶ 10 (emphasis added).
[146] Final Hr'g Tr. at 1474, 26 Jan. 2017 (cross examination of Mr. Noble).

n. Mr. Baldwin then admitted, at the Final Hearing, that the purpose of signing **an** MOU—presumably, *any* MOU would have sufficed—was simply to extend Sanum's Sale Deadline:

> President: . . . [Noble] wasn't an owner of a big, huge business or had, I'm looking at this résumé, it's not like he was a multimillionaire . . .
>
> The Witness: No, I mean it's no secret that we needed **an** MOU signed or we wanted **an** MOU signed, all right. . . .
>
> We needed the MOU signed, there's no question that was the right thing to do was to get **an** MOU signed. However—
>
> President: The right thing to do for?
>
> The Witness: To trigger another 90 days.[147]

190. In light of the testimony and documentary evidence, the Majority cannot credit Sanum's argument that the Noble MOU was, nevertheless, *bona fide*. The conduct and testimony of Mr. Baldwin and Mr. Noble make clear that the two parties never intended Mr. Noble to purchase the Casino but rather completed the Noble MOU, in Mr. Baldwin's own words, to simply "trigger another 90 days" of Sanum's control over the Casino. In short, the Majority finds that presenting the document as a valid MOU was a misrepresentation on both Mr. Noble's and Mr. Baldwin's part. The Dissenting Opinion of Ms. Lamm likewise determined that the Noble MOU could not extend the Sale Deadline. Although the Dissenting Opinion of Ms. Lamm disagrees that this constitutes a misrepresentation, there is no other basis for the conclusion that the Sale Deadline was not extended other than that the Noble MOU was not valid or *bona fide*.

191. Furthermore, even if the evidence did not establish the complete lack of validity of the Noble MOU, the Noble MOU did not meet the requirements of the Deed:

a. First, shortly after signing the Noble MOU, Mr. Noble was essentially hired by Mr. Scott as a consultant at a rate of US$10,000/month.[148] However, Mr. Noble's employment with Mr. Scott disqualified him from purchasing the Casino, as the Deed prohibits any employee of Mr. Scott or Mr. Baldwin from

[147] Final H'rg Tr. at 1189–90, 25 Jan. 2017 (cross-examination of Mr. Baldwin) (emphasis added).
[148] C-301, Email from Angus Noble to Shawn Scott, 8 May 2015 (attaching a proposed consultancy agreement); C-305, Email from Angus Noble to Shawn Scott and Irene Tantiado, 27 May 2015 (attaching Noble's US$10,000 invoice).

being the purchaser.[149]

b. Additionally, Paragraph 11 of the Deed contemplates extending Sanum's Sale Deadline only if Sanum "signed an MOU *with a proposed buyer to complete such Sale*."[150] However, both Mr. Baldwin and Mr. Noble admit that, despite the language of the Noble MOU naming MaxGaming as the buyer, neither intended MaxGaming or Mr. Noble to be the purchaser. It is highly unlikely, under the circumstances described above, that this MOU was going to be a basis "to complete [an already contemplated] Sale" within the three additional months given by the Deed. Indeed, Mr. Baldwin admitted that the Noble MOU was signed simply to give *Sanum*, not Mr. Noble, an additional 90 days to remain in control and sell the Casino.

c. Last, the Deed requires that the purchaser be either a recognized gaming company, a junket operator duly licensed to operate a gaming casino, or failing those two qualifications, approved by the FT Committee. MaxGaming, however, fits none of these descriptions. It is a consulting company. Moreover, the FT Committee could not approve MaxGaming as a purchaser because Sanum, as of 15 April 2015, still refused to constitute it.

Based on the foregoing, we find the Noble MOU did not extend Sanum's Sale Deadline of 15 April 2015. We discuss the impact of Respondents' reliance on the Noble MOU, *infra*, in the discussion of Claimant's allegations of fraud.

D. Claimant's Allegations of Fraud

192. In addition to its claims of breach, Claimant alleges that Respondents also committed fraud, both upon Claimant and upon this Tribunal. First, Claimant alleges Respondents fraudulently induced Claimant to execute the Deed, arguing that it relied on Respondents' assertion that they had a "credible buyer" (later identified as Tak Chun) to purchase Savan Vegas when no such buyer existed at that time.

193. Additionally, Claimant argues that Respondents also committed fraud by

[149] Paragraph 14 of the Deed provides that Sanum
> shall take all necessary steps to reject any bidder if it is owned or controlled to any extent or degree by Mr. John K. Baldwin, Mr. Shawn Scott . . . or any related person of any of them. A "related person" for the purposes of this Section shall include . . . any shareholder, director, officer or employee of them or at or connected with the Gaming Assets or otherwise.

[150] Emphasis added.

misappropriating approximately US$24 million from Savan Vegas by having Savan Vegas pay this amount to Sanum ostensibly pursuant to the terms of two allegedly fraudulent credit facility agreements.

194. Last, Claimant alleges that Respondents committed fraud on this Tribunal by continually asserting that Angus Noble submitted a valid MOU when the overwhelming evidence established that this MOU was fraudulent. Claimant asserts that, under New York law, this alleged fraud requires the imposition of sanctions on Respondents.

E. Tribunal's Conclusions Regarding Claimant's Allegations of Fraud

i. Claimant's Allegation of Fraudulent Inducement

195. In response to Claimant's claim of fraudulent inducement, Respondents first argue that Laos is barred from raising this claim as the Consent Award issued on 18 June 2014 found that the Deed was "not procured by fraud" and also because the Side Letter stipulates that "[t]he Parties shall not have any claims against any other party with respect to the negotiation and signing of the Settlement and this Side Letter" (emphasis added).

196. However, the language of the Consent Award of 18 June 2014 does not bar Claimant from raising a claim of fraudulent inducement before this Tribunal, both because the Consent Award is not binding on this Tribunal and because the Consent Award only found that Claimant had not committed fraud; it never addressed whether Respondents had committed any fraud. Regarding the language of release in the Side Letter, we note that it appears to waive the Parties' rights to bring claims against "any other party"—that is, third parties—and thus does not prevent Claimant from bringing a fraud claim against Respondents. In any event, we note that, under New York law, fraud in the inducement is an exception to a waiver or release contained in a contract.[151]

197. Thus, we turn to the elements of fraudulent inducement under New York law, which are the following:

> (1) a material misrepresentation or omission of fact (2) made by defendant with knowledge of its falsity (3) and intent to defraud; (4) reasonable reliance on the part of the plaintiff; and (5) resulting damage to the plaintiff.[152]

198. Mr. Baldwin admits in his Third Witness Statement that:

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[151] *Centro Empresarial Cempresa S.A. v America Movil, S.A.B. de C.V.*, 17 N.Y.3d 269, 276 (2011).
[152] *Crigger v. Fahnestock & Co.*, 443 F.3d 230, 234 (2d Cir. 2006).

> ***My intention during the settlement negotiations*** in either communicating or having communicated the facts of my discussion with Tak Chun . . . ***[was] rather to convey that a credible buyer had expressed an interest in purchasing Savan Vegas.***[153]

199. The statement of an "expression of interest from a potential buyer" constitutes a representation made during the negotiations which was material. Laos relied on this representation. Knowing that Respondents had a potential buyer was clearly significant to Claimant's decision to allow Respondents to maintain ownership of Savan Vegas for ten months. Mr. Baldwin makes this clear stating, in his Second Witness Statement, the expression of interest in purchasing Savan Vegas "was the impetus for the Settlement with Laos."[154]

200. However, the overwhelming evidence is that this buyer—who Respondents eventually alleged was Tak Chun—never made a credible expression of interest prior to the execution of the Deed:

a. In response to a request for production, Respondents stated that no documents existed pertaining to the alleged "credible buyer."[155]

b. It was not until April 2015, ten months after the signing of the Deed and a few days before the BIT Tribunal's hearing on Sanum's Material Breach Application, that Sanum finally identified the person they had referenced as the "credible buyer" as the Tak Chun Group, a junket operator. However, Sanum could not produce any evidence of Tak Chun's alleged interest in purchasing Savan Vegas.

c. The email correspondence between Tak Chun and Mr. Baldwin, which Sanum produced for this Arbitration, confirms that the first time Tak Chun and Mr. Baldwin mentioned a meeting to discuss Savan Vegas was not until 24 January 2015, some six months after the Deed was signed.[156]

d. Additionally, Mr. David Green, Claimant's expert witness on taxation of casinos, testified that while investigating the facts of this Arbitration, he

[153] Third Witness Statement of John K. Baldwin, ¶ 11, 1 Dec. 2016 (emphasis added).
[154] Second Witness Statement of John K. Baldwin, ¶ 8, 8 June 2015.
[155] C-122, Sanum's Responses to Laos' Document Disclosure Requests (Redfern Schedule), *Lao Holdings, N.V. v. The Government of the Lao People's Democratic Republic*, ICSID Case No. ARB(AF)/12/6, 2 March 2015 (nor were any privileged documents logged).
[156] C-112, Email from Wayne Lio (Tak Chun) to John Baldwin, 26 Jan. 2015.

attended a meeting with the senior leadership of Tak Chun. In that meeting the officials from Tak Chun were asked about their dealings with Sanum. Mr. Green noted the following:

> The first meeting between Baldwin and one other . . . occurred when the 3 executives met Baldwin for what was described as a "thank you" lunch in Hong Kong [referencing a prior deal]. CEO/CMO not clear when the lunch occurred, whether it was in late 2014 (post the December settlement), or in early 2015. ***They said there was a casual conversation about Savan Vegas, but the CMO was adamant that the property was of no material interest to TC.***
>
> . . . .
>
> ***In summary, TC said there was no meeting with Baldwin and the 3 executives [CMO, CFO, CEO], or any of them, prior to the lunch in HK after the closing of the land sale in December 2014. There was no discussion about TC buying SV, whether for US$250m, or any price, in June 2014.***[157]

e. In his Third Witness Statement and in his testimony before this Tribunal, Mr. Baldwin confirmed that he never spoke to the CEO, CMO or CFO of Tak Chun about purchasing Savan Vegas prior to the execution of the Deed.[158] He testified that he had discussions only with an architect and a business development representative from Tak Chun, both of whom he only knew as "Steven."[159] Despite never receiving any written statement of interest from or concluding a deal with either one of the "Stevens," Mr. Baldwin claimed that the "Stevens" could finalize Tak Chun's purchase of Savan Vegas:

> Q: You just told us that you had no paper with these people in May or June 2014, and therefore, how could they have been credible people in June 2014?
>
> A: My assessment of them is that they had a lot of money and that they were actively looking for transactions.
>
> Q: You had one conference call with two Stevens you tell us, one's an architect, he doesn't have any authority to buy anything, does he?
>
> A: No.
>
> Q: And the other person was a Steven who you say is a

[157] Expert Report of David Green, Ex. B, 11 Sept. 2016 (emphasis added).
[158] Third Witness Statement of John K. Baldwin, ¶ 12; Final H'rg Tr. at 1089–90, 25 Jan. 2017 (cross-examination of Mr. Baldwin).
[159] Final H'rg Tr. at 1082–88 (cross-examination of Mr. Baldwin).

> business development person. Did he have any authority to buy anything?
>
> A: He represented that he was the one who could put together the Macau land deal and in fact did do the Macau land deal. He represented that he could put together transactions for other properties.[160]

201. Despite producing no evidence of Tak Chun's interest in Savan Vegas prior to the Deed and never even speaking with the corporate officers of Tak Chun prior to the Deed, Mr. Baldwin maintained that the "Stevens"—whose last names he did not know, with whom he never completed a deal, and whose authority to make any large business acquisition he could not describe—could ensure that Tak Chun would purchase Savan Vegas. Given the totality of the evidence, the Majority cannot find Mr. Baldwin's assertions to be credible. Notwithstanding the testimony and responses to request for production that indicate that Mr. Baldwin never received any documentation pertaining to an offer to purchase Savan Vegas prior to the signing of the Deed, Respondents nonetheless asserted the contrary:

a. In their Second Amended Response to Notice of Arbitration, Respondents asserted that "Respondents were led to consider the Settlement because they had already received an offer to purchase Savan Vegas for a substantial sum."[161]

b. In their Opening Memorial, Respondents again asserted that "Respondents were prompted to consider settlement after Tak Chun, a well-known Macau-based junket operator (with which Bridge Capital, an affiliate of Respondents, was involved in an unrelated real-estate finance transaction), expressed interest in a potential acquisition of Savan Vegas."[162]

c. In their Counter-Memorial, Respondents again stated that "Respondents do not deny that they informed the Government orally during the course of negotiations that they had received an expression of interest from a potential buyer. . . . In about May 2014, Tak Chun had made a provisional and informal

[160] *Id.* at 1090–91.
[161] Resp'ts Second Amended Response to Notice of Arbitration and Brief Statement of Countercls., ¶ 20, 3 June 2016.
[162] Resp'ts Opening Memorial on Countercls., ¶ 52, 14 Oct. 2016.

expression of interest to purchase the Casino for US$275 million."[163]

202. We find that the only reasonable conclusion based on the totality of the evidence in this record, articulated above, is that there was no viable "credible" or "interested" buyer prior to the signing of the Deed.

203. However, notwithstanding that Sanum misrepresented that it had a viable "interested" or "credible" buyer, and that, as Mr. Baldwin makes clear in his Second Witness Statement, the expression of interest in purchasing Savan Vegas served as "the impetus for the Settlement,"[164] Laos has not alleged any specific damages flowing from this misrepresentation beyond asserting the need for this Arbitration. Accordingly, because all the necessary elements for a fraudulent inducement claim have not been established, we cannot, on this record, find for Claimant on its claim of fraudulent inducement.

ii. Claimant's Allegation of Loan Fraud

204. We conclude that Claimant's allegation of loan fraud is outside of this Tribunal's jurisdiction because it is not encompassed by the Deed, and, therefore, we do not address the evidence presented regarding loan fraud.[165]

iii. Claimant's Allegation of Fraud on the Tribunal with the Noble MOU

205. Last, we address Claimant's allegation that Respondents committed fraud on the Tribunal by presenting and asserting the validity of the Noble MOU, which Respondents maintain was a valid, *bona fide* agreement. This is not a claim of fraud upon a party, but rather a claim of fraud consisting of misrepresentations to the Tribunal.

206. For the reasons discussed above, the Majority has concluded that the Noble MOU cannot be credited as valid or *bona fide*, and the Dissenting Opinion agrees that the Noble MOU could not extend Sanum's Sale Deadline. As discussed and detailed in paragraphs 189 to 191, Respondents simply found someone in the final hours of their Sale Deadline willing to put his signature on a pre-prepared MOU. By Mr. Baldwin's own words, the

[163] Resp'ts Corrected Counter-Memorial on Claimant's Claims, ¶ 268, 10 Dec. 2016.
[164] Second Witness Statement of John K. Baldwin, ¶ 8.
[165] The Dissent, in its paragraph 16, notes that Sanum invested "US$25 million up to a total of US$65 million." However, it is these asserted amounts that constitute the loans from Mr. Baldwin to the Casino, the principal of which was never reduced despite Savan Vegas paying US$85.3 million, as all of this amount was designated as interest (charged at an effective rate of 23-32%), late fees, and administrative fees. *See* Expert Report of Kenneth Yeo, 14 Sept. 2016; *see also* Expert Report of Ricky Lee, 2 Dec. 2016.

Noble MOU was signed simply "to trigger another 90 days."[166]

207. Although Mr. Noble claimed that he was involved in billion-dollar deals, it is difficult to credit this experience when he both represented to the Tribunal that the Noble MOU allowed him to seek financial backers but, at the same time, testified that the Noble MOU clearly stated that "MaxGaming" would be the buyer[167] even though he lacked access to any funds to purchase the Casino.[168] In addition, shortly after he signed the MOU, Mr. Noble was hired as a consultant essentially by Mr. Scott and was being paid US$10,000/month,[169] which precluded him from purchasing the Casino under the terms of the Deed.

208. Despite being in possession of the evidence which overwhelmingly indicates the invalidity of the MOU, Respondents continued to argue that the Noble MOU was *bona fide*. Most notably, in their Counter-Memorial of 10 December 2016, Respondents asserted that:

> ***[T]he MOU was in fact a bona fide agreement that satisfied all of the Deed's requirements and rightfully necessitated an extension of Respondents' control over the Casino***. Respondents asked Mr. Noble to sign the agreement when they did because, in the shadow of the Government's threats to seize the Casino immediately upon the expiry of the ten-month control period, ***Respondents believed that, with a three-month extension, Sanum would be able to sell the Casino.***[170]

209. This statement clearly indicates that the MOU was designed to give Sanum additional time to operate the Casino, rather than truly providing three months to complete an already contemplated sale, as the Deed requires. Contrary to the language of the MOU itself, Mr. Noble had no intention of being the purchaser of Savan Vegas, nor did Mr. Baldwin expect him to be.[171] Additionally, even if Mr. Noble did intend to purchase the Casino, under the terms of the Deed, he was not eligible because his company MaxGaming was neither a recognized gaming company, nor a junket operator duly licensed to operate a gaming casino, nor approved by the FT Committee to purchase the

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[166] Final H'rg Tr. at 1190, 25 Jan. 2017 (cross-examination of Mr. Baldwin).
[167] Final Hr'g Tr. at 1474, 26 Jan. 2017 (cross-examination of Mr. Noble).
[168] *See supra* note 143 and accompanying text.
[169] C-301, Email from Angus Noble to Shawn Scott, 8 May 2015 (attaching a proposed consultancy agreement); C-305, Email from Angus Noble to Shawn Scott and Irene Tantiado, 27 May 2015 (attaching Noble's US$10,000 invoice); *see also supra* paragraph 191.
[170] Resp'ts Corrected Counter-Memorial on Claimant's Claims, ¶ 277, 10 Dec. 2016 (emphasis added).
[171] *See supra* note 145 and accompanying text ("Obviously, MaxGaming was not intending to invest US$220 million in Savan Vegas on its own; ***nor would Mr. Scott and Mr. Baldwin, both seasoned businessmen in the gaming industry, have found me to be a credible buyer had I represented MaxGaming to be the sole purchaser.***") (emphasis added).

Casino. He was also disqualified from purchasing the Casino due to his employment with Mr. Scott. In short, the assertion in Respondents' Counter-Memorial that "the MOU was in fact a *bona fide* agreement that satisfied all of the Deed's requirements" was easily ascertainable as untrue and should not have been asserted.

210. There are limits to zealous advocacy, and it cannot be acceptable to continue to advance an argument that the evidence clearly shows is not true. Although this Tribunal has already found that the Noble MOU was not legitimate and did not extend the time within which Sanum could remain in possession of Savan Vegas and manage the sale pursuant to the Deed, the Majority feels duty-bound to reach the inescapable conclusion that, under the clear evidence in this case, Respondents' repeated reliance on the Noble MOU and assertions of its validity must be construed as a fraud on the Tribunal. While sometimes counsel can be excused when the real facts are hidden by its client, in this case, the provenance of the Noble MOU, the details surrounding its creation, and Mr. Noble's employment with Mr. Scott were fully available to counsel. Respondents' submission of the Noble MOU also violates their obligation in Paragraph 38 of the Deed that "[t]he Parties agree to act in good faith in relation to the performance of each Party's obligation under this Deed . . . ." Claimants have asked that we apply sanctions. Although the Majority finds clear and convincing evidence that the Noble MOU was false and misleading, we do not have jurisdiction to make or enforce sanctions or financial orders against a person not a party to the arbitration. However, impermissible conduct by a party or its counsel in a proceeding which leads to additional time and costs for its adversary may be taken into account in the allocation of costs, and we will address this issue *infra* if it has any practical effect on the allocation of costs.

211. Having resolved Claimant's claims against Respondents, the Tribunal now turns to Respondents' counterclaims to assess whether Claimant also breached the Deed.

F. Respondents' Counterclaims

212. Respondents have brought numerous counterclaims alleging that Claimant breached the Deed by the actions it took to operate, tax, and sell Savan Vegas. In essence, Respondents' counterclaims for damages can be organized into three separate claims.[172]

[172] Although Respondents assert that Claimant's termination of Clay Crawford breached Paragraph 19 of the Deed, they assert no damage therefrom. Thus, we dismiss this counterclaim.

213. First and primarily, Respondents allege that Claimant failed to maximize the sale proceeds of Savan Vegas because:

a. Claimant excluded the Slot Clubs from the sale.

b. Claimant failed to restate the terms of the 2007 PDA in the New PDA that it formed with the new buyer of Savan Vegas.

c. Claimant did not grant the new buyer the right to extend the runway at Savannakhet Airport and instead granted the new buyer the less valuable right to build a new airport at Seno.

d. Claimant mismanaged the Casino.

e. Claimant arranged a "sweetheart deal" with Macau Legend, failing to appropriately market and auction Savan Vegas to maximize the sale proceeds.

f. Claimant imposed an unreasonable tax rate of 28% on Savan Vegas.

g. Claimant sold the Casino for less than its value.

214. Second, Respondents allege that Claimant failed to comply with Paragraph 22 of the Deed which provides that, subject to Respondents' one-time payment of US$500,000 to Claimant, the Parties will

> negotiate in good faith and conclude a land concession and project development agreement with respect to the 90 hectares of land at Thakhet [Thakhaek] identified in the MOU signed on 20 October 2010 . . . Fees and charges, if any, imposed in connection with the project at the 90 hectare site shall be commensurate with those charged in connection with any similar site or project in the Thakhek [sic] Free Enterprise Zone.

Respondents assert that Claimant has not negotiated in good faith because it excluded 16 hectares from what Respondents allege was the designated land concession, and Respondents argue that they are entitled to the US$500,000 payment.

215. Last, Respondents allege that Claimant failed to terminate criminal investigations and proceedings against Sanum and its affiliates, as required under Paragraph 23 of the Deed.[173]

[173] Paragraph 23 provides

> Laos shall discontinue the current criminal investigations against Sanum / Savan Vegas and its management or other personnel and shall not reinstate such investigations provided that the terms and conditions agreed herein are duly and fully implemented by the Claimants [Sanum].

G. Claimant's Responses to Respondents' Counterclaim and Tribunal's Conclusions

216. In response to these counterclaims, Claimant contends that, under New York law, Respondents' undisputed nonperformance of their obligations precludes them from bringing a claim of breach and requires this Tribunal to dismiss the counterclaims.

217. The Deed is governed by New York law, which provides that

> a party seeking recovery for breach of contract must show: (1) a contract; (2) performance by the party seeking recovery; (3) breach of the contract by the other party; and, (4) damages attributable to the breach.[174]

218. Although a contract clearly exists, Respondents cannot prove their performance of the contract, which is the second requirement for recovery under New York law. As discussed above, the Majority has found that Respondents breached the Deed by refusing to perform their obligations of establishing the FT Committee, paying the taxes Savan Vegas owed to Laos, taking steps to sell the Casino by the Sale Deadline, and cooperating with RMC. Notwithstanding their nonperformance, however, Respondents' counterclaim that Claimant failed to maximize the sale proceeds of Savan Vegas must still be addressed because it implicates Claimant's duty to act in good faith as joint-owner of Savan Vegas. Similarly, Respondents' allegations that Claimant failed to perform in good faith its obligations concerning the land concession at Thakhaek and the criminal investigations could, if proven, require an equitable remedy. Accordingly, the Majority will consider the facts and circumstances surrounding each of these three claims, turning first to the claim that Claimant's actions improperly reduced Savan Vegas' sale price.

H. Tribunal Findings Regarding the Sale of Savan Vegas

219. As outlined in paragraph 213, *supra*, Respondents' primary counterclaim that Claimant failed to maximize the sale price of the Casino under the circumstances comprises seven separate allegations. The Tribunal addresses each of these allegations in turn and whether the alleged actions improperly reduced the sale price of Savan Vegas. The analysis and conclusions that follow reflect the views of the Majority, except where indicated below or in Ms. Lamm's Dissenting Opinion.

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[174] *Alesayi Beverage Corp. v. Canada Dry Corp.*, 947 F. Supp. 658, 667 (S.D.N.Y. 1996), *aff'd*, 122 F.3d 1055 (2d Cir. 1997); *see UnitedMerch. Wholesale, Inc. v. IFFCO, Inc.*, 51 F. Supp. 3d 249, 264 (E.D.N.Y. 2014) ("In New York, to establish a claim for breach of contract, a plaintiff must prove the following elements: (1) the existence of a contract; (2) ***plaintiff's performance of the contract***; (3) defendant's breach of the contract; and (4) damages suffered as a result of the breach.") (emphasis added).

i. Exclusion of the Slot Clubs from the Sale of Savan Vegas

220. Paragraphs 6 and 10 of the Deed define "Gaming Assets" to include both the Lao Bao Slot Club and the Ferry Terminal Slot Club (as previously noted, "Slot Clubs") and require that the Slot Clubs be sold along with Savan Vegas.[175]

221. However, the subsequently signed Side Letter states that

> The Parties understand that the two references to "Gaming Assets" in Section 16 refer to Savan Vegas only, not the Slot Clubs.

222. Paragraph 16 of the Deed specifies that the proceeds of the sale of the "Gaming Assets" will be divided 80/20 between Sanum and Laos respectively. However, the language in the Side Letter effectively excludes from both Parties any share of the proceeds that could come from the sale of the Slot Clubs. Therefore, no damage could have been caused to Sanum by the exclusion of the Slot Clubs from the sale.

223. Moreover, the Participation Agreement executed on 11 September 2007 ("Participation Agreement") between Sanum and ST Group, which detailed the two parties' rights and obligations concerning the Slot Clubs, establishes that ST Group, not Sanum, owned the Slot Clubs. Specifically, Paragraphs 6.1 and 6.5 of the Participation Agreement state that ST Group undertook to procure all of the relevant licenses and owned the premises where the slot machines were installed.[176]

224. The terms of the Participation Agreement were described by Mr. Baldwin in his Third Witness Statement dated 1 December 2016 as "enabl[ing] Sanum to install and maintain its own machines and entitl[ing] it to 60 percent of the cash revenues at the clubs."[177] At the Final Hearing, he confirmed that Participation Agreements do not confer ownership

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[175] Paragraph 6 provides:

> Laos shall treat the Project Development Agreement ("PDA") dated 10 August 2007 in respect of the Savan Vegas Casino, Lao Bao Slot Club (located at the Lao border at Lao Bao) and Savannakhet Ferry Terminal Slot Club (located at the Savannakhet / Mukdahan checkpoint) all in Savannakhet Province (collectively, the "Gaming Assets") and each of the licenses issued in respect of the Lao Bao Slot Club and the Savannakhet Ferry Terminal Slot Club, as being restated as of the Effective Date, with a term in each case of fifty (50) years as from the Effective Date.

Paragraph 10 provides, in relevant part:

> Following the establishment of the FT as provided in Section 9 above, the Claimants [Sanum] shall take steps to establish and expeditiously carry out a sale of the Gaming Assets (the "Sale") in compliance with applicable Lao laws. . . .

[176] C-004, Participation Agreement between Sanum and ST Group, ¶¶ 6.1, 6.5, 11 Sept. 2007.
[177] Third Witness Statement of John Baldwin, ¶ 16.

rights on the party who provides the slot machines:

> Q: But the person who puts the slot machines into a casino doesn't own the casino, do they?
>
> A: No.
>
> Q: And they don't own the licenses do they?
>
> A: No.[178]
>
> . . .
>
> Q: Is there anywhere in this agreement . . . where it says that Sanum owns a license to run a slot club?
>
> A: No, but it doesn't say that Sanum doesn't have it.
>
> Q: . . . [S]o you're agreeing in paragraph 6.5 that ST owns the business operation, correct, and the premises, correct?
>
> A: Yes.[179]

225. In addition to the terms of the Participation Agreement, the Slot Club licenses name ST Group, and not Respondents, as the owners of the Slot Clubs,[180] which Mr. Baldwin also confirmed at the Final Hearing:

> Q: . . . did ST own the slot club license?
>
> A: Yes, it was in their names . . . . I mean it was granted to them, but they granted us an interest in it.[181]
>
> . . .
>
> Q: Well, you will agree, won't you, that the government license for the Ferry Terminal and Lao Bao slot clubs was issued in the name of ST Group?
>
> A: ST Vegas, yes.
>
> Q: ST Vegas. There was never a slot club license issued by the government of Lao to Sanum for those clubs, was there?
>
> A: I mean I don't know every license but I don't—not one that I recall.[182]

226. Mr. Baldwin also testified before this Tribunal that although the Participation Agreement required Sanum to obtain ST Group's approval in order for Sanum (or Laos) to sell Sanum's rights and obligations under the contract, Sanum never did so. His only explanation as to how, without ST Group's approval, Laos could still sell Sanum's rights

[178] Final Hr'g Tr. at 1038, 25 Jan. 2017 (cross-examination of John Baldwin).
[179] *Id.* at 1045–46.
[180] C-046, ST Group Slot Club License, 21 Sept. 2012.
[181] Final Hr'g Tr. at 1034–35, 25 Jan. 2017 (cross-examination of John Baldwin).
[182] *Id.* at 1050.

under the contract was "They're the government."[183]

227. However, on three separate occasions over the course of three months (15 July 2015, 2 August 2015, and 5 October 2015), Laos wrote to Sanum explaining that it had no objection to selling the Slot Clubs but could not do so unless Sanum and ST Group agreed to permit the new buyer to have undisputed rights in them.[184] In the last letter of 5 October 2015, Laos requested Sanum to "provide a solution to the slot club sale issue by October 11, 2015 or the Government will have to solve the problem without Sanum's participation in the solution."[185] Sanum never provided such a solution,[186] and the Slot Clubs were excluded from the sale.

228. Accordingly, based on the evidence in the record, we conclude that Respondents have not proven their claim with respect to the exclusion of the Slot Clubs from the sale of Savan Vegas. The Dissenting Opinion of Ms. Lamm does not take issue with this conclusion.

ii. The Terms of the New PDA

229. In August 2007, Laos granted Sanum the monopoly rights to establish the Casino in Laos in a specific contract known as the Project Development Agreement (as referenced above, "2007 PDA").[187] When the two Parties negotiated the Deed, they included a provision (Paragraph 6) requiring that Claimant treat the 2007 PDA as restated for another fifty years.

230. Respondents argue that Laos breached Paragraph 6 of the Deed by terminating the 2007 PDA in June 2015 and by creating a new PDA for the new buyer of Savan Vegas (as referenced above, "New PDA") with different terms.

231. However, the 2007 PDA permitted Laos to unilaterally terminate the 2007 PDA if Respondents failed to uphold their obligations, which included paying tax on Savan Vegas.[188] Accordingly, the Majority concludes that, under the terms of the 2007 PDA,

[183] *Id.* at 1053–54.
[184] C-165, Letters from David Branson to Sanum, John Baldwin and Christopher Tahbaz, 15 July, 2 August and 5 October 2015.
[185] *Id.* at 11.
[186] Final H'rg Tr. at 1062–64, 25 Jan. 2017 (cross-examination of John Baldwin).
[187] R-001, Savan Vegas Project Development Agreement, 10 Aug. 2007.
[188] *Id.* at art. 24 (5) ("In the event that the Company [Sanum] fails to perform its obligations, under any of the following Articles: Article 4, Article 9 and Article 10, . . . the Government shall be entitled to terminate this Agreement unilaterally."); art. 10 (requiring "The Company" (Sanum) to pay taxes).

Respondents' admitted failure to have Savan Vegas pay any taxes permitted Laos to unilaterally terminate the 2007 PDA. Thus, this termination cannot violate the terms of the Deed. Based on this finding, the Majority determines there is no need not proceed to the issue of whether Claimant included materially different terms in the New PDA. However, the obligation of Paragraph 6 of the Deed to "treat the [2007 PDA] . . . as being restated for fifty (50) years" appears to be satisfied, as the essential feature of the New PDA, like the 2007 PDA, was a guarantee of exclusive gaming rights for 50 years.[189] The Dissenting Opinion of Ms. Lamm does not address the similarity of the essential term of exclusivity contained in both PDAs.

232. Most importantly, even if it could be said that Claimant was obliged to include the same terms contained in the 2007 PDA in the New PDA and that Claimant failed to do so, we have no evidence before us quantifying any loss that could be directly attributable to the different terms in the two PDAs. Nor did any witness express or testify that the terms of the New PDA were important or even relevant to fixing the sales price. The Dissenting Opinion of Ms. Lamm agrees that there is no evidence quantifying any alleged loss due to the terms of the New PDA.

iii. Omission of the Right to Extend the Runway at Savannakhet Airport

233. The Deed also provided, in Paragraph 25, that Laos would grant the new buyer of Savan Vegas the "right to make the necessary investment (free of all cost to Laos) to extend the existing runway at Savannakhet Airport sufficiently to accommodate planes up to Boeing 737 size." This right to extend the runway was also conditioned on, *inter alia*, compliance with all International Civil Aviation Organization ("ICAO") standards and regulations.[190]

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[189] C-199, Request for Offers, p. 10, 23 Oct. 2015 ("For the duration of the PDA [50 years], the Government will not grant to any other person or entity the right to operate a casino business in the following provinces of the Lao PDR: Savannakhet, Khammouane and Bolikhamsay."); C-238, Project Development Agreement for the Savan Vegas Hotel and Entertainment Complex between Laos and Macau Legend, arts. 3.2–3.4, 13 May 2016.

[190] Paragraph 25, in full, provides:

> The Claimants [Sanum] or a new owner of the Gaming Assets (the "SV Owner" as the case may be) shall have the right to make the necessary investment (free of all cost to Laos) to extend the existing runway at Savannakhet Airport sufficiently to accommodate planes up to Boeing 737 size, provided that: (i) Laos has not built a new airport at Savannakhet; (ii) any such extended runway and associated activities shall be completed in accordance with all applicable ICAO standards and regulations; (iii) if the SV Owner completes such runway extension, Laos shall waive landing fees on charter flights serving passengers using the Gaming Assets using such extended runway for the extended term of the PDA, but if the SV Owner does not carry out such runway extension, Laos shall have the right to impose landing fees on such charter flights in its discretion; and (iv) the SV Owner shall not gain any additional rights whatsoever (beyond those to which it is already entitled) in respect of such airport or

234. Respondents argue that Laos breached Paragraph 25 by granting the new buyer of Savan Vegas the right to build a new airport at Seno instead of the right to extend the runway at Savannakhet Airport. Respondents also allege this change reduced the value of Savan Vegas because the right to build an airport at Seno costs more and is less valuable than the right to extend the runway. However, Sanum did not quantify the alleged reduction in value.

235. All the evidence submitted indicates that the runway at Savannakhet Airport could not be extended on the airport's existing land while complying with ICAO regulations and at no cost to Laos, as required by the Deed. To accommodate Boeing 737 planes, the runway would need to extend to at least 2200m and ideally 2400m.[191] However, an unrebutted report issued by RSE Associates Inc., Consulting Engineers, and DY Aviation Planners, stated that, to comply with ICAO regulations, the runway could be extended on the airport's existing land only to a length 1829m. Any additional extension would require building on adjacent residential land not owned by the Government.[192]

236. The Majority concludes that the plain language in Paragraph 25 of the Deed, which governs Laos' obligation with respect to the runway extension, does not obligate Laos to take whatever measures are necessary to ensure the extension. To the contrary, Paragraph 25 unambiguously conditions the buyer's right to invest in the extension of the runway on compliance with the ICAO regulations, and it requires that the extension be "**free of all cost to Laos**" (emphasis added). Respondents' suggestion, without any basis in the Deed, that Laos was somehow obliged to purchase additional land to permit the extension is contrary to this provision of the Deed. Nor does the Deed provide that, if a new buyer of the Casino would be willing to pay for the private land necessary to extend the runway, Laos would be obligated to exercise eminent domain and complete the extension. This speculative argument would require adding terms to the Deed which we are not permitted to do.

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runway except for the waiver of landing fees on such charter flights in the event that the SV Owner completes such runway extension. Prior to commencing any runway expansion work, the SV Owner shall demonstrate to Laos' reasonable satisfaction that funding arrangements are in place for such work sufficient to ensure that such work will be carried through to completion without interruption or delay. If the SV Owner has completed the runway extension and is therefore entitled to the waiver of landing fees for charter flights at that airport, and at any later date Laos closes that airport, the Claimants [Sanum] shall be entitled to a similar waiver of landing fees for charter flights using any substitute airport for so long as the airport where such extension was made remains closed.

[191] C-274, Emails between John Baldwin, Michael Gore et al, 21 June 2014.

[192] C-226, RSE Associates Inc., Savannakhet Airport Runway 4-22 Extension Study, p. 2, 30 March 2016.

237. Moreover, the evidence is that Sanum was not planning to develop or extend the airport in any case: between 2009 and 2011—years before the Deed was signed—the Parties negotiated an MOU seeking to redevelop the airport in order to "upgrade standards so as to better accommodate all aircraft,"[193] but the negotiations for this project ended in February 2012 and contracts beyond the initial MOU were never concluded. Additionally, on 22 April 2014, the Lao Airport Authority agreed to permit Sanum to survey the Savannakhet Airport "for runway extension from 1,660 meters long to 2,400 meters long in order to handle Boeing 737 and Airbus a320,"[194] but Sanum never completed this survey.[195] Finally, at the hearing of 16 June 2015 before this Tribunal, Mr. Baldwin indicated that Sanum had taken no concrete steps to extend the runway and had not asked the Government to take steps to do so.[196]

238. In addition, Respondents have not quantified any devaluation of Savan Vegas due to the changed airport rights. In fact, Mr. Sheldon Trainor-DeGirolamo's unrebutted testimony at the Final Hearing, which we find credible, was that the runway extension was not valuable because Savannakhet's airport facilities were inadequate:

> Forget about this airport, whether it's extended 200 feet or 200 meters or X or Y planes can get in. The existing facility itself is not a facility in our view, and we know quite a bit about this because we have a fairly robust gaming business in Macau that deals with these kind of customers, it's not a facility that would really attract those kinds of players. . . .
>
> To just think you can expand an airport and bring people into that existing facility, that would be very challenging and it would be very challenging without some pretty comprehensive renovations.[197]

239. Thus, the Majority concludes that Claimant did not breach any obligation under these circumstances by failing to grant the new buyer the right to extend the runway at Savannakhet. Although it is unclear from the Dissenting Opinion of Ms. Lamm whether she determines that any breach occurred, it is clear that the Dissenting Opinion does not find any quantifiable damage attributable to the airport issue to have been proved.

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[193] Fourth Witness Statement of John Baldwin, ¶¶ 6-7, 22 Dec. 2016.
[194] R-338, Meeting Minutes between Lao Airports Authority and Sanum, 22 April 2014.
[195] C-275, Emails between Michael Gore, John Baldwin et al, 12-13 July 2014 (Mr. Gore writing on 13 July 2014 that "John has requested that ***we hold up on the airport survey*** and the letter to the DPM re the airport upgrade. ***It appears this will probably be an extremely long project.***") (emphasis added); Third Witness Statement of Michael J. Gore, ¶ 13, 2 Dec. 2016.
[196] R-283, H'rg Tr. at 178–79, 16 June 2015 (cross-examination of Mr. Baldwin).
[197] Final H'rg Tr. at 394–95, 23 Jan. 2017 (cross-examination of Sheldon Trainor-DeGirolamo).

iv. San Marco's Management of Savan Vegas

240. Respondents argue that Claimant's seizure of Savan Vegas and appointment of Ms. Gass and her company San Marco to manage and sell the Casino violated Paragraphs 11 and 12 of the Deed because San Marco and Ms. Gass were neither qualified gaming operators nor jointly appointed by the Parties.

241. Paragraphs 11 and 12 of the Deed set forth the sequence of entities charged with managing and selling Savan Vegas. First, Respondents had until the Sale Deadline (which we have determined to be 15 April 2015[198]) to complete the sale and manage the Casino in the process. However, according to Paragraph 12, when that deadline lapsed, Respondents were no longer permitted to operate or sell the Casino. Rather, Paragraph 12 specified that Respondents were to work with Claimant to appoint RMC or another qualified gaming operator to sell the Casino who would also manage it during the sale process, beginning on the day Sanum's Sale Deadline expired.

242. As discussed above in paragraphs 184 to 191, Sanum had not taken any steps to sell Savan Vegas and, thus, failed to meet its deadline. Sanum also ignored Laos' request of 24 December 2014 to "begin the orderly process of the exchange of control due on 15 April 2015, in the event Sanum/LH does not complete a sale or have in place an MOU, as stated in the Deed" [199] and Laos' second request of 30 March 2015 to "cooperate in a peaceful turnover" on 15 April 2015 should Sanum fail to sell the Casino.[200] Additionally, as noted above in paragraph 99, when Laos inquired whether RMC would be willing to act as the qualified gaming operator should Sanum not sell the Casino by their deadline, RMC noted that it had previously terminated its services "as a result of the lack of cooperation and payment from Savan."[201] As a result of nonpayment by Sanum, RMC declined to act as the qualified gaming operator but recommended San Marco, noting that

> San Marco . . . is fully capable of taking operational control of the Savan Vegas . . . . In addition, San Marco . . . has the regional knowledge and expertise in marketing gaming properties in the Asian gaming markets (including Indochina) and was identified as a broker of the property post the

[198] *See supra* paragraphs 184 to 191.
[199] C-102, Letter from Dr. Bounthavy Sisouphanthong to John Baldwin and Christopher Tahbaz, 24 Dec. 2014.
[200] R-052, Letter from Dr. Bounthavy Sisouphanthong to John Baldwin and Christopher Tahbaz, 30 March 2015. *See also supra* note 50 and accompanying text.
[201] C-105, Email from Robert Russell (RMC) to David Branson, 6 Jan. 2015.

initially proposed monitoring period.[202]

243. With reference to Respondents' argument that the seizure breached the Deed, Paragraph 12 provides that, once the Sale Deadline expired, Sanum no longer had the right to operate or sell the Casino. Rather, the Deed specifically provided that, by the Sale Deadline, Sanum would no longer be in control of the Casino, as either the Casino would have already been sold to a third-party or its operation and control would have been transferred to a qualified gaming operator without any connection to Sanum.

244. Then, by repeatedly refusing to cooperate with Laos to appoint RMC or another entity to manage and sell Savan Vegas, Sanum chose to exclude itself from the process of appointing the gaming operator. Under the totality of the evidence, it was reasonable for Laos to move forward and appoint the gaming operator independently. Moreover, Laos' choice of San Marco and Ms. Gass was not arbitrary or unreasonable. Rather, it was based on the recommendation of RMC, which Paragraph 12 of the Deed recognized as a qualified agent and gaming operator. Under these circumstances and based on the record, the Majority concludes that there is insufficient evidence to find that Laos' actions constitute a breach of Paragraphs 11 or 12. The seizure of the Casino occurred after Sanum's permitted period of control expired and was intended to complete a sale in accordance with the Deed and to dispense the proceeds in accordance with the ownership interest of the Parties.

245. Additionally, Sanum argues that San Marco mismanaged the Casino. However, the Majority does not find that the evidence can support the conclusion that the Casino was not managed in good faith. For example, the evidence indicates that the profitability of the Casino was declining prior to Laos' takeover.

a. Although Respondents argue that part of the mismanagement was capping the table limits to 600,000 baht,[203] the evidence reflects that in August 2014, prior to Laos' takeover, Mr. Baldwin decided to cap table limits to 600,000 baht.[204]

b. Respondents also allege that Mr. David Branson terminated Savan Vegas's relationship with several junket operators that imported VIP clientele, including one operator known as "Tango", reducing the number of customers.

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[202] C-108, Draft Interim Review and Assessment, San Marco Capital Partners, p. 2, Jan. 2015.
[203] *See* Second Witness Statement of Michael Gore, ¶ 44(f), 14 Oct. 2016.
[204] C-276, Emails between John Baldwin, Mike Gore, Claw Crawford et al, 8 Aug. 2014.

However, the evidence is that Mr. Mike Gore, the General Manager of Savan Vegas, decided along with San Marco's team that the contract with junket operator Tango should be canceled because Tango owed US$900,000 to Savan Vegas since August 2014, approximately nine months prior to Laos' takeover of the Casino, and was an uncooperative partner.[205]

c. In December 2014, Mr. Baldwin wrote to Mr. Gore about a meeting with a junket operator noting that "[t]hey [the junket operator] both said that we have taken Savan from a casino with a Wow factor to a casino that is cut up and not as desirable, and suggest that we renovate and unclutter the building."[206]

d. Similarly, on 1 May 2015 Mr. Gore wrote to Ms. Gass stating that VIP revenue had been in decline for the preceding 15 months.[207] Mr. Gore elaborated that the crackdown on corruption in Thailand in 2014 caused VIP revenues to drop almost 50% per month, noting that "**Savan monthly rolling and VIP revenues will continue to decrease to about 10 million by year-end 2015 and can disappear entirely (considering expenses) by year-end 2016.**"[208]

e. Additionally, in a Witness Statement submitted to this Tribunal, Mr. Gore stated that

> Ms. Gass has reassured the staff at every level that our jobs are secure and she is interested in running a first class operation. The change has been the best event in the management of the casino since I have been there. For the first time, we have professional casino managers making decisions for the benefit of the employees and customers. The staff is very satisfied from the top to bottom. We are all working together as a team to improve the casino operation.[209]

246. It is inevitable that disagreements over management decisions or management styles will occur among operators. However, based on the evidence in the record, the Majority concludes that the disagreements, here, do not rise to the level of being deemed mismanagement or a failure to act in good faith sufficient to support a claim of breach.

[205] C-312, Email from Mike Gore to Travis Miller, 28 Sept. 2015; C-314, Email from Mike Gore to Kelly Gass, 3 Oct. 2015; C-315, Email from Zane Kubala to Kelly Gass and Travis Miller, 7 Oct. 2015.
[206] C-278, Emails between John Baldwin, Michael Gore et al, 15-16 Dec. 2014.
[207] C-300, Memorandum from Michael Gore, 1 May 2015.
[208] *Id.* (emphasis in original).
[209] C-304, Witness Statement of Michael Gore, ¶ 8, 26 May 2015.

Moreover, the evidence is insufficient for us to quantify the relationship between any asserted mismanagement to the value of Savan Vegas, a conclusion with which the Dissenting Opinion of Ms. Lamm agrees.

v. Sale to Macau Legend and Sale Process

247. Sanum generally alleges that, for various reasons, Laos breached the Deed both by selling the Casino to Macau Legend and by failing to conduct the sale process in good faith.

248. First, Respondents assert that Laos' sale to Macau Legend breached the Deed because Macau Legend was not a qualified bidder. It is unclear to the Tribunal the basis for this assertion and how it relates to the ultimate question of whether the sale of the Casino conforms to the terms of the Deed. The Deed's only requirements are that the Casino be sold "on a basis that will maximize the Sale proceeds" and that the buyer shall be either "(i) a recognized gaming company or junket operator duly licensed to operate a gaming casino, or (ii) any entity approved by the FT Committee as possessing the requisite degree of integrity, character and fitness to own, manage and operate the Gaming Assets in accordance with the applicable Laos laws."[210] This language must be read in the context of the Deed which intended that Sanum would sell the Casino within ten months, and thereafter, the Casino would either be sold or be managed by a qualified operator unrelated to Sanum. In essence, this provision can only be interpreted to be for the protection of Laos, as after the Casino was sold, Laos would continue to have a relationship with the new owner, whereas Sanum would have no further interest in Savan Vegas or in its relationship to Laos.

249. Moreover, Macau Legend was assessed by Agenda Group which indicated the following:

a. In its overall summary, Agenda Group found that "MLD [Macau Legend] has the experience of running casinos of the size and type of Savan Vegas. It is connected to junket play through its New Legend business and also has mass market experience at both its Pharaoh's Palace and Babylon casinos. However, MLD has not itself held a casino licence (apart from a licence in Cape Verde for which there is currently no casino) but has instead operated

[210] Deed of Settlement, at Paragraph 13, *supra* paragraph 64 (containing the full text of Paragraph 13).

under an arrangement with SJM in Macau. It has people at Board level as well at the operational level with many years' experience working in casinos. In addition, although it is not itself licensed, to all intents and purposes it operates the Pharaoh's Palace and Babylon casinos as if it were the licensee of each property and appreciates all the operating requirements of casinos including marketing, internal controls and anti-money laundering an counter-terrorism financing obligations."[211]

b. Agenda Group also noted in its summary that "[n]o issues of concern have been identified which would make any of the Directors, Company Secretary, Chief Executive Officer or key shareholders unsuitable to be associated with casino gaming."[212]

c. Agenda Group also investigated Macau Legend's and its associates' "suitability" to purchase Savan Vegas in terms of their history and connections in the gaming industry. As to Macau Legend, the entity itself, Agenda Group found "[t]here are no negative findings against MLD. . . . No issues of concern have been identified which would make Macau Legend Development Limited unsuitable."[213] Regarding the directors, officers, and 10% (or above) shareholders of Macau Legend, Agenda Group likewise did not find them unsuitable to be associated with the casino industry.[214]

d. Although Agenda Group noted that there were some information gaps in Macau Legend's submission, it stated that, provided those gaps were filled "this assessment would conclude that MLD is suitable to proceed to the next stage of the process. However, if satisfactory information is not forthcoming, a different conclusion could be reached."[215]

250. The Majority cannot conclude that there is sufficient evidence that Macau Legend was ineligible under the terms of the Deed to purchase the Casino simply due to an information gap in its submission. Agenda Group was hired to diligence the companies interested in purchasing Savan Vegas and to provide detailed feedback noting possible

[211] C-211, Agenda Group Report of Macau Legend Development Limited, p. 18, 20 Jan. 2016.
[212] *Id.*
[213] *Id.* at 12–13.
[214] *Id.* at 13–17 (analyzing 10 individuals who are either directors, officers or 10% shareholders of Macau Legend and finding none to be ultimately unsuitable to be associated with the casino industry).
[215] *Id.* at 18.

issues. Although Respondents argue that Agenda Group made "positive findings" of the other bidders,[216] the evidence indicates that Agenda Group noted potential issues with other bidders as well, including missing information.[217]

251. Respondents also allege that Macau Legend had ties to organized crime and was therefore not qualified to purchase Savan Vegas. The only evidence submitted to support this allegation was a report from Dennis L. Amerine, a CPA. Although there were suppositions and innuendo in his report, he ultimately stated that "Please note that I do not express an opinion on the final suitability of either John Baldwin or Macau Legend. . . . No portion of this report should make any inference to that effect."[218] Having considered the totality of his report, we cannot place any weight on it as credible. Thus, the Majority finds the weight of the evidence establishes that Macau Legend was not disqualified under the requirements and the intent of the Deed to purchase Savan Vegas. We note that Respondents' counsel conceded that Agenda Group did not find that Macau Legend was unqualified.[219]

252. Regarding the sale process, Respondents allege that Laos abandoned the auction process to arrange a "sweetheart deal" with Macau Legend in order to depress the sale price and benefit from a higher tax rate. The evidence indicates, however, that Laos intended to sell the Casino by auction and, due to the circumstances, terminated the auction process to ensure the highest value for the Casino. As detailed in paragraphs 125 to 130 above, after San Marco and Ms. Gass were appointed to sell and manage the Casino on the recommendation of RMC, they began to prepare for the auction, expending substantial resources to do so. For example, they retained experienced, international

[216] Resp'ts Memorial on Countercls., ¶¶ 153–57, 14 Oct. 2016.
[217] *See e.g.*, C-212, Agenda Group Report on Groupe Lucien Barrière, p. 12, 5 Feb. 2016 ("Insufficient information has been provided to draw any substantive conclusions about its financial strength. The numbers which are provided in its financial statements pose more questions than they answer and additional information is required before a confident conclusion could be made. . . . At that next stage, more information would be required with respect to the major shareholders of the Desseigne-Barrière family company, the proposed financing of the purchase and ongoing operations and a more detailed explanation of marketing plans, amongst other things."); C-213, Agenda Group Report on Silver Heritage Limited, p. 12, 7 Feb. 2016 ("SHL's bid is compromised by its corporate plans to list on the Australian Stock Exchange. It is part way through an IPO for that purpose which will, SHL hopes, once complete allow SHL access to financial markets to assist them to finance this bid. However, there is no explanation of a fallback position should the IPO not be successfully completed."); C-214, Agenda Group Report of RGB, p. 13, 10 Feb. 2016 ("Should RGB Consortium be successful in this process, it is recommended that SMC confirm that all key personnel including directors, substantial shareholders and the Chief Executive (however described) of the company which is ultimately formed have either already been assessed as part of the RFO process or are otherwise assessed for suitability. If RGB Consortium is ultimately the successful bidder and the assessment cannot be finalised prior to the sale proceeding, it is recommended that the sale be made conditional on RGB Consortium passing final probity.")
[218] Expert Report of Dennis Amerine, p. 4, 2 Dec. 2016.
[219] Final Hr'g Tr. at 1804–05, 28 Jan. 2017 (statement of Mr. Rivkin).

counsel, Matias Vega of Curtis Mallet Prevost Colt & Mosle, to lead the Laos' corporate team and to oversee the sale generally. They also retained gaming law experts, IT specialists to prepare a data room and marketing experts and drafted the SOI, which was distributed and also announced by several websites, and accepted responsive submissions from 13 entities. San Marco and Ms. Gass then organized a conference for all approved bidders on 7-8 April 2016, providing the approved entities with an opportunity to meet with Laotian officials and view the Casino.

253. Despite this preparation, the evidence shows that one week before the auction was to occur, RGB informed Laos that it did not currently meet the bidding requirements—including providing the US$1 million guarantee and signing the model PDA—and that it could not meet these requirements unless it won the bid and was, in addition, given three to four months thereafter to obtain shareholder approval to sign the model PDA.[220] In contrast, Macau Legend was able to provide the US$1 million guarantee, sign the model PDA without shareholder approval, and was able to fund its bid in whole.[221]

254. According to the Witness Statements of Dr. Bounthavy Sisouphanthong, at about this same time, the Government also learned that Silver Heritage lacked funding. Since neither RGB nor Silver Heritage was able to bid, Laos worried that Macau Legend would be the only bidder at the auction and therefore offer a low bid.[222] The Majority finds the testimony of Dr. Bounthavy Sisouphanthong credible and finds no evidence to doubt the veracity of his statement.

255. Under the circumstances presented by Silver Heritage and RGB, the Majority finds that the evidence does not establish that Laos' decision to pre-empt the auction and arrange a sale with Macau Legend was made in bad faith. Rather, we find the evidence indicates that Laos' decision to pre-empt the auction process and sell the Casino to Macau Legend was made to ensure the highest price, aligning with Paragraph 11's requirement that the sale occurs "*on a basis* that will maximize Sale proceeds," not necessarily via an auction. Likewise, we cannot conclude that the sale to Macau Legend ultimately affected

[220] *See supra* note 87 and accompanying text.
[221] *See* C-238, PDA between Macau Legend and Laos, p. 30, 13 May 2016 (indicating both parties signed the PDA upon reaching an agreement); R-420, Letter of Record for Macau Legend, 13 May 2016 (noting that Macau Legend has signed the PDA, has agreed to pay the US$1 million guarantee on the date of the Letter of Record, and requires shareholder approval only for the Asset Purchase Agreement (which was not prerequisite for the bid, unlike signing the PDA and providing the US$1 million guarantee)).
[222] First Witness Statement of Dr. Bounthavy Sisouphanthong, ¶¶ 38–41; *see also supra* notes 87–89 and accompanying text.

or reduced the sale price of Savan Vegas because there is insufficient evidence that another credible, qualified and interested buyer existed when the Casino was being sold.

256. Respondents next contend that the sale process was a sham because Claimant did not consider and accept all of the comments and suggestions made by Respondents during the sale process, including suggestions regarding the marketing process and recommendations on potential buyers.

257. However, as we stated in our Order on Respondents' Requests for Provisional Measures and Claimant's Motion for a Stay of Discovery and Motion Practice dated 6 January 2016, see paragraph 32 above, Laos was obligated to "in good faith consider any—not take all—suggestions and input from Sanum." We do not find that there is sufficient evidence establishing that Laos' rejection of some of Respondents' comments amounts to a failure to consider in good faith Respondents' input.

258. Regarding Respondents' argument that Laos ignored their suggestions of potential purchasers, the record indicates that Sanum's only suggestions of potential purchasers were made on 1 May 2015 by Ms. Deborah Deitsch-Perez. She mentioned only Tak Chun, MaxGaming, and Greg Bousquette as buyers.[223] However, the record is clear that MaxGaming lacked funds and Angus Noble, in his Second Witness Statement was clear that Mr. Baldwin himself would not have considered him or MaxGaming a credible buyer.[224] More importantly, none of these entities or individuals made a submission after the SOI was published by Laos and announced by several websites.[225] As counsel for Laos explained in its response to Ms. Deborah Deitsch-Perez's email, Laos was creating a process for all prospective purchasers to submit bids and would not evaluate entities or individuals outside of this process. Moreover, counsel for Laos noted that Sanum's representatives could not "be offered as an agent or emissary of the Government" but were free to meet with anyone.[226] On this record, there is insufficient evidence to conclude that Laos in bad faith failed to consider other credible and interested buyers.

259. Respondents also allege that the sale process was conducted in bad faith because the timeline for the auction was compressed and interested entities did not receive all the

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[223] *See supra* note 55 and accompanying text.
[224] *See* Second Witness Statement of Angus Noble, ¶ 10; *see supra* note 145 and accompanying text.
[225] Additionally, the evidence is that Greg Bousquette was interested in acting as or assisting a broker, not a purchaser, and Laos had already retained an exclusive broker for the sale of the Casino. *See* R-520, Emails between Greg Bousquette and David Branson, 13 May 2015.
[226] *See supra* note 55 and accompanying text.

information they requested. Respondents cited Peninsula Pacific and Groupe Lucien Barrière as interested parties not receiving information. However, here again, there is insufficient evidence of conduct rising to the level of bad faith. First, the emails between Ms. Gass and each of Peninsula Pacific and Groupe Lucien Barrière demonstrate that Ms. Gass offered to provide these entities with additional information about Savan Vegas and that she informed the entities about accessing the data room. For example, on 11 March 2016, Ms. Gass sent Groupe Lucien Barrière a letter stating that Savan Vegas would be holding a bidders' conference on 7-8 April 2016 in Vientiane and providing information about the contents of the data room.[227] When Groupe Lucien Barrière finally noted on 4 April 2016 that it would not be attending the bidders' conference on 7 April 2016 in Vientiane, Ms. Gass responded:

> I'm sorry you will not be able to make the conference. Hopefully you have been able to access the dataroom at this point. Please submit any questions you have through the dataroom Q&A. I am also available at any time at the contact information below.[228]

Even after the bidders' conference that Groupe Lucien Barrière did not attend, Ms. Gass continued to contact the entity about the status of its application and to request additional information.[229]

The evidence indicates that she was similarly attentive to Peninsula Pacific. When Peninsula Pacific inquired about when financial data would be available, Ms. Gass responded on the same day that they "will be sending out the instructions for accessing the data room Wednesday or Thursday USA time."[230] Ms. Gass also promptly responded via email to Peninsula Pacific's questions about the RFO and made herself available by phone to answer the company's concerns about the submission.[231]

260. Based on the record, there is also insufficient evidence that these two bidders were denied information, the opportunity to bid, another meeting with Laos, or another opportunity to visit the Casino.

261. Second, with respect to the argument that San Marco ignored queries from IKGH, another potential bidder, the evidence demonstrates that Ms. Gass initiated contact with

[227] R-660, Letter from Kelly Gass to Jonathan Strock (Groupe Lucien Barrière), 11 March 2016.
[228] R-557, Email from Kelly Gass to Jonathan Strock (Groupe Lucien Barrière), 4 April 2016.
[229] R-559, Email from Kelly Gass to Jonathan Strock (Groupe Lucien Barrière), 19 April 2016.
[230] R-555, Emails between Steve Croxton (Peninsula Pacific) and Kelly Gass, 17–29 March 2016.
[231] R-394, Emails between Steve Croxton (Peninsula Pacific) and Kelly Gass, 19–20 Jan. 2016; R-396, Emails between Steve Alarcon (Peninsula Pacific) and Kelly Gass, 20–23 Jan. 2016.

Mr. James Preissler, an Independent Director of IKGH, with whom she was previously acquainted, in order to interest him in participating in the sale in February 2016.[232] Mr. Preissler has submitted a statement indicating that he had sought financial information about Savan Vegas, which was not provided. However, his witness statement indicates that he sought the information prior to when the data room, which would contain the financial information, had been made available to all approved bidders and also that when IKGH had been approved as a bidder, IKGH decided not to move forward with the bid.[233] On 18 April 2016, Ms. Gass wrote to IKGH noting that she had not received the information she requested on 11 March 2016 and requesting "any update you might have regarding the requested information or IKGH's continued participation in the sale of Savan Vegas."[234] There was no response from anyone at IKGH. Based on the record, we find insufficient evidence that Laos conducted its review of or failed to respond to IKGH in bad faith.

262. Regarding the assertion that another entity, ISMS, was not approved as a bidder despite responding to the SOI, Respondents have provided nothing more than supposition and hearsay that ISMS was intentionally and improperly excluded.[235] Thus, we likewise find there is insufficient evidence that Laos conducted its review or consideration of ISMS in bad faith.

263. While it is possible that some interested entities may have desired additional information during the sale process, Respondents have failed to adduce sufficient evidence that Ms. Gass or Laos actively and intentionally excluded information from them, intentionally discouraged them from participating in the sale process, or included them in the sale process as a mere smoke screen to legitimize a pre-planned sale to Macau Legend. These assertions cannot be reconciled with the totality of the evidence, including Ms. Gass' contact with the bidders, and are not sufficient to support a conclusion that San Marco or Ms. Gass failed to conduct the sale process in good faith.

264. Moreover, the evidence does not indicate that Ms. Gass or San Marco rushed or

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[232] R-552, Email from Kelly Gass to Jim Preissler (IKGH), 18 Feb. 2016.
[233] Witness Statement of James Preissler, 2 Dec. 2016.
[234] R-558, Letter from Kelly Gass to IKGH, 18 April 2016.
[235] As support, Respondents submitted a Witness Statement from Gareth Arnold, a principal at ISMS. Although Mr. Arnold, in his statement, notes that ISMS did not receive all the information it requested, he admits that Ms. Gass responded to his inquiries and met with him twice in person in Bangkok. Alone, this witness statement is insufficient to support Respondents' allegations that Ms. Gass and Laos in bad faith ignored interested entities and conducted a sham auction.

compressed the process or overlooked buyers in bad faith but, rather in good faith, endeavored to sell the Casino in accordance the Deed's requirement of an expeditious sale. We note that Paragraph 48 of the Deed requires that "Time shall be of the essence of this Deed," and that the Deed called for the sale to occur within ten to 13 months. This period was deemed to be sufficient time for the Casino, in its current condition, to be sold. It was never contemplated that the Parties would delay selling the Casino until it was refurbished or upgraded or market conditions improved in order to generate a higher price, but rather that the Casino would be sold for the maximum value within the time constraints imposed by the Deed and existing conditions. The language of Paragraph 11 of the Deed likewise recognizes that the existing circumstances and context will inform the sale, providing that "The Sale shall be completed *on a basis* that will maximize Sale proceeds." Laos' efforts, through Ms. Gass and San Marco, followed upon Respondents' failure to take any steps to comply with any provisions of the Deed, and especially to take steps to sell the Casino by the Sale Deadline of 15 April 2015.

265. Last, Respondents assert Laos acted in bad faith by failing to consider ST Group's stated interest in purchasing the Casino for US$100 million. However, this assertion, too, ignores the context of Laos' decision. ST Group did not communicate its interest in purchasing Savan Vegas until 29 July 2016, months after the deadline for an interested person to submit bids, months after Claimant had agreed to sell the Casino to Macau Legend, and only just days before the final sale documents were completed and signed.[236] It is not reasonable to expect Claimant to terminate its completed agreement with Macau Legend in order to begin negotiating with ST Group. There is also no evidence outlining how serious this offer was, or whether ST Group could in fact fund it. Thus, the communications from ST Group cannot be seen as discrediting the sale process.

vi. The Establishment and Fairness of the 28% Tax Rate

266. As discussed above in paragraphs 169 to 174, for the first 11 months after the Deed was executed, Sanum refused to permit its nominee to participate in the FT Committee, despite requests from Laos to do so. On 15 May 2015, Laos appointed Mr. Va on the recommendation of the Macau Society to determine a tax rate for Savan Vegas,[237] and, on 9 June 2015, Mr. Va issued his opinion that a 28% tax rate on Savan Vegas' GGR was

[236] *See supra* notes 94–95 and accompanying text.
[237] C-144, Flat Tax Committee Appointment Agreement between Laos and Quin Va, 15 May 2015.

fair and reasonable.[238] Between these two dates, on 23 May 2015, Sanum proposed that the Parties re-form the FT Committee in the event that the BIT Tribunal denied their Material Breach Application.[239]

267. Respondents argue that Mr. Va's appointment violated the terms of the Deed for two reasons:

a. Once Respondents offered to re-form the FT Committee on 23 May 2015, Laos had an obligation to accept that proposal and begin working with Respondents.

b. Additionally, Mr. Va's appointment as the sole member of the FT Committee violates the Deed's requirement that a three-member FT Committee establish a flat tax.

268. Based on the evidence, the Majority does not find it unreasonable that Laos rejected Sanum's conditional offer of 23 May 2015. The Deed required the Parties to establish the FT Committee within 45 days of the execution of the Deed so that the tax based thereupon could be immediately set and paid. As discussed below, Sanum refused to participate in the FT Committee for 11 months following the execution of the Deed:

a. One week after nominating Mr. Rittvo to the FT Committee on 25 June 2014, Sanum instructed him not to participate in the FT Committee.[240]

b. On 5 December 2014, five months after the deadline to establish the FT Committee, Laos contacted the President of the Macau Society, requesting that the President assist in "secur[ing] the appointment of the third member of the [FT] Committee." Laos further specified the requirement that "[t]he person will be a member of your Society familiar with the taxation of casinos,"[241] and specified that the goal was to "set a tax that is fair to the Government and the current owner [Sanum] who must sell the casino."[242]

c. On 29 December 2014, three weeks after asking the Macau Society to appoint

[238] C-155, Report of Flat Tax Committee from Quin Va, 9 June 2015.
[239] *See* R-522, Letter from Christopher Tahbaz to the Minister of Planning and Investment and David Branson, 23 May 2015; *see also supra* note 58 and accompanying text.
[240] *See supra* notes 11 and 21 and accompanying text.
[241] C-115, Notificacao Judicial Avulsa, Registration No. 04/2015, p. 5, 28 Jan. 2015 (including a letter from David Branson to the President of the Macau Society dated 5 Dec. 2014).
[242] C-119, Emails between David Branson and Stella Lok, 2 Feb. 2015.

a chair, Laos sent Sanum a notice requiring Sanum to either participate in the FT Committee within a month or pay Laotian taxes at the prevailing rate:

> The Ministry of Finance has been requested by the Committee Supervising the Sanum Settlement to assist in compliance with the tax aspects of the Deed of Settlement (Deed). According to the Deed, the parties were to have agreed to a procedure to set a Flat Tax for Savan Vegas and Casino Co, (Savan Vegas). We understand that. Sanum Investments Limited (Sanum) and Lao Holdings NV (LH) are refusing to comply with that procedure.
>
> . . .
>
> ***A failure to execute a Flat Tax Agreement within 30 days as required by your agreement with the Government will lead to the imposition of tax according to the laws, based upon the requested financial reports.***[243]

At the Final Hearing, Mr. Baldwin was specifically asked whether he "consider[ed] that, in this letter, [he was] being invited to participate in a flat tax committee within the next 30 days to set a tax." He said "yes" and that they "had an absolute duty to pay tax."[244] Despite recognizing this invitation, Sanum continued to refuse to participate in establishing the FT Committee or to pay taxes.

d. Then, on 10 March 2015, during a telephone hearing before the BIT Tribunal on the very question of whether Laos could apply its tax law to Savan Vegas, Laos informed Sanum and the BIT Tribunal that it intended "to have the Flat Tax Committee constituted without the cooperation of [Sanum] by resorting under Article 9 of the Deed of Settlement, to the President of the Macao Society of Registered Accountants."[245]

e. The BIT Tribunal, in its decision issued one week later, observed:

> [F]or so long as the Claimant continues to do business in Laos, it can reasonably expect to be bound by the Laotian income tax laws applicable to gambling casinos unless and until a new Flat Tax Agreement is negotiated.[246]

Again, Sanum made no effort to re-form the FT Committee, but instead maintained its Material Breach Application before the BIT Tribunal.

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[243] *See supra* note 40 and accompanying text (emphasis added).
[244] Final Hr'g Tr. at 1110–11, 25 Jan. 2017 (cross-examination of Mr. Baldwin).
[245] C-124, Decision on Claimant's Second Application for Provisional Measures, *supra* note 46, ¶ 33.
[246] *Id.* at ¶ 34.

f. Furthermore, even after the BIT Tribunal informed the Parties on 14 April 2015 via email that it "[h]aving deliberated . . . the Tribunal concludes the Claimant [Sanum] has failed to establish all of the requisite elements for such an order, and therefore dismisses the application, with reasons to follow,"[247] Sanum still took no immediate steps to re-form the FT Committee.[248]

g. On 15 May 2015, Laos appointed Mr. Va on the recommendation of the Macau Society to determine a tax rate for Savan Vegas.[249]

269. Sanum's letter to Laos raising the *possibility* of re-forming the FT Committee only "*in the event* the ICSID tribunal denies the Material Breach Application" came only on 23 May 2015:[250] 11 months after Sanum was required under the Deed to form the FT Committee, five months after Laos requested Sanum to re-form the FT Committee, two months after Laos informed Sanum it would request the Macau Society to appoint an accountant to set the flat tax, two months after the BIT Tribunal denied Sanum's request to enjoin Laos from applying Laotian Tax Law, and one week *after* Mr. Va had been formally engaged and began working on determining a flat tax rate. In these circumstances and based on the evidence in the record, it was not unreasonable for Laos to reject Sanum's conditional proposal.

270. The Majority also rejects Respondents' second argument that Laos breached the Deed by appointing Mr. Va unilaterally, as it likewise ignores the context in which Mr. Va was appointed: to wit, Respondents had refused for 11 months to participate in establishing an FT Committee and Laos had an indisputable right to collect taxes, both under the Deed and under Laotian tax law. As discussed in paragraph 177, Sanum and its counsel recognized this duty to pay taxes was absolute. And, as the BIT Tribunal observed in its Decision on [Sanum's] Second Application for Provisional Measures, if Sanum chose not to participate in the FT Committee, then it would be taxed according to Laotian tax law at a rate of 35% GGR and 10% VAT.[251]

271. However, rather than taxing Savan Vegas at the default Laotian tax rates, Laos

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[247] R-351, Email from Judge Ian Binnie to Christopher Tahbaz, 14 April 2015.
[248] *Supra* note 55 and accompanying text (Ms. Deitsch-Perez's emails to Mr. Branson in the first week of May 2015 request not that the Parties cooperate on the formation of the FT Committee but only that the Parties cooperate on the sale.).
[249] C-144, Flat Tax Committee Appointment Agreement between Laos and Quin Va, 15 May 2015.
[250] *See* R-522, Letter from Christopher Tahbaz to the Minister of Planning and Investment and David Branson, 23 May 2015; *supra* note 58 and accompanying text (emphasis added).
[251] C-124, Decision on Claimant's Second Application for Provisional Measures, *supra* note 46, at ¶ 34.

attempted to honor the spirit of the Deed by asking the Macau Society—the body which the Deed authorized to unilaterally choose the third member of the FT Committee—to appoint an independent and qualified professional to set a flat tax. The Majority does not find that the manner in which Mr. Va was appointed as the sole member of the FT Committee was either arbitrary or disconnected from the terms of the Deed. In the face of Sanum's intractable position of refusing to cooperate in the FT Committee, it was not unreasonable for Laos to appoint Mr. Va, as the only other choice was to accede to Sanum's nonperformance.

272. The Majority also rejects Sanum's allegation that Laos misrepresented to the Macau Society that there would be a three-member committee. Based on the record, we do not find a misrepresentation. After Laos initially wrote to the Macau Society on 5 December 2014, Laos then asked Sanum again to participate in the FT Committee, indicating that Laos still believed a three-member FT Committee could be constituted.

273. In addition to arguing that Laos' appointment of Mr. Va breached the Deed, Respondents contend that the 28% tax rate set by Mr. Va is neither fair, nor reasonable, nor flat and also acted to reduce the value of Savan Vegas.

274. First, there is no requirement under the Deed that the tax rate set by the FT Committee fall within a certain range. Indeed, the two times Mr. Baldwin testified before this Tribunal, he made it clear that the Parties knew they would be bound by whatever determination the FT Committee made.

On 16 June 2015, Mr. Baldwin testified as follows:

> Judge Barkett: . . . . Whatever the flat tax was going to be [as established by the FT Committee], that was what it was going to be and you agreed to abide to that, whether it was, high, low, middle, whatever. Is that not right?
>
> A: It's Russian roulette. It's right.[252]

Likewise, during the Final Hearing, Mr. Baldwin stated that

> We had an absolute duty to pay tax and as soon as the tax committee, the properly formed tax committee under the Settlement Deed met and set a tax we were obligated to pay whatever that amount was.[253]

275. As stated in Laos' notice of 29 December 2014, if the FT Committee did not establish a new flat tax, Laotian tax law indisputably would apply to Savan Vegas, imposing a rate

[252] R-283, Hr'g Tr. at 242, 16 June 2015 (cross-examination of Mr. Baldwin).
[253] Final Hr'g Tr. at 1111, 25 Jan. 2017 (cross-examination of Mr. Baldwin).

of 35% on GGR and an additional 10% VAT.[254] This was also the observation of the BIT Tribunal:

> In the Tribunal's view, the Claimant has not established a case for relief from the collection of the 45% tax on gross gaming revenues enacted in October 2014.
>
> . . .
>
> When the Flat Tax Agreement expired on 31 December [2013], Savan Vegas became subject to the applicable tax laws of Laos. It is common ground that although Savan Vegas has continued to do business in Laos, it has not paid taxes either directly or in escrow since 1 January 2015. While it now offers to pay in escrow the sum of US$429,300 per month retroactive to 1 January 2015, there is no obligation on the Government to agree to such a figure or to any escrow arrangement.
>
> . . .
>
> . . .[F]or so long as the Claimant continues to do business in Laos, it can reasonably expect to be bound by the Laotian income tax laws applicable to gambling casinos unless and until a new Flat Tax Agreement is negotiated.[255]

276. Sanum chose not to participate in the FT Committee, and in so doing, forwent its opportunity to influence the tax rate. Therefore, had Laos opted not to ask the Macau Society to appoint an accountant to determine the flat tax, Savan Vegas would be subject to the tax rate imposed under Laotian tax law—35% on revenue and 10% VAT—as this Tribunal would have no authority to relieve Sanum from this obligation absent a new flat tax agreement between the Parties. This obligation to pay taxes would have continued to exist even if Sanum had succeeded in obtaining the complete rescission of the Deed that it had requested in its Material Breach Application, as any obligation Laos had to negotiate a new flat tax agreement would have been nullified.

277. The Majority finds that there is also insufficient evidence that the process by which Mr. Va set the 28% tax rate was biased. The evidence indicates that Mr. Va was a qualified, impartial, and independent professional. He is a registered auditor with approximately 30 years of experience in taxation of the gaming industry. His qualifications, knowledge, and skills were never contested. According to his report, Mr. Va based his recommendation for a 28% tax rate on measurable facts: the existing Laotian taxation system and government policies, the taxation policy of other countries in the region and their competitive advantage in gaming, the current size of Savan Vegas,

[254] *See supra* note 40 and accompanying text.
[255] C-124, Decision on Claimant's Second Application for Provisional Measures, *supra* note 46, at ¶¶ 27, 32, 34.

the current market position of Laos in the Asian gaming industry, and Thailand's gaming policies as Thai tourists are the majority of Savan Vegas' gamblers.[256]

278. Additionally, there is no indication that, other than giving Mr. Va three reports on taxation upon his formal engagement, the Government interfered with or sought to influence Mr. Va's determination or that the Government contacted him at any point while he was determining the tax rate.[257] The evidence indicates that the Government specified that "[t]he goal is to set a tax that is fair to the Government and the current owner who must sell the casino."[258]

279. Moreover, Mr. Va's testimony made clear that he did not base the flat tax rate on the documents given to him by the Government and instead focused on setting an independent rate that was fair and reasonable to the Government and to Sanum:

a. "In my, in my opinion, fair and reasonable tax is the tax that is fair and reasonable for both parties for this case, the government and Sanum."[259]

b. "As I mention before, even if I receive both reports, I need to work independently, impartially and do my own work, my own research . . . in my belief, this would not affect my work since I know that I need to work impartially literally and do my own work, my own research."[260]

c. "So I have mentioned before in the report I received from the government, I received with a very high degree of skepticism. I need to do my own work from the beginning. I don't need to rely on these reports, no."[261]

280. The Majority found Mr. Va to be honest, impartial and experienced and his testimony regarding his methods and conclusions to be credible and therefore finds insufficient evidence of bias or partiality to discount the fairness of his 28% tax rate.

281. The Majority is also not persuaded that the 28% tax rate is unreasonable simply because Macau Legend and Laos later negotiated a US$10 million annual tax for Savan Vegas.[262] Although it is possible that, had Sanum participated in the FT Committee, the

[256] C-155, Report of Flat Tax Committee from Quin Va, p. 1–2 , 9 June 2015.
[257] Final Hr'g Tr. at 654-55, 24 Jan. 2017 (examination of Mr. Va).
[258] C-119, Emails between David Branson and Stella Lok, 2 Feb. 2015.
[259] Final Hr'g Tr. at 590, 23 Jan. 2017 (testimony of Mr. Va).
[260] *Id.* at 579.
[261] Final Hr'g Tr. at 628, 24 Jan. 2017 (testimony of Mr. Va).
[262] *See* C 238, PDA between Laos and Macau Legend, at Annex C, 13 May 2016.

FT Committee would have determined a rate lower than 28%, there is no evidence as to what would have happened had Sanum opted to participate in the FT Committee or what that negotiated flat tax might be.

282. Additionally, Respondents argued that an annual, lump-sum payment of approximately US$2 million is fair and reasonable under the Deed because, according to the report of Respondents' gaming tax expert, Mr. William Bryson, it is consistent with the tax rates imposed by Cambodian casinos.[263]

283. However, the Majority cannot credit the relevance of using Cambodia's tax laws as a reference, as among other differences between the two jurisdictions, Cambodia has allowed a proliferation of casinos (granting 77 licenses) and is in the process of amending its own laws on the taxation of casinos, whereas Laos, who looks unfavorably on casinos in generally, has only three existing casinos and has banned the granting of any new licenses.[264] We also note that, according to the opinion of Laos' expert on taxation, Mr. Green, the 28% tax rate is equal to or lower than the effective tax rate that would be imposed on Savan Vegas under Macau, Vietnamese, and Malaysian tax laws.[265] Moreover, the Deed does not define "fair and reasonable" by analogy to specific jurisdictions or external reference points, and the Tribunal cannot re-write the Deed to do so. Simply garnering evidence that US$2 million could be a fair and reasonable tax rate under the circumstances in Cambodia is not sufficient to prove that the 28% tax rate imposed on Savan Vegas in Laos was neither fair nor reasonable.

284. Respondents also argue that the Tribunal should conclude that the tax should have been a US$2 million annual lump sum based on the prior flat tax agreement. However, that agreement expired on 31 December 2013, the intention of the Parties was always to set a new tax rate, and there is no indication that the FT Committee would have agreed to a US$2 million lump sum tax. There is nothing in the record to support the Dissenting Opinion's statement that "the parties . . . from the outset of their relationship had an understanding that a flat tax was to be set jointly . . . in an exact dollar amount—as described in their existing Flat Tax Agreement through 2014."

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[263] *See* Expert Report of William Bryson, pp. 3–4, 16–17, 16 Oct. 2014.
[264] Expert Rebuttal Report of David Green, ¶¶ 3–4, 29 Nov. 2016.
[265] Expert Report of David Green, Tables 1&2, 11 Sept. 2016; Final Hr'g Tr. at 812, 843–45, 24 Jan. 2017 (During the final hearing, Respondents' counsel noted that Vietnam's effective tax rate on GGR was lower than what Mr. Green had assumed and indicated in Table 1. However, as explained on Mr. Green's re-direct, Vietnam, even with the corrected tax rates, would have applied an equal or higher effective tax rate on Savan Vegas.).

285. Moreover, as discussed in paragraph 275, if no new flat tax agreement were concluded, the default would have been to tax Savan Vegas according to the rates imposed under Laotian tax law, not according to the expired, prior flat tax agreement. Given that Mr. Va's 28% tax on GGR is lower than the rate imposed by Laotian tax law and Sanum was explicitly and repeatedly told that Laotian tax law would apply if no new flat tax were negotiated, the Majority finds nothing unfair or unreasonable about the outcome.

286. The Majority is also not persuaded that this 28% tax rate was so high as to prevent a sale of Savan Vegas for the maximum value—most notably because Savan Vegas *was* sold subject to this 28% tax rate and multiple bidders were interested in purchasing the Casino. Moreover, as Macau Legend evidences, a potential purchaser was free to negotiate a different tax rate to apply to Savan Vegas after the sale.

287. Respondents also argue that the Deed's requirement that the tax be "flat" means that the tax should be a fixed, unchanging, periodic amount, not a fixed tax rate. However, the Deed does not define "flat tax," and when Mr. Va, a qualified professional knowledgeable about the taxation of casinos, was asked to determine a "flat tax," he interpreted this term to mean a tax with a flat rate. Given that under national taxation laws (including Laotian tax law), a flat tax is a tax that applies a constant marginal rate on income, the Majority does not find Mr. Va's interpretation to be an unreasonable one.

288. Finally, the Majority concludes that there is insufficient evidence in this record to support a viable, alternative tax that the Tribunal would have the authority to impose under the Deed. Given that Paragraph 7 of the Deed entitled Laos to collect tax on Savan Vegas as of 1 July 2014, it is consistent with the Deed to use this 28% rate to calculate Savan Vegas' outstanding tax liability.

vii. Sale Price of Savan Vegas

289. Pursuant to Paragraph 13 of the Deed, the sale must occur "on a basis that will maximize Sale proceeds." The Tribunal must now decide whether the sale price of US$42 million meets that criterion in that it equals or exceeds the value of Savan Vegas at the time of the sale.[266]

[266] The Dissenting Opinion of Ms. Lamm indicates that she wished to examine the damages experts. However, as discussed in paragraphs 24 and 53, the Parties had specifically agreed that no witness would be called except

290. The accuracy of any valuation depends on the accuracy of its assumptions. The Tribunal reiterates that there is insufficient evidence in this record to conclude that the value or purchase price of Savan Vegas was improperly reduced by any of the following: (a) the exclusion of the Slot Clubs from the sale of Savan Vegas; (b) the terms of the New PDA and airport rights; (c) Claimant's management of Savan Vegas; or (d) the 28% tax rate. These findings, therefore, must be assumed in any valuation of Savan Vegas.

291. Thus, from the outset, the estimate provided by Respondents' experts, Professor Kalt and Dr. Fisher, is flawed as it assumed the converse of the Tribunal's findings: that the Slot Clubs were included in the sale, that the new buyer would and could have the same PDA and could extend the runway at Savannakhet Airport, that the current financials of Savan Vegas were inaccurate due to Claimant's mismanagement and the protracted legal dispute, and most notably that a 1–2% tax rate applied.[267] These assumptions seriously impacted the valuation. For example, just assuming the tax rate would be 1-2% (instead of the 28% rate) highly inflated their estimated value of Savan Vegas. As described by Claimant's rebuttal expert, Ms. Kellie Greard of PricewaterhouseCoopers, changing the tax rate to 28% in Professors Kalt and Fisher's calculation would decrease their baseline valuation of Savan Vegas by 67%.[268] Moreover, Professor Kalt's assumption that the expansion of the Savannakhet Airport was possible and intended is directly contradicted by the evidence that Mr. Baldwin was no longer interested in pursuing the expansion.[269]

292. Likewise, the valuation provided by Respondents' rebuttal expert, HVS, suffers from the same fundamental flaw of assuming the circumstances that existed prior to the Deed, including a tax based on the prior flat tax agreement (approximately 1% of GGR), rather than basing its valuation on the actual facts and circumstances at the time of the sale.[270]

293. The only accurate way to value Savan Vegas is to root the calculations, and any necessary assumptions, on the evidence in the record. Because the Majority has already determined that the evidence does not support the conclusion that Claimant mismanaged or overtaxed the Casino, the only evidence available on which to base a valuation is

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for cross-examination **if** requested by the opposing Party. Given the imminence of the Final Hearing and the substantial documents already submitted regarding this issue, the Majority concluded it was most fair, efficient, and expeditious to uphold the agreement as good cause had not been shown to vary it.

[267] Expert Report of Professor Joseph Kalt, ¶¶ 14–17, 19, 71. 14 Oct. 2016; *see also* Supplemental Expert Report of Professor Joseph Kalt, ¶ 4, 2 Dec. 2016 (alternatively estimating the value of Savan Vegas assuming a flat tax of US$10 million, as requested by Respondents).

[268] Rebuttal Report of Kellie Anne Greard (PwC), ¶ 2.3.9, 2 Dec. 2016.

[269] *See supra* notes 194–196 and accompanying text.

[270] *See* Narrative Appraisal Report of HVS, pp. 7–9, 125–26, 2 Dec. 2016.

Savan Vegas' EBIDTA, as reflected in its financials of 2015 and 2016.

294. Additionally, the Majority finds no support in the Deed for using Savan Vegas's EBIDTA as of June 2014, as HVS did.[271] There can be no debate that the Deed specified that the Casino would be sold for its maximum price approximately ten months *after* the Deed was signed. Just as there is no support for inferring that the Deed intended the Parties to delay selling the Casino in order to increase its value, there is no support for inferring that the Parties intended that the sale price be maximized based on circumstances that no longer existed. Moreover, any change in circumstance was due in no small part to the actions of Respondents.

295. The Tribunal concludes that Respondents failed to provide sufficient evidence to rebut Claimant's valuation of US$30 million to US$39 million, which is less than what Macau Legend paid for the Casino. Therefore, the Majority concludes that, based on the record, Respondents failed to demonstrate that Claimant did not maximize the Sale proceeds of Savan Vegas.

296. According to the Asset Purchase Agreement under which Macau Legend paid US$42 million as consideration for Savan Vegas, Laos designated and collected US$26,659,000 as Savan Vegas' unpaid tax liability, which is equivalent to 28% of Savan Vegas' GGR between 1 July 2014 and the date of the sale.[272] Laos has designated the remaining US$15,341,000 as the purchase price,[273] which Laos placed in escrow to be released to

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[271] *See id.* at 2, 119–21 (stating they are performing a "retrospective" market value of Savan Vegas as of 14 June 2014).

[272] The record indicates that between July 2014 and July 2016, Savan Vegas had a total of approximately US$108,612,296 in GGR, and a 28% flat tax on this amount would therefore equate to approximately US$30,411,433. The record also indicates that Laos caused Savan Vegas to make two tax payments of US$4,913,480.62 and US$200,000, reducing the tax liability for this period to approximately US$25,297,962. Because Savan Vegas would also have GGR for August 2016, prior to when Macau Legend took possession of the Casino, this GGR would also be subject to the 28% flat tax, increasing the unpaid tax liability to approximately US$ 26,659,000. *See* R-427T, Tax Notification Letter from Savan Vegas Lao to Tax Department, 21 July 2016

> ("On behalf of the Savan Vegas Lao Limited, I would like to inform you the amount of money due to pay lump-sum tax for the period of 07/2014 and 05/2016. Based on the total amount of the incomes of the Casino receiving during the period is $98,648,485.66 The total amount of lump-sum tax is $27,621,576.01 [which is 28% of the Casino's income]. Of this amount, $4,913,480.62 was already paid [by Laos]; so the balanced amount is $22,708,095.39.").

See also R-432, Savan Vegas Gaming Tax Submission for June 2016-July 2016, 31 July 2016; R-455T, June 2016 Tax Statement for Savan Vegas, Undated; R-459T, July 2016 Tax Statement for Savan Vegas, Undated (collectively indicating that Savan Vegas' total GGR for June and July 2016 was US$9,963,811, that the total tax on the GGR for this period was US$2,789,867.20 (which is 28% of the GGR), that US$200,000 had been paid by Laos in July 2016, and that therefore US$2,589,867.20 of tax was due and owing for this period).

[273] C-255, PDA between Macau Legend and Laos, at Annex B, arts. 1.1, 2.4, 19 Aug. 2016 (defining "Limited Assumed Tax Payment" and "Purchase Price" and instructing their payment). We note that Laos is slightly inconsistent with how it divides the sale proceeds: in its pleadings, it states that of the US$42 million in

and divided between the Parties per the instructions of this Tribunal.[274] The Tribunal will address the division of the purchase price, *infra*, in its discussion of damages.

I. Respondents' Counterclaim Concerning the Land Concession at Thakhaek and Claimant's Responses Thereto

297. In addition to the obligations concerning the taxation, management and sale of Savan Vegas, the Deed required the Parties to negotiate a land concession at Thakhaek in good faith pursuant to an MOU signed by the Parties in October 2010 ("Thakhaek MOU").

298. The Thakhaek MOU describes the land as "one plot of land . . . located on the South of the Bridge and on the West of Road No. 13, with the land area of *about 90 hectares more or less* (see the land area drawing surveyed in May- August 2009 for the detail)."[275] The drawing attached to the Thakhaek MOU showed a large rectangular SEZ of approximately 1000 hectares with a smaller rectangle piece of land that is labeled as "E-1." This E-1 Parcel forms the basis of the land concession.

299. Sanum has alleged that Laos has not negotiated the Thakhaek land concession in good faith because Laos excluded 16 hectares from the designated E-1 Parcel.

300. Laos responds that Sanum knew prior to the Deed that the 16 hectares were to be excluded from the E-1 Parcel because that land is privately owned. In addition, an independent survey of the E-1 Parcel indicates that when the 16 hectares of private land are excluded from the E-1 Parcel, the parcel still encompasses 88.9 hectares.[276] Claimant argues that offering to grant 88.9 hectares of the E-1 Parcel clearly matches the Thakhaek MOU's requirement that the land concession be "about 90 hectares more or less" (emphasis added).

301. Additionally, Laos contends that it continued to negotiate in good faith by offering Respondents the opportunity to propose a development on any other available 90-hectare parcel in the SEZ.

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consideration, US$15,325,614.00 is the purchase price, but the Asset Purchase Agreement designates US$15,341,000 as the purchase price. We use the amount set forth in this Asset Purchase Agreement.

[274] Escrow Agreement by and among The Government of the Lao People's Democratic Republic and TMF Trustees Singapore Limited, art. 4.1, 16 Jan. 2017.

[275] R-275, Memorandum of Understanding between Sanum and the Committee for the Laos-Thailand Friendship Bridge III, art. 2.1, 20 Oct. 2010 (emphasis added).

[276] *See* C-198, Lao Engineering Company Limited Technical Report on Topographic Survey for Determination of Boundary, Corners and Calculation of the Area, Specific Economic Zone (SEZ) in Thakhaek, Annex II, 22 Oct. 2015.

302. New York law makes it clear that an obligation to negotiate in good faith "does not guarantee that the final contract will be concluded if both parties comport with their obligation, as good faith differences in the negotiation of the open issues may prevent a reaching of a final contract."[277] Thus, the fact that no land concession has been negotiated does not by itself establish that either Party violated their obligation to negotiate in good faith.

303. Based on the record, the Majority finds that the evidence does not support a finding of bad faith. First, the Majority agrees that 88.9 hectares, which is only 1.1 hectares smaller than 90, meets the size requirement described in the Thakhaek MOU of "about 90 hectares more or less" (emphasis added). The Dissenting Opinion of Ms. Lamm fails to consider that the Thakhaek MOU specifically designates the size of the concession as "about 90 hectares more or less," and that, by including the 16 hectares of private land, the concession would appreciably exceed the size requirement. Second, the evidence indicates that Sanum was aware since 2012, before the execution of the Deed, that the Government considered these 16 hectares to be excluded from the E-1 Parcel. According to Mr. Baldwin's Second Witness Statement before the BIT Tribunal, he had learned in January 2012 that these 16 hectares were private property and leasing them required permission from the owner.[278] Mr. Philip James, Sanum's representative negotiating the concession, also testified that, prior to the negotiations in November 2015, "there was still a misunderstanding over the land [16 hectares] at that point."[279] Thus, prior to the Deed, the Parties had not decided whether the 16 hectares would be included in the concession, and it remained an open issue for negotiations.

304. Furthermore, the Majority notes that, contrary to the Dissenting Opinion of Ms. Lamm, the Thakhaek MOU itself is ambiguous as to whether the 16 hectares of private land are included in the E-1 Parcel, as those 16 hectares are shaded in a different color than the remaining 88.9 hectares of available land in the E-1 Parcel.[280] Accordingly, the Majority finds that "good faith differences in the negotiation of the open issues"—most notably, the 16 hectares of private land—"prevent[ed] a reaching of a final contract," which, under New York law, does not constitute bad faith.

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[277] *Teachers Insurance & Annuity Association v. Tribune Co.*, 670 F. Supp. 491, 498 (S.D.N.Y. 1987).
[278] C-066, Second Witness Statement of John K. Baldwin, ¶ 95, *Sanum Investments Limited v. The Government of the Lao People's Democratic Republic*, PCA Case No. 2013 (UNCITRAL), 9 May 2014.
[279] Final Hr'g Tr. at 1527, 26 Jan. 2017 (cross-examination of Mr. James).
[280] *See* R-275, Memorandum of Understanding between Sanum and the Committee for the Laos-Thailand Friendship Bridge III, 20 Oct. 2010.

305. Additionally, the Majority finds that Sanum's alternative proposal, made in December 2015, in response to Laos' offer to provide another site of Sanum's choosing, is not consistent with the requirements imposed of the Deed. Sanum proposed developing a parcel of land as a "Dubai-style Free Zone area," which would be exempt from taxation, import and export duties, any restrictions on trade of foreign currencies and repatriation of income, and that the rules and regulations of the SEZ would be amended to accommodate this free-zone.[281] However, Paragraph 22 of the Deed requires that the fees and charges imposed in the land concession "be commensurate with those charged in connection with any similar site or project in the Thakhaek Free Enterprise Zone," which Sanum admits their proposal did not do: in his Witness Statement Mr. James recognized that Sanum's proposal required "modifying the rules of the Thakhaek SEZ,"[282] and at the Final Hearing, he agreed that these modifications would be "something over and above what was the norm at the time and currently for SEZs in Laos."[283]

306. Moreover, the proposal's goal of obtaining "the commercial opportunity . . . originally intended from the [Thakhaek MOU],"[284] which had included slot clubs and a casino, was in tension with Paragraph 22's prohibition against gaming activity in the land concession.

307. Finally, the Majority finds it significant that, after rejecting the proposal for the Dubai-style Free Zone Area, Laos offered to consider any other proposal made by Sanum,[285] which Sanum refused to do.[286] Ultimately, the evidence does not support a conclusion that Laos did not negotiate good faith.

J. Respondents' Counterclaim Concerning Laos' Criminal Investigations of Sanum

308. Last, the Tribunal turns to Respondents' counterclaim that Laos violated Paragraph 23 of the Deed by failing to terminate its criminal investigations against Sanum and their affiliates. Paragraph 23, in full, reads as follows:

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[281] C-207, Letter from Philip James to Outakeo Keodouangsinh, pp. 5–7,10 Dec. 2015.
[282] Witness Statement of Philip James, ¶ 25, 30 Nov. 2016.
[283] Final Hr'g Tr. at 1544, 26 Jan. 2017 (cross-examination of Philip James) (In response to the question of whether the proposal seeks "something over and above what was the norm at the time and currently for SEZs in Laos?", he answered "within Laos, yes.").
[284] C-207, Letter from Philip James to Outakeo Keodouangsinh, p. 1,10 Dec. 2015.
[285] C-210, Letter from Outakeo Keodouangsinh to Phillip James, p. 4, 15 Jan. 2016 (offering to consider any other proposals made by Sanum).
[286] C-215, Letter from Jorge Menzenes to Outakeo Keodouangsinh, 12 Feb. 2016 (stating Laos must either include the 16 hectares in the E-1 Parcel or accept Sanum's proposal of a Dubai-Style Free Trade Zone made in December 2015).

> Laos shall discontinue the current criminal investigations against Sanum / Savan Vegas and its management or other personnel and shall not reinstate such investigations provided that the terms and conditions agreed herein are duly and fully implemented by the Claimants [Sanum].

309. It is undisputed that, after seizing the Casino in April 2015, Laos brought criminal investigations against Sanum and their affiliates.

310. However, the Deed itself acknowledges that Claimant's obligation to terminate "the current criminal investigations against Sanum / Savan Vegas and its management" only exists "*provided that the terms and conditions agreed herein are duly and fully implemented by [Sanum].*" The Dissenting Opinion of Ms. Lamm does not address the fact that Claimant's obligation to terminate the current criminal investigations only exists provided that Sanum duly and fully implemented the terms of the agreement; Claimant's performance of its obligations is not referenced in or relevant to this provision.

311. The evidence is undisputed that, for ten months, as delineated earlier in this Award, "the terms and conditions agreed [in the Deed]" were not "duly and fully implemented by [Sanum]." As a result, Sanum is not entitled to any damages alleged for its legal costs in this regard. Additionally, it is unclear from the evidence presented whether Sanum's claim for defense costs derive from the "current" criminal investigations as referenced in the Deed or investigations arising from new investigations.

VII. SUMMARY OF TRIBUNAL CONCLUSIONS

312. Based on the foregoing:

a. The Majority concludes that Respondents did not perform their obligations under the Deed, nor were any deadlines for performance extended. Accordingly, Respondents breached their obligations under the Deed without a sufficient legal or factual basis for doing so. Each breach was material and substantial and frustrated the Deed's fundamental purposes of establishing a flat tax and selling the Casino within a short period of time (i.e., 10 months). Claimant thus did not receive the benefit of its bargain to have the Casino sold within 10 months and taxes paid during that interim. As a result, Claimant is entitled to any damages that flow from Respondents' breach. Such damages are to be paid from Respondents' share of the purchase price of Savan Vegas, which is being held in escrow.

b. The Majority concludes that, given Sanum's intransigence during the ten-month period they were permitted to operate the Casino, Laos performed its obligations under the Deed to the extent possible. Therefore, the Majority finds that Respondents counterclaims alleging breach are not meritorious and accordingly are denied. The Dissenting Opinion of Ms. Lamm concedes that the evidence needed to support a quantification of Respondents' alleged damages on their counterclaims has not been adduced.

c. Pursuant to Paragraph 7 of the Deed, the Majority determines that Claimant is entitled to designate and collect US$26,659,000 of the sale proceeds of Savan Vegas as taxes.

d. Pursuant to Paragraph 16 of the Deed, the Tribunal determines that both Parties are entitled to a share of the purchase price of Savan Vegas (US$15,341,000, which is the total sale price of US$42 million less the outstanding tax liability), as defined by the Asset Purchase Agreement between Laos and Macau Legend, proportionate to their ownership interest in Savan Vegas.

313. The conclusions of the Majority are based on the evidence which fully supports the Claimant's arguments and fails to support Respondents' arguments.

VIII. DAMAGES, COSTS AND FEES

A. Damages

314. In damages, Laos has sought (a) 20% of the purchase price of Savan Vegas; (b) all of the expenses of the sale; and (c) monies due as a result of the alleged loan fraud.

315. Because we do not have jurisdiction over Laos' claim for loan fraud, we do not address any damages based thereupon.

316. Paragraph 16 of the Deed informs the allocation of the purchase price and the costs of the sale:

> Laos shall be entitled to receive twenty percent (20%) of the purchase price paid for the Gaming Assets. The Claimants [Sanum] shall be entitled to receive an amount equivalent to: (i) eighty percent (80%) of the purchase price paid for the Gaming Assets, less . . . (iii) any and all costs associated with the Sale (other than any costs not ordinarily

> imposed by Laos in connection with such transactions in the Lao PDR); and provided in any event that no amount of Sale proceeds shall be distributed or otherwise paid to the Claimants [Sanum] until Laos has received its payment of Sale proceeds in full. The Claimants [Sanum] shall bear all costs of the Sale. Laos and the Claimants [Sanum] each agree to take all necessary steps to permit, expedite and facilitate the Sale.

317. Applying Paragraph 16 of the Deed, Laos is entitled to receive 20% of the purchase price of US$15,341,000, which equals US$3,068,200.00, and Sanum is entitled to receive the remaining 80%, which equals US$12,272,800. In addition, "[Sanum] shall bear all costs of the Sale."

318. Laos is claiming that it has borne US$4,162,339.49 in sale costs set forth as follows:

a. Prior to 31 August 2016, Savan Vegas paid US$8,211,697.46 related to the cost of the sale. As 20% owner, Laos claims 20% of these costs and expenses as damages, which equates to US$1,642,339.49.

b. The Ministry of Finance paid San Marco a brokerage fee of US$2,520,000.00.[287]

The Majority finds these amounts, which total US$4,162,339.49 to be applicable and substantiated sale costs which are due to Laos and must be deducted from Sanum's portion of the purchase price pursuant to Paragraph 16 of the Deed.[288]

319. Since the purchase price was deposited into escrow, interest has accrued on the amount, and fees and expenses have been incurred to manage and maintain the escrow. Both the interest and fees and expenses shall be divided among Laos and Sanum, 20% and 80% respectively.

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[287] C-259, Payment of San Marco Brokerage Fee, 31 Aug. 2016.

[288] Sanum, in an email dated 19 February 2017, argued that all evidence of Laos' sale costs that was submitted after the hearing should be excluded as late-filed because sale costs are "damages" which had to be pleaded and substantiated prior to the hearing and only evidence of "costs" could be filed after the hearing. Laos does not dispute that it is claiming "sale costs" as "damages." However, Laos notes that, prior to the hearing, it included two exhibits to support its damage claim for sale costs: a list of sale expenses which included Curtis Mallet Prevost Colt & Mosle's fees regarding the sale (Exhibit C-260) and an invoice from San Marco (Exhibit C-259). Thus, it appears that Respondents are simply taking issue with the fact that, after the hearing, Claimant further detailed its sales costs and indicated where these costs appeared in the General Ledger. Given that the materials Laos submitted after the hearing in support of its "sale costs" claim are essentially a more detailed version of the list of sale costs included as exhibit C-260, the Majority finds there is no prejudice to Respondents for admitting this evidence.

B. Costs and Fees

320. Both Parties argued in their respective pleadings that the prevailing Party is entitled to recover 100% of their arbitration costs and 100% of their legal costs, fees and expenses.[289] As the Parties have recognized, this Tribunal has the power to apportion the Parties' respective arbitration costs and legal fees and expenses pursuant to SIAC Rules 31.1 and 33.[290] The Parties have also recognized that the *lex arbitri* (Singapore law) likewise grants this Tribunal the authority to apportion the Parties' arbitration costs and legal fees and expenses, while also directing the Tribunal to follow the principle that "costs follow the event," which entitles the prevailing party to recover all reasonable costs and expenses.[291] The Tribunal notes, as do the Parties, that this apportionment is the generally accepted principle among arbitral tribunals.[292]

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[289] Claimant's Amended Notice of Arbitration, p. 20, 3 June 2016; Resp'ts Second Amended Response to Notice of Arbitration and Brief Statement of Countercls., ¶ 155, 3 June 2016.

[290] SIAC Rule 31.1 (2013) ("The Tribunal shall specify in the award, the total amount of the costs of the arbitration. Unless the parties have agreed otherwise, the Tribunal shall determine in the award the apportionment of the costs of the arbitration among the parties."); *id.* at Rule 33.1 ("The Tribunal shall have the authority to order in its award that all or a part of the legal or other costs of a party be paid by another party."). *See also* Claimant's Rejoinder, ¶¶ 115-119, 130-31, 22 Dec. 2016 (noting that under Singapore law, SIAC Rule 33.1, and the general principle that "costs follow the event," the prevailing party is entitled to recover its costs and expenses, including arbitration costs and legal costs and expenses); Resp'ts. Submission on Costs, ¶ 16, 15 Feb. 2017 (stating same and citing to Claimant's Rejoinder).

[291] *See* English Arbitration Act 1996, SI 1996/3146, ch. 23 §§ 59, 61 (providing in § 61(2) that "Unless the parties agree otherwise, the tribunal shall award costs on the general principle that costs should follow the event. . . ." and providing in § 59 that costs include "(a) the arbitrators' fees and expenses, (b) the fees and expenses of any arbitral institution concerned, and (c) the legal or other costs of the parties."); Application of English Law Act § 3(1) (Sing.) (providing that, under certain circumstances, the common law of England is in force in Singapore); *APL Co. Pte. Ltd. v. UK Aerosols Ltd.* 582, F.3d 947, 955-58 (9th Cir. 2009) (holding that Singapore law has adopted the English Rule on awarding costs and fees by application of the English Law Act §3(1) (Sing.) and, as a result, fees should be awarded to the prevailing party). *See also* Claimant's Rejoinder, ¶¶ 115-119, 130-31, 22 Dec. 2016 (noting that under Singapore law, the applicable principle is that "costs follow the event," entitling the prevailing party to recover its costs and expenses, including arbitration costs and legal costs and expenses); Resp'ts. Submission on Costs, ¶ 16, 15 Feb. 2017 (stating same and citing to Claimant's Rejoinder).

[292] *See e.g. State-owned Corporation X v. Corporation Y,* ICC Case No. 11307, Final Award, in Albert Jan van den Berg (ed), YEARBOOK COMMERCIAL ARBITRATION, at 24-62, 61 (Kluwer 2008) (noting that the "general rule is that costs follow the event"); *Seller (Turkey) v. Buyer (Turkey)*, ICC Case No. 16168, Final Award, in Albert Jan van den Berg (ed), YEARBOOK COMMERCIAL ARBITRATION, at 205-227, 226 (Kluwer 2013) ("The Arbitral Tribunal notes that Claimant is the party prevailing in this arbitration by almost 100 percent. Therefore, the Arbitral Tribunal finds it reasonable and appropriate that Respondent shall bear the entire costs of the arbitration."); *Company A (Italy) v. 6 Respondents (Italy)*, ICC Case No. 14046 (excerpt), Final Award, in Albert Jan van den Berg (ed.), YEARBOOK COMMERCIAL ARBITRATION, at 241-271, 268 (Kluwer 2010) ("Typically, the 'legal and other costs' include such items as the fees and expenses of legal counsel, the costs of experts, consultants and witnesses, and other costs associated with the production of documents."); Gary Born, INTERNATIONAL COMMERCIAL ARBITRATION, at 3095 (2d ed. 2014) ("As a practical matter, arbitrators in international cases routinely award the costs of legal representation ... In exercising their discretion, international arbitral tribunals have often made some award of the costs of legal representation to the 'prevailing party.'"); John Gotanda, *Awarding Costs and Attorneys' Fees in International Commercial Arbitrations*, 21 MICH. J. INT'L L. 2, 6-10 (1999) (stating that most jurisdictions allocate costs

321. The Majority has found that Claimant is the prevailing Party in this case and is thus entitled to all of its arbitration costs and legal costs, fees and expenses. In addition to having been found to be the prevailing Party, the Majority cannot ignore the actions of Respondents that caused, prolonged, and exacerbated this dispute. For example, this Arbitration would not have been necessary had Respondents honored the Deed's provision providing Laos with a 45-day period to cure any alleged breach (even though this Tribunal and the BIT Tribunal ultimately found there had been no breach), as discussed in paragraphs 155 to 167. Other actions throughout this Arbitration including the submission of the fraudulent Angus Noble MOU likewise contributed to the time and resources expended by Laos, which were not necessary and directly violate the requirement under Paragraph 38 of the Deed that "The Parties agree to act in good faith in relation to the performance of each Party's obligation under this Deed and not to make any false statements against each other."

322. Turning to Claimant's arbitration costs and legal fees and expenses, Claimant seeks the following:

a. 20% of the fees and expenses incurred through 31 August 2016 due to the Parties' dispute and paid by Savan Vegas (US$1,375,662.11);

b. 100% of the fees and expenses outstanding in 2017 incurred due to the Parties' dispute paid by Laos (US$4,389,806.03);

c. 100% of the costs of the hearings (US$106,374.18); and

d. 100% of the fees paid to SIAC (US$504,426.98).

323. Included in Claimant's requested amounts are (1) the fees of Mr. Govinda Singh (US$188,648.00), and (2) the fees incurred from TMF Escrow (US$10,100.00). The Majority finds that Claimant is not entitled to recover either amount because the fees of Mr. Singh constitute a damage claim which was not timely submitted, and, as described above in paragraph 319, the escrow fees are to be born jointly by the Parties.

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and fees according to the principle that costs follow the event). *See also* Claimant's Rejoinder, ¶¶ 115-119, 130-31, 22 Dec. 2016 (noting that under the general principle that "costs follow the event," the prevailing party is entitled to recover its costs and expenses, including arbitration costs and legal costs and expenses); Resp'ts. Submission on Costs, ¶ 16, 15 Feb. 2017 (stating same and citing to Claimant's Rejoinder).

324. Because the Majority denies the Respondents' counterclaims, which the Majority has found meritless, Respondents are not entitled to any arbitration costs or legal fees and expenses.

325. Based on the foregoing, the Majority concludes that Claimant is entitled to recover its arbitration costs and legal fees and expenses as follows:

a. Pursuant to SIAC Rule 33 and Singapore Law, Claimant is entitled to recover US$5,566,720.14 of its legal fees and expenses and expert fees, which is to be deducted from Sanum's portion of the sales price and paid to Claimant.[293]

b. Pursuant to SIAC Rule 33 and Singapore Law, Claimant is entitled to recover 100% of its costs of the hearings (US$106,374.18), which is to be deducted from Sanum's portion of the sales price and paid to Claimant.

c. The total costs of this arbitration, as determined by the Registrar of SIAC, is SGD 1,964,667.32, which includes (a) the Tribunal's fees and expenses[294] and (b) SIAC's administrative fees and expenses.[295] Claimant has deposited US$504,426.98, and Respondents have deposited US$1,103,230.00. Pursuant to SIAC Rule 31.1 and Singapore Law, Respondents shall bear all the costs of arbitration. To accomplish this, Claimant is entitled to recover its share of the costs of this arbitration from Respondents' portion of the sales price in the total amount of US$504,426.98.

d. Any funds which remain in the SIAC deposit account after settling the costs of arbitration shall be returned to the Parties as determined by the Registrar of SIAC recognizing that Claimant will have received the return of its deposit by way of the escrowed sale proceeds.

C. Conclusion as to Damages, Costs and Fees

326. Accordingly, the Majority determines that, of the purchase price of US$15,341,000, Sanum is entitled to recover 80% of this amount less US$9,835,433.81, which constitute Laos' damages and costs set forth above and which are to be added to Laos' 20% of the

[293] This sum is the total of (a) 20% of the fees and expenses Savan Vegas incurred and paid through 31 August 2016 and (b) 100% of the fees and expenses outstanding in 2017 incurred and paid by Laos, less (x) the fees of Mr. Govinda Singh (US$188,648) and (y) the escrow fees from TMF Group (US$10,100).
[294] The Tribunal's total fees and expenses are SGD 1,877,717.32.
[295] SIAC's administrative fees and expenses total SGD 86,950.00.

purchase price (US$3,068,200.00).

327. Therefore, of the principal amount placed into escrow, the Majority determines that Laos is entitled to receive US$13,408,060.79,[296] and Sanum is entitled to receive US$1,932,939.21.[297] The interest and costs of the escrow are to be borne 80/20 between Sanum and Laos respectively. The Parties are to ensure that the Escrow Agent, TMF Trustees, is apprised of this decision, as indicated in Tribunal Payment Notice as set forth in Appendix C, and are ordered to provide TMF Trustees with the necessary documentation to effectuate same.

IX. DECISION AND AWARD

328. For the reasons set out above, the Tribunal has concluded by majority and makes the following Award:

a. Respondents materially breached their obligations under Paragraphs 8 and 9 of the Deed concerning the establishment of the FT Committee;

b. Respondents materially breached their obligations under Paragraph 7 of the Deed concerning their obligation to cause Savan Vegas to pay taxes to Laos as of 1 July 2014;

c. Respondents materially breached their obligations under Paragraph 10 of the Deed concerning their obligation to take steps to sell Savan Vegas;

d. Respondents were in material breach of their obligations under Paragraph 9 of the Deed and Annex F of the Deed concerning payment to and cooperation with RMC;

e. Counsel for Respondents submitted the fraudulent Noble MOU to the Tribunal;

f. Claimant did not breach its obligations under the Deed;

g. Of the US$42,000,000.00 paid by Macau Legend for Savan Vegas, Claimant was entitled to collect US$26,659,000 as Savan Vegas' unpaid tax liability,

[296] This amount consists of (a) 20% of the sale price (US$3,068,200.00), (b) US$2,520,000.00 brokerage fee paid to San Marco, (c) 20% of all remaining sale expenses incurred by Savan Vegas (US$ $1,642,339.49), (d) US$5,566,720.14 of Claimant's legal fees and expenses and expert fees, and (e) Claimant's hearing costs and expenses (US$106,374.18).

[297] This amount is (a) 80% of the sale price (US$12,272,800) less (b) Claimant's awarded damages, legal fees and expenses, and expert fees (US$9,835,433.81).

and the remaining US$15,341,000.00 constituted the sales price;

h. Of the US$15,341,000.00 sales price, Claimant is entitled to receive US$13,408,060.79; and Respondents are entitled to receive US$1,932,939.21, both of which are to be paid from the escrow account;

i. Fees and interests accrued on the amount in escrow shall be divided among the Parties as described in paragraph 319;

j. Respondents shall bear all the costs of arbitration, as defined under SIAC Rule 31.1, which the Registrar of SIAC determined to be SGD 1,964,667.32; and

k. All other claims and counterclaims are dismissed.

Place of Arbitration: Singapore

Dated:

Judge Rosemary Barkett
Presiding Arbitrator

Mr. W. Laurence Craig
Co-Arbitrator

Ms. Carolyn Lamm
Co-arbitrator and Dissentient where indicated

Separate opinion of Ms. Lamm is attached.

Appendix A: Deed of Settlement

DEED OF SETTLEMENT

THIS DEED OF SETTLEMENT (this "**Deed**"), dated and effective as of the 15th of June 2014 ("**Effective Date**"), is made

BETWEEN

1. **SANUM INVESTMENTS LIMITED** ("**Sanum**") of Avenida da Amizade, No. 1321, Edf. Hung On Center, 7 andar X, Macau, an enterprise established on 14 July 2005 under the laws of the Macau Special Administrative Region of the People's Republic of China, in the business of, *inter alia*, developing and operating resort and hotel gaming facilities in the Lao People's Democratic Republic.

2. **LAO HOLDINGS N.V.** ("**Lao Holdings**"), a company formed in Aruba, the Netherlands, in January 2012.

(collectively "**the Claimants**")

AND

3. **THE GOVERNMENT OF THE LAO PEOPLE'S DEMOCRATIC REPUBLIC** ("**Laos**") Ministry of Planning and Investment, Souphanouvong Road, Vientiane, Lao PDR 01001.

(hereinafter each shall be referred to as a "**Party**" and collectively referred to as the "**Parties**")

WHEREAS

A By way of a Notice of Arbitration dated 14 August 2012, Sanum had commenced an arbitration in PCA Case No. 2013-13 against Laos pursuant to a bilateral investment agreement dated 31 January 1993 between the

Government of the People's Republic of China and Laos concerning the promotion and reciprocal protection of investments ("**the PRC BIT**"). Sanum subsequently filed an Amended Notice of Arbitration on 7 June 2013.

B. By way of a Notice of Arbitration dated 14 August 2012, Lao Holdings had commenced an arbitration under the ICSID Additional Facility Rules, Case No. ARB(AF)/12/6 against Laos pursuant to a bilateral investment agreement dated 2005 between the Kingdom of the Netherlands and Laos ("**the Netherlands BIT**").

C. Through this Deed, the Parties wish to withdraw any and all reliefs sought by either Party hereto against the other Party (or Parties) and any and all claims that either Party may have against the other Party (or Parties) in respect of the above-mentioned arbitrations.

IT IS AGREED AS FOLLOWS:

1. On the terms and conditions stated herein in this Deed, the Parties hereby agree, without any admission as to liability whatsoever, to a full and final settlement in all and every respect of all and every claims, reliefs, liabilities, loss and/or damage of whatsoever nature against or by whosoever that each Party has or may have raised, pleaded, disclosed, referred to and/or relied on in relation to the matters pleaded in the arbitration in PCA Case No. 2013-13 and ICSID Additional Facility Rules Case No. ARB(AF)/12/6.

2. The Claimants shall notify the tribunals in respect of the arbitrations identifed in the preceding paragraph ("Tribunals") within 3 days of the Effective Date that Parties have agreed to a full and final settlement of the arbitration in PCA Case No. 2013-13 and the arbitration in ICSID Additional Facility Rules Case No. ARB(AF)/12/6.

3. Parties shall consent to and take all necessary steps to implement and/or request the Tribunals in the arbitrations in PCA Case No. 2013-13 and ICSID Additional Facility Rules Case No. ARB(AF)/12/6 to issue a Consent Award

in the forms set out in **Annex A** attached hereto.

4. In the event that the Tribunals or either of them does not agree to any such suspension of the respective arbitration proceedings, then the arbitration(s) shall be deemed for all purposes as completely and finally terminated.

Commercial Terms and Conditions

5. Laos and the Claimants each confirm that the equity ownership of the Savan Vegas and Casino Co., Ltd. gaming project in Savannakhet Province is held 80% by the Claimants and 20% by Laos.

6. Laos shall treat the Project Development Agreement ("PDA") dated 10 August 2007 in respect of the Savan Vegas Casino, Lao Bao Slot Club (located at the Lao border at Lao Bao) and Savannakhet Ferry Terminal Slot Club (located at the Savannakhet / Mukdahan checkpoint) all in Savannakhet Province (collectively, the "Gaming Assets") and each of the licenses issued in respect of the Lao Bao Slot Club and the Savannakhet Ferry Terminal Slot Club, as being restated as of the Effective Date, with a term in each case of fifty (50) years as from the Effective Date.

7. Laos shall forgive and waive any and all taxes and related interest and penalties due and payable by the Claimants and the Gaming Assets up to 1 July 2014 in respect of the Gaming Assets, provided, however, that taxes shall be due and payable as from 1 July 2014 as provided in Section 8 below. The taxes covered herein are all taxes and fees including but not limited to those that are specifically indicated in Article 1 of the previously signed FTA attached as Annex D hereto.

8. Laos and the Claimants agree that a new flat tax ("FT") shall be promptly established in accordance with the procedure described in Section 9 below, and such FT shall be applied to the Gaming Assets with retroactive effect dating back to 1 July 2014. The FT shall apply throughout the fifty (50) year term of

the PDA. Such FT shall be escalated by five percent (5%) at the fifth (5th) anniversary of the Effective Date and by five percent (5%) on every five (5) year anniversary thereafter throughout the term.

9. Laos shall appoint RMC Gaming Management LLC ("RMC") not later than ten (10) days after the Effective Date, on the terms and conditions attached hereto as Annex E. If RMC does not accept the appointment within 4 days of the Effective Date, Laos shall appoint another agent to assist it in the matter as described in Annex E. Within ten (10) days of the Effective Date, the Claimants (collectively) shall nominate one person and Laos shall nominate one person (which may be an employee of RMC) to be members of a Flat Tax Committee (the "FT Committee"). Within ten (10) days after the Effective Date, the two persons nominated by the Claimants and Laos to the FT Committee shall nominate a mutually acceptable third FT Committee member. If the two FT Committee members fail to reach agreement on such third FT Committee member within such deadline, the third FT Committee member shall be appointed in the sole discretion of the President of the Macao Society of Registered Accountants. Within forty five (45) days of the Effective Date, the duly composed, three-member FT Committee shall determine a new fair and reasonable FT applicable to the Gaming Assets, taking into due consideration all relevant information submitted to the FT Committee by the Claimants and Laos.

10. Following the establishment of the FT as provided in Section 9 above, the Claimants shall take steps to establish and expeditiously carry out a sale of the Gaming Assets (the "Sale") in compliance with applicable Lao laws. The Claimants shall grant RMC access to all Sale related information and documents as stated in Annex E and shall keep RMC fully informed in regard to all matters related to the Sale. RMC shall have the right to share such Sale related information with Laos. RMC's point of contact in respect of such matters shall be Mr. Clay Crawford or his successor.

11. The Claimants shall have the right to continue to manage and operate the Gaming Assets in compliance with applicable laws through the completion of the Sale, subject to monitoring and oversight of RMC in accordance with the

provisions of Annex E, and provided, however, that such Sale shall be completed not later than ten (10) months after the Effective Date, and provided, further, that if prior to the end of such ten (10) month period the Claimants have signed an MOU with a proposed buyer to complete such Sale, then such ten (10) month period shall be extended by the term of the MOU but not more than an additional ninety (90) days within which to complete the Sale (the "Sale Deadline").

12. If the Sale Deadline is missed, the Claimants and Laos shall have the right to appoint RMC or any other qualified gaming operator to: (i) step in and manage and operate the Gaming Assets in place of the Claimants until the Sale is completed, and (ii) complete the Sale; provided that such gaming operator shall have a fiduciary duty to each the Claimants and Laos as interested parties in the Gaming Assets. If the Claimants and Laos have not agreed on who that operator shall be 30 days before the Sale Deadline, they shall submit the matter to the FT Committee for final decision such that the operator can take over by the Sale Deadline.

13. The Sale shall be completed on a basis that will maximize Sale proceeds to the Claimants and Laos, provided, however, that the winning bidder shall be either: (i) a recognized gaming company or junket operator duly licensed to operate a gaming casino, or (ii) any entity approved by the FT Committee as possessing the requisite degree of integrity, character and fitness to own, manage and operate the Gaming Assets in accordance with applicable Lao laws. The FT Committee shall respond within two (2) weeks of receipt from the Claimants of notice of a proposed purchaser as to whether such proposed purchaser meets the standards set forth herein.

14. The Claimants, and if relevant the FT Committee, shall take all necessary steps to reject any bidder if it is owned or controlled to any extent or degree by Mr. John K. Baldwin, Mr. Shawn A. Scott, Bridge Capital LLC (of Saipan), Lao Holdings NV (of Aruba), Sanum Investments Ltd. Holdings (of Macao SAR) or any related person of any of them. A "related person" for the purposes of this Section shall include any legally recognized relation including spouse,

child, parent or other relative, any shareholder, director, officer or employee of any of them or at or connected with the Gaming Assets or otherwise. Laos shall retain the right to terminate, without any liablity or compensation to any person, the PDA and all rights of any buyer of the Gaming Assets found to be non-compliant with this ownership restriction.

15. All Sale proceeds shall be received directly from the buyer into an escrow account at TMF Trustees Singapore Limited in Singapore under instructions to be jointly issued by the Claimants and Laos. No moneys shall be withdrawn from such escrow account except in compliance with this document. The Claimants and Savan Vegas (in the case of an assets sale rather than corporate sale) shall have no liability to pay any withholding or capital gains taxes in respect of the Sale.

16. Laos shall be entitled to receive twenty percent (20%) of the purchase price paid for the Gaming Assets. The Claimants shall be entitled to receive an amount equivalent to: (i) eighty percent (80%) of the purchase price paid for the Gaming Assets, less (ii) any amounts paid in respect of termination or claims of Mr. Richard Pipes and Mr. Hoolae Paoa, and less (iii) any and all costs associated with the Sale (other than any costs not ordinarily imposed by Laos in connection with such transactions in the Lao PDR); and provided in any event that no amount of Sale proceeds shall be distributed or otherwise paid to the Claimants until Laos has received its payment of Sale proceeds in full. The Claimants shall bear all costs of the Sale. Laos and the Claimants each agree to take all necessary steps to permit, expedite and facilitate the Sale.

17. All funds currently held in the Singapore escrow account with TMF Trustees Singapore Limited shall be released by a Joint Escrow Notice and paid in full to Laos not later than five (5) days after the Effective Date. The Claimants and Laos are to issue the Joint Escrow Notice in the form attached at Annex F. Payment details to Laos are as follows:

Account No.: 0000010000100101

Beneficiary: National Treasury, Ministry of Finance

Address: The Bank of Lao PDR, Yonnet Road, P.O. Box 19, Vientiane
Lao PDR.
SWIFT: LPDRLALAXXX

18. Any refunds on advances that may be due or payable from or by ICSID or the Permanent Court of Arbitration ("PCA") in regard to the subject matter hereof shall be made in equal amounts to Laos and to the Claimants (collectively). The Claimants and Laos shall execute all required documents to instruct ICSID and PCA to carry out this provision.

19. Mr. Clay Crawford, currently serving as CFO in respect of the Gaming Assets and related business operations, shall be retained in that position, if he so chooses, through the completion of the Sale. Other Claimants' management personnel, Mr. Richard Pipes and Mr. Hoolae Paoa, shall discontinue their employment and involvement, on any basis, with the Gaming Assets and at the Savan Vegas operations with full and immediate effect as from the Effective Date.

20. The Claimants shall be solely responsible to bear any and all severance and other costs associated with the termination of employment of Mr. Richard Pipes and Mr. Hoolae Paoa and shall pay any severance and termination amounts. In no event shall such payments be treated as an expense of the gaming operations or affect or reduce the amount of Sale proceeds to which Laos is entitled.

21. The Claimants shall have the right to export from the Lao PDR unused slot machines currently held in storage at the Lao PDR without the obligation to pay any taxes or duties thereon, provided, however, that such slot machines are accepted by the Claimants "as is" in their current condition, and Laos shall have no responsibility for any damage or defect in such machines.

22. Subject to the Claimants' payment of US Dollars 500,000 to Laos, the Parties will negotiate in good faith and conclude a land concession and project development agreement with respect to the 90 hectares of land at Thakhet identified in the MOU signed on 20 October 2010 between Savan Vegas and Governor Khambhay Damlath of Khammouane Province, Lao PDR, on the

basis that no gaming activities whatsoever will be allowed at or in connection with that 90 hectare site. The Claimants acknowledge and agree that: (i) there shall be no gaming license, sublicense or other grant of gaming rights issued by Laos at any time in respect of such 90 hectares site; (ii) any development of, at or pertaining to such 90 hectare site shall be in the form of commercial, non-gaming activities only; and (iii) the Claimants shall have no right to claim or receive any compensation from Laos in regard to the prohibition of gaming activities at such 90 hectares site. Fees and charges, if any, imposed in connection with the project at the 90 hectare site shall be commensurate with those charged in connection with any similar site or project in the Thakek Free Enterprise Zone.

23. Laos shall discontinue the current criminal investigations against Sanum / Savan Vegas and its management or other personnel and shall not reinstate such investigations provided that the terms and conditions agreed herein are duly and fully implemented by the Claimants.

24. The Claimants or a new owner shall have the right to submit to Laos a proposal to encompass the Site A golf club and associated facilities at Savannakhet. Laos shall consider such proposal in good faith, and may accept, reject, or propose adjustments to such proposal in its sole discretion.

25. The Claimants or a new owner of the Gaming Assets (the "SV Owner" as the case may be) shall have the right to make the necessary investment (free of all cost to Laos) to extend the existing runway at Savannakhet Airport sufficiently to accommodate planes up to Boeing 737 size, provided that: (i) Laos has not built a new airport at Savannakhet; (ii) any such extended runway and associated activities shall be completed in accordance with all applicable ICAO standards and regulations; (iii) if the SV Owner completes such runway extension, Laos shall waive landing fees on charter flights serving passengers using the Gaming Assets using such extended runway for the extended term of the PDA, but if the SV Owner does not carry out such runway extension, Laos shall have the right to impose landing fees on such charter flights in its discretion; and (iv) the SV Owner shall not gain any additional rights

whatsoever (beyond those to which it is already entitled) in respect of such airport or runway except for the waiver of landing fees on such charter flights in the event that the SV Owner completes such runway extension. Prior to commencing any runway expansion work, the SV Owner shall demonstrate to Laos' reasonable satisfaction that funding arrangements are in place for such work sufficient to ensure that such work will be carried through to completion without interruption or delay. If the SV Owner has completed the runway extension and is therefore entitled to the waiver of landing fees for charter flights at that airport, and at any later date Laos closes that airport, the Claimants shall be entitled to a similar waiver of landing fees for charter flights using any substitute airport for so long as the airport where such extension was made remains closed.

26. The Claimants (and their successors, assigns, agents and representatives) hereby irrevocably and unconditionally waive and release all personnel listed in Annex G (each a "Former Employee") from any and all claims, whether currently known or unknown, arising out of or relating to any Former Employee's cooperation with the Respondent in this matter (a "Covered Claim"). The Claimants further agree to indemnify and hold harmless each Former Employee against any claim, damage, loss, expense, or liability (including attorney's fees and litigation expenses, whether incurred by or assessed against such Former Employee) arising out of or relating to any Covered Claim, whether asserted by the Claimants, by any person or entity affiliated with the Claimants, or by any other person or entity. Each Former Employee shall be entitled to enforce this provision as a third-party beneficiary thereof.

27. The Claimants hereby wholly waive and release any and all claims whatsoever against Laos and all officials thereof and advisors, counsels and experts thereto related, and to forego the lodging of any dispute or claim against any of them, and shall ensure that each of the following persons – the direct and indirect shareholders, personnel, affiliates, subsidiaries and managers of the Claimants, John Baldwin and Shawn Scott – shall also wholly waive and release any and all claims whatsoever against Laos and all officials thereof and

advisors, counsels and experts thereto related and forego the lodging of any dispute or claim against any of them. The Claimants shall fully indemnify Laos and all officials thereof and advisors, counsels and experts thereto in the event that any direct and indirect shareholders, personnel, affiliates, subsidiaries and managers of the Claimants, John Baldwin and Shawn Scott shall fail to provide such waiver and release. Laos hereby waives and releases any and all claims with respect to the matters addressed in the arbitrations against the Claimants, shareholders, officers and directors and the Gaming Assets companies. Notwithstanding the above, if the arbitrations suspended hereby, or either of them is or are revived or re-instated to any extent by either Party, then the releases and waivers provided herein shall be null and void and any and all claims previously made and facts asserted in the arbitration(s) are not waived and no liability of either Party thereunder is waived or released.

28. Each of the Claimants and Laos shall indemnify and keep the other Party hereto indemnified on demand and shall defend and, hold the other Party hereto harmless from and against all liabilities, loss, damages, expenses and claims of any nature whatsoever by any person for any and all losses or damages arising out of or in any way connected with the indemnifying Party's breach hereof and any negligent or willful act or omission of the indemnifying Party hereunder.

29. Laos hereby confirms to the Claimants that Mr. Ket Kiettisak has full authority as Vice Minister of Justice and an offical of the Sanum Oversight Committee to sign this agreement and related agreements and documents referenced herein and to bind Laos as contemplated herein.

30. Each of the Claimants and Laos shall take all necessary steps to ensure the effective implementation of their respective obligations hereunder, including that Laos shall grant any necessary approvals in regard to the Sale, whether it is an asset sale or corporate sale.

31. Upon Laos' compliance with Sections 5 to 30 above, the Parties shall inform the Tribunals in writing of such full compliance and take all necessary steps to

cause the Tribunals to issue an Order by consent in the terms of Annex B attached hereto which shall terminate the arbitration(s). In that event, no party shall seek an award of costs in the Arbitration Proceedings. Any outstanding or additional costs incurred to date in respect of the Arbitration Proceedings are to be shared equally between the Parties. Each party shall respectively be responsible for his or its own legal costs incurred towards the conduct of the said proceedings and the negotiation of the present Deed.

32. The Claimants shall only be permitted to revive the arbitration in the event that Laos is in material breach of Sections 6 – 8, 15, 21 – 23, 25, 27 or 28 above and only after reasonable written notice is given to Laos by the Claimants of such breach and such breach is not remedied within 45 days after receipt of notice of such breach. The Sale Deadline and any other relevant time periods herein shall be extended by the length of time required to cure such breach. In the event that there is a dispute as to whether or not Laos is in material breach of Sections 6 – 8, 15, 21 – 23, 25, 27 or 28 above, the Tribunals shall determine whether or not there has been such a material breach and shall only revive the arbitration if they conclude that there has been such a material breach.

33. In the event that the arbitration is revived pursuant to clause 32 above: (i) the depositions of Mr. Benson Ko, Mr. Jerry Rhoads (which Claimants shall take on 20 June 2014 between 10:00 a.m. and 1:00 p.m.) and the depositions of Mr. Gerard Yingling and Mr. Bouker Nonthavath (which Claimants shall take on 21 June 2014 between 10:00 a.m. and 1:00 p.m.) shall be fixed and these witnesses shall not be subject to any further notice, questioning or cross-examination by or on behalf of the Claimants; (ii) the Claimants shall consent to the admission into evidence of the witness statements of Laos listed in Annex C, provided that such witnesses (other than the four individuals referred to in (i) above) shall, if necessary, be available to appear before the Tribunal for cross-examination or questioning, and Laos consents to the admission of witness statements that have been submitted by the Claimants, subject to the right of Laos to cross-examine all such witnesses except for Mr. Richard Pipes, whose cross-examination Laos explicitly waives. The

Claimants shall pay all costs and expenses of the court reporter used for such depositions.

34. In the event that the arbitration is revived pursuant to clause 32 above, neither the Claimants nor Laos shall not be permitted to add any new claims or evidence to the arbitration nor seek any additional reliefs not already sought in the proceedings.

35. In the event that the Claimants fail to comply with their obligations under this Deed, Laos shall be entitled to commence a fresh arbitration to enforce the terms of this Deed. Such arbitration shall be conducted in Singapore in accordance with the Arbitration Rules of the Singapore International Arbitration Centre for the time being in force. The seat of the arbitration shall be Singapore. The Tribunal shall consist of three arbitrators. Each Party shall nominate one arbitrator and the two nominated arbitrators shall nominate the presiding arbitrator. In the event that the two nominated arbitrators are unable to agree on a presiding arbitrator, the presiding arbitrator shall be appointed by the President of the SIAC Court of Arbitration. The language of the arbitration shall be English.

Severability

36. If any provision of this Deed is held to be illegal, invalid and/or unenforceable, and if the rights or obligations of any Party hereto under this Deed will not be materially and adversely affected thereby, (a) said provision will be fully severable; (b) this Deed will be construed and enforced as if said provision had never comprised a part hereof; (c) the remaining provisions of this Deed will remain in full force and effect and will not be affected by said provision or by its severance herefrom; and (d) in lieu of said provision, there will be added automatically as part of this Deed a legal, valid and enforceable provision as similar in terms to said provision as may be possible.

Contra Proferentum does not apply

37. This Deed shall be construed as a whole according to its fair meaning and none of the Parties (nor the Parties' respective attorneys) shall be deemed to be the draftsman of this Deed in any action which may hereafter arise between the Parties.

Good faith

38. The Parties agree to act in good faith in relation to the performance of each Party's obligations under this Deed and not to make any false statements against each other.

Notices

39. Unless otherwise provided in this Deed, all notices, requests, demands and other communications required or permitted to be given hereunder shall be in writing and shall be deemed to have been duly given and received (i) immediately if delivered by personal delivery, or (ii) the next business day if delivered by an internationally recognized overnight air courier service.

40. A copy of all notices, requests, demands and other communications to the Claimants shall also be sent by facsimile or email to

John K. Baldwin
PMB 29, Box 10001
Saipan, MP 96950
USA
Telephone: +1 670 483 8300; +1 670 322 2222 ext 301
Fax: +1 670 322 2323

and

Christopher K. Tahbaz, Esq.
Debevoise & Plimpton LLP
21/F AIA Central
1 Connaught Road Central
Hong Kong
Telephone: +852 2160 9800
Fax: +852 2810 9828

41. A copy of all notices, requests, demands and other communications to Laos shall also be sent by facsimile or email to:

Ministry of Planning and Investment
Souphanouvong Road
Vientiane
Lao PDR 01001
Attention: The Minister of Planning and Investment
Fax No.: +856 21 215491

and

Werner Tsu, Esq.
c/o LS Horizon (Lao) Limited
Unit 4/1.1, 4th Floor, Simuong Commercial Centre,
Fa Ngum Road, Phiavat Village, Sisatanak District,
Vientiane, Lao PDR
Telephone: +65 9625 4400
Fax: +856 2121 7590

Governing Law

42. This Deed shall be governed by and construed solely in accordance with the laws of New York. Any dispute arising out of or in connection with this Deed, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in Singapore in accordance with the Arbitration Rules of the Singapore International Arbitration Centre for the time being in force, including its emergency arbitration rules. The seat of the arbitration shall be Singapore. The Tribunal shall consist of three arbitrators. Each Party shall nominate one arbitrator and the two nominated arbitrators shall nominate the presiding arbitrator. In the event that the two nominated arbitrators are unable to agree on a presiding arbitrator, the presiding arbitrator shall be appointed by the President of the SIAC Court of Arbitration. The language of the arbitration shall be English.

No admission

43. This Deed is given and accepted for the purpose of compromising disputed claims and avoiding the further incurrence of expense, inconvenience, and uncertainty of arbitration and any form of litigation. Nothing contained in this Deed, nor any consideration given pursuant to it, shall constitute, be deemed by, or be treated by any Party for any purpose as an admission of any wrongful act, position, omission, liability, or damages.

Entire Agreement

44. This Deed embodies the entire agreement between the Parties relating to the subject matter herein, whether written or oral, and there are no other representations, warranties or agreements between the Parties not contained or referenced in this Deed. This Deed may be amended, supplemented or modified only by a written instrument duly executed by or on behalf of every Party hereto which specifically refers to this Deed.

Variation

45. No variation of this Deed shall be effective unless made in writing and signed by the Parties. Unless expressly agreed, no variation shall constitute a general waiver of any provisions of this Deed, nor shall it affect any rights, obligations or liabilities under or pursuant to this Deed which have already accrued up to the date of variation, and the rights and obligations of each Party under or pursuant to this Deed shall remain in full force and effect, except and only to the extent that they are so varied.

No assignment

46. Neither this Deed nor the rights or obligations hereunder may be assigned, transferred, licensed, sub-licensed, contracted or sub-contracted directly or

indirectly by any of the Parties hereto save with the prior written consent of the other Parties hereto.

Third parties

47. Unless otherwise expressly provided herein, no person who is not a Party to this Deed, except the Former Employees who are third party beneficiaries entitled to enforce the terms of this Deed, shall have any right under the governing law to enforce any of the terms of this Deed.

Time shall be of the essence

48. Time shall be of the essence of this Deed.

Counterparts

49. This Deed may be entered into in any number of counterparts, all of which taken together shall constitute one and the same instrument. The Parties may enter into this Deed signing any such counterpart.

IN WITNESS WHEREOF THE PARTIES HERETO HAVE HEREUNTO AFFIXED THEIR HAND AND SEALS THE DAY AND YEAR FIRST ABOVE WRITTEN

SIGNED SEALED AND DELIVERED BY)
NAME: **JOHN K. BALDWIN**)
PASSPORT / I.D. NO.:)
for and on behalf of Sanum Investments Limited)

SIGNED SEALED AND DELIVERED BY)
NAME: **JOHN K. BALDWIN**)
PASSPORT / I.D. NO.:)
for and on behalf of Lao Holdings)

SIGNED SEALED AND DELIVERED BY)
NAME: **KET KIETTISAK**, VICE)
MINISTER OF JUSTICE, LAO PDR)
PASSPORT / I.D. NO.:)
for and on behalf of the Government of the Laos People's Democratic Republic

ANNEX E

RMC Scope of Services

- Interim Casino Consultation/Property Management

RMC G.M. is to provide the financial and operational expertise to the Lao P.D.R. (Lao) necessary to assist the Lao in the sale of the Savan Vegas and Casino Company Ltd. (SVCC).

RMC G.M.'s monthly retainer for providing these Interim Casino Consultation and Property Management services shall be at a rate of $150,000.00 (USD) per month (all international taxes, fees and trade costs, all to be paid by SVCC). RMC G.M. shall receive a minimum guarantee of six months of service in this regard. For the first six months, SVCC will pay $100,000 on the first day of the month measured from the Effective Date of the Settlement Agreement to which this Annex E is appended. The $50,000 per month held in abeyance shall be paid by Sanum on the Sale Closing date of SVCC, with the funds paid from the Escrow Account at TMF Trustees Singapore Limited. Sanum and RMC GM will submit a joint escrow notice to TMF to complete the final payment. Following this initial six month period, payment of the monthly retainer shall be paid in full on the first day of each month. All RMC G.M. out of pocket expenses (including, but not limited to, all travel, hotel, transfers and associate project expenses) will be invoiced on a monthly basis and shall be paid by SVCC within 14 days of receipt.

– Assistance in Development of Sales Process

RMC G.M. will provide consulting services to the Lao Government related to the sale of the Savan Vegas Casino and two slot clubs. These services to include, but are not limited to:

Sale Monitoring and Property Marketing

(i) Prepare for Lao Comparable Transactions Analysis and identification of change of control transactions involving regional properties, other governmental-owned properties; and
(ii) Monitor the expenses of a sale of the Savan Vegas Casino;
(iii) Vet of any proposed new buyer of the Savan Vegas Casino, and
(iv) Monitor the gaming operations and financial performance of the Savan Vegas Casino during the period from the effective date through any ownership transition; RMC will coordinate its activities with Mr. Clay Crawford, current SVCC CFO, or his successor; RMC will have full and complete access to all books, records and documents SVCC maintains in the ordinary course of its business; RMC will not request documents or information from any other SVCC employees without consent of Mr. Crawford, which consent will not be unreasonably withheld. RMC will limit the number of its personnel on the casino property to two at any one time.

Change of Control: The Settlement Agreement provides that Claimants must sell the Gaming Assets within 10 months of the Effective Date. Pursuant to paragraph 12, under certain

conditions stated therein, the parties may exercise a change of control. If RMC is selected pursuant to Paragraph 12, RMC shall exercise operational control and management of SVCC. RMC G.M. will have authority to make hiring and firing decisions of SVCC staff in its sole and absolute discretion.

Following a change of control to RMC, RMC will retain a broker to market and sell SVCC.

i) RMC will complete a property analysis; RMC will assemble a data room for potential buyers; and
ii) RMC will assist broker with marketing of property and onsite visits by potential buyers.
iii) If RMC brings an acceptable buyer to the Lao government, then RMC shall receive a fee of 6% of the applicable sale price (to be paid in USD)
iv) RMC to have the authority to engage independent third party investigator to complete review of buyer's financial and business suitability.

RMC has identified Spectrum Investigators, or Lower's and Associates to assist with investigations. The fee agreement with such investigator will be reasonable and paid on a monthly basis by SVCC; if a party objects to the fee proposed, the FT Committee will determine a reasonable fee.

Appendix B: Side Letter

Side Letter to Deed of Settlement

Sanum Investments Limited, Lao Holdings N.V. and the Government of the Lao People's Democratic Republic (collectively, the "Parties") agree to enter into this letter of 18 June 2014 and the obligations and understandings contained herein (the "Side Letter") to state their understanding of the Deed of Settlement dated 15 June 2014 (the "Settlement"). This Side Letter is executed pursuant to Section 44 of the Settlement.

- The Parties understand Section 6 to mean: "Laos shall treat the Project Development Agreement ("PDA") dated 10 August 2007 in respect of the Savan Vegas Casino and each of the licenses and land concessions issued in respect of the Savan Vegas casino, the Lao Bao Slot Club and the Savannakhet Ferry Terminal Slot Club (collectively, the "Gaming Assets"), as being restated as of the Effective Date, with a term in each case of fifty (50) years as from the Effective Date. ST owns 40% of the Lao Bao and Ferry Terminal Slot Clubs."
- The Parties understand that under Section 9, the third member shall be appointed within ten (10) days after the appointment of the first two members.
- The Parties understand that the Sale Deadline in Section 11 shall be extended by the same number of days beyond the 45-days provided in Section 9 for the FT Committee to make its decision on the FT.
- The Parties understand that the taxes referred to in Section 15 include any "income tax" and VAT in the event of an asset sale.
- The Parties understand that the two references to "Gaming Assets" in Section 16 refer to Savan Vegas only, not the Slot Clubs.
- The Parties understand that the second sentence of Section 19 only refers to Mr. Richard Pipes and Mr. Hoolac Paoa.
- The Parties understand that Claimants' rights pursuant to Section 22 may be assigned or transferred.
- The Parties understand that the two references to other Sections in Section 32 shall be corrected to read: Sections 5-8, 15, 21-23, 25, 27, 28 or the obligation in 30 to grant any necessary approvals with regard to the Sale.
- The Parties understand the word "not" in the second line of Section 34 is a typographical error.
- The Parties understand that the references in Sections 10 and 13 to applicable Lao laws refer to the laws in effect as of the Effective Date.

The Parties, on the signing of this Side Letter, confirm that the Settlement is and remains in full force and effect, and that the Parties shall not have any claims against any other party with respect to the negotiation and signing of the Settlement and this Side Letter.

The authorized representatives of the Parties signing this Side Letter represent that they have full authority to sign this Side Letter and to bind the Parties. Laos hereby confirms that Mr. Ket Kiettisak has full authority as Vice Minister of Justice and Head of the Lao delegation for settlement of Sanum Investments Ltd and Lao Holdings N.V. to sign this Side Letter and to bind Laos as contemplated herein.

John K. Baldwin
For and on behalf of Sanum Investments Limited and Lao Holdings

Ket Kiettisak
Vice Minister of Justice, Lao PDR
For and on behalf of the Government of the Lao People's Democratic Republic

Appendix C: Tribunal Payment Notice

TRIBUNAL PAYMENT NOTICE

Date: 29 June 2017
TMF Trustees Singapore Limited
[Re: Escrow No. _____
38 Beach Road,
South Beach Tower, #29-11,
Singapore 189767 Telephone: +65 6808 1600
Fax: + 65 6808 1616]

Dear Sirs/Madam,

Reference is made to Escrow Agreement entered into by Government and the Escrow Agent dated as of 16th January, 2017. Capitalized terms used and not otherwise defined herein have the respective meanings ascribed to them in the Escrow Agreement.

The undersigned, Judge Rosemary Barkett, Presiding Arbitrator of the Tribunal, hereby notices the Escrow Agent that, in the Majority Award issued this date, the Tribunal has determined that of the amount held in Escrow:

- US$13,408,060.79, plus 20% of all interest accrued and less 20% of all expenses accrued, is apportioned to the Government.

- US$1,932,939.21, plus 80% of all interest accrued and less 80% of all expenses accrued, is apportioned to LHNV and/or Sanum.

The Government and LHNV and/or Sanum will provide to the Escrow Agent the necessary information to remit the funds.

Yours truly,

Rosemary Barkett

By: _____
Name: Judge Rosemary Barkett

Title: President of Tribunal
Cc: For the Government
Chia Voon Jiet
Drew & Napier LLC
10 Collyer Quay
10th Floor Ocean Financial Center
Singapore 049315
Daniel.cai@drewnapier.com

Cc: For LHNV and/ or Sanum
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Jkb@becnmi.com

GOVERNMENT OF THE LAO PEOPLE'S DEMOCRATIC REPUBLIC
v.
LAO HOLDINGS N.V. AND SANUM INVESTMENTS LIMITED
SIAC Case No. ARB143/14/MV

DISSENTING OPINION OF CAROLYN B. LAMM

A. BACKGROUND

1. This is a protracted and complex series of international and commercial disputes raised in past and present ICSID and other arbitrations commenced by the Parties to attempt to resolve their various disputes. The dispute before this Tribunal is limited to the determination of the dispute "arising out of and in connection with" the Deed of Settlement. Although the three members of the Tribunal had lengthy and challenging exchanges of views, they could not in the end arrive at agreement on: a unanimous analysis of the evidence that was of relevance, the consequences of the central questions of the interpretation of the Deed of Settlement ("Deed" or "Settlement Deed"), the occurrence of breaches of the Deed, and damages, if any. I do accept the factual findings in the Award, except as noted and/or elaborated below. I agree with the Majority's legal reasoning and the Decision, except as noted below.

2. The Tribunal did agree unanimously that it is a tribunal of limited jurisdiction under Paragraphs 35 and 42 of the Deed, limited to deciding disputes "arising out of or in connection with th[e] Deed" under the applicable law: the substantive law of New York and the *lex arbitri* of Singapore as that is the seat of the arbitration. The Tribunal does not consider or decide any questions of expropriation or other international legal issues before the international tribunals constituted under the bilateral investment treaties or otherwise. The claims this Tribunal assesses are those for interpretation or breach of the Deed, and the damages awarded, if any, are limited to the consequences of the breaches of the Deed.

B. NEW YORK LAW

3. In my view, the necessary starting point for the analysis of the substantive issues before the Tribunal is New York law. In applying New York law to interpret the Deed and determine any breaches, the Respondents' position on New York law, as essentially accepted by the Claimant and the Tribunal, is correct: an unambiguous contractual provision must be construed in accordance with its plain terms, without regard to other evidence of the parties' intent.[1]

[1] RLA-189, *Law Debenture Trust Co. of New York v. Maverick Tube Corp.*, 595 F.3d 458, 466 (2d Cir. 2010) ("In sum, '[e]vidence outside the four corners of the document as to what was really intended but unstated or misstated is generally inadmissible to add to or vary the writing.'"); RLA-210, *WWW Assoc. v.*

4. The further provisions of New York law also must be applied. To determine whether there is ambiguity, a clause must be found to be susceptible to two different meanings by an objective and reasonably intelligent person familiar with the customs and usage in the business.[2] If a contract is ambiguous, the question of contractual interpretation is one of fact, and the fact finder may consider evidence of the "surrounding facts and circumstances" to determine what the parties intended when they entered into the contract.[3]

5. Under New York law, to determine whether a breach is material, the Tribunal must assess whether the breaching party failed to substantially perform its obligations under the contract, in other words, whether the breach is "important" rather than "trivial."[4] In making that determination, the Tribunal must consider several factors, "including the ratio of the performance already rendered to that unperformed, the quantitative character of the default, the degree to which the purpose behind the contract has been frustrated, the willfulness of the default, and the extent to which the aggrieved party has already received the substantial benefit of the promised performance."[5] Under New York law, a party may not accept the benefits of a contract while refusing to accept the burdens.

6. If there is a material breach, the non-breaching party must choose between two remedies: to terminate the contract or to continue it.[6] Under New York's doctrine of election of remedies there is not a "third option" allowing a party claiming breach to invoke self-help and only perform those obligations which it wishes to perform.[7]

Giancontieri, 77 N.Y.2d 157, 162 (1990) ("A familiar and eminently sensible proposition of law is that, when parties set down their agreement in a clear, complete document, their writing should as a rule be enforced according to its terms. Evidence outside the four corners of the document as to what was really intended but unstated or misstated is generally inadmissible to add to or vary the writing.") (Internal citations omitted); Respondents' Opening Memorial on Counterclaims, 14 October 2016, ¶ 225.

[2] RLA-189, *Law Debenture Trust Co. of New York v. Maverick Tube Corp.*, 595 F.3d 458, 466 (2d Cir. 2010) (internal citations omitted).

[3] RLA-155, *67 Wall St. Co. v. Franklin Nat'l. Bank*, 37 N.Y.2d 245, 248 (1975) ("Unlike the trial court, we find article 41 to be ambiguous, susceptible of differing interpretations. Although recognizing the proposition that words are never to be construed as meaningless if they can be made significant by any reasonable construction, we also recognize that if several such constructions are possible, the court can look to the surrounding facts and circumstances to determine the intent of the parties.") (internal citations omitted); Respondents' Opening Memorial on Counterclaims, 14 October 2016, ¶ 225.

[4] RLA-161, *Bear, Stearns Funding, Inc. v. Interface Grp.–Nevada, Inc.*, 361 F. Supp. 2d 283, 296 (S.D.N.Y. 2005); Respondents' Opening Memorial on Counterclaims, 14 October 2016, ¶ 313.

[5] RLA-175, *Hadden v. Consol. Edison Co. of N.Y. Inc.*, 34 N.Y.2d 88, 96, 312 N.E.2d 445, 449 (1974)

[6] RLA-220, *Awards.com v. Kinko's, Inc.*, 42 A.D.3d 178, 188 (2007) ("When a party materially breaches a contract, the nonbreaching party must choose between two remedies: it can elect to terminate the contract or continue it. If it chooses the latter course, it loses its right to terminate the contract because of the default.") (internal citations omitted); RLA-186, *K.M.L. Laboratories Ltd. v. Hopper*, 830 F.Supp. 159, 163 (E.D.N.Y. 1993) ("Under New York law, a breach in a contract which substantially defeats the purpose of that contract can be grounds for rescission.") (internal citations omitted).

[7] *See* RLA-228, *ESPN, Inc. v. Office of Com'r of Baseball*, 76 F.Supp.2d 383, 397-398 (S.D.N.Y. 1999)("it is black-letter law that when one party to a contract materially breaches, the nonbreaching party has two options: it can terminate the agreement and sue for total breach, or it can continue the contract and sue for

Finally, under New York law, if the party elects to continue the contract despite knowledge of a breach, it loses its right to rely on the past breach to excuse its non-performance.[8] This determination requires a careful balancing of both parties' alleged breaches, both parties' acceptance of the benefits despite the breaches, the sequence of the alleged breaches, and acceptance of the benefits under the Settlement Deed.

7. The burden of proof and the standard of proof are matters of the substantive law of New York. In this regard, Claimant acknowledged that under New York law, it bore the burden of proving "fraud on the court" by "clear and convincing" evidence, a standard higher than the preponderance of the evidence standard.[9] The Claimant, thus, bears the burden of proving its allegations relating to the breaches of the Deed, fraud and the associated damages, while Respondents bear the burden of proof with respect to its Counterclaims and related damages.

8. In my view, the consideration cannot be a one-sided analysis. To analyze one party's breach and fail to consider the continued acceptance of the benefits of the Deed and/or unilateral or selective enforcement of the Deed is not consistent with New York law defined above. In view of the applicable standard of proof, it is imperative that the Tribunal take into account a balanced consideration of the evidence, including the chronological sequence of the acts of both Parties giving rise to this dispute, and the law argued by both Parties.

C. CIRCUMSTANCES AT THE TIME OF THE DEED OF SETTLEMENT

9. To caption or regard the Settlement Deed as a settlement of any dispute at all was a misnomer. It did not settle anything but simply spawned more disputes between the Parties as described herein. The continued disputes arose in part due to the Parties disregard of the provisions of the Deed and also to the lack of clarity of the terms of the Deed itself.

10. To interpret the Deed, the Tribunal must first consider the plain language of the Deed but, to the extent it is not dispositive due to ambiguity of the terms, under

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partial breach. There is, however, no third option allowing the party claiming a breach to invoke 'self-help' and only perform those obligations it wishes to perform.") (internal citations omitted); RLA-254, *Summit Properties Intern., LLC v. Ladies Professional Golf Ass'n*, No. 07 Civ. 10407 (LBS), 2010 WL 2382405 at *5 (S.D.N.Y. 14 June 2010)("Upon LPGA's breach of the Agreement, Summit had two options: (1) it could have stopped performance and sued for total breach; or (2) it could have affirmed the contract by continuing to perform while suing in partial breach.") (internal citations omitted).

[8] RLA-164, *City of New York v. New York Pizzeria Delicatessen, Inc.*, No. 05 CV 2754 (KMK), 2006 WL 2850237 at *7 (S.D.N.Y. 29 Sept. 2006) ("When the non-breaching party elects to continue the contract, it is not freed from its obligations under the contract, despite the [other] party's breach.") (internal citations omitted); RLA-226, *Damiani USA Corp v. Mediterraneo Group, Inc.*, No. 600791/2009, 2011 WL 11166349 at *5 (N.Y. Sup. 12 Aug. 2011) ("A party's performance under a contract may be excused by a material breach of the other party. However, the non-breaching party loses an affirmative defense of excuse for breaching a contract ... where the party continues to carry out the contract in spite of a known excuse for non-performance.") (internal citations omitted).

[9] Claimant's Counter-Memorial ¶ 40.

New York law above described the facts and circumstances in existence at the time the Parties concluded the Deed (on 15 June 2014) also may be referenced.

11. In paragraph 61 of the Award, the Majority cursorily refers to agreements that were concluded between the Parties (other than the 2007 Project Development Agreement) and alludes that they have no impact on the issues before this Tribunal because the Deed "supersedes these agreements."[10] I disagree. These agreements necessarily form part of the "facts and circumstances" at the time of the making of the Deed that may be considered in the event that the plain language of the Deed does not dispose of an issue due to ambiguity that precludes interpretation of the Deed on its plain language alone.

12. For instance, the background agreement central to structuring the investment was concluded on 30 May 2007: Sanum Investments Limited ("Sanum") and ST Group Co., Ltd. ("ST") entered into an Agreement (commonly referred to by the Parties as the "Master Agreement"), under which Sanum held 60% of the shares in all slot clubs and in each of the two casino joint ventures, while ST held a 40% stake in the slot clubs and a 20% stake in the casino joint ventures, with the Government holding the remaining 20% stake in the casino joint ventures.[11] Under the terms of the Master Agreement's Article 2(4), "[a]ll operating expenses of each Joint Venture shall be paid by the relevant Joint Venture before any profit is paid." Operating expenses would have included debt service.[12] This is of relevance to the Majority's observation in footnote 165 of the Award concerning the legitimacy of the amounts invested.[13] While I completely agree with the Majority that Claimant's allegations of loan fraud are beyond the Tribunal's jurisdiction, the Master Agreement is relevant to issues surrounding the the Tribunal's understanding of the total amount of the investment made by Sanum.[14]

13. On 10 August 2007, the Government and Sanum entered into the Project Development Agreement ("2007 PDA") to govern the two casino joint ventures and set forth the obligations of the Parties.[15] In the 2007 PDA, the Government affirmed its desire to develop the economy and specifically to promote Savannakhat province as a tourism center including entertainment, a hotel and casino.

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[10] Award, ¶ 61.

[11] R-303, Agreement between Sanum Investments Ltd and ST Group dated 30 May 2007, ¶ 1 (RCORE-464).

[12] *See* Witness Statement of John K. Baldwin, dated 8 May 2015, ¶ 34 (addressing the casino's debt service as part of its operating budget); Witness Statement of Clay Crawford, dated 8 May 2015, ¶¶ 19, 23 (same).

[13] *See* R-168, Credit Facility Agreement between Sanum and Savan Vegas effective 1 January 2008; R-175, Second Credit Facility Agreement between Sanum and Savan Vegas effective 4 March 2009.

[14] Award, ¶ 204.

[15] R-1, Project Development Agreement on Savan Vegas Entertainment Hotel and Casino in Savannakhet Province between the Government of the Lao People's Democratic Republic and Sanum Investments Ltd., Xaya Construction Co., Ltd. and Mr. Xaysana Xaysoulivong, dated 10 August 2007 (RCORE-486).

14. Under Article 2 of the 2007 PDA, the Government granted specific rights to Sanum to develop the casino on a 50 hectare plot, and under Article 3 the term of development was for 50 years. Under Article 5, a total of US$25 million was to be invested for project development and, more significantly, under Article 9, Paragraph 24, the Government granted Sanum a monopoly for its casino business.

15. Most significantly, on 1 September 2009, Savan Vegas and Casino Company, Ltd entered into an agreement with the Lao People's Democratic Republic regarding a flat tax for an experimental period of five years ("Flat Tax Agreement"). Savan Vegas and Casino Company, Ltd paid US$745,000.00 per year in four quarterly payments.[16] Importantly, Article 5 of the Flat Tax Agreement provided that after the expiration of five years, if the casino business "grew and revenue increased, [and with] basic data information completed and confirmed, both parties will discuss together [] the agreement [and] shall improve [it] in accordance with real revenue." Under Article 5 of the Flat Tax Agreement, the parties thus from the outset of their relationship had an understanding that a flat tax was to be set jointly – even after the initial five-year period – on the basis of the casino's actual revenue and business in an exact dollar amount – as described in their existing Flat Tax Agreement through 2014. In my view, this informs the Parties' approach in Paragraphs 7 to 9 of the Settlement Deed given that, in my view, relevant portions of those clauses are ambiguous – as is a portion of Paragraph 32.

16. In December 2008, the Savan Vegas casino opened, with Sanum having invested more than the required US$25 million, up to a total of US$65 million.[17]

17. On 20 December 2011, Laos amended its tax law to impose an 80% tax on gross gaming revenues on casinos operating without a flat tax agreement, in addition to a 10% VAT. According to Respondents, this rate effectively would have confiscated their investment once the existing flat tax agreement for the Savan Vegas casino expired at the end of 2013.[18] As a result, in the summer of 2012, Respondents initiated the two investment treaty arbitrations against Laos that are referenced in the Award.[19] Subsequently, the Government committed before the ICSID Tribunal that it would not impose or collect from Respondents any tax on their gaming revenue in excess of 30%.[20]

18. On 15 June 2014, two days before the beginning of the scheduled merits hearing in the BIT cases, the Parties signed the Deed.[21] That Deed provided obligations

[16] R-73, Agreement regarding Flat Tax Payment for Casino Business of Savan Vegas and Casino, dated 1 September 2009 (RCORE-571, 572).

[17] R-334, Third Witness Statement of John K. Baldwin dated 22 July 2013, ¶¶ 55-56.

[18] R-323, Letter from Ministry of Finance, Department of Tax, Savannakhet Province, to Savan Vegas, dated 28 June 2012; Respondents' Opening Memorial on Counterclaims dated 14 October 2016, ¶ 49.

[19] Award, ¶ 62; *see also* R-339, Deed of Settlement dated 15 June 2014, considerations A and B.

[20] R-81, Respondent's Rejoinder (Amended), *Lao Holdings N.V. v. Lao People's Democratic Republic*, ICSID Case No. ARB(AF)/12/6, dated 4 June 2014, ¶ 75.

[21] R-339, Deed of Settlement dated 15 June 2014.

for both Parties to resolve their disputes and to dismiss both of their international arbitrations.

19. The Deed specifically provided that the Parties agreed, without any admission of liability, to a full and final settlement of all and every claim and released each other fully from anything that was pleaded, raised, disclosed, referred to, or relied on in relation to either of the two BIT cases.[22]

20. Within one day, the settlement had fallen into dispute and Respondents were raising allegations of fraud at the inception against Claimant. By 18 June 2014, the Parties had signed a Side Letter again resolving their continued differences. In the Side Letter, the Parties confirmed and amplified many provisions but the Parties, on the signing of the Side Letter, "confirm[ed] that the Settlement is and remains in full force and effect, and that the Parties shall not have any claims against any other party with respect to the negotiation and signing of the Settlement and this Side Letter." The Parties also represented that the persons signing the Side Letter were authorized to sign.

21. On 18 June 2014, the Government also initiated the first SIAC arbitration. The Parties attended a hearing at which they informed the sole arbitrator, Douglas Jones, that they had resolved the dispute by entering into the Side Letter. The sole arbitrator thereupon issued a consent award determining that the Deed was valid and enforceable.[23] According to both Parties, this was to be the final resolution of everything up to that time that was subject to their dispute.

22. Paragraphs 2 to 4 of the Deed required that the Respondents withdraw all of their international treaty claims then lodged before two arbitral Tribunals (ICSID and PCA) and obtain consent orders from each. As a result, Respondents provided notice to the two BIT Tribunals on 18 June 2014 and obtained Consent Orders on 19 June 2014 dismissing their treaty claims.[24]

23. Thus, on 19 June 2014, Laos received a significant benefit of the bargain under the Settlement Deed in that two international treaty claims filed against it for millions of dollars were withdrawn.

24. By 27 June 2014, Respondents provided their first notice of Material Breach under Paragraph 32 of the Settlement Deed, on the basis of the Government's alleged grant of a US$10 billion mega project joint venture including a casino as a gateway for foreign investors, with the signing ceremony reported in the newspapers.[25] By

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[22] *Id.*, ¶ 1.

[23] C-76, Consent Award, *The Government of the Lao People's Democratic Republic v. Lao Holdings N.V. and Sanum Investments Limited*, SIAC Case No. ARB 114/14/MV, dated 18 June 2014.

[24] R-8, Order on Consent, *Lao Holdings N.V. v. The Government of the Lao People's Democratic Republic*, ICSID Case No. ARB(AF)/12/6, dated 19 June 2014; R-7, Order on Consent, *Sanum Investments Limited v. The Government of the Lao People's Democratic Republic*, PCA Case No. 2013-13, dated 19 June 2014.

[25] R-83, Material Breach Notice dated 27 June 2014.

4 July 2014, Respondents made their applications to both BIT tribunals for a finding of Material Breach and reinstatement of the arbitrations.[26]

25. On 2 July 2014, not having received any response to its Material Breach Application, Sanum provided notice pursuant to Paragraph 32 of the Deed that it suspended further performance of the Deed until there was a response to the Material Breach Application. In paragraph 34 of the Award, the Majority observes that Sanum maintained its Material Breach Application and continued to decline to perform its obligations under the Deed. While the Majority does not view the newspaper publication as a legitimate basis to invoke Material Breach, I disagree for the reasons explained further below and essentially adopted by the BIT Tribunal.[27] Thus, I do regard the industry newspaper publications as a legitimate basis to invoke Paragraph 32. While the BIT Tribunal began consideration of the Material Breach Applications, the dispute before this Tribunal proceeded.

26. I, however, do agree with the conclusion of the BIT Tribunal and the Majority that, under Paragraph 32, the Material Breach could be cured within the 45-day period – and it was for the reasons explained below.

27. By 25 November 2014, the Claimant advised Respondents that "the time deadline for turnover of control of the casino remains 15 April 2015, which the Government intends to enforce."[28] The Government also warned that the gaming tax had been amended by action of the National Assembly and Presidential Decree of 24 October 2014 to a new lower gaming tax rate of 35%.[29] If no flat tax was agreed by the time of the take-over, then the tax would be recommended to be collected commencing on 1 January 2014, minus the US$2.576 million collected in the escrow as of June 2014.[30] The Government further notified Respondents that the new gaming tax would apply on an ongoing basis in 2015.[31]

28. When Respondents requested provisional measures from the BIT Tribunal to enjoin the Government from exercising its tax powers, the Government argued the request was moot, as the Government would "suspend the collection of tax invoices sent to Claimant in January 2015, because the Flat Tax Committee ... will shortly convene and set a Flat Tax as agreed in the Deed, Section 9."[32]

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[26] R-20, Application for Finding of Material Breach of Deed of Settlement and for Reinstatement of Arbitration, *Lao Holdings N.V. v. The Government of the Lao People's Democratic Republic*, ICSID Case No. ARB(AF)/12/6, dated 4 July 2014; R-12, Application for Finding of Material Breach of Deed of Settlement and for Reinstatement of Arbitration, *Sanum Investments Limited v. The Government of the Lao People's Democratic Republic* (UNCITRAL), dated 4 July 2014.

[27] See C-156, *Lao Holdings N.V. v. The Government of the Lao People's Democratic Republic*, ICSID Case No. ARB(AF)/12/6, Decision on the Merits, dated 10 June 2015 (deciding the material breach application on the merits, rather than rejecting it for lack of jurisdiction).

[28] R-40, Email from D. Branson to C. Tahbaz, dated 25 November 2014 (RCORE-74).

[29] *Id.*

[30] *Id.*

[31] *Id.*

[32] R-124, Government's Reply to Claimant's Response on Provisional Measures, *Lao Holdings N.V. v. The*

29. On 2 March 2015, the Government further asserted that due to its willingness to suspend collection of the tax invoices issued under the new tax code in October 2014 the request to enjoin enforcement was moot.[33] The Government argued the 80% tax claim was moot, that that tax was never assessed, was no longer the law, and therefore could not be the subject of claims raised before the BIT Tribunal.[34]

D. THE DEED

30. Of significant importance in assessing the various alleged breaches is the provision of Paragraph 38 of the Deed, which requires the Parties "to act in good faith in relation to the performance of each Party's obligations."

31. Importantly, Paragraph 44 of the Deed further provides that "[t]his Deed may be amended, supplemented or modified only by a written instrument duly executed by or on behalf of every Party hereto which specifically refers to this Deed."

32. Paragraph 45 of the Deed states:

> No variation of this Deed shall be effective unless made in writing and signed by the Parties. Unless expressly agreed, no variation shall constitute a general waiver of any provisions of this Deed, nor shall it affect any rights, obligations or liabilities under or pursuant to this Deed which have already accrued up to the date of variation, and the rights and obligations of each Party under or pursuant to this Deed shall remain in full force and effect, except and only to the extent they are so varied.[35]

33. Hence, under both New York law and the express provisions of the Deed, unilateral variations of the provisions of the Deed are impermissible and enforcement of the Deed's provisions was to be undertaken in good faith. In my view, the allegations of both Parties must be analyzed in the context of the plain language of the Deed, and where it is ambiguous then the above instruments between them, as part of, and in addition to the factual circumstances at the time they executed the Settlement Deed, may be considered.

E. PARAGRAPH 32 OF THE DEED, THE SUSPENSION OF OBLIGATIONS ABSENT BOTH PARTIES' WRITTEN CONSENT AND RELATED BREACHES

34. Each Party has alleged that the other Party has breached the Deed. Of significant importance to the interpretation of the Deed and the Claimant's allegations of the Respondents' breaches is Paragraph 32 of the Deed.

Government of the Lao People's Democratic Republic, ICSID Case No. ARB(AF)/12/6, dated 2 March 2015, at ¶ 2 (RCORE-122).

[33] *Id.*, ¶ 21 (RCORE-127).

[34] *Id.*

[35] R-339, Deed of Settlement dated 15 June 2014.

35. Under Paragraph 32 of the Deed, if notice of material breach is given and "such breach is not remedied within 45 days after receipt of notice of such breach," then Respondents would be permitted to revive the arbitrations if Laos is in material breach. The provision further provides however that "[t]he Sale Deadline and any other relevant time periods herein shall be extended by the length of time required to cure such breach."

36. I agree with the Majority's statements in paragraphs 155 to 156 of the Award, however, I disagree with the Majority's findings and conclusions in paragraphs 154 and 157 to 167. While the Majority concludes in paragraph 159 that "there is nothing in the plain language of the Deed suspending Respondents' performance while a Material Breach Application is pending,"[36] in my view, the plain language of Paragraph 32 specifically does allow for a suspension of Respondents' performance, but the extension of the relevant time period is up to the time the Claimant's breach is cured: "The sale deadline and any other relevant time period herein shall be extended by the length of time required to cure the breach." I agree with the finding of the BIT Tribunal that Claimant cured the alleged Material Breach within two weeks when it provided assurance that it had not granted and would not grant a license,[37] including by promptly responding to the "26 June 2014 misreporting in the media about a rival casino and made it clear to the private developers in Savan City that no permission had been or would be approved or granted."[38] I rely on the plain language of Paragraph 32 to reach this view. That, however, is not the end of the matter as there is an ambiguity as to the permissible length of time under Paragraph 32 for which a party alleging a material breach that cannot be cured may suspend performance.

37. Indeed, both Parties allege the plain language of Paragraph 32 resolves their opposite contentions as to its "plain" meaning. The ambiguity becomes obvious from the opposing good faith contentions under Paragraph 32 by Claimant, that it cured and no further suspension is permitted, and by Respondents, that the suspension may continue until the Material Breach application is determined despite the alleged cure as they will be deprived of a remedy IF the Tribunal determines that a Material Breach has occurred and yet they were compelled to perform the remainder of the Deed in the interim when, as Respondents contended, that breach could not be cured.

38. In paragraph 160 of the Award, to resolve these diametrically opposed views referring to the plain language of Paragraph 32 of the Deed, the Majority concludes that, under New York law, they may interpret Paragraph 32 with reference to the

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[36] Award, ¶ 159.

[37] C-156, Decision on the Merits, *Lao Holdings, N.V. v. The Government of the Lao People's Democratic Republic*, ICSID Case No. ARB (A/F)12/6, dated 10 June 2015, at ¶ 12 ("[I]t is the Tribunal's conclusion that any such alleged conduct was 'cured' by the Government within 45 days. If there was any doubt before 26 June 2014 about the Government's policy against new casinos, there was none afterwards."); *see also* Award ¶ 119(e).

[38] C-156, Decision on the Merits, *Lao Holdings, N.V. v. The Government of the Lao People's Democratic Republic*, ICSID Case No. ARB (A/F)12/6, dated 10 June 2015, at ¶ 98.

entirety of the Deed. The Majority focuses primarily on Paragraph 48 (time is of the essence), the "ultimate purpose of the Deed to complete the sale of the Casino,"[39] and the setting of the flat tax but, in my view, as a primary matter the entirety of the Deed, which necessarily includes Paragraphs 38, 44 and 45 and given the ambiguity, the factual circumstances must be considered.

39. Under New York law, as described in paragraph 4 above, ambiguity may be found if the language is susceptible to two different interpretations. In the present instance, it is obvious that Claimant has a different interpretation than the Respondents of the same words in Paragraph 32. Indeed, the Parties have exerted significant effort, time and devoted hundreds of pages to arguing before two Tribunals about its plain meaning. In light of the extensive record of their submissions and legitimate arguments of both, I conclude that both Parties have made good faith arguments and thus, I am not of the view that Respondents were solely motivated by a bad-faith intent in filing their challenge under Paragraph 32. The selective identification of one or two witnesses' testimony at a hearing does not overcome the extensive submissions and change my view.

40. The Parties disagree fundamentally as to what happens with respect to their performance during the 45-day cure period and during the pendency of the Material Breach Application contemplated by Paragraph 32 of the Deed. Claimant asserts that after their cure Respondents suspended their performance and failed to participate in the Flat Tax Committee and make timely payment of RMC's agreed fee in accordance with the Deed and Annex E and thereby were in material breach of the Deed.[40] Respondents, on the other hand, contend that they were not in any breach whatsoever of the Deed.[41] This is because, according to Respondents, under Paragraph 32 of the Deed, their obligation to pay RMC's fees and participate in the Flat Tax Committee was extended as a result of their 27 June 2014 notification to Claimant that the latter was in breach of Section 6 of the Deed.[42]

41. The Majority is of the view that the plain language of Paragraph 32 of the Deed does not suspend the Respondents' obligations, based on its reading of the plain language of Paragraphs 7, 8, 9, and 48, which all include language specifically providing that time "will be of the essence" or the performance prompt.[43] I disagree that such language in other paragraphs of the Deed (*i.e.*, Paragraphs 7, 8, 9) referring to prompt performance lends any support to reading a requirement for speed into a provision without that language. Although the language in Paragraph 48 does apply to all performance it is not predominant to all other provisions of the Deed.

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[39] Award, ¶ 160.

[40] R-490, Email from David Branson to Christopher Tahbaz dated 2 July 2014.

[41] R-490, Email from Christopher Tahbaz to David Branson dated 3 July 2014.

[42] R-490, Email from Christopher Tahbaz to David Branson dated 3 July 2014; *see also* R-99, Claimant's Application for Provisional Measures, *Lao Holdings N.V. v. The Government of the Lao People's Democratic Republic*, ICSID Case No. ARB(AF)/12/6, dated 19 January 2015, at ¶ 15 (RCORE-84).

[43] Award, ¶ 160.

42. In my view the Majority's approach of interpreting Paragraph 32 to include a time-is-of-the-essence clause alone ignores the requirement of Paragraph 44, which unequivocally states that the Deed "may be amended, supplemented or modified only by a written instrument duly executed by on or behalf of every Party hereto which specifically refers to this Deed."

43. The record shows that, on 27 June 2014 (just days after the execution of the Settlement Deed), Respondents properly gave notice of material breach to Claimant of the latter's alleged material breach of the Deed and the Side Letter.[44] Specifically, Respondents alleged that Claimant had materially breached Section 6 of the Deed, which reaffirmed the 2007 PDA for 50 years, further to which Laos had expressly granted Sanum a "monopoly on 'any type of casino business' within the three closest provinces" and that no application to conduct business within those provinces would be granted without Sanum's consent.[45]

44. Upon Respondents' Material Breach Applications, the ICSID Tribunal – nearly a year later – rendered a merits decision on 10 June 2015.[46] After evaluating significantly more evidence than that presented to this Tribunal, the ICSID Tribunal concluded that:

- Private developers involved in Savan City promoted the concept of a casino on Site A and publicized it at the signing ceremony on 26 June 2014.[47] There was however, no evidence that anyone in the Prime Minister's office received or approved any application for a casino license.[48]
- The Government responded promptly to the 26 June 2014 media misreporting about the rival casino and clarified to private developers that no permission for a casino had been granted or would be forthcoming.[49]
- The misleading article in a Thai newspaper and subsequent related postings did not destroy the value and marketability of Savan Vegas such that the so-called breach was incurable. In this regard, the observation of Gregory Bousquette, an experienced merchant banker,[50] to John Baldwin on 20 June 2014, in the context of discussing a potential buyer for Savan Vegas, was particularly probative because he observed that "[i]t is key that … Buyers have

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[44] R-083, Material Breach Notice dated 27 June 2014.

[45] *Id.*, at 2.

[46] R-282, Decision on the Merits, *Lao Holdings N.V. v The Government of the Lao People's Democratic Republic*, ICSID Case No. ARB (AF)/12/6, dated 12 June 2015 ("ICSID Merits Decision").

[47] *Id.*, ¶ 64.

[48] *Id.*, ¶¶ 75, 80; Award, ¶ 119 (d).

[49] ICSID Merits Decision, ¶ 98.

[50] ICSID Merits Decision, ¶ 100; R-156, Hearing Transcript dated 14 April 2015, *Lao Holdings N.V. v The Government of the Lao People's Democratic Republic*, ICSID Case No. ARB (AF)/12, at p. 49, 11.01-24, to p. 50, 11.03-09.

comfort that they will get a monopoly signed off on at the highest levels of the Lao government."[51]

45. The ICSID tribunal also observed that, even if the Government had approved and granted authorization for the operation of a casino on Site A before receipt of Respondents' Notice of Breach on 27 June 2014, the Government nonetheless, had a contractual right to cure the breach within 45 days of the notice of such breach, and that there could be no revival of the ICSID arbitration if this was the case.[52]

46. In my view, under the plain language of Paragraph 32 of the Settlement Deed, a party's performance obligations are suspended when the requisite notice is given and any Material Breach Application is under consideration by the BIT Tribunal. If, however, the party alleged to have committed a breach cured such breach within less than 45 days, then the suspension could not continue. Hence, the filing of a Material Breach Application by itself does not result in an indefinite extension of the suspension period, or an automatic revival of the BIT arbitrations, and such extension would be contingent upon whether a party is willing to cure any alleged breach because the explicit language of the Settlement Deed in Paragraph 32 provides the allegedly breaching party with the right to do so. After the "cure," the obligations under the Settlement Deed however would no longer be extended. On this issue, I agree with the BIT Tribunal that the Claimant cured the alleged breach within the period. This view alone, however, is not the end of the analysis of whether Respondents breached by suspending their performance. Under New York law, as I note in paragraph 5 above, a variety of other factors must be considered to determine whether a substantial breach has occurred by the suspension of performance, *inter alia*: the ratio of the performance rendered to that of unperformed obligations; the degree to which the purpose of the contract has been frustrated; and the willfulness of the default. The context I discuss above and herein addresses each of these.

47. In the present instance, Claimant disputed that it was in breach of Paragraph 6 of the Deed, and the issue was under consideration by the ICSID Tribunal. Respondents legitimately argue that an absurd result would materialize if Respondents were expected to conclude the sale of Savan Vegas during the same time period when they had submitted a Material Breach Application to the ICSID Tribunal for consideration, particularly wherein Respondents contended that the alleged "breach is not susceptible to cure due to the irreversible impact on the pool of buyers for the asset."[53] The fact that an ICSID or SIAC Tribunal later disagrees with that contention does not mean it was made in bad faith.

48. Again applying New York law as defined in paragraph 5 above, I am of the view that the ICSID Tribunal, when evaluating whether a material breach occurred by

[51] ICSID Merits Decision, ¶ 100; R-150, Email from Gregory Bousquette to John Baldwin dated 20 June 2014.

[52] ICSID Merits Decision, ¶ 94.

[53] R-83, Material Breach Notice dated 27 June 2014, at 2.

invoking a suspension under Paragraph 32, should certainly also take into account the degree to which the purpose of the Deed was frustrated. Here, the Deed provided both to settle the arbitrations and for a mutually beneficial process by which the sale of the casino could take place.

49. The Material Breach of Paragraph 6 of the Deed alleged by Respondents to have occurred allegedly occurred on 27 June or 2 July 2014[54] and, even if allegedly cured within two weeks, the casino was not scheduled to be sold for months, until April 2015. It is further undeniable that Claimant received substantial performance – the dismissal of both international arbitration claims for significant amounts against it. Even if Respondents' failure to perform certain Paragraphs of the Deed, such as making payment to RMS and cooperating in the appointment to the Flat Tax Committee,[55] the Majority fails to recognize that Claimant nonetheless received substantial benefits under the Deed and it had only two choices under New York law: to terminate the Deed or to continue performance according to its terms. Instead, without the benefit of either Tribunal's order or that of any court, Claimant chose to engage in self-help and revise selectively the terms of the Deed unilaterally and perform selectively, devoid of the mutual or joint performance required under the Deed itself. Such conduct – detailed above and in the Parties' submissions – amounts to a breach of the Deed, both under New York law and the terms of Paragraphs 38, 44 and 45 of the Deed itself. The fact that performance is to be with time of the essence does not, as the Majority decides, permit Claimant to ignore and, indeed, rewrite the other terms of the Deed.

50. In my view, Paragraphs 38 and 45 cannot be ignored when interpreting the Deed because they are within the four corners of the Parties' agreement and form the basis of interpreting its terms and, thus, the legitimacy of the Parties' performance. These Paragraphs specifically provide that no variations may be made, unless they are in writing and signed by both Parties, and that good faith is applicable. Neither the Tribunal nor the Parties thus can rewrite the Deed's provisions on the basis of alleged interpretation—ignoring the applicable substantive law or fundamental terms of the Deed, or otherwise vary the specific terms of the Deed. Thus, the Majority's approach of invoking interpretation to justify Claimant's unilateral rewriting of the Settlement Deed to effect one party's objective is not an appropriate way in which to ensure the enforcement of a bilateral contract according to its plain language.

51. For the above reasons, I disagree with the Majority's conclusion, in paragraph 312(a) of the Award, that Respondents breached their obligations under the Deed and that each breach was material and substantial.

52. I now turn to an assessment of the breaches claimed by each of the Parties.

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[54] R-011, Emails between C. Tahbaz and D. Branson, 2-3 July 2014.

[55] See Award, ¶¶ 169-175, 181-183.

F. THE CLAIMED BREACHES

53. Paragraph 149 of the Award summarizes Claimant's allegations of breach, which are further summarized as follows:

- Sanum allegedly violated Paragraphs 8 and 9 of the Deed by failing to form an Flat Tax Committee and, instead, directing its nominee to the Flat Tax Committee to stop any work, shortly after he was appointed, and by refusing to work with Laos to re-form the Committee over a period of approximately 11 months.
- Sanum allegedly violated Paragraph 7 of the Deed by causing Savan Vegas to stop paying taxes to Laos beyond 1 July 2014.
- Sanum failed to accept and pay RMC as an agent, in violation of the Deed's Paragraph 9 and Annex E.
- Sanum allegedly violated Paragraph 10 of the Deed by failing to sell Savan Vegas during the ten months it retained control of the Casino.

54. As explained *supra* and *infra*, the Majority analyzes these allegations of breach without due consideration of all relevant facts and/or fails to accord weight to them. I do not accept the Majority's decidedly Claimant-oriented view of the evidence without adequate balance of Respondents' evidence and legal arguments on the requirements of New York law and the Deed itself. I will address each of these allegations of breach below.

1. Paragraphs 8 and 9: Establishment of the Flat Tax Committee

55. First, the Award is fundamentally flawed with respect to the Flat Tax Committee and its work. The provisions of the Deed are explicit and required compliance with Paragraphs 8[56] and 9.[57] Reviewing the arguments of both Parties in a

[56] R-339, Deed of Settlement dated 15 June 2014 ("Laos and the Claimants agree that a new flat tax ('FT') shall be promptly established in accordance with the procedure described in Section 9 below, and such FT shall be applied to the Gaming Assets with retroactive effect dating back to 1 July 2014. The FT shall apply throughout the fifty (50) year term of the PDA. Such FT shall be escalated by five percent (5%) on every five (5) year anniversary thereafter throughout the term.").

[57] R-339, Deed of Settlement dated 15 June 2014 ("Laos shall appoint RMC Gaming Management LLC ('RMC') not later than ten (10) days after the Effective Date [15 June 2014], on the terms and conditions attached hereto as Annex E. If RMC does not accept the appointment within 4 days of the Effective Date, Laos shall appoint another agent to assist it in the matter as described in Annex E. Within ten (10) days of the Effective Date, the Claimants (collectively) [Sanum] shall nominate one person and Laos shall nominate one person (which may be an employee of RMC) to be members of a Flat Tax Committee (the 'FT Committee'). Within ten (10) days after the Effective Date, the two persons nominated by the Claimants [Sanum] and Laos to the FT Committee shall nominate a mutually acceptable third FT Committee member. If the two FT Committee members fail to reach agreement on such third FT Committee member within such deadline, the third FT Committee member shall be appointed in the sole discretion of the President of the Macao Society of Registered Accountants. Within forty-five (45) days of the Effective Date, the duly composed, three-member FT Committee shall determine a new fair and reasonable FT applicable to the

balanced way reveals that each has its own interpretation of the meaning of the words of the Deed and Side Letter. I conclude that Paragraphs 7 to 9 of the Deed are ambiguous. Even if the Respondents breached the Deed's provisions, Claimant was not permitted to unilaterally rewrite the procedure for the appointment of the Flat Tax Committee or terminate it, but rather was obligated to continue to respect the terms of the Deed, especially given the undisputed fact that Claimant had already enjoyed the benefit of the agreement—the dismissal of the two international arbitrations. Without the benefit of a tribunal's or court's authority, neither Party was free to rewrite the terms of the agreement and proceed as they wished invoking any legitimacy or support under the Settlement Deed.

56. The evidence demonstrates that Claimant proceeded to unilaterally carry out, in secret[58] and without notice to Respondents or the Tribunal (until June 2015),[59] its own self-help remedy of appointing a single-member Flat Tax Committee. As Respondents explained, the Flat Tax Committee was to "receive submissions from both sides and make a decision."[60] Instead, the Government unilaterally appointed Mr. Va to the Committee, who then proceeded to receive information only from the Government, before making his determination.[61] As set forth below, Mr. Va did not seek any information or documents from Respondents. Indeed, the lopsided nature of the Flat Tax Committee's functioning, to Respondents' detriment, was evident from Mr. Va's testimony at the hearing:

> Q. To the best of your recollection, what did Mr. Branson tell you about why you were going to be the only member of the flat tax committee?
>
> A. Since both parties have not appointed anyone, so I need to act as a sole member of the flat tax committee.
>
> . . .
>
> Q. Now, you knew this was not consistent with provisions of the deed of settlement, right?
>
> A. Initially, yes.

Gaming Assets, taking into due consideration all relevant information submitted to the FT Committee by the Claimants [Sanum] and Laos.").

[58] *See* R-283, 16 June 2015 Hearing, Tr 35:21-37:5 (Respondents explaining that Claimant had acted unilaterally with respect to the Flat Tax Committee, and that Respondent had no information about the chair of the Flat Tax Committee); 142:3-19 (Mr. Branson informing the Tribunal on 16 June 2015 that he "think[s]" that Mr. Va set the tax rate on 10 June 2015).

[59] *See* R-283, 16 June 2015 Hearing, Tr 87:1-18 (Mr. Branson informing the Tribunal, only in response to questioning, that the President of the Macau Society of Registered Accountants had "appointed" Mr. Va Quinva as the chair of the Flat Tax Committee).

[60] Rejoinder dated 23 December 2016, ¶ 47.

[61] Rejoinder dated 23 December 2016, ¶¶ 47-50.

. . .

Q. Now the deed of settlement contemplates that you would receive submission from both sides, right, from both parties; is that right?

A. Mr. David Branson have mentioned to me since I'm the third party, I will receive the report from both sides.

. . .

Q. Did you ever receive a submission from Sanum about the tax that should be set at Savan Vegas?

A. No, I don't receive anything from Sanum.

. . .

Q. Did you ever ask to receive Sanum's view on the appropriate tax to be set at Savan Vegas?

A. No, I didn't. Effective I don't have any contact with Sanum.

Q. Did you ask Mr. Branson if he could ask Sanum to arrange to submit their view on the appropriate level of flat tax?

A. Not at all.[62]

57. The Government also failed to provide Mr. Va with the Rose report; gave him a "flawed BDO report, which was factually inaccurate regarding the taxes paid by other casinos and ignored jurisdictions that utilized a true flat tax rather than a GGR-based tax;" and, moreover, provided him with the Molo Lamken report, which contained incorrect data relating to the taxes and infrastructure investments of other casinos.[63]

58. The Majority side steps the above critical facts by somehow construing Paragraph 9 of the Deed as permitting Laos to unilaterally appoint a sole member of the Flat Tax Committee under certain circumstances.[64] Such a view is simply inconsistent with the plain language of Paragraph 9, which does not address issues relating to the appointment of a single Flat Tax Committee member. The Majority is mistaken in interpreting Article 9's provisions regarding the procedure

[62] Testimony of Mr. Va dated 23 January 2017, at 553:4- 579:2 (Day 2).

[63] Rejoinder dated 23 December 2016, ¶ 49; *see also* R-361, Flat Tax Committee Appointment Agreement between the Government of the Lao PDR and Quin Va, dated 15 May 2015, ¶ 5 (instructing Mr. Va to "determine the basis for the flat tax, whether expressed as a percentage of revenues, dollar amount, or other measure").

[64] Award, ¶ 174.

for the appointment of a third Flat Tax Committee member, when there is no agreement between the other two members, as a basis for Laos's unilateral and secret appointment of Mr. Va. New York law does not permit self-help and a unilateral rewriting of the terms of the Settlement Deed.

59. For these reasons, I reject the Majority's finding of breach with respect to the flat tax provisions, which was accomplished on a unilateral basis without notice, without input from both parties and participation as specifically required by the terms of the Deed. I conclude therefore that NEITHER Party performed its respective obligations with respect to the formation of a Flat Tax Committee under Paragraphs 8 and 9 of the Deed. Indeed, Claimant acted in breach by rewriting unilaterally terms of the Deed and ultimately refusing to permit Respondents to participate. In light of this conclusion, and contrary to the Majority's view,[65] it is not warranted to solely burden Respondents with any consequences for the breaches.

2. Paragraph 7: Payment of Taxes

60. With respect to the payment of taxes, I reject the view of the Majority that Sanum breached Paragraph 7 of the Deed,[66] as set forth in paragraphs 176 to 180 of the Award. In this regard, the Majority dismisses Respondents' explanation that Paragraph 7 required a Flat Tax Committee to determine the tax rate that was to be paid. I disagree. As explained above, the Government unilaterally and secretly appointed Mr. Va, who received evidence only from the Government and then proceeded to set a tax rate that was neither reasonable nor flat. There were thus substantive and procedural breaches in the tax assessment process, which contributed to the distortion of the final rate.

61. The Majority finds it undisputed that Respondents did not make tax payments to Laos between July 2014 and 15 April 2015. The Majority, however, ignores that:

- When Respondents sought an injunction from the ICSID Tribunal enjoining Laos from exercising its powers of taxation, the Government contended that such a request was moot because it "will suspend the collection of tax invoices sent to Claimant [Sanum] in January 2015, because the Flat Tax Committee will shortly convene and set a flat tax" in accordance with Paragraph 9 of the Deed.[67] That new flat tax was not set until June 2015.[68]

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[65] Award, ¶ 173.

[66] R-339, Deed of Settlement dated 15 June 2014 ("Laos shall forgive and waive any and all taxes and related interest and penalties due and payable by the Claimants [Sanum] and the Gaming Assets up to 1 July 2014 in respect of the Gaming Assets, provided, however, that taxes shall be due and payable as from 1 July 2014 as provided in Section 8 below. The taxes covered herein are all taxes and fees including but not limited to those that are specifically indicated in Article 1 of the previously signed FTA attached as Annex D hereto.").

[67] R-124, Government's Reply to Claimant's Response on Provisional Measures, *Lao Holdings N.V. v. Lao People's Democratic Republic*, ICSID Case No. ARB(AF)/12/6, dated 2 March 2015, ¶ 2 (RCORE-122).

[68] *See* R-283, 16 June 2015 Hearing, Tr. 142:3-8.

- The Government represented further, that "due to its willingness to suspend the collection of tax invoices issued under the new tax code of October 2014" the provisional measures request was moot[69] and moreover, that the "dispute on taxation before this [ICSID] Tribunal . . . is suspended; the tax was never assessed and is no longer the law."[70]
- The Flat Tax Committee assessed a tax only on 15 June 2015. Paragraph 8 of the Deed expressly provides that: "Laos and the Claimants agree that a new flat tax ('FT') shall be promptly established in accordance with the procedure described in Section 9 below, and such FT shall be applied to the Gaming Assets with retroactive effect dating back to July 1, 2014." Hence, the Parties clearly contemplated that once the new flat tax was set, it would have applied and paid for the period from 1 July 2014 until April 2015. Thus, under the Deed's terms, Respondents were not obligated to pay taxes until the Flat Tax Committee determined the tax on 15 June 2015.
- The 28% GGR-based tax imposed by Mr. Va, with the input of Claimant but without the opinion of Respondents, was unreasonable and higher than the rates of comparable gaming jurisdictions.[71] Laos never submitted evidence showing that the Government approved the 28% rate set by Mr. Va, despite the Tribunal's order.[72] Claimant, thus, also committed substantive tax-related breaches.
- Laos itself failed to pay taxes from the date of the seizure of Savan Vegas, *i.e.* 15 April 2015. Laos controlled the casino revenue from this point onwards and should have paid any taxes due on the gross gaming revenues during the period of its control.[73] Laos thus must not be permitted to place the entire tax burden on Sanum for this time period, which it does by deducting all of the

[69] R-124, Government's Reply to Claimant's Response on Provisional Measures, *Lao Holdings N.V. v. Lao People's Democratic Republic*, ICSID Case No. ARB(AF)/12/6, dated 2 March 2015, ¶ 21 (RCORE-127).

[70] *Id.*

[71] See Expert Report of Andrew Black, 14 October 2016, ¶¶ 50-51 ("In my professional experience, a 28% tax rate on GGR is unusually high for border casinos such as Savan Vegas. In Cambodia, which hosts the casinos that compete for Savan Vegas's primarily Thai customer base, gaming taxes are based on flat amounts per table or machine, and are substantially lower than 28% of GGR. In the case of O'Smach, the amount of tax paid under this scheme ordinarily amounts to no more than 5% of GGR. Although I do not have direct experience from every single casino that competes with Savan Vegas, it is my professional opinion, based on my industry knowledge and experience, that none of Savan Vegas's other competitors could afford to sustain a tax equal to 28% of GGR. That amount of tax, when applied to GGR without consideration of reductions for rebates and other customer acquisition costs, is simply too high for any casino to remain competitive in the region.").

[72] Rejoinder ¶ 44.

[73] See R-427, Tax Notification Letter from Savan Vegas Lao Limited to Director General of Tax Department, Ministry of Finance, Regarding Taxes Due for the Period of July 2014 through May 2016, dated 21 July 2016, at GOL-13-00000018_T (showing that the casino did not pay the full amount of the taxes assessed for the period during which it was under the Government's control); Respondents' Opening Memorial on Counterclaims, 14 October 2016, ¶ 136.

taxes from the sale proceeds that were to be distributed 80% to Sanum and 20% to Laos.

62. Thus, as a result of Claimant's procedural and substantive tax-related breaches, I cannot agree with the Majority that Respondents breached Paragraph 7 of the Deed. Neither the Tribunal nor Claimant can rewrite the provisions of the Settlement Deed to impose a tax other than agreed in the Deed.

63. I disagree with the Majority's conclusions in paragraphs 176 to 180 of the Award. The Deed and the Side Letter specifically provided that the Parties understand that the sale deadline in Paragraph 11 shall be extended by the same number of days beyond the 45 days provided in Paragraph 9 for the Flat Tax Committee to make its decision on the flat tax.

3. Paragraph 9 and Annex E: Payment of RMC

64. I disagree with the Majority's conclusion in paragraph 183 of the Award. In my view, Respondents' failure to pay RMC was not a material breach as result of their suspension of performance under Paragraph 32 of the Deed in the particular circumstances presented, for the reasons explained above.

4. Paragraphs 10 and 11: Respondents' Sale Deadline

65. I agree with the Majority that, pursuant to Paragraphs 10 and 11 of the Deed, the sale of Savan Vegas was to be accomplished by 15 April 2015.[74] The relevant Paragraphs of the Deed to be analyzed in connection with this issue are the following:

- Paragraph 10, which expressly states that "[f]ollowing the establishment of the FT as provided in Section 9 …, the Claimants [Sanum] shall take steps to establish and expeditiously carry out a sale of the Gaming Assets (the "Sale") in compliance with applicable Lao laws."
- Paragraph 11 provides that "[t]he Claimants shall have the right to continue to manage and operate the Gaming Assets in compliance with applicable laws through the completion of the Sale, subject to monitoring and oversight of RMC in accordance with the provisions of Annex E."
- Paragraph 12 provides that "[i]f the Sale Deadline is missed, the Claimants [Sanum] and Laos shall have the right to appoint RMC or any other qualified gaming operator to: (i) step in and manage and operate the Gaming Assets in place of the Claimants [Sanum] until the Sale is completed, and (ii) complete the Sale; provided that such gaming operator shall have a fiduciary duty to each the Claimants [Sanum] and Laos as interested parties in the Gaming Assets."

[74] Award, ¶ 184.

- Under Paragraph 13, the sale was to be "completed on a basis that will maximize Sale proceeds to the Claimants [Sanum] and Laos ...."

66. While I agree with the Majority that the sale of the casino was not accomplished by 15 April 2015, I disagree with any finding that justifies the Government's seizure of the casino. In my view, the casino's seizure by the Government was completely inconsistent with, and a violation of the terms of, the Deed as set forth in its Paragraph 12. The plain and express terms agreed to by the Parties granted Sanum and Laos the right to appoint RMC or another qualified gaming operator to step in, operate the assets, and complete the sale.

67. Thus, a scenario wherein Mr. Baldwin failed to sell the casino within the ten months allotted was already addressed by the plain and express language of the Deed: the Parties envisioned that a new gaming operator would be appointed to sell the casino through the efforts of both Parties—a scenario that did not materialize due to the fault of not just Respondents, but also Claimant.

68. The Deed does not envision any scenario under which Laos (clearly not a "qualified gaming operator," or RMC) could unilaterally step in and take control of the property. Nor does the language of the Deed permit Laos, at any point in time, to unilaterally conduct the sale process. To the contrary, the Deed requires the qualified gaming operator to act as a fiduciary to both Parties. Laos certainly could not, and indeed clearly did not, fill the role of such a qualified gaming operator. Indeed, these actions of Laos violate Paragraph 38 of the Deed, which requires it to act in good faith,[75] and Paragraph 45 of the Deed, which provides that no changes could be made to the terms of the Deed unless in writing and signed by both Parties.[76] A unilateral series of actions without authority from any court or tribunal simply does not fulfill the terms of the agreed Deed and is a serious material breach.

69. Accordingly, I reject the characterizations of the Majority and do not reach the same conclusions.

G. CLAIMANT'S ALLEGATIONS OF FRAUD ON THE TRIBUNAL WITH ANGUS NOBLE MOU

70. As an initial matter, I agree with the Majority that the Tribunal lacks jurisdiction to apply sanctions or enforce financial orders against a person who is not a party to

[75] *See* R-339, Deed of Settlement dated 15 June 2014, ¶ 38 ("The Parties agree to act in good faith in relation to the performance of each Party's obligations under this Deed and not to make any false statements against each other.").

[76] *See* R-339, Deed of Settlement dated 15 June 2014, ¶ 45 ("No variation of this Deed shall be effective unless made in writing and signed by the Parties. Unless expressly agreed, no variation shall constitute a general waiver of any provisions of this Deed, nor shall it affect any rights, obligations or liabilities under or pursuant to this Deed which have already accrued up to the date of variation, and the rights and obligation of each Party under or pursuant to this Deed shall remain in full force and effect, except and only to the extent that they are so varied.").

the arbitration.[77] I apply the New York law standard of proof to my assessment of the proof on the legitimacy of the MOU and the alleged lack of candor by counsel concerning the MOU. I agree with the Majority's conclusion in paragraph 191 of the Award that the MOU did not meet the requirements of the Deed and thus should not be regarded as extending the Sale Deadline.

71. However, I depart from the Majority's finding that the Respondents' "repeated reliance on the Noble MOU and assertions of its validity must be construed as a fraud on the Tribunal."[78] These conclusions are not grounded in all of the contemporaneous facts and the record as to what counsel knew when, as explained below. Applying a clear and convincing standard of evidence to assess whether the alleged fraud occurred, and whether any such fraud resulted in a lack of candor with the Tribunal, I conclude that the record is insufficient to make a finding affirmatively on either issue.

72. First, I disagree with the Majority that the evidence "overwhelmingly indicates" that the MOU was not *bona fide*.[79] In arriving at this erroneous conclusion, the Majority focuses on (i) Mr. Noble's testimony that incorrectly noted that he discussed purchasing Savan Vegas with Mr. Shawn Scott, Mr. Baldwin's partner, in February 2015, rather than only in April 2015; (ii) Mr. Noble's acknowledgment that he lacked the funds to personally make a down payment for the purchase of Savan Vegas; and (iii) Mr. Baldwin's admission that the MOU was signed to trigger another 90 days.[80]

73. This evidence must be considered in context and weighed against Respondents' other evidence, which the Majority either overlooks or disregards:

- Mr. Noble corrected his testimony on the timing of his meeting with Mr. Scott to specifically discuss the purchase of Savan Vegas and, in this regard, attested that such discussion took place in April 2015, and not in February 2015.[81] He also clarified that he, in fact, was aware of "Savan Vegas's standing from industry news, as well as a prior conversation with Mr. Scott" in February 2015 and that Sanum was locked in a dispute with Laos regarding its investment.[82] Hence the error he corrected related to timing.
- Mr. Noble had substantial experience in the gaming industry and his professional experience spanned the fields of accounting, banking, and consulting.[83] From 2000 to 2005, he served as a consultant to TAB Limited, a listed Australian gaming company, during which period he was in charge of

[77] Award, ¶ 210.

[78] Award, ¶ 210.

[79] Award, ¶ 208.

[80] Award, ¶¶ 189-190.

[81] Second Witness Statement of Angus Noble dated 14 October 2016, ¶ 6 ("Noble II").

[82] Third Witness Statement of Angus "Gus" Noble dated 16 December 2016, ¶ 12 ("Noble III").

[83] Noble III, ¶ 5.

implementing the "largest wide-area jackpot network of poker machines in South East Asia."[84] In 2007, he established MaxGaming Consulting, which provides sales, business development, and general management services.[85]

- Mr. Noble testified that he concluded the MOU because "it was a fantastic opportunity to complete a significant deal in the Southeast Asian gaming industry, and because I was uniquely positioned to take advantage of that opportunity."[86] In this regard, Mr. Baldwin also proffered testimony on cross-examination that Claimant's portrayal of Mr. Noble as "just a slot machine salesman" was "in fact ... not true."[87] Moreover, Mr. Noble himself explained to the Tribunal that he had experience with large financing deals, including involvement with a "billion dollar finance deal between St. George Bank Automotive and Hyundai."[88]
- Mr. Noble further: proffered oral testimony that he understood the MOU to allow him to "seek financial backers" for the purchase of Savan Vegas;[89] attested that he had contacted several potential investors about the sale of Savan Vegas;[90] that the MOU was "subject to financial due diligence" and was not a binding agreement nor a contract for sale of Savan Vegas;[91] and that he was not paid for his testimony, which Claimant alleged but was unable to prove.[92]

74. In light of these facts there was a justification for the 15 April 2015 communication from Mr. Rivkin to Mr. Branson about the MOU for the sale of Savan Vegas that Respondents' counsel was conveying to the Government on behalf of its client,[93] and that counsel's subsequent efforts to explain the *bona fide* nature of the MOU were within the bounds of zealous advocacy based on its good faith understanding of its client's situation. Indeed, for the reasons described above, the weight of the evidence is sufficient for counsel to believe that Mr. Noble was sufficiently active in the Asian gaming industry to be able, following the conclusion of the MOU, to undertake sustained good-faith efforts to identify and organize a consortium of potential investors to purchase Savan Vegas, irrespective of whether these efforts enjoyed a high likelihood of success.

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[84] *Id.*, ¶ 6.

[85] *Id.*

[86] *Id.*, ¶ 8.

[87] Testimony of John Baldwin dated 25 January 2017, at 1136: 16-20 (Day 4).

[88] Testimony of Gus Noble dated 26 January 2017, at 1507: 25-1500:11 (Day 5) ("Noble Testimony")

[89] Noble Testimony, at 1500:10-11 (Day 5).

[90] Noble Testimony, at 1500:17-1502:15; R-359, Email chain between Gus Noble and Justin Casey dated 4 May 2015; R-356, Email from Gus Noble to Andy Tsui dated 22 April 2015; R-353, Email exchange between Gus Noble, Casey Kong and Ken Lim dated 18 April 2016; *see also* Noble II, ¶¶ 9-14.

[91] Noble Testimony, at 1459:4-6; 19-23; Noble III, ¶ 14.

[92] Noble Testimony, at 1505: 21-1508:21.

[93] R-59, Email from D. Rivkin to D. Branson dated 14 April 2015, at 2.

75. Of significant importance to my assessment of the fraud issues are the elements of fraud under New York law as correctly recited by the Majority in paragraph 197 of the Award. The elements require reliance on the fraudulent representations and reliance by the deceived party to its detriment or inflicting harm. Neither element is substantiated in the present instance. The contemporaneous record shows that Mr. Branson informed the Respondents in November 2014 and RMC in January 2015 that the Government would take the casino on 15 April 2015.[94] Then, the day after Respondents' counsel sent the allegedly fraudulent MOU to Mr. Branson, the Government seized the casino – not relying at all on the extension pursuant to the MOU in the least. Claimant has thus failed to substantiate reliance and certainly reliance on the MOU to its detriment. Claimant, in fact, rejected the MOU within in a matter of few hours.[95] The Tribunal was well aware of this sequence of facts.

76. Based on my review of the totality of the evidence – in context – I agree that the MOU should be disregarded as not extending the time within which Respondents had to sell the Casino and not being in compliance with the terms of the Deed, but not as to anything else. Contrary to the Majority's view,[96] it is not necessary to find misrepresentation to conclude that the MOU failed to meet the requirements of the Deed given that MaxGaming was not an experienced gaming operator and Mr. Noble had a relationship with Mr. Scott and therefore, under Paragraph 11 of the Deed, was ineligible, as the Majority itself recognizes elsewhere in the Award.[97] Further, as noted *infra*, it is also notable that there is not any evidence that Claimant or the Tribunal ever even relied on the MOU for any extension of any deadline or for any other matter. Mr. Rivkin emailed the MOU to Mr. Branson on 14 April and Mr. Branson rejected it on 15 April – facts that the Tribunal was well aware of.

77. I further agree with the Majority that the Tribunal is without jurisdiction to impose any sanctions.[98] More importantly, the record simply does not support a finding that Respondents' counsel were knowledgeable as to any potential fraud on the Tribunal. In this regard, I disagree with the Majority's paragraph 210. There is no compelling evidence in the record of Respondents' counsel's knowledge of any such alleged fraud, or any reliance by Claimant[99] upon such representation, to conclude that Respondents' counsel exceeded the limits of zealous advocacy.

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[94] *See* R-40, Email from D. Branson to C. Tahbaz dated 25 November 2014 (RCORE-74) ("the time deadline for turnover of control remains 15 April 2015, which the Government intends to enforce"); C-106, Email from D. Branson to R. Russell dated 6 January 2015 ("the Committee of Ministers needs reassurance that RMC is willing and able to take over the casino on April 15").

[95] *See* R-59 Email from D. Branson to D. Rivkin dated 15 April 2015.

[96] Award, ¶ 190.

[97] Award, ¶¶ 191, 209.

[98] Award, ¶ 210.

[99] R-59, Email from D. Branson to D. Rivkin dated 15 April 2015 (Claimant almost immediately rejecting Respondents' notification that an MOU has been signed and seeking extension of 90 days for completion of purchase, by noting "We do not agree . . . GOL will proceed to takeover the casino.").

On a related note, I am fully satisfied by Respondents' counsel's express assurance to the Tribunal that it had conducted itself professionally and within the bounds of zealous advocacy on behalf of its clients and had not engaged in any improper tactics.[100] Claimant has clearly failed to meet the high evidentiary standard, that of clear and convincing evidence, necessary to overcome this evidence in the record.

H. THE COUNTERCLAIMS

78. As paragraphs 212 to 215 of the Award explain, Respondents allege that Claimant failed to maximize the sale proceeds of Savan Vegas for a number of reasons, including because: (a) Claimant excluded the Slot Clubs from the sale; (b) Claimant failed to restate the terms of the 2007 PDA in the New PDA that it formed with the new buyer of Savan Vegas; (c) Claimant did not grant the new buyer the right to extend the runway at Savannakhet Airport and instead granted the new buyer the less valuable right to build a new airport at Seno; (d) Claimant mismanaged the Casino; (e) Claimant arranged a "sweetheart deal" with Macau Legend Development Ltd. ("Macau Legend"), failing to appropriately market and auction Savan Vegas to maximize the sale proceeds; (f) Claimant imposed an unreasonable tax rate of 28% on Savan Vegas; and (g) Claimant sold the Casino for less than its value.

79. The Majority addresses all of these seven allegations, relating to Claimant's alleged failure to maximize the sale price of the Casino, in paragraphs 219 to 296 of the Award. Below, I address those allegations as to which I dissent from the Majority's analysis.

1. The Establishment and Fairness of the 28% Tax Rate

80. In paragraphs 54 to 62 above, I explained why Claimant's appointment of Mr. Va and his subsequent imposition of the 28% tax rate was unfair and unreasonable, both from a procedural and a substantive viewpoint. Although the Majority assesses this evidence in paragraphs 266 to 288 of the Award, it does not find it persuasive enough to conclude that the 28% tax rate was unreasonable. In addition to the reasons set out above in paragraphs 55 to 63, I disagree with the Majority's weighing of the evidence, for the following reasons:

- Contrary to the Majority's position, as expressed in paragraph 271 of the Award, from a strictly contractual perspective, Claimant lacked any legitimate basis under the Settlement Deed to unilaterally appoint Mr. Va, which thus renders his subsequent decision to impose the 28% tax rate invalid. In this context, I note that the Respondents' refusal to participate in the Flat Tax

[100] See R-283, 16 June 2015 Hearing, Tr. 72:11-73:18 (Mr. Rivkin assuring the Tribunal that Debevoise & Plimpton acted in good faith with respect to the filing of the Material Breach applications before the BIT Tribunals and furthermore noting that "in the strongest possible terms" that "Debevoise & Plimpton does not" engage in delay tactics through the filing of frivolous claims or other improper tactics.)

Committee, which is also a breach of the Deed, does not provide grounds to Claimant to engage in their own breach of the Deed or a unilateral rewriting of its terms.

- The Majority emphasizes Mr. Baldwin's testimony, in paragraph 274 of the Award, that "[w]e had an absolute duty to pay tax and as soon as the tax committee, the properly formed tax committee under the Settlement Deed met and set a tax we were obligated to pay whatever that amount was" to somehow contend that the flat tax rate of 28% was valid."[101] There was, however, no "properly formed tax committee under the Settlement Deed" that ever materialized, as explained above.
- Mr. Va's testimony, as highlighted above in paragraph 56, clearly shows that neither he nor Claimant made any good-faith efforts to solicit the participation of Respondents during the flat tax assessment process. In this context, I cannot agree with the Majority's statement that it is persuaded, as reflected in paragraph 280 of the Award, that Mr. Va acted impartially, given his failure to seek the input of Respondents despite acknowledging that he was aware of Respondents, while accepting Claimant's reports. Such facts clearly demonstrate that he was far from neutral. An impartial and experienced professional would certainly endeavor to solicit the views of all the affected parties – despite what he is advised to do by one side's zealous advocate – before rendering a decision on such a sensitive matter, a standard that Mr. Va did not meet.

2. Mismanagement

81. The Majority takes the view that there is insufficient evidence that San Marco mismanaged the Casino. In this regard, the Majority points to evidence that the profitability of the Casino was declining in 2015 prior to Laos' takeover and brushes aside "as inevitable" disagreements over management decisions by operators.[102]

82. I disagree. Notably, the Majority does not completely assess the written testimony of Michael Gore, the former General Manager and President of the Casino, who worked from November 2012 to February 2016, under both Mr. John Baldwin and later under Ms. Kelly Gass and Mr. Travis Miller, after Lao seized the Casino.[103]

83. Among other issues, Mr. Gore proffered written testimony that Ms. Gass, "who reported directly to Mr. Branson," had "no experience in running a casino."[104] He further explained that the drop in revenues in 2015, before Laos seized the casino,

[101] Testimony of Mr. Baldwin dated 25 January 2017, at 1111: 4-9 (Day 4).

[102] Award, ¶¶ 245-246.

[103] Third Witness Statement of Michael J. Gore dated 16 December 2016 ("Gore III").

[104] Gore III, ¶ 20 ("Almost immediately after seizing the Casino, the Government installed new management, including Kelly Gass, who reported directly to Mr. Branson.").

could be traced back to 2014 due to a coup in Thailand and the impact of the Thai Government's anti-corruption plan, which was documented in contemporaneous correspondence.[105]

84. Mr. Gore also explained that Mr. Branson implemented a series of damaging policies, including, for example: an across-the board cap on bets at THB 600,000;[106] terminating the Casino's relationship with experienced partners such as Tango, a junket operator;[107] terminating prospective deals with two Chinese junket operators; ordering Ms. Gass to "take out a US$2 million line of credit against the Casino's gaming license and, once that credit line was exhausted, submit[ing] US$800,000 to US$900,000 in invoices for legal fees to Savan Vegas."[108] The Majority identifies instances upon which it relies to criticize Mr. Baldwin's management from other portions of Mr. Gore's testimony but none that are dispositive of the issue.

85. In light of these significant criticisms of Claimant's management of the Casino, it is surprising that Claimant chose not to cross-examine Mr. Gore. The weight of the evidence calls into question whether Claimant did, in fact, mismanage the Casino. While I agree with the Majority that the Tribunal is not in a position to quantify the relationship between the mismanagement (alleged in the Majority's view) and the value of Savan Vegas,[109] this does not preclude me from finding that such mismanagement was likely a contributing cause to a decline in the value of Savan Vegas. The Tribunal simply did not have before it sufficient evidence to reach a conclusion on the percentage of causation that each such breach contributed to the diminution of the ability to achieve the maximum proceeds. There was a failure of proof.

3. Termination of the 2007 PDA

86. The Majority takes the position that Laos's termination of the 2007 PDA in June 2015 and its subsequent creation of a new PDA, with different terms, for the new buyer of Savan Vegas is not a breach of Paragraph 6 of the Deed.[110]

87. Paragraph 6 of the Deed states that:

> Laos shall treat the Project Development Agreement ("PDA") dated 10 August 2007 in respect of the Savan Vegas Casino, Lao Bao Slot club (located at the Lao border at Lao Bao) and Savannakhet Ferry Terminal Slot Club (located at the Savannakhet / Mukdahan checkpoint) and each of

[105] Gore III, ¶ 24.

[106] Gore III, ¶ 27.

[107] Gore III, ¶ 29.

[108] Gore III, ¶ 32.

[109] Award, ¶ 246.

[110] Award, ¶¶ 229-232.

> the licenses issued in respect of the Lao Bao Slot Club and the Savannakhet Ferry Terminal Slot Club, as being restated as of the Effective Date [15 June 2014], with a term in each case of fifty (50) years as from the Effective Date.

88. The plain language of Paragraph 6, thus, makes explicit that the 2007 PDA was to continue in effect with all of its licenses for 50 years from the effective date of the Deed. There is no dispute that Laos terminated the 2007 PDA and created a new PDA, with different terms, for the new buyer of Savan Vegas. Indeed, although the exclusivity terms in the 2007 PDA and the new PDA are similar,[111] the importance of the monopoly provision in the new PDA is negated by the fact that the new PDA is clearly focused primarily on the development of a new casino on Site A at the expense of the Savan Vegas casino, which, as the new PDA provides, is to be closed.[112] By focusing exclusively on the textual similarity of the exclusivity provisions contained in both PDAs,[113] the Majority fails to recognize the essentially different nature of the new PDA. Given this focus, it is not surprising that the Majority finds that no witness or expert testified that the terms of the new PDA were relevant to the sale price of Savan Vegas, because the new PDA in fact did not focus on Savan Vegas but on the new casino to be built on Site A.[114] The termination of the 2007 PDA and conclusion of the new PDA thus constitute a clear and direct breach of the terms of Paragraph 6 of the Deed.

89. While the Majority is of the view that Laos's termination of the 2007 PDA is justified under Article 24(5) of the 2007 PDA, which permits the Government to unilaterally terminate the 2007 PDA if Sanum fails to perform its obligations, including for non-payment of taxes due,[115] I am of the view, for the reasons elaborated in paragraphs 60 to 63 above, that Sanum's non-payment of taxes, in the present instance, is not a material breach of its obligations because the payment was suspended until the flat tax was determined and ultimately was to be deducted from the proceeds of the sale so we do not have before us a record of an outright refusal to pay taxes. It follows that Laos breached Paragraph 6 of the Deed by terminating the 2007 PDA.

90. I agree with the Majority that quantifying any loss from the termination of the PDA that could be directly attributable to the different terms in the two PDAs is not

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[111] *See* R-1, Savan Vegas Project Development Agreement dated 10 August 2007, at Art. 24; R-439, Executed Project Development Agreement between the Government of the Lao People's Democratic Republic and Savan Legend Resorts Sole Company Ltd.dated 19 August 2016, at Art. 3.3.

[112] *See* R-439, Executed Project Development Agreement between the Government of the Lao People's Democratic Republic and Savan Legend Resorts Sole Company Ltd. dated 19 August 2016, Recitals, Part 5 ("The Company intends to construct a new casino on Site A and will close the casino in the Project Area when the new casino opens.").

[113] Award, ¶ 231.

[114] Award, ¶ 232.

[115] Award, ¶ 231.

possible in the present circumstances due to a lack of evidence on this issue.[116] It is however, notable that Article 9, Paragraph 24, of the 2007 PDA provides that Sanum has been "granted monopoly rights for its Casino business operations only with the condition that the Government shall not approve or grant any other parties or entities who put up their applications for the operation of certain Casino businesses in the three (3) neighboring provinces close to the Project Development Zone of the company ... throughout the concession period of 50 years." As such, although unquantifiable at the present moment, it is certain that the monopoly rights granted under the 2007 PDA are of substantial monetary value to Respondents. In my view, the significance of this value is highlighted by Paragraph 6 of the Deed, which directs Laos to treat the 2007 PDA as being restated with a term of 50 years from the Deed's effective date.

91. It is thus not surprising that Respondents argued in their first Material Breach Application to the ICSID Tribunal that a Material Breach occurred because of a violation of their monopoly rights protected in the Deed, and that these monopoly rights were a key determinant of the value of the gaming assets to be sold under the Deed. While the ICSID Tribunal agreed with the Respondents that a competing deed had been planned for Site A, the Tribunal found that Respondents had not met their burden of establishing that the Government approved the casino. Regardless of whether the ICSID Tribunal found a Material Breach, this clearly evidences the importance of the monopoly to Respondents, and removal of the monopoly violated a fundamental term of the Deed, Paragraph 6, and the 2007 PDA. While the later termination of the PDA contrary to Paragraph 6 of the Deed was a material breach, again, there is insufficient evidence to calculate the value of the benefit, the harm that particular breach caused, or the resulting damages.

4. The Airport

92. On 21 November 2011, a Memorandum of Understanding between the Lao Airports Authority, Ministry of Public Works and Transport and Sanum was signed ("Airport MOU").[117] The Airport MOU notes that Sanum proposed to improve and redevelop the Savannakhet International Airport and to upgrade standards to accommodate all the aircraft that might land at the airport. The Airport MOU summarizes the principal terms of a proposed joint venture between the Lao Airports Authority and Sanum to undertake the expansion. Under Articles 2 and 4, Sanum agreed to contribute the capital to cover the airport expansion, in the amount of US$3.75 million, in two tranches. The Lao Airports Authority would contribute the airport rights to the joint venture that would later run the airport.

93. On 21 April 2014, the Lao Airports Authority agreed to continue the existing Airport MOU and to conduct a survey to plan the runway extension that was needed.[118]

[116] Award, ¶ 232.

[117] R-319, Memorandum of Understanding, dated 21 November 2011 (RCORE-21).

[118] R-338, Lao Airports Authority, Meeting Minutes dated 22 April 2014 (summarizing meeting held with Sanum on 21 April 2014) (RCORE-32).

The significance of the expansion of the airport was recognized in Paragraph 25 of the Deed and by Professor Kalt, who testified this would be part of a valuable package to be conveyed to a future buyer.[119] Ultimately, in violation of Paragraph 25 of the Deed, the right to expand the runway was not offered to the purchaser, as evidenced by the feasibility study provided to potential purchasers, which was based on the assumption that the runway would only be extended within the existing airport property that clearly was insufficient to accommodate the runway length needed as envisaged at the April 2014 meeting.[120] While I thus disagree with the Majority's conclusion as to Claimant's liability for breach of the Deed, I agree with the Majority that the evidence before the Tribunal does not establish any quantifiable damage attributable to this particular breach.[121]

5. The Sale Price

94. I disagree with the findings of the Majority in paragraphs 220 to 296 of the Award. Indeed, on the basis of the evidence before the Tribunal, including the expert testimony of Mr. Fisher and Professor Kalt, it is obvious that a sale of the casino for US$42 million was not a sale for the maximum possible sale proceeds. Moreover, as described in paragraph 88 above, Claimant did not focus its efforts on selling the Sanum Vegas Casino at all, but rather sold a new casino on Site A and, as part of this process, permitted the eventual closure of Sanum Vegas.

95. The Government's seizure of the casino instead of the joint appointment of a new gaming operator, who would have a fiduciary duty to both the Government and Sanum, the casino's subsequent mismanagement, and the unilateral marketing and sale, resulted in a decline in revenue.[122] The establishment of a 28% tax rate on gross gaming revenues that was neither a flat tax nor fair and reasonable; the termination of the 2007 PDA; the exclusion of Sanum from participation in the sale; and the limited marketing all, according to the experts submitted by Respondents,[123] had a chilling effect on potential buyers and thereby caused a diminution in value and depressed the obtainable sale price, certainly in violation

[119] Expert Report of Professor Joseph P. Kalt dated 14 October 2016, ¶ 32.

[120] *See* R-338, Lao Airports Authority, Meeting Minutes dated 22 April 2014 ("runway extension from 1,660 meters long to 2,400 meters long in order to handle Boeing 737 and Airbus a320") (RCORE-32); R-424, RSE Associates, Feasibility Study on the Redevelopment of the Savannakhet Airport, dated 30 May 2016, at 2 (Government-commissioned feasibility study stating that an expansion beyond 1,829 meters would be possible only if the Government exercised its eminent domain powers to acquire adjacent properties, but that the Government "has made no commitments" to do so).

[121] Award, ¶¶ 238-239.

[122] *See* Expert Report of Andrew Black, 14 October 2016, ¶¶ 34-44, 79-80 (attributing a 19.7% drop in gross gaming revenue and a 53.6% increase in expenses to mismanagement during the period in which the casino was under Government control); *see also* Testimony of Sheldon Trainor, Hrg. Tr. 465:12-24 (confirming that during the time period since the Government relinquished control to Macau Legend, the casino's operating results improved).

[123] HVS Report, dated 2 December 2016, at 16; Expert Report of Andrew Black, 14 October 2016, ¶¶ 79-80.

of the commitment in Paragraph 13 of the Deed to complete the sale on a basis "that will maximize Sale proceeds to the Claimants [Sanum] and Laos."[124]

6. Respondents' Counterclaim Concerning the Concession at Thakhaek

96. The Parties agree, and the Majority recognizes, that the Deed required the Parties to negotiate a land concession at Thakhaek in good faith pursuant to an MOU concluded by the Parties in October 2010.[125] The Majority concludes that there is insufficient evidence to suggest that Laos failed to negotiate in good faith.[126] I disagree because, in reaching its conclusion, the Majority overlooked some of the key evidence submitted by Sanum.

97. As a preliminary matter, the Majority does not acknowledge that, under New York law, the good faith standard requires a party to adhere to "honesty in fact" and undertake negotiations with an "honest[] articulation of interests, positions, or understandings."[127] In the present instance, based on my review of the evidence, I find that Laos's conduct does not meet these standards.

98. Specifically, the Majority does not take into account that Laos conducted the negotiations in a hostile fashion[128] and simply refused to even consider negotiating the inclusion of the 16 hectares that it excluded from the concession, without which Sanum lacked a commercial rationale for entering into an MOU because there would have been no road footage.[129] Without road footage, as Sanum explained, its development plan, which included retail shops, restaurants, and a visitor welcome center, would have been unviable.[130]

99. The Majority also does not take into account that the Deed refers expressly to 90 hectares of land as "identified in the MOU signed on 20 October 2010," which included the 16 hectares at issue.[131] Under these circumstances, irrespective of whether or not Sanum knew that the 16 hectares would be an issue for

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[124] R-293, Letter from Christopher Tahbaz to David Branson, dated 16 May 2016; R-378, Letter from Christopher Tahbaz to David Branson, dated 16 October 2015.

[125] Award, ¶ 297.

[126] *Id.*

[127] *See* RLA-243, *L-7 Designs, Inc. v. Old Navy, LLC*, 964 F. Supp. 2d 299, 307 (S.D.N.Y. 2013) (quoting *Penguin Grp. (USA) Inc. v. Steinbeck*, No. 06 Civ. 2438 (GBD), 2009 WL 857466, at *2 (S.D.N.Y. Mar. 31, 2009)); Respondents' Corrected Counter-Memorial ¶ 153.

[128] James Baldwin Witness Statement dated 30 November 2016, ¶ 18 (describing how Mr. Branson during negotiations "lost his temper, slapped the table aggressively" and effectively accused Sanum of "not getting it.").

[129] Respondents' Corrected Counter-Memorial, ¶¶ 154-155; James Baldwin Witness Statement dated 30 November 2016, ¶¶ 15-17.

[130] Respondents' Corrected Counter-Memorial, ¶¶ 154-155; James Baldwin Witness Statement dated 30 November 2016, ¶¶ 15-17.

[131] Respondents' Corrected Counter-Memorial, ¶ 155; R-339, Deed § 22.

negotiations,[132] the evidence shows that Laos did not act in good faith to endeavor to reach an agreement that would have included the 16 hectares.[133] Furthermore, the Majority ignores Sanum's explanation, supported by evidence, that it was fully aware, by 2014, "that gaming could no longer be offered at Thakbaek" and that it was "*willing and committed to developing the Thakhaek Concession without gaming.*"[134] Under these circumstances, I conclude that Laos acted in bad faith with respect to the concession at Thakhaek and breached Section 22 of the Deed.

7. Respondents' Counterclaim Concerning Laos's Criminal Investigation of Sanum

100. Paragraph 23 of the Deed states that "Laos shall discontinue the current criminal investigations against Sanum/Savan Vegas and its management or other personnel and shall not reinstate such investigations provided that the terms and conditions agreed herein are duly and fully implemented by the Claimants [Sanum]." In paragraph 253 of the Award, the Majority finds that Laos did not breach this obligation because "[t]he evidence is undisputed" (as the Majority finds) that the terms and conditions of the Deed were not properly implemented by Sanum. This is not correct. Further, if Claimant chose to perform the Deed by taking the Casino, selling it, and setting a Flat Tax reportedly consistent with the Deed, it cannot deny Respondents the benefit of Paragraph 23 of the Deed.

101. I cannot join the Majority in reaching a conclusion that, as the Majority acknowledges, would give only Laos the benefit of the bargain while depriving Sanum entirely of one of the few benefits of the Deed it was entitled to. Sanum should be compensated for the undisputed legal costs it incurred as a result of Laos's breach of Paragraph 23 of the Deed, in the amount of US$369,864.[135]

I. DAMAGES, COSTS AND FEES

1. Damages

102. The calculation of the damages was made exceedingly difficult because the Claimant refused to call any of the damages experts of Respondents and the damages expert reports of either side did not address fully the causation issues. While the Respondents offered the damages experts for testimony at the merits hearing, their experts had not been called. I wished to examine the damages experts with respect to the causation issues related to the damages, given that

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[132] Award ¶ 303 (noting that Sanum knew that the 16 hectares would be subject to negotiation).

[133] Respondents' Corrected Counter-Memorial, ¶¶ 153-167.

[134] Respondents' Corrected Counter-Memorial, ¶ 162; James Baldwin Witness Statement dated 30 November 2016, ¶¶ 9, 26 (acknowledging that gaming had been "removed as an offering" and noting that the alternative proposals for the SEZ was only an "aspect of a commercially-sound proposal and negotiations" and not demands upon Laos).

[135] Respondent's Memorial on Counterclaims, ¶¶ 220, 309.

both Parties had recently revised their respective damages amounts claims, the magnitude of the divergence in the damage amounts, and the divergence of views on the related issues.[136] Regrettably, the Majority's decision not to call the damages experts for questioning by the Tribunal impeded our ability to fully ascertain quantum-related issues, particularly with respect to causation of the failure to obtain "maximum proceeds."

103. As explained above, I find the unilateral rewriting and performance of the Deed other than as agreed resulted in material breaches of the Deed with respect to the seizure of the casino; the calculation of the tax; the termination of the 50-year 2007 PDA; the exclusion of Sanum from the sale process; the firing of the CFO; the management, or mismanagement, of the property during the sale process; the failure to work with all of the bidders; and the huge number of disputes. All of these had a chilling effect on the price and prevented the achievement of maximum sale proceeds.

104. While I can conclude that those multiple breaches caused the diminution in value, the causation was not sufficiently analyzed with respect to each of the elements, and as to whether any of these elements were off-set by other elements or potential causes that may have contributed to the diminution of the proceeds of the sale. As a result, I cannot separately calculate the amount of damages. Given this inability to develop the causation evidence and given the gap between the various breaches and the cause of the failure to obtain the maximum sale proceeds, I cannot calculate the specific amount of damages that may have been due to the Respondents.

105. I agree with the Majority that the sale proceeds, the US$42 million obtained, must be divided according to Paragraph 16 of the Deed under which both Parties are entitled to share in the sale price of Savan Vegas. I therefore agree with paragraph 312(d) of the Award with respect to the allocation of the sale proceeds; except, for the reasons stated above, I do not agree that the amount of the tax liability is correct. I agree further with paragraphs 314 to 317 of the Award.

106. I disagree with the calculation of the sale costs in paragraph 318 of the Award because the computation includes costs, additional to the costs of sale, specifically the so-called brokerage fee of US$2,520,000 paid by the Ministry of Finance to San Marco. In this context, I note that the Majority does not take into account evidence which shows that San Marco did not act as an independent broker, but rather under the direction of Laos's representative Mr. Branson[137], which ultimately resulted in the sale of the casino to Macau Legend below market price.[138]

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[136] Order on Respondents' Request to Have Kalt and Fisher Present at the Final Hearing dated 14 January 2017, ¶ 6 (Ms. Lamm's Dissent). *See also* Award ¶ 53.

[137] *See supra* ¶¶ 82-85.

[138] *See* Respondents' Memorial on Counterclaims ¶¶ 159-172, 240-242 (explaining how Ms. Gass and her company San Marco Capital Partners: were unqualified to manage, and broker the sale of the casino; were directly and improperly influenced by Mr. Branson who dictated the below-market price sale of the casino to Macau Legend; failed to inform Sanum about the sale process or take its views into account); Respondents'

2. Costs and Fees

107. With respect to paragraphs 320 to 325 of the Award, because I have found that both Parties breached the Deed, I would not allocate the arbitration fees and expenses against Respondents and to Claimant's benefit. Further, each Party should bear its own costs and expenses, and the Parties should equally share the expenses of the arbitration.

108. I disagree specifically with paragraphs 321, 324 and 325 of the Award. Claimant unilaterally seized the casino and effectively rewriting the terms of the Settlement Deed. Claimant breached the Deed, used self-help to achieve its desired result, and did not afford Respondents the benefit of their bargain. Hence, Claimant did not respect the terms of the Deed and unilaterally carried out operations. Accordingly, Claimant is not entitled to costs.

109. Even assuming the Majority's approach to cost allocation, such costs should not have included the arbitration fees and expenses paid by Savan Vegas.[139] Moreover, the Award fails to address Respondents' objections to the inclusion of fees designated by Claimant as "indemnification," and the fees of Curtis Mallet-Prevost and Mr. Va,[140] nor does the Award state any reasons for the inclusion of those fees among Claimant's "legal and other costs" under SIAC Rule 33.

3. Conclusions as to Damages, Costs and Fees

110. I specifically disagree with paragraphs 312-328 of the Majority Award. For all of the reasons amplified herein.

111. The failure to obtain the maximum sale proceeds does appear to be more attributable to the Claimant than to the Respondents, but given the lack of causation evidence showing which breaches caused the diminution in price, the damages cannot be specifically calculated, and cost consequences cannot be attached. I cannot agree to the calculation in paragraphs 326 and 327 of the Award, which deprives Respondents entirely of any value of the 80% they were supposed to receive of the sale proceeds of the casino. As Laos, in my view, is not entitled to compensation for the so-called brokerage fee nor to any recovery of costs or fees from Respondents, Respondents are entitled to recover from the

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Corrected Counter-Memorial ¶ 244 ("Other expenses on the Government's one-page summary appear to be unreasonable, unrelated to the costs of the sale, or both, including: … The payment of more than US$2.5 million to San Marco, in spite of Ms. Gass's lack of qualifications for the role of sale director, the significant decline of the business during her leadership, and the fact that her 'success fee' was unearned, given Mr. Branson's control over the sale process and his personal negotiation of the deal with Macau Legend."); *see also id.*, ¶¶ 58, 62-75 (detailing how the Government failed to notify Sanum of Ms. Kelly's appointment and obstructed Sanum from providing input on the sales process).

[139] *See* Award ¶ 322(a).

[140] *See* Email from Samantha Rowe to the Tribunal dated 19 February 2017; Letter from David Branson to the Tribunal dated 15 February 2017.

principal amount placed into escrow US$10,630,460.51, which represents 80% of the purchase price of US$15,341,000 (equaling US$12,272,800) less the amount of US$1,642,339.49 per paragraph 318(a) of the Award. Consequently, Laos is entitled to recover US$4,710,539.49 from the principal amount placed into escrow.

Dated: 29 June 2017

Carolyn B. Lamm