In the proceedings pursuant to 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, dated January 31, 1993, and the UNCITRAL Arbitration Rules, as revised in 2010

between

SANUM INVESTMENTS LIMITED

Claimant

and

THE GOVERNMENT OF THE LAO PEOPLE'S DEMOCRATIC REPUBLIC

Respondent

AWARD

Tribunal
Dr. Andrés Rigo Sureda, Presiding Arbitrator
Professor Bernard Hanotiau
Professor Brigitte Stern

Registry
Permanent Court of Arbitration

Secretary to the Tribunal
Fedelma C. Smith

6 August 2019

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FREQUENTLY USED ABBREVIATIONS AND ACRONYMS

Abbreviation	Meaning
BIT or Treaty	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, dated 31 January 1993
BIT II Proceedings	Proceedings between *Lao Holdings N.V. v. Lao People's Democratic Republic* (ICSID Case No. ARB(AF)/16/2)/ *Sanum Investments Limited v. Lao People's Democratic Republic* (ICSID Case No. ADHOC/17/1)
C(B)-[XX]	Claimants' Exhibits
C(S)-[XX]	Claimant Sanum's Exhibits
CLA(B)-[XX] or CLA-[XX]	Claimants' Legal Authorities
Claimant's Memorial	Claimant's Memorial dated 22 July 2013
Claimant's Reply	Claimant's Reply and Opposition to Respondent's Counterclaims dated 9 May 2014
Claimant	Sanum Investments Limited
Claimants	Sanum Investments Limited and Lao Holding NV
Decision on the Second Material Breach	Tribunal's Decision on the Merits of the Claimant's Second Material Breach Application, dated 15 December 2017
E&Y	Ernst & Young
First Material Breach Application	Claimant's First Material Breach Application dated 4 July 2014
FTA	Flat Tax Agreement between Laos and Savan Vegas dated 21 September 2009
Gaming Assets	Savan Vegas Casino, Lao Bao Slot Club and Savannakhet Ferry Terminal Slot Club
Government or Respondent	Respondent Government of The Lao People's Democratic Republic
Hearing	Hearing on the Merits of the Second Material Breach Application held from 3 to 7 September 2018 in Singapore
ICSID or the Centre	International Centre for Settlement of Investment Disputes
ICSID-AF Rules	Arbitration Rules (Additional Facility) of the International Centre for Settlement of Investment Disputes

ICSID Convention	Convention on the Settlement of Investment Disputes Between States and Nationals of Other States dated 18 March 1965
LHNV	Lao Holdings NV
Reply	Claimant's Reply and Opposition to Respondent's Counterclaims dated 9 May 2014
SRE-[XX]	Respondent's Exhibits
SRA-[XX]	Respondent's Legal Authorities
MaxGaming	MaxGaming Consulting Services Limited (Macau)
MIC	Ministry of Information and Culture
Paksong PDA	Project Development Agreement by and between The Lao People's Democratic Republic, Sanum Investments, Nouansavanh Construction Co. Ltd., and Mr. Sittixay Xaysana dated 10 August 2007
Paksong Vegas	Paksong Vegas Hotel and Casino
Participation Agreement	Participation Agreement for Thanaleng by and between Sanum and ST Holdings dated 4 October 2008
PCA	Permanent Court of Arbitration
PCA Proceeding	PCA proceeding between *Sanum Investments Limited (People's Republic of China) v. the Government of the Lao People's Democratic Republic* – PCA Case No. 2013-13, chaired by Dr. Andrés Rigo Sureda
PDA	Savan Vegas Project Development Agreement
Respondent's Counter-Memorial	Respondent's Counter-Memorial on the Merits dated 20 February 2014
Respondent's Rejoinder	Respondent's Rejoinder (Amended) dated 4 June 2014
RMC	RMC Gaming Management LLC
Sanum or Claimant	Sanum Investments
Savan Vegas	Savan Vegas Hotel and Casino
Settlement	Deed of Settlement dated 15 June 2014 and Side Letter dated 18 June 2014
SIAC	Singapore International Arbitration Centre
ST	ST Holdings
Thanaleng	Thanaleng Slot Club
Amended Transcript, [Day], p. [page], [lines]	Transcript of the Hearing, as amended on the basis of corrections agreed by the Parties
UNCAC	United Nations Convention Against Corruption
UNCITRAL Rules	UNCITRAL Arbitration Rules, as revised in 2010

VCLT	Vienna Convention on the Law of Treaties

1. OVERVIEW

1. Mr. John Baldwin and Mr. Shawn Scott, two U.S. entrepreneurs who were experienced in a number of businesses including gambling facilities, became involved in casinos and slot machines in Laos in 2007. For this purpose, they caused two companies to be incorporated in Aruba, the Netherlands Antilles **Lao Holdings NV** ("**LHNV**"), and a subsidiary **Sanum Investments** ("**Sanum**") in Macau (collectively referred to as "the **Claimants**"). Mr. Baldwin and Mr. Scott, using various corporate structures partnered with a Laotian conglomerate ("**ST Holdings**") in two casino projects and three slot machine clubs in Laos positioned near its border with Thailand. One of the casinos, the **Savan Vegas Hotel and Casino** ("**Savan Vegas**"), was built and operated successfully. The second casino, **Paksong Vegas Casino** ("**Paksong Vegas**"), was never built.

2. Within three years there was a falling out between the Claimants and their local partners. ST Holdings ceased cooperation with Sanum, initiated litigation against it and shut Sanum out of Thanaleng, the most profitable of the slot clubs. Mr. John Baldwin testified that ST Holdings was closely connected to leading politicians in the Respondent Government. He said that ST Holdings orchestrated a series of wrongful Government acts against LHNV which led to the result, designed by the Government, of driving Sanum out of Laos and appropriating for the Government the wealth created by the investment and expertise of Mr. Baldwin and his associated companies.

3. The Claimants initiated arbitrations by LHNV under the bilateral investment treaties between Laos and the Netherlands,[1] and by Sanum pursuant to a similar investment treaty between Laos and Macau (now China).[2] These arbitrations have consumed multiple proceedings and years of litigation. Eventually Sanum obtained an award against ST Holdings from the Singapore International Arbitration Centre ("**SIAC**") for over US $200 million. LHNV is not a claimant before this Tribunal, and the Tribunal does not purport to address its claims. However, much of the evidence of Mr. John

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[1] *Agreement on Encouragement and Reciprocal Protection of Investments between Laos and the Kingdom of the Netherlands*, signed on 16 May 2003, in force since 1 May 2005.

[2] *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*, dated 31 January 1993, as amended on 10 April 2006.

Baldwin is related to both companies, and as he was the directing mind of both companies, and their principal witness, references will be made to LHNV from time to time (or collectively to "**the Claimants**" in the plural) as part of the background to the disposition of the Sanum claims. Moreover, counsel for the Claimants advised that it did not withdraw "any factual allegations, as the **totality of the facts remain relevant to certain treaty breaches** for which the Claimants will seek relief."[3]

2. PROCEDURAL HISTORY

4. The Tribunal has issued the following decisions during the proceeding: (i) Award on Jurisdiction of 13 December 2013; (ii) Interim Ruling on Issues Arising Under the Deed of Settlement of 19 December 2014 and (iii) Decision on the Merits of the Claimant's Second Material Breach Application of 15 December 2017 ("**Decision on the Second Material Breach**"). The full procedural history of this case is described in these decisions. These Decisions, and the Decision on the Second Material Breach, are an integral part of the Award.

5. The procedural details of this arbitration following the Decision on the Second Material Breach are summarized below.

6. In the Decision on the Second Material Breach, the Tribunal ruled as follows:

   (a) the Second Material Breach Application is allowed;

   (b) pursuant to Section 32 of the Settlement, the Treaty arbitration is revived on the basis jointly and severally of the Government's breaches of:

      (i) Section 8, which promised a "new flat tax", but instead the Government imposed a 28% *ad valorem* tax on gross gaming revenues;

      (ii) Section 23, which promised the Claimant relief from "current criminal investigations," which nevertheless have been revived;

   (c) both of these breaches constitute material breaches that deprived the Claimant of the intended benefits (or "bargain") promised by each of Section 8 and Section 23;

   (d) except as aforesaid, the grounds of revival relied on by the Claimant are rejected;

---

[3] Letter dated 26 March 2018 from Claimant to the Tribunal.

(e) the parties are instructed to confer and propose to the Tribunal a timetable for the renewed arbitration within 30 days of the date of this decision;

(f) a pre-hearing teleconference to resolve any outstanding issues will be held within 45 days of the date of this decision;

(g) the issue of costs is reserved to be dealt with at the conclusion of the hearing on the merits.

7. By letter dated 14 January 2018, the Claimant informed the Tribunals of its intention to propose a timetable for the renewed Treaty arbitrations, as requested by the Tribunals' Decisions on the Merits of the Claimant's Second Material Breach Applications of 15 December 2017. By the same letter, the Claimant requested that the Tribunals in the revived arbitration be set for a merits hearing to take place at a reasonable time after the scheduled hearing of related but separate proceedings, identified as *Lao Holdings N.V. v. Lao People's Democratic Republic* (ICSID Case No. ARB(AF)/16/2)/ *Sanum Investments Limited v. Lao People's Democratic Republic* (ICSID Case No. ADHOC/17/1) (the "**BIT II Proceedings**"), and proposed an in-person pre-hearing conference, to explore with the Tribunals how to proceed and to receive any instructions the Tribunals may have.

8. By letter dated 18 January 2018, the Respondent objected to the Tribunals' Interim Decision on the Claimant's Second Material Breach Applications. By the same letter, the Respondent objected to the Claimant's suggestion that the hearings for the revived proceedings be delayed until the conclusion of the BIT II Proceedings. The Respondent proposed a hearing schedule and stated its desire to complete the original disputes as soon as possible.

9. By letter dated 26 January 2018, the Claimant provided further comments regarding the basis for a post-January 2019 hearing.

10. By letter dated 30 January 2018, the Tribunal invited the Respondent to comment, should it wish, on the Claimant's assertions concerning the matters raised in the letter dated 26 January 2018. The Respondent provided its response by letter dated 9 February 2018.

11. By letter dated 19 February 2018, the Tribunal issued directions for the Parties to "confer regarding a schedule for the exchange of submissions and other logistical matters."

12. By letter dated 2 March 2018, the Claimant informed the Tribunal that no consensus had been reached and detailed the Parties' discussions on the schedule.

13. By letter dated 8 March 2018, the PCA informed the Parties that in order to resolve outstanding matters, the Tribunal would hold a teleconference on 21 March 2018 at 12 noon Washington, D.C. time.

14. By letter dated 19 March 2018, the Claimant informed the Tribunal of the Parties' positions with respect to the agenda for the telephone conference, noting any areas of agreement reached between the Parties and setting forth the discussion on matters not in agreement.

15. On 21 March 2018, the Tribunal held a telephone conference with the Parties.

16. By letter dated 26 March 2018, the Claimant informed the Tribunal and the Respondent of the claims for which they would no longer seek specific relief and clarified the claims they were still pursing.

17. On 29 March 2018, the Tribunal issued **Procedural Order No. 8** on the organization of the hearing.

18. On 24 April 2018, the Respondent confirmed that it maintained its defences.

19. By email dated 16 May 2018, the Respondent submitted its list of witnesses to be called for examination at the merits hearing in Singapore scheduled for 3 to 7 September 2018.

20. By email dated 15 May 2018, the Respondent submitted its Application for Additional Evidence and Index of Additional Evidence, together with an index of supporting documentation and Exhibits R-001-002, R-004, R-028-029, R-034-036, C-1053, and R-054-055 and three additional documents not identified for the record.

21. By email dated 17 May 2018, each Party submitted its preliminary list of witnesses to be called for examination at the hearing to be taking place between 3-7 September 2018.

22. On 30 May 2018, the Claimant filed its response to the Respondent's Application for Additional Evidence together with Exhibits C-1225 to C-1227, and Legal Authorities CL-379 to CL-389.

23. By letter of 31 May 2018, the Respondent requested that the Tribunal order the Claimant to inform it on order of presentation of the witnesses to be examined at the scheduled hearing. Additionally, the Respondent requested the examination from Lao PDR *via* video-link of the following witnesses: Minister Kmabay Damlath, Dr. Sinlavong Khoutphaythoun, and Minister Chaleune Yiapaoheu.

24. On 6 June 2018, the Tribunal provided further instructions to the Parties regarding the submissions on the list of witnesses for cross-examination at the scheduled hearing. On 8 June 2018, the Claimant filed its response opposing the Respondent's request for the witnesses' video-link testimony, together with Exhibits C-1224, C-1235 and Legal Authority CL-390.

25. On 15 June 2018, the Respondent filed its reply to its Application for Additional Evidence. On this same date, the Claimant filed its objection to the Respondent's preliminary witness list, pointing out that the Respondent had not indicated the intended purpose or subjects of one of the witnesses' cross-examination, together with Exhibit C-1237.

26. On 22 June 2018, the Respondent filed its response to the Claimant's opposition to the examination of witnesses *via* video-link.

27. On 25 June 2018, the Tribunal issued Procedural Order No. 9, in which it ruled on the Respondent's Application for Additional Evidence.

28. On 26 June 2018, the Tribunal issued Procedural Order No. 10, on the Respondent's request for the examination of witnesses *via* video-link.

29. On 27 June 2018, the Respondent filed a request for clarification of Tribunal's Procedural Order No. 9. On this same date, it stated its agreement to the full consolidation of the present arbitration with the matter chaired by the Honorable Ian Binnie QC, ICSID Case No. ARB(AF)/12/6, Lao Holdings NV *v. Lao People's Democratic Republic* (the "**ICSID Proceedings**").

30. On 28 June 2018, the Tribunal issued an amended Procedural Order No. 9, in which certain typographical errors were corrected.

31. By letter of 28 June 2018, the Tribunal informed the Parties that the Claimant's request objecting the Respondent's witness list was approved and invited the Parties to submit their final witness lists.

32. On 5 July 2018, the Tribunal addressed the Respondent's communication of 27 June 2018, concerning its agreement to the full consolidation of this proceeding with the ICSID Proceeding. In this communication, the Tribunal informed the Parties that it did not consider the consolidation as "practical or necessary at this late stage of the proceeding".

33. On 6 July 2018, each Party submitted its final witness list for the hearing of 3 to 7 September 2018.

34. By email dated 6 July 2018, the Respondent confirmed that there were no changes to its witness list of 16 May 2018, with the exception of one witness in accordance with the Tribunal's decision contained in its letter of 28 June 2018.

35. On 9 July 2018, the Parties jointly requested the Tribunal for a one-day extension for the further deadlines in the organization of the hearing. On 11 July 2018, the Tribunal took note of the Parties' agreed extensions.

36. On 17 July 2018, the Claimant submitted a request for additional evidence to rebut the Respondent's additional evidence pursuant to the Tribunal's Procedural Order No. 9.

37. On 18 July 2018, the Claimant submitted a request to substitute Dr. Thomas Zitt for Mr. Steven Rittvo for examination on the Innovation Group's Expert Report at the scheduled hearing, together with Exhibit C-1267 and Exhibits A to F. On the same date, the Respondent submitted its objection to the Claimant's request together with Exhibits 1 through 12. On 19 July 2018, the Tribunal invited the Claimant to submit its comments to the Respondent's objection. On 25 July 2018, the Claimant filed its response to the Respondent's objection of 24 July 2018, together with Exhibits G through L.

38. On 25 July 2018, the Respondent filed its observations to the Claimant's request for additional evidence of 17 July 2018. The Claimant's filed its reply on support of its request on 26 July 2018.

39. On 26 July 2018, the Respondent filed additional observations to the Claimant's request for the substitution of experts of 18 July 2018.

40. On 31 July 2018, the Tribunal issued Procedural Order No. 11 deciding that the scheduled hearing would proceed on all issues except for damages and quantum and ruled on the Claimant's request for the substitution of experts to give testimony at the hearing. Simultaneously, the Tribunal issued and Procedural Order No. 13 on the Claimant's request for additional evidence as follows:

> "1. The following documents submitted by the Claimants are admitted on consent:
>
> Exhibits R-049, C-1240, R-046, C-1241, C-1242, C-0928, C-1243, C-1131, C-1244, C-1245, C-1246, C-774, C-755, C-1226, C-1248, C-1249, C-1250, C-1251, R-026, C-1238 A, C-1238 B , C-1239, C-1256, C-1257, C-1258, C-1259, C-1260, C-1261, C-1262, C-1263, C-1264, C-1265, C-1266.
>
> 2. The Tribunal admits the extracts of the Witness statements of John Baldwin, Angus Noble, William Greenlee and Clay Crawford submitted by the Claimants, but permits the Government to provide additional extracts from the same witness statements which the Government contends are necessary to give "balance" to the extracts submitted by the Claimants, as per the ruling in item 1 above.
>
> 3. The Baldwin Statement (Exhibit C-1244) and the Kurlantzick Report (Exhibit C-1247) are not admitted into evidence.
>
> 4. The Government's Opening Memorial in SIAC Arb 143/14/MV (Exhibit C-971) is admitted into evidence.
>
> 5. The interlocutory correspondence in ICSID Case No ARB (AF)/16/2 (Exhibits C-1252, C-1253, C-1254 and C-1255) are not admitted into evidence.
>
> 6. The admissibility of the further report of Professor Joseph Kalt is deferred pending a decision following the merits hearing as to whether a hearing on damages and quantum is required."

41. On 10 August 2018, the Respondent filed a request to strike the witness statement of Mr. William Greenlee, together with Appendices 1 through 4. By communication of

the same date, the Respondent requested leave from the Tribunal to include new evidence into the record (Exhibit SRE-164 and SRE-165).

42. On 17 August 2018, the Claimant filed its response opposing the Respondent's request to strike Mr. Greenlee's witness statement from the record, together with the following supporting documentation: Exhibit C(B)-434, C(B)-492, C-1242, R-001 and R-036. On the same date, the Claimant filed its observations, partially agreeing with the Respondent's request to include new evidence into the record. On 20 August 2018, the Tribunal invited the Respondent to comment on the Claimant's observations.

43. On 20 August 2018, the Claimant filed a request to increase their examination time at the Hearing and sent a proposed hearing schedule for the Tribunal's consideration. On 22 August 2018, the Tribunal invited the Respondent to comment on Claimant's proposal.

44. On 23 August 2018, the Respondent filed a reply to the Claimant's response concerning its request to strike Mr. Greenlee's witness statement and its observations to the Claimant's position towards its request to include new evidence into the record. This submission was filed together with Appendices 1 through 5.

45. On this same date, the Claimant submitted additional observations to the Respondent's comments on Mr. Greenlee's witness statement and requested the Tribunal to strike from the record an exhibit of 291 pages filed by the Respondent together with BDO's expert report as part of the Respondent's additional evidence submitted pursuant to Procedural Order No. 11. The Tribunal invited the Respondent to comment on these two submissions by the Claimant.

46. On 23 August 2018, the Respondent submitted its opposition to the Claimant's request for an enlargement of the examination time, together with Appendices 1 through 3.

47. On 24 August 2018, the Respondent filed its observations on the Claimant's objection to the introduction of the exhibit to BDO's expert report, and its rejoinder on Mr. Greenlee's witness statement.

48. On the same date, the Claimant informed the Tribunal and the Respondent of its decision to withdraw their request to cross-examine Sivath Sengdouangchanh at the hearing.

49. On 25 August 2018, the Claimant requested the Tribunal's clarification on paragraph 3.ii of Procedural Order No. 8, concerning the witnesses' examination. On 26 August 2018, the Respondent filed its observations to this request.

50. On 28 August 2018, the Respondent withdrew the witness statement of Mr. Vanheung (Vanheuang) Nanthachak from the record.

51. On 29 August 2018, the Tribunal issued Procedural Order No. 13, on (1) Respondent's request to strike from the record Mr. William Greenlee's witness statements; (2) Respondent's request to introduce exhibits SRE-164 and SRE-165; (3) Claimant's request to extend the time assigned at the hearing; (4) Claimant's request to exclude the BDO Report submitted by the Respondent, and (5) Claimant's request for advance notice for witness examination. These issues were decided as follows:

> "1. The Respondent's request to strike from the record Mr. William Greenlee's witness statements is premature.
>
> 2. Exhibits SRE-164 and SRE-165 are to be admitted into evidence.
>
> 3. Each party shall have equal time and is to determine the order in which its own cross-examinations proceed as well as time allocation.
>
> 4. The Claimants' request to exclude from the record the 291 additional pages attached to the BDO Report contained in Exhibit SRE-161 is granted.
>
> 5. The Parties are not required to provide advance notice of topics to be covered in cross-examination."

52. By letter of the same date, the Tribunal requested the Parties to confer and provide to the Tribunal a final hearing schedule.

53. On 30 August 2018, the Claimant submitted the Parties' final and agreed hearing schedule.

54. A hearing on the merits was held at Maxwell Chambers in Singapore, from 3 to 7 September 2018 (the "**Hearing**"). As on previous occasions, the Tribunal conducted the hearing jointly with the Tribunal in the ICSID Proceedings. At no time were the

ICSID proceedings and the PCA proceedings consolidated. The following persons were present at the Hearing:

Tribunal:	
Dr. Andrés Rigo	President
Prof. Bernard Hanotiau	Arbitrator
Prof. Brigitte Stern	Arbitrator
PCA:	
Ms. Fedelma Claire Smith	Secretary of the Tribunal
Ms. Gaëlle Buchet	Case Manager
(*Attending Video Conference from Laos*)	
ICSID Tribunal:	
The Honorable Ian Binnie, QC	President
Prof. Bernard Hanotiau	Arbitrator
Prof. Brigitte Stern	Arbitrator
ICSID Secretariat:	
Ms. Cathy Kettlewell	Secretary of the Tribunal
For the Claimant:	
Ms. Deborah Deitsch-Perez	Stinson Leonard Street
Mr. Jeff Prudhomme	Stinson Leonard Street
Mr. Alexander Hinckley	Stinson Leonard Street
Mr. Todd Weiler	
Mr. Ken Kroot	In house counsel-Sanum
Mr. Jorge Menezes	FCLaw
(Attending Video Conference from Laos)	
Parties:	
Mr. Shawn Scott	
Mr. Tucker Baldwin	
Other:	
Ms. Benjawan Poomsan Terlecky	
Ms. Diana Paraguacuto	
Claimant's Expert:	
Mr. Gerard Ngo	
For the Respondent:	
Mr. David Branson	
Mr. Kurt Lindquist II	Womble Bond Dickinson (US) LLP
Mr. John Branson	Womble Bond Dickinson (US) LLP

Ms. Emily Doll	Womble Bond Dickinson (US) LLP
Mr. Russ Ferguson	Womble Bond Dickinson (US) LLP
Mr. John Dackson	Womble Bond Dickinson (US) LLP

Parties:
Outakeo Keodouangsinh
Phothilath Sokhotchounlamaly
Other:
Ms. Xaynari Chanthala
(Attending Video Conference from Laos)
Mr. K.P. Santivong
(Attending Video Conference from Laos)

Respondent's Expert:
Prof. Hervé Ascensio

Court Reporters:

Mr. Goh Chee Jian	Epiq
Mr. Tan Chee Keeng	Epiq
Ms. Tan Liang Chiah Sharon	Epiq
Tay Ai Poh	Epiq
Mr. Chua Hong Guan (Damien)	Epiq

Interpreters:

Mr. John Johnston	Laotian/English
Ms. Maly Siribounthong	Laotian/English
Mr. Samuel Mattix	Laotian/English
Ms. Ana Ooms	French/English
Mr. Jean-Christophe Kuzniak	French/English

55. During the Hearing, the following persons were examined:

On behalf of the Claimant:
Mr. John Baldwin
Mr. Clay Crawford
Mr. Angus Noble
On behalf of the Respondent:
Mr. Phimphone Sengthong
Judge Soulideth Souvannasaly
Minister Chaleune Yiapaoheu
(Video Conferencing from Laos)
Minister Sinlavong Khoutphaythoun
(Video Conferencing from Laos)
Governor Kambay Damlath
(Video Conferencing from Laos)

56. On 18 September 2018, the Respondent requested that the Tribunal provide further directions concerning the submission of further pleadings or applications.

57. On 19 September 2018, the Claimant filed a submission addressing the Respondent's closing arguments made at the Hearing.

58. By communication of 20 September 2018, the Tribunal informed the Parties that it would not admit into the record the Claimant's submission of 19 September 2018 and that any further submissions, but for those related to transcript issues, would require the Tribunal's approval. The Tribunal invited the Parties to submit their corrections to the hearing transcript by 28 September 2018.

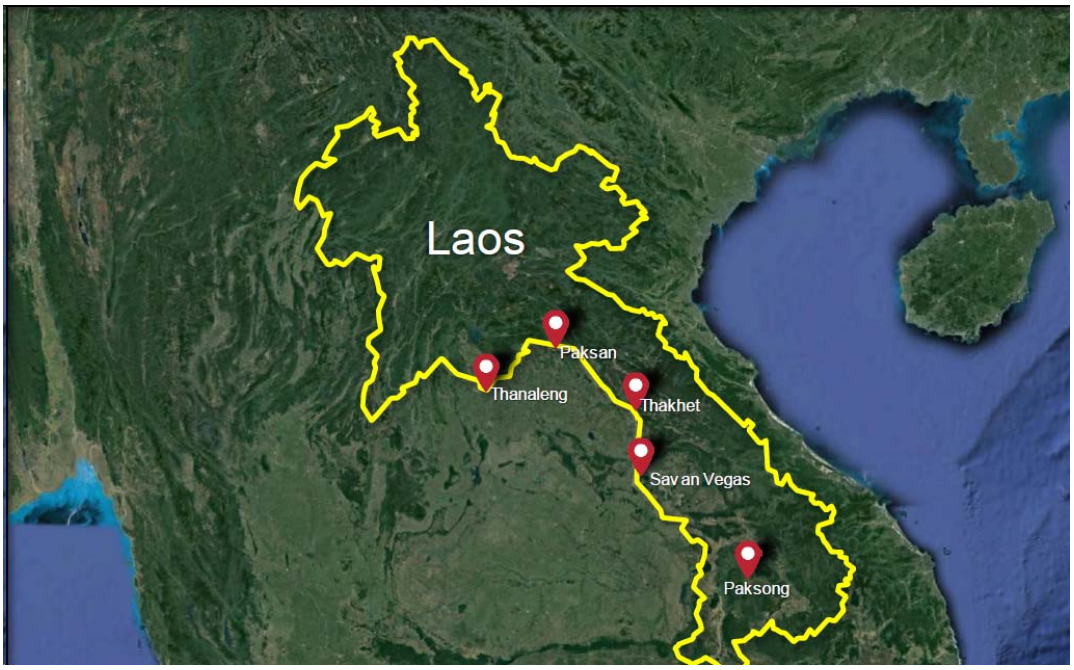
59. Following the Tribunal's instructions, on 28 September 2018, the Claimant submitted the Parties' agreed transcript corrections to be included by the Court Reporters. Amended transcripts were received from the Court Reporters on 22 October 2018.

60. On 22 February 2019, the Respondent filed its submission on costs and on 7 March 2019, the Claimant filed its submission on costs. On 12 March 2019, the Tribunal invited the Parties to comment on the other Party's submission on costs, if they wished to do so. On 15 March 2019, the Respondent submitted its comments to the Claimant's submission on costs.

61. The proceeding was closed on 17 July 2019.

3. OVERVIEW OF THE FACTS

3.1. Laos: The Claimants' Investments in Laos



62. As mentioned earlier, LHNV, owned directly and indirectly through its subsidiary, Sanum, gambling assets in Laos, including the Savan Vegas Hotel and Casino Complex in Savannakhet Province. The Casino is strategically located near the Friendship Bridge which spans the Mekong River between Laos and Thailand. The Claimants also had an investment in "slot clubs" located at the Thai border at Lao Bao and Savannakhet Ferry Terminal (located at the Savannakhet/Mukdahan checkpoint), all in the Savannakhet Province and at Thanaleng to the Northwest. LHNV and its subsidiary Sanum, claim to have invested many millions of dollars in these projects.[4]

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[4] The Claimants' principal, Mr. John Baldwin, testified as follows:

> Q. … Can you tell us when Sanum first invested in Laos and what kind of money it invested, at what time period?
> A. We – we started investing in Laos in 2007. Our initial commitment was a total of seven and a half million dollars – my recollection is seven and a half million dollars paid to ST Group in various stages, and then the next thing we invested in was getting new plans drawn and studies done for Savan Vegas and Paksong Vegas.
> Q. And in what year was that done?
> A. That was done in 2008 primarily.
> Q. When was the first monies paid? 2007 or 2008?
> A. First monies, 2007.

3.2. The Original Treaty Claims

63. The Claimants allege expropriation without compensation and Treaty breaches in respect of their investment in gambling projects described in the Project Development Agreement ("**PDA**") dated 10 August 2007 in respect of the Savan Vegas Casino, as well as the three slot clubs, Thanaleng, Lao Bao and Savannakhet Ferry. The claims also relate to the expected expansion of the Savannakhet Airport and opportunities for development in the Special Economic Zone at Thakhet.

64. On 14 August 2012, Sanum Investments Limited, a LHNV subsidiary which operated the Savan Vegas Hotel and Casino, initiated its claim before the PCA for alleged violations 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,* dated 31 January 1993 and the UNCITRAL Arbitration Rules as revised in 2010.

65. Also on 14 August 2012, LHNV initiated its ICSID proceedings against the Respondent, before the International Centre for Settlement of Investment Disputes ("**ICSID**" or the "**Centre**") pursuant to the *Agreement on Encouragement and Reciprocal Protection of Investments between Laos and the Kingdom of the Netherlands*,[5] and the *Arbitration Rules (Additional Facility)* of ICSID ("**ICSID-AF Rules**").[6]

66. While the proceedings before the two Tribunals are distinct and separate, the proceedings were the subject of joint hearings in Singapore and elsewhere. Accordingly, for ease of reference only, LHNV and Sanum will be referred to as "the Claimants", as the facts of the cases are intermingled. This terminology is not to

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Q. And then the money that was in 2008, can you say during roughly what month?
A. Well, the largest amount of money was paid prior to the Savan – was paid in probably the last six months of 2008.
Q. During all of that time in 2007 and 2008, did you have a flat tax agreement yet?
A. Yes.
Q. Prior – let me show you some documents. Let me show you –
A. Well, we had an agreement to get the flat tax agreement. The flat tax was approved – the flat tax was approved by Prime Minister Bouasone in [29 December 2008].

Transcript, 5 September 2018, p. 134, l. 10 to p. 135, l. 12, date corrected p. 135, ll. 9-12.

[5] Signed on 16 May 2003, in force since 1 May 2005.

[6] As amended on 10 April 2006.

suggest, however, that the two arbitral proceedings are consolidated or otherwise conjoined.

3.3. Claims and Counterclaims

67. The Claimants' original Treaty claims were based on a multiplicity of alleged treaty breaches by the Government including (but not limited to) an 80% tax on casino revenues and what the Claimants contended were unfair and oppressive audits of the Savan Vegas Hotel and Casino. In addition, the Claimants alleged that the Government abused its sovereign authority to assist ST Holdings to acquire other assets which belonged in whole or in part, to the Claimants. In the Treaty proceedings, the Claimants eventually valued their investment loss as of 31 August 2016 at between US $690 million and US $1 billion.[7]

3.4. The Settlement and its Aftermath

68. The Treaty claims were thought to have been resolved by a Deed of Settlement concluded between the Parties during the merits hearing in Singapore on 15 June 2014 (to be read together with a Side Letter dated 18 June 2014) (herein referred to collectively as "**the Settlement**").

69. Shortly after the Settlement, the Claimants alleged that the Government had committed a material breach of its terms which entitled them to a revival of the Treaty arbitrations ("**the First Material Breach Application**"). The Government contested jurisdiction. On 11 August 2014, the Government filed a Notice of Arbitration with the SIAC pursuant to paragraphs 35 and 42 of the Settlement, seeking an order directing Sanum to comply with its obligations under the Settlement.

70. The ICSID and PCA Tribunals held a hearing on 14 October 2014 in Washington, D.C. on the objections to jurisdiction, which were dismissed. However, on 20 January 2015, the High Court of the Republic of Singapore held that the PCA Tribunal did not possess subject matter jurisdiction under the Laos-China BIT because of the status of Macau and issues of state succession not here relevant, as well as the limitation in the BIT,

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[7] See Reports of Joseph P. Kalt dated 14 October 2016, 2 December 2016, 22 December 2016 and 15 March 2017.

according to which "only disputes over the amount of compensation for expropriation can be submitted to arbitration."[8] This judgment was later reversed by the Court of Appeal of Singapore on 29 September 2016.[9]

3.5. Delimitation of the Relief Presently Sought by the Claimants

71. The Claimants' Second Material Breach Application was successful, and on 15 December 2017, the Hearing on the merits of the "revived" claim was ordered to proceed. On 26 March 2018, the Claimants advised the Tribunal of the claims for which they no longer sought relief, namely, in respect of the PCA proceedings, "Article 6 expropriation claim regarding the [Savan Vegas], its Article 6 expropriation claim regarding Ferry Terminal or Lao Bao slot clubs […], or its claims regarding Respondent's seizure of its bank account in breach of Articles 3(2), 3(4), 4, 5, and 6."[10]

72. The Claimants' letter of 26 March 2018 notionally divided and separated their claims concerning LHNV (Thanaleng, Savan Vegas and the Ferry Terminal and Lao Bao slots) and Sanum (Thanaleng, Paksan, Thakhet and Paksong Vegas Hotel and Casino). As mentioned, however, counsel for the Claimants asserted in the same letter that "the totality of the facts remain relevant to certain treaty breaches for which the Claimants will seek relief." Equally, the Respondent conjoined its "clean hands" defence to all claims by both Claimants at issue in the ICSID and PCA proceedings involving Mr. John Baldwin and the various interrelated allegations of bribery and corruption. Accordingly, it will be necessary for the Tribunal to address "the totality" of the factual circumstances of the listed projects of both Claimants insofar as they are relevant to the position of Sanum.

73. Sanum maintained the expropriation claim pursuant to Article 4 of the Treaty regarding the Thanaleng slot club, Paksan, Thakhet and the Paksong Vegas Hotel and Casino.

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[8] *Government of the Lao People's Democratic Republic v. Sanum Investments Ltd*., [2015] SGHC 15 at para. 128.
[9] *Sanum Investments Ltd. v. Government of the Lao People's Democratic Republic*, [2016] SGCA 57.
[10] Letter dated 26 March 2018 from Claimant to the Tribunal.

4. RELEVANT ARTICLES OF THE BIT

74. The Preamble to the Treaty provides, in relevant part:

> The Government of the People's Republic of China and the Government of the Lao People's Democratic Republic (hereinafter referred to as Contracting States), Desiring to encourage, protect and create favorable conditions for investment by investors of one Contracting State in the territory of the other Contracting State based on the principles of mutual respect for sovereignty, equality and mutual benefit and for the purpose of the development of economic cooperation between both States […]

75. Article 1(1) of the Treaty provides, in relevant part:

> The term "investments" means every kind of asset invested by investors of one Contracting State in accordance with the laws and regulations of the other Contracting State in the territory of the latter, including mainly (a) movable and immovable property and other property rights; (b) shares in companies or other forms of interest in such companies; (c) a claim to money or to any performance having an economic value; (d) copyrights, industrial property, know-how and technological process; (e) concessions conferred by law, including concessions to search for or to exploit natural resources.

76. Article 1(2)(b) of the Treaty provides, in relevant part:

> The term "investors" means: In respect of both Contracting States: […] (b) economic entities established in accordance with the laws and regulations of each contracting State.

77. Article 3(1) and 3(2) of the Treaty provide:

> (1) Investments and activities associated with investments of investors of either Contracting State shall be accorded fair and equitable treatment and shall enjoy protection in the territory of the other Contracting State.
>
> (2) The treatment and protection as mentioned in Paragraph 1 of this Article shall not be less favorable than that accorded to investments and activities associated with such investments of investors of a third State.

78. Article 4(1) and 4(2) of the Treaty provide:

> (1) Neither Contracting State shall expropriate, nationalize or take similar measures (hereinafter referred to as "expropriation") against investments of investors of the other Contracting state in its territory, unless the following conditions are met:
>
> (a) as necessitated by the public interest;
>
> (b) in accordance with domestic legal procedures;
>
> (c) without discrimination;

> (d) against appropriate and effective compensation.
>
> (2) The compensation mentioned in paragraph 1(d) of this Article shall be equivalent to the value of the expropriated investments at the time when expropriation is proclaimed, be convertible and freely transferable. The compensation shall be paid without unreasonable delay.

79. Article 8(1), 8(2), and 8(3) of the Treaty provide:

> (1) Any dispute between an investor of one Contracting State and the other Contracting State in connection with an investment in the territory of the other Contracting State shall, as far as possible, be settled amicably through negotiation between the parties to the dispute.
>
> (2) If the dispute cannot be settled through negotiation within six months, either party to the dispute shall be entitled to submit the dispute to the competent court of the Contracting State accepting the investment.
>
> (3) If a dispute involving the amount of compensation for expropriation cannot be settled through negotiation within six months as specified in paragraph 1 of this Article, it may be submitted at the request of either party to an ad hoc arbitral tribunal. The provisions of this paragraph shall not apply if the investor concerned has resorted to the procedure specified in the paragraph 2 of this Article.

5. OTHER MATTERS

5.1. Other Legal Provisions

80. The Respondent argues that, in addition to the BIT, domestic law is relevant to the existence of the Claimants' contractual rights and the legality of the conduct of the foreign investors. Furthermore, there are international norms such as "[t]he United Nations Convention Against Corruption which defines bribery and money laundering as fundamental criminal offenses that undermine the international system of foreign trade."[11] It is the contention of the Respondent that the Claimants violated the BIT, the laws of Laos and international norms.

81. According to the Claimant Sanum's Reply, the "[BIT] clearly governs this dispute."[12] The United Nations Convention Against Corruption ("**UNCAC**") "creates obligations only for the state Parties, to develop anti-corruption policies, practices, and task forces.

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[11] Respondent's Counter-Memorial, para. 20.

[12] Claimant's Reply and Opposition to Respondent's Counterclaims dated 9 May 2014 (hereinafter "**Claimant's Reply**"), para. -237.

It does not bind or purport to bind the conduct of entities such as the Claimant."[13] The Claimants also question the Respondent's appeal to international public policy and, in particular, the international standard for the gaming industry based on domestic gaming regulations of just four jurisdictions, none of them applicable to the Claimants' projects in Laos.

82. While the Claimants admit that domestic statutes obviously do determine whether certain alleged acts are legal or illegal for the purposes of domestic law, domestic law does not dictate the consequences for an investor's claims under the Treaty.

83. The Claimants argue that "once an investor has established its investment in conformity with the host state's laws, that investment falls within the scope of the treaty (assuming all of the other jurisdictional hurdles have been cleared), and the investor is *prima facie* entitled to its protections."[14] The Claimants further argue that the cases that "consider whether allegations of misconduct constitute a proper defence on the merits do not assist Laos because tribunals have required Respondents to demonstrate that the actions taken in breach of the treaty were actually justified by the misconduct."[15]

84. The Claimants also dispute the relevance of the "uncontroversial proposition that arbitral tribunals have an inherent power to preserve the integrity of their own process …"[16] The Claimants equally reject the applicability of the "unclean hands" doctrine and note that the Respondent has not cited any case in which a tribunal has sanctioned post-investment behaviour with a full dismissal of the Claimant's case.

5.2. The Tribunal's Analysis

85. The law to be applied by the Tribunal is determined by the Treaty. The Treaty is an international instrument that to the extent it requires interpretation will be interpreted by the Tribunal in accordance with the provisions of the Vienna Convention on the Law of the Treaties ("**VCLT**") to which both State parties to the Treaty have acceded. As the Parties admit in their exchanges, the domestic law of the State may also be relevant.

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[13] *Ibid.*

[14] *Ibid.*, para. 246.

[15] *Ibid.*, para. 249.

[16] *Ibid.*, para. 252.

The extent of its relevance is a matter of dispute between the Parties, particularly on the question of whether to be protected an investment needs to be made *and operated* according to the law of the host State. This issue and the disputed applicability of international policy relate to the defence of illegal conduct and the Tribunal will address both matters as needed in its consideration of the Respondent's defence.

5.3. Clarification on the Nature of the Respondent's Illegality Claims

86. As part of its defence, the Respondent has pleaded that the Tribunal should dismiss all claims because of the illegal activities in which the Claimants allegedly engaged, including bribery, embezzlement and money laundering. The Claimants have at times characterized this defence as a "request for dismissal…for lack of jurisdiction" because at inception or in its operation the investment of the Claimants was illegal.[17]

87. As the Tribunal understands it, the present submission of the Respondent to dismiss all claims on grounds of illegality is not an objection to the Tribunal's jurisdiction, but an affirmation of the Tribunal's jurisdiction to consider the claims on their merits which, the Government says, ought to be dismissed because of the Claimants' illegal conduct.

6. THE RESPONDENT'S THRESHOLD POSITION IS THAT THE CLAIMS OUGHT NOT TO BE ENTERTAINED BY REASON OF THE CLAIMANTS' BRIBERY AND CORRUPTION

88. At the threshold of its argument, the Respondent contends that the claims should be dismissed in their entirety, in part because of corruption in the creation of the investments, and in part because of corruption in the course of performance of the various PDAs and unsuccessful initiatives by the Claimants to obtain licences for new gambling facilities.

89. The Respondent alleges that the principals behind the Claimants, Mr. John Baldwin and Mr. Sean Scott, were quite brazen about how to do business in a culture of corruption. However, Mr. Baldwin says, they steadfastly resisted. In this respect, Mr. Baldwin testified that:

> Laos can be quite a corrupt country … As I met fellow businessmen in Laos, I came to realize that almost every major business operating in Laos has paid

[17] Claimant's Reply, para. 13.

> money under the table for their concessions, or their flat tax agreements or other Government approvals. Sanum, however, has not.[18]

90. In his re-examination at the Hearing, Mr. John Baldwin made an even more emphatic denial of corrupt activities: "I gave strict instructions always that we weren't paying any bribes."[19]

91. The allegations of bribery in the course of making the initial investment include:

(a) an alleged bribe of US $30,000 to Laotian tax authorities to obtain approval of the original 2009 Flat Tax Agreement which the Claimants regarded as essential to their investment in their flagship Savan Vegas Hotel and Casino project;

(b) payment of US $25,000 to Government officials to procure a licence for the Claimants' proposed Thakhaek Slot Club and Welcome Centre.[20]

92. The allegations of bribery in the course of performance of the PDAs and related initiatives include:

(a) payment of US $875,000 to the Claimants' consultant in the Laos private sector, Madam Sengkeo Phimmasone, to bribe Government officials to stop an audit by Ernst & Young ("**E&Y**") of Savan Vegas in order to avoid disclosure of the Claimants' illegal activity[21] and witness tampering (Madam Sengkeo Phimmasone refused to make herself available to testify in these proceedings. The Respondent alleges she was paid by the Claimants to stay away);

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[18] John Baldwin Second Witness Statement dated 9 May 2014, para. 5.

[19] Mr. Baldwin testified as follows in re-examination by his counsel:

> Q. Mr. Branson asked you a number of questions about the contracts, the consulting contracts, that Mr. Bouker had that Marty Gersten had written up and you said you hadn't seen them, but now that you've seen them, do they cause you to believe that Mr. Bouker was being dispatched to go and bribe people?
> A. No.
> Q. And why is that?
> A. Well, first and foremost, **I gave strict instructions always that we weren't paying any bribes**. That's number one. I just don't do it and I'm a stubborn guy and I just don't – I tell my staff the same thing always, you know, it's a slippery slope and you can't start down it, so that's number one. But number two is, you know, fair value [in terms of a success fee] for result for work given. I mean, if he [Mr. Bowker] has the contacts to do this, more power to him. (emphasis added)

Amended Transcript, 5 September 2018, p. 168, ll. 8-19.

[20] Respondent's Rejoinder, paras. 10-11, 15-17.

[21] Respondent's Counter-Memorial, para. 73; Respondent's Rejoinder, para. 9(i) and (vii).

(b) payment of bribes totalling US $21,000 in 2012 to Government officials in an effort to obtain an extension of the 2009 Flax Tax Agreement;[22]

(c) offer of a US $7 million bribe to the Prime Minister of Laos for approval of a licence to establish a casino in the capital city of Vientiane;[23]

(d) a bribe of US $80,000 to the Governor of the Province of Champasak to approve a slot club at Chong Mek;[24]

(e) bribes totalling US $106,000 to Government officials to close the Paksan Slot Club as a way of bringing pressure on ST Holdings to settle their differences;[25]

(f) a claim (now abandoned) of payment of unspecified amounts of bribes to Government officials stationed at Savan Vegas to turn a blind eye to unlawful gambling by Lao citizens;[26]

(g) an allegation (now abandoned) of payment of unspecified amounts to Thai border officials to facilitate Thai gamblers crossing into Laos to gamble and return unhindered with their winnings;[27] and

(h) additional allegations (now abandoned) that the Claimants engaged in money laundering and embezzled funds from Savan Vegas by use of phoney loans.[28]

93. In addition, the Respondent alleges that the Claimants paid US $120,000 to Cambodian officials for a Cambodian lottery licence, bribed Cambodian officials to obtain Cambodian diplomatic passports and bribed Cambodian customs officials to ignore unlawful border crossings. These allegations were designed to demonstrate that the principals of the Claimants are "bad people" with a predisposition to use bribery and corruption to advance their financial interests. The facts underlying the Cambodian

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[22] Respondent's Counter-Memorial, paras. 90-93; Respondent's Rejoinder, paras. 10,15, 19.
[23] Respondent's Counter-Memorial, para. 97.
[24] Respondent's Counter-Memorial, paras. 100-101; Respondent's Rejoinder, paras. 21-22.
[25] Respondent's Counter-Memorial, paras. 102-104.
[26] Respondent's Counter-Memorial, paras. 110-113.
[27] Respondent's Counter-Memorial, paras. 114.
[28] Respondent's Counter-Memorial, paras. 115-199, 133, 135, 338.

allegations are so far removed from the allegations of corruption in Laos, that the allegations relating to Cambodia will not be considered further.

6.1. Evidence of Bribery and Corruption is Relevant Both at the Time of Investment and During Subsequent Performance

94. The Parties agree that investment tribunals are rightly sensitive to allegations of corruption. They agree that the Respondent bears the burden of proof. They disagree on the standard of proof, *i.e.* whether a balance of probabilities is sufficient or whether corruption must be established to the more demanding standard of "clear and convincing evidence" of corruption. They also, of course, disagree on the facts.

95. There is no doubt that bribery and corruption are contrary to the domestic laws of Laos.[29]

6.1.1. The Respondent's Argument

96. The Respondent asserts that the Claimants are not legally entitled to maintain any of their claims in these proceedings as a matter of *ordre public international* and public policy.[30] Corruption, the Respondent argues, is relevant to the initial investment but

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[29] **Lao Penal Code**

Article 157:
Any person bribing or agreeing to bribe a civil servant shall be punished by six months to two years of imprisonment and a fine equal to the amount or value of the bribe.
In the event of a substantial bribe, the bribed civil servant, the briber and the person who agrees to give the bribe shall be punished by three to five years of imprisonment and fines equal to twice the amount or value of the bribe.
Bribe intermediaries shall be punished by six months to two years of imprisonment and fines equal to the amount or value of the bribe.
LHRA-15.

Lao Law on Investment Promotion

Article 73: Prohibited actions for investors:
Investors are prohibited to perform the following actions:
1. Give bribes to officers and government officials who have responsibilities for concerned tasks;
LHRA-21**.**

[30] *World Duty Free Company Limited v. Republic of Kenya*, ICSID Case No. ARB/00/7, Award ("***World Duty Free v. Kenya***"), at para. 188(3), LHRA-31.

also to the investor's subsequent conduct in relation to the investment in the host country.[31]

97. The difference is that corruption in the making of the investment will raise issues of jurisdiction for the Tribunal, whereas subsequent acts of corruption will go to a claimant's entitlement for relief under the BIT.[32]

98. In particular, the Respondent relies on the analysis in *Metal-Tech v. Uzbekistan*:

> While reaching the conclusion that the claims are barred as a result of corruption, the Tribunal is sensitive to the ongoing debate that findings on corruption often come down heavily on claimants, while possibly exonerating defendants that may have themselves been involved in the corrupt acts. It is true that the outcome in cases of corruption often appears unsatisfactory because, at first sight at least, it seems to give an unfair advantage to the defendant party. The idea, however, is not to punish one party at the cost of the other, but rather to ensure the promotion of the rule of law, which entails that a court or tribunal cannot grant assistance to a party that has engaged in a corrupt act.[33] (emphasis added)

99. The Respondent also relies, more generally, on the doctrine of "clean hands". The Claimants' misconduct is sufficient, it is said, to deny them the assistance of investor-state arbitration.

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[31] Referencing ICC Dossier: *Addressing Issues of Corruption in Commercial and Investment Arbitration*, Chapter 11, at para. 31, LHRA-155 (citing *Flughafen Zürich A.G. and Gestión e Ingeniería IDC S.A. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/10/19, Award, 18 November 2014, at paras. 129-132):

> 31. The approach to bribery is different in investment arbitrations, where jurisdiction does not derive from a contract, but rather from an investment treaty. In these cases, validity of contracts is not the question. The issue is whether an investor who has incurred in corrupt practices when making or performing the investment can still enjoy protection under the relevant investment treaty. And the answer is no. (38) Investment arbitration has initiated and led the movement of zero tolerance towards corruption.

[32] *Fraport AG Frankfurt Airport Services Worldwide v. Republic of the Philippines*, ICSID Case No. ARB/03/25, at para. 345, LHRA-29:

> If, at the time of the initiation of the investment, there has been compliance with the law of the host state, allegations by the host state of violations of its law **in the course of the investment**, as a justification for state action with respect to the investment, **might be a defence** to claimed *substantive* violations of the BIT, but could not deprive a tribunal acting under the authority of the BIT of its jurisdiction. (emphasis added)

[33] Respondent's Opening Submission, Slide 143, citing *Metal-Tech Ltd. v. Republic of Uzbekistan,* ICSID Case No. ARB/10/3, Award, 4 October 2013, at para. 389, Exhibit LHRA-157.

6.1.2. The Claimant's Argument

100. The Claimants point out that the Tribunal's jurisdiction is founded on the BIT and neither the Netherlands nor the Chinese BIT contains a provision authorizing a tribunal to deny the treaty's protection on the basis that the claimant/investor engaged in corruption. If the BITs provide no authority to dismiss, the Tribunal would have to base its decision on customary international law. However, the lack of "clean hands" is neither a recognized rule of customary international law nor a general principle of international law and thus affords no authority to dismiss.[34]

101. The Claimants acknowledge that corruption in **the establishment of an investment** can render a claim inadmissible because treaty protections are only available for valid investments recognized under the treaty (based upon either an explicit or implied legality requirement).[35] The Claimants deny corruption but in any event deny any causal connection between the acts of *alleged* corruption and these claims. The Respondent only concocted its corruption allegations **after** the arbitrations were commenced and in any event has failed to govern itself in a manner consistent with its international obligations, including due process and good faith, and the prosecution of bribe-takers as well as alleged bribe-givers.[36]

102. The Claimants' principal, Mr. John Baldwin, denied the applicability of the "red flags" approach to the investments in issue here:

> Q. Is it possible that when you enter into a consulting contract like this, that if the event is achieved, the consultant is sent the money and the consultant then is instructed to pay it to certain government ministers so that it keeps the company one step removed from proof of the bribe? Isn't that how it works, Mr Baldwin?
>
> A. That's a possibility, although it didn't happen here.[37]

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[34] Citing *Yukos Universal Limited (Isle of Man) v. The Russian Federation*, UNCITRAL PCA Case No. AA 227, Award, 18 July 2014, at paras. 1362-1363, CLA(B)-395.

[35] Claimant's Closing Submission, Slide 3.

[36] Claimant's Opening Submission on Respondent's Corruption Allegations, Slide 4.

[37] Amended Transcript, 5 September 2018, p. 91, 16-25.

6.1.3. The Tribunal's Analysis

103. The Tribunal considers that proof of corruption at any stage of the investment may be relevant depending on the circumstances. While the UNCAC applies to States rather than private parties, it embodies what has become a principle of customary international law applicable, according to the OECD, to root out corruption used "to **obtain** or **retain business** or other undue advantage **in relation to the conduct** of international business."[38]

104. The Respondent also relies on a generalized doctrine of "clean hands" which is a metaphor employed as a defence to equitable relief in common law jurisdictions. Incorporation of such a general doctrine into investor-State law without careful boundaries would risk opening investment disputes to an open-ended, vague and ultimately unmanageable principle. However, putting aside the label, serious financial misconduct by the Claimants incompatible with their good faith obligations as investors in the host country (such as criminality in defrauding the host Government in respect of an investment) is not without Treaty consequences, both in relation to their attempt to rely on the guarantee of fair and equitable treatment, as well as their entitlement to relief of any kind from an international tribunal.

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[38] *UN Convention Against Corruption, Article 16(1), LHRA-16. See also OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*, Article 1(1), Exhibit LHRA-136:

> Each Party shall take such measures as may be necessary to establish that it is a criminal offence under its law for any person intentionally to offer, promise or give any undue pecuniary or other advantage, whether directly or through intermediaries, to a foreign public official, for that official or for a third party, in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business. (emphasis added) .

See also ICC Dossier: *Addressing Issues of Corruption in Commercial and Investment Arbitration*, Chapter 11, at para. 34, Exhibit LHRA-155:

> It is now undisputed that a finding of corruption when making or performing an investment will lead to dismissal of claimant's claims and to a loss of any protection afforded by the treaty. (emphasis added)

Respondent's Opening Statement, Slide 146.

6.2. The Applicable Standard of Proof

6.2.1. The Respondent's Argument

105. The Respondent notes that many international tribunals have recognized the difficulty of "proving" bribery and corruption. In the nature of things, the parties to such transactions are generally careful to leave no paper trail or other direct or documentary evidence. As a result, if corruption is to be combatted effectively, it is necessary to rely on inferences from circumstantial evidence. A reasonable approach is to identify "red flags" which, if established, require the alleged perpetrators to provide an exculpatory explanation of otherwise suspicious conduct. In *Metal-Tech v. Uzbekistan*,[39] for example, the tribunal considered probative of corruption the Government's evidence of substantial payments to a consultant where:

(a) the consultant lacks experience in the sector,

(b) the consultant is not a resident of the country where the project is located;

(c) the consultant has no significant business presence or experience within the country;

(d) the consultant requests "urgent" payments and/or unusually high commissions;

(e) the consultant requests payments be made in cash, be made in a third country, to a numbered bank account, or to some other person or entity than the one with whom the agreement was signed;

(f) the consultant has a close personal/professional relationship to the Government that could improperly influence the decision.[40]

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[39] Metal-Tech v. Uzbekistan, Exhibit LHRA-157, at para. 293. See also ICC Dossier *Addressing Issues of Corruption in Commercial and Investment Arbitration*, Chapter 5, Exhibit LHRA-160.

[40] *Metal-Tech v. Uzbekistan*, Exhibit LHRA-157, para. 293.

6.2.2. The Claimant's Argument

106. The Claimants contend that the applicable standard of proof of corruption in international law is "**clear and convincing evidence**" which must consist of "substantial facts" not mere "inferences".[41] Relevance is placed on *Waguih Elie George Siag and Clorinda Vecchi v. The Arab Republic of Egypt,* where the tribunal held that "the applicable standard of proof is greater than the balance of probabilities but less than beyond a reasonable doubt." The term favoured by the Claimants is "**clear and convincing evidence**."[42]

6.2.3. The Tribunal's Analysis

107. The Tribunal acknowledges the difficulty of proving corruption as well as the importance of exposing corruption where it exists. In the nature of the offence, the person offering the bribe and the person accepting it will take care to cover their tracks. Nevertheless, given the seriousness of the charge, and the severity of the consequences to the individuals concerned, procedural fairness requires that there be proof rather than conjecture. The standard of "probabilities" requires the trier of fact to stand back and make an overall assessment. The requirement of "clear and convincing" evidence puts the focus more closely on the building blocks of the evidence to ensure a rigorous testing.

108. In the Tribunal's view, there need not be "clear and convincing evidence" on every element of every allegation of corruption, but such "clear and convincing evidence" as exists must point clearly to corruption. An assessment must then be made of which

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[41] *Liman Caspian Oil BV and NCL Dutch Investment BV v. Republic of Kazakhstan*, ICSID Case No. ARB/07/14, Award, 22 June 2010, Exhibit CLA(B)-441, at para. 424:

> … It is not sufficient to present evidence which could possibly indicate that there might have been or even probably was corruption. Rather Claimants have to *prove* corruption…[T]he issue is not one of inference, and the Tribunal considers that Claimants have not met their burden of proof in this regard.

See also *Gustav FW Hamseter GmbH & Co KG v. Republic of Ghana*, ICSID Case No. ARB/07/24, Award, 18 June 2010, Exhibit LHRA-26, at para. 134.

[42] *Waguih Elie George Siag & Clorinda Vecchi v. Arab Republic of Egypt,* ICSID Case No ARB/05/15, Award, 1 June 2009, Exhibit CLA(LH)-069, at para. 326.

elements of the alleged act of corruption have been established by clear and convincing evidence, and which elements are left to reasonable inference, and on the whole whether the alleged act of corruption is established to a standard higher than the balance of probabilities but less than the criminal standard of beyond reasonable doubt, although, of course proof beyond reasonable doubt would be conclusive. This approach reflects the general proposition that the "graver the charge, the more confidence there must be in the evidence relied on."[43]

6.3. Failure of the Respondent to Investigate and Prosecute Persons who Allegedly Accepted Bribes

109. As the Claimants point out, the Respondent has brought no prosecutions against any Government official said to be on the receiving end of the bribes. Nor is there before the Tribunal any evidence of a serious criminal investigation of anyone other than the principals of the Claimant, Mr. John Baldwin and Mr. Sean Scott.

110. Conviction of its own officials would not estop the Government from pursuing the Claimants as bribe-givers.

111. However, in this case, the Tribunal finds it disturbing that **no** prosecutions have been brought against **any** persons alleged to have accepted bribes, nor has there been evidence of due diligence in any investigation. These omissions are relevant to the credibility of the Government's allegations, as will be seen.

6.3.1. First Allegation – Bribes to Obtain the 2009 Flat Tax Agreement

6.3.1.1. The Respondent's Argument

112. The Claimants have repeatedly acknowledged that the Flat Tax Agreement ("**FTA**")[44] was essential to the economic profitability of Savan Vegas. Mr. John Baldwin testified in Singapore that the Claimants would not have built the casino without an FTA:

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[43] *See Libananco* v. *Turkey* (Exh. RLA-117), para. 125; *Rompetrol* v. *Romania* (Exh. RLA-233), para. 182; both relying on the Separate Opinion of Judge Higgins in the *Oil Platforms* case, ICJ Reports 1996, at 856.

[44] Flat Tax Agreement between Laos and Savan Vegas, dated 21 September 2009, Exhibit C(B)-007.

> Q. And would you have built the Savan Vegas casino for $25 million, $30 million if that was the tax you had to pay, if the government refused to give you a flat tax agreement?
>
> A. No.[45]

113. It is alleged that to obtain the original 2009 FTA, a bribe of US $30,000 was paid to Ms. Manivone or Mr. Khamphai, senior officials with the Government tax department, through the Claimants' intermediary or consultant, Madam Sengkeo.

114. The FTA was of great value to the Claimants as it limited most types of tax to a flat sum of US $745,000 per year regardless of the profits made by the multi-million dollar casino operation.

115. The chronology is as follows:

DATE	**ACTIVITY**
29 December 2008	Prime Minister approves FTA in principle
21 September 2009	Flat Tax Agreement signed.
22 September 2009	Internal Sanum e-mail records that Mr. Khamphai requested wire of "agreed payment" to Madam Sengkeo's account "approved" by Mr. Baldwin.[46]
24 September 2009	Internal Sanum e-mail records that **the** "**tax people** are requesting […] $30,000 USD […] to get the flat tax approval."[47]
7 October 2009	Internal Sanum e-mail records that Madam Sengkeo "has provided **her daughter's** bank account" information.[48]
8 October 2009	Internal Sanum e-mail records that Mr. Baldwin instructed the disbursement of funds "by wire" for "service[s] partially rendered". Amounts of US $10,000 and US $20,000 were disbursed from the account "by wire".[49]

[45] Amended Transcript, 5 September 208, p. 89, 12-16.

[46] Emails regarding Flat Tax, Exhibit SRE-152.

[47] *Ibid.*

[48] *Ibid.*

[49] *Ibid.*

116. According to the Respondent, the sequence of dates, and the use of the daughter's bank account in lieu of Madam Sengkeo's own account, raise "red flags".

117. While the FTA had been agreed to in principle in December 2008, Mr. John Baldwin testified that the deal was not done, because "we needed to get the flat tax agreement reduced into a formal document at that specific time."[50] Accordingly, it would have been quite understandable for the payment of a bribe to be delayed until October 2009 when the FTA was signed, as opposed to December 2008 when it was purportedly approved in principle by the Government.

118. In cross-examination, Mr. John Baldwin denied any illegal payment to Madam Sengkeo, but according to the Respondent, Mr. Baldwin's explanation that the reference to payment in October 2009 of US $30,000 to the "**tax people**" meant payment to Madam Sengkeo for her own benefit rather than as a bribe for tax officials is (according to the Respondent) manifestly absurd. In this respect, Mr. John Baldwin testified as follows:

> Q. Isn't this a statement to the CFO of Sanum/Savan Vegas to pay a bribe of $30,000 to a tax official in the Ministry of Finance?
>
> A. No.
>
> Q. How do you interpret it? What does it mean?
>
> A. That the $30,000 success fee was supposed to be paid to Madam Sengkeo and her tax people that were with her.
>
> Q. She is "the Tax people"?
>
> A. Yes.
>
> Q. Did she work for the government then?
>
> A. No.
>
> Q. She didn't? She's not an employee of the Ministry of Finance?

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[50] Mr. John Baldwin testified as follows:

> Q. What was the agreement's substance? I mean, the agreement with Madam Sengkeo, what was the substance of that agreement?
> A. I believe – I – I don't know specifically, but I believe that we needed to get the flat tax agreement reduced into a formal document at that specific time, but Madam Sengkeo's engagement went back nearly a year, is my recollection, and that she helped, through that whole period, to get the flat tax agreement.
> Q. What was the agreement? Why was she getting 30,000? Why not 50,000?
> A. Well, she agreed to take $30,000.

Amended Transcript, 5 September 2018, p.69, 16-25 to 70, 1-3.

A. No.[51]

119. The Respondent adds that the US $30,000 may have gone to Madam Sengkeo in the first instance, but in the Respondent's view, the coincidence of timing with Sanum's apparent need to ingratiate itself with Government officials is fatal to Mr. Baldwin's credibility.

6.3.1.2. The Claimant's Argument

120. The Claimant contends that payment of US $30,000 to Madam Sengkeo was a "success fee" for obtaining the FTA where previous intermediaries had failed.[52] Mr. Baldwin strongly denied any impropriety:

> Q. Down at the bottom of the page it says:
>
> "Dear Billy and Team, Mr Khamphai of the Tax Department and Mdm Sengkeo had just informed us that Joe had picked up the flat tax document at his office [meaning Mr Khamphai's] since 9AM this morning ...
>
> However, he has asked us to wire the agreed payment to Madam Sengkeo's account as followed ..."
>
> And then they give the account number. So isn't this interesting, that **the day that the flat tax agreement is delivered to your employee, he asked that $30,000 is wired that day**?
>
> A. Well, my reading of this is that "he" is Joe.
>
> Q. And who is he saying that the money should be paid to?
>
> A. Madam Sengkeo.[53] (emphasis added)

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[51] Amended Transcript, 5 September 2018, p. 66, 1-15.

[52] Mr. Baldwin testified in his Second Witness Statement in the SIAC case of 8 June 2015 as follows:

> 15. The Government alleges that I authorized payments totaling US$30,000 to Madame Sengkeo Phimmasone, as a bribe to obtain the flat tax agreement issued on 1 September 2009 for Savan Vegas. This too is false. **The payments represented a success fee to Madam Sengkeo** for her efforts to help Savan Vegas negotiate a Flat Tax Agreement with the Lao Government – a project on which she had worked since at least July 2008.
> 16. Initially, it was the ST Group – then our local partner in Laos – that was responsible for obtaining a flat tax agreement for Savan Vegas. However, it failed to do so, thus by mid-2008, we took it upon ourselves to negotiate such an agreement with the Lao Government. In order to have local Lao expertise to assist us, **Savan Vegas offered a success fee to Madam Sengkeo** to lobby for a satisfactory Flat Tax Agreement for Savan Vegas. Madam Sengkeo was a partner of ST, which is how I came to know her. I discovered that she had many high-level connections in the Lao Government. This made her a natural choice for this consulting engagement. (emphasis added)

John Baldwin Second Witness Statement, 8 June 2015, paras. 15-16, Exhibit SRE-159.

[53] Amended Transcript, 5 September 2018, p. 67, 2-18.

121. Mr. John Baldwin testified that there was no reason to bribe any Government employee in September 2009 as the Prime Minister had already agreed to a flat tax agreement in December 2008.[54]

6.3.1.3. The Tribunal's Analysis

122. The Respondent's case is speculative rather than substantial. Madam Sengkeo was in the consulting business. Consultants are paid. While the Claimants never produced a "consulting agreement" with Madam Sengkeo, the evidence is that it is not unusual for consultants to insist on a success fee as part of their remuneration. The effort to obtain a FTA was successful. It was likely worth millions of dollars to the Claimants in reduced taxes. In that context, payment of US $30,000 in 2009 is not a disproportionate "success fee". Moreover, no one was prosecuted in this affair. Even if Madam Sengkeo did not cooperate with the Government, why was her daughter (the owner of the bank account) not investigated? What is the daughter's explanation? The evidence of corruption in this instance is neither clear nor convincing. The bribery allegation in connection with the FTA is not established to the necessary standard for such a serious charge.

6.3.2. Second Allegation – Bribes to Extend the Flat Tax Agreement After Expiry of the 5-Year Term

6.3.2.1. The Respondent's Argument

123. On 18 March 2011, Savan Vegas submitted its proposal to extend the FTA, which was due to expire on 31 December 2014. Six days later, on 24 March 2011, the Claimants paid US $21,000 to Mr. Bouker Noutharath, a retired hospital worker from Olympia, Washington State, United States of America, who had returned to live in Laos. He had no experience as a "consultant" but had good contacts within the Government. On

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[54] Mr. Baldwin testified:

> Q. Would there be any reason to have to bribe anyone when the Prime Minister had already approved your flat tax?
> A. You know, there's no reason to and, plus, obviously, the Prime Minister's office was watching this. The local tax people were watching this, the finance department's watching this. This was a significant project and lots of people were watching it and there's no way. You just wouldn't – couldn't happen.

Amended Transcript, 5 September 2018, p. 151, 2-11.

4 March 2011, he was retained by Savan Vegas[55] as a consultant to lobby in favour of an extension of the FTA. Mr. Baldwin says Mr. Bouker was promised a success fee substantially in excess of US $ 21,000, but Mr. Bouker, who agreed to cooperate with the Government, testified that:

> I have seen the entry in the general ledger that I was sent $21,000 on March 24, 2011. The entry says "prof fee re flat tax acceptance – Brian Nonthavet." RE-131. I remember that Sanum was concerned about extending a flat tax agreement, but **I was not involved** in that issue. **I was sent the $21,000 to deliver it to a government person.** I remember it was Mr. Paoa [of Savan Vegas] who asked me to make this payment about the tax issue but **I cannot remember the name of the Government person** who I gave this payment too.[56] (emphasis added)
>
> * * * * *
>
> These contracts are for fraud reasons. They were drafted and sent to me by lawyer Martin Gersten …They were to provide a cover for the bribes Sanum intended to pay to have the Government extend the Flat Tax Agreement and to obtain the Thakhaek slot club licence.[57]

124. The Respondent believes the unidentified "Government Person" was Ms. Manivone, but Mr. Baldwin testified he was "sure" this was not so:

> Q. Do you know that at the time you were negotiating with Madam Manivone in the tax department of the Ministry of Finance?
>
> A. Well, we were – negotiated with Madam Manivone from 2007 clear through, you know, into 2012.
>
> * * * * *
>
> Q. Isn't it true that Mr Paoa asked Bouker to deliver $21,000 [in 2012] to Ms Manivone in the tax department to help in negotiations for the flat tax agreement?
>
> A. I don't think so.
>
> Q. But you're not sure?
>
> A. I'm sure…[58]

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[55] Bouker Nonthavet Third Witness Statement, 23 May 2014, Exhibit 4, Respondent's Opening Submission, Slide 161.

[56] Bouker Nonthavet First Witness Statement, 2 April 2014, at para. 7.

[57] Amended Transcript, 5 September 2018, p. 90, 20-25.

[58] Amended Transcript, 5 September 2018, p. 86, ll. 7-24.

6.3.2.2. The Claimant's Argument

125. Mr. Bouker received a legitimate consulting mandate. By e-mail dated 21 March 2011, he requested US $21,000 as "an advance". His bank records do not show a withdrawal of US $21,000 but withdrawals of three different amounts on 28 March (US $9,500 cash), 30 March (US $9,000 to his son) and 4 April (US $2,135 cash). Mr. Bouker is a dissatisfied former employee whose testimony is not credible.

6.3.2.3. The Tribunal's Analysis

126. There are inconsistencies in Mr. Bouker's evidence and it is significant that he can remember nothing about (or is otherwise unwilling to identify) "the Government Person" to whom he said he handed US $21,000. There are too many loose ends to his story. There is no evidence that Madam Manivone (the presumed recipient) or anyone else was prosecuted. In the Tribunal's view, the Respondent's evidence does not establish by clear and convincing evidence or on a balance of probabilities that a US $21,000 bribe was offered by Mr. Bouker to any Government official as alleged.

6.3.3. Third Allegation – The Claimants Paid US $500,000 in Bribes in 2012 to (i) Shut Down the E&Y Audit of Savan Vegas and (ii) to Cause the Government to Shut Down the Thanaleng Slot Club to the Disadvantage of ST Holdings

127. On 8 July 2012, Mr. Baldwin wired Sanum's Chief Financial Officer, Mr. Clay Crawford, that "Savan has an extraordinary expense of $500,000 this week. I've tell you about it when we speak on the phone, but please think about our cash situation."[59]

128. Mr. Baldwin accepts that the sum of US $500,000 was subsequently sent to Vientiane including US $300,000 cash in a backpack delivered to Madam Sengkeo by his personal assistant, Bruce Douglas.[60]

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[59] E-mail from John Baldwin to Clay Crawford, 8 July 2012, Exhibit SRE-154.

[60] Transcript, 16 June 2015 Hearing, SIAC Case No. ARB/143/14/MV, pp. 207-208, Exhibit SRE-160:

> Q. You ordered Mr. Douglas on that day, or the day before, rather, the same day you had to have the 200,000 on 11 July you ordered Mr. Douglas to get into an airplane in Cambodia, fly across the border with USD 300,000 in a suitcase, didn't you?
> A. In a backpack.
> Q. You have USD 500,000 going into Vientiane in a two-day period in cash?
> A. Yes.

6.3.3.1. The E&Y Audit

129. Mr. Baldwin acknowledges ordering Mr. Douglas to fly to Vientiane with US $300,000 in cash. It is established that US $300,000 was subsequently deposited in Madam Sengkeo's bank account. She subsequently deposited US $30,000 in her bank account in New York.

130. The Respondent's allegation is that the balance of US $270,000 was paid by Madam Sengkeo to Government officials to stop the E&Y audit of the Savan Vegas which Mr. Baldwin considered part of a Government move to get rid of Sanum and take over the Claimants' gambling assets without compensation.[61]

6.3.3.1.1. The Respondent's Argument

131. The Respondent points out that the alleged "loan" to Madam Sengkeo was undocumented.[62] Only US $15,000 has been repaid.[63] Mr. Baldwin acknowledges that

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[61] Mr. John Baldwin testified in his Third Witness Statement, 22 July 2013, at para. 5:

> …"Even those few Government officials who will still speak with me have admitted that we have been the target of a deliberate campaign to strip Sanum of its investments in Laos. The objective of these efforts appears to be to leave the successful businesses, in which we invested so much and which we spent years developing, in the hands of our local commercial partner, the ST Group...and the senior Lao Government officials who have intimate business and familial connections with ST."

[62] See testimony of John Baldwin, Transcript, 16 June 2015 Hearing, SIAC Case No. ARB/143/14/MV, p. 209, Exhibit SRE-160:

> Judge Barkett: Can I ask a question? Would there be loan documents evidencing this loan?
> A. **Not on this loan. We have made her other loans that there are. This was – she was part owner of Paksong Vegas and a part owner of Savan Vegas, small pieces. We had – she helped us with a lot of things, <u>but she and I become very close friends</u>. When she called us, she said she needed it and I responded to that need.** (emphasis added)

[63] Testimony of John Baldwin, Amended Transcript, 5 September 2018 at p. 41, 14-25 to p. 42, 5-10:

> Q. …first of all, your $300,000 loan that you say you gave Madam Sengkeo in 2012, are there any loan documents for that loan?
> A. No, there are not.
> Q. Has she ever repaid it?
> A. She – she paid me 500,000 Thai baht.
> Q. That's US$15,000?
> A. US$15,000.
> Q. Do you have any record of that payment?
> A. I think so – yeah, I do.
> Q. Have you ever produced it? You have been asked….
> * * * * *
> Q. Okay. But the other – let's assume she gave you US$15,000. The other 285,000 that you lent her in 2012 has not been repaid?
> A. It has not been repaid.
> Q. And we're now in 2018?
> A. Yes.

Madam Sengkeo has not been asked by the Claimants to repay the balance. The US $30,000 deposit in New York was 10% of the US $300,000 transfer. Madam Sengkeo was a "ten percenter", and her receipt of US $30,000 indicates that bribes of US $270,000 were paid.

132. The bribe succeeded, according to the Respondent. On 12 July 2012, Ernst & Young ("**E&Y**") was ordered by unidentified Government officials to stop work on its audit of Savan Vegas.[64] The E&Y audit would have disclosed the Claimants' illegal activities (subsequently uncovered by a BDO audit after the Government ousted the Claimants from the casino) including (the Government alleges) embezzlement and money laundering.

6.3.3.1.2. The Claimant's Argument

133. The Claimant says the US $300,000 was a "loan" to Madam Sengkeo. The New York deposits are unrelated. Madam Sengkeo was closely involved with ST Holdings. There had been a falling out. She thus had an "urgency" for funds when ST Holdings malevolently cut off Madam Sengkeo's regular source of income.[65] Mr. Baldwin was a loyal friend.

6.3.3.1.3. The Tribunal's Analysis

134. Mr. Baldwin's explanation of the US $300,000 payment to Madam Sengkeo is not credible. It is clear on the evidence that Mr. Baldwin and his CFO, Mr. Clay Crawford, were concerned about the threat to Sanum's business posed by the E&Y audit. Mr.

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[64] Letter from Ernst & Young to the Ministry of Finance, Exhibit SRE-53:

> In relation to our final report, we also feel it necessary to remind the Inspection Committee that, since we were instructed by your goodself on 10 July 2012 to cease our fieldwork at Savan Vegas Hotel & Casino (SVC) and to refrain from receiving any additional information and/or documents from SVC on the same day, our final report will only contain our preliminary findings and/or observations for the work performed on documents and information received by us from SVC up till and including 10 July 2012.

[65] Transcript, 16 June 2015 Hearing, SIAC Case No. ARB/143/14/MV, p. 207-208, Exhibit SRE-160:

> Q. What was going on in Vientiane in July 2012 that you needed all that cash there except the Thanaleng case was happening about 10 days later and the E&Y audit was terminated the day before. Those are the two events that I can think of that related to Savan Vegas, what can you think of?
> A. **ST had cut Madame Sengkeo off from any income from their investments, because she had helped us over him, he had cut her off from any money and she lives primarily on money from him. She needed money to pay bills on the hotel she was building. The USD 300,000 is a loan to her.** (emphasis added)

Baldwin had every incentive to influence the Government to call off the E&Y audit in the summer of 2012. It is simply not plausible, as the Claimants argue, that the E&Y audit was stopped because Government officials had concluded that E&Y had *failed* to find incriminating evidence. If that were true, the obvious instructions from the Government to E&Y would have been to keep digging, not to give up and down tools.

135. On the other hand, the Claimants had a powerful motive to stop the audit as Mr. Baldwin and Mr. Crawford knew (and the Government merely suspected) of the existence of financial skeletons in the Savan Vegas books later uncovered by the BDO audit. All in all, the Tribunal concludes that the Claimants got a senior Government official to stop the audit and that the $270,000 was paid through Madam Sengkeo (i.e. $300,000 less 10%) to that Government person or persons.

136. That said, the Tribunal is troubled by the fact that the Government has apparently not identified any bribe-*takers*. The order to E&Y to stop the audit came as a surprise to E&Y and must have been issued by a senior Government source, otherwise the audit would have continued. The Respondent does not suggest that E&Y took the bribe **but E&Y must know who gave its auditors the order to stop work**. The evidentiary trail could then have been followed up the chain of command from the Government person who gave the order to identify the person who authorized the order, who could then have been required to provide the Government (and subsequently the Tribunal) with an explanation for the stop work order.

137. The Respondent has not offered any explanation for this gap in the evidence. In the circumstances, while the evidence of Mr. Baldwin that Madam Sengkeo required the funds for her personal use is deeply unsatisfactory, so too is the Government's apparent failure even to *attempt* (so far the evidence is concerned) to get to the bottom of the matter, not only potentially to punish the wrongdoers, but to provide solid evidence that a bribe was given and taken by Government official(s) to stop the E&Y audit.

138. The Tribunal concludes that it is more probable than not that Madam Sengkeo was used as a conduit to bribe Government officials to stop the E&Y audit, but that this conclusion is not established to the higher standard of "clear and convincing evidence". The Tribunal is satisfied, however, on the lesser standard of a balance of probabilities,

that Mr. Baldwin involved the Claimants in serious financial illegalities in respect of the halt of the E&Y audit.

6.3.3.2. Payment of About $200,000 in Bribes to Shut Down the Thanaleng Slot Club

139. In 2012, the Claimants were experiencing tense relations with their then Laotian partner, ST Holdings. In part, the tensions related to a profitable slot club at Thanaleng, which ST Holdings agreed to joint venture with Sanum. The joint venture was to commence at a future date awaiting the expiry of an earlier arrangement ST Holdings had contracted with a different slot machine supplier. However, when the date for the change-over arrived, ST Holdings refused to proceed with its deal with Sanum.

140. Mr. Baldwin is alleged to have then paid bribes to Government officials through a "consultant", Mr. Anousith Thepsimuong, in an effort to shut down the Thanaleng Slot Club as a pressure tactic to force ST Holdings to negotiate a solution rather than continue with litigation (which the Claimants ultimately lost in the Laotian Courts).

6.3.3.2.1. The Respondent's Argument

141. On 28 July 2012, during the corporate struggle over the Thanaleng Slot Club, the Claimants attempted to obtain leverage over ST Holdings by bribing Government Ministries to shut down the Club. The money was channelled through Mr. Anousith. The sum of US $190,000 was deposited in Mr. Anousith's bank account on 11 July 2012 and a cash withdrawal of US $100,000 was made the following day.[66]

142. Mr. Baldwin testified that Mr. Anousith was paid to lobby "the National Assembly" but this explanation is not credible. The National Assembly has no executive function. Only a Government Minister would have operational authority to issue a stop order against the Thanaleng Slot Club.

143. Mr. Baldwin acknowledged that he could not explain how or why the National Assembly would get involved in such an executive action:

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[66] Extract of ANZ Bank Statement for Mr. Anousith Thepsimoung, Exhibit SRE-153.

> Q. You say that the National Assembly is going to suspend a licence, but did he [the Deputy Prime Minister] ever explain or did you ever find out how the National Assembly would actually do that?
>
> A. No.[67]

6.3.3.2.2. The Claimant's Argument

144. Mr. John Baldwin readily admits that in July 2012 he was doing what was possible to get the Government to close the Thangaleng Slot Club[68], including by a written submission to the country's President. The Claimants say there is no reason to disbelieve Mr. Baldwin's evidence that he was told by the Deputy Prime Minister to lobby the country's National Assembly.[69]

145. Mr. Baldwin denied that money was intended for a Government Minister:

> Q. See, that brings us back to July and this $500,000 pot of money that we have sitting in Vientiane in Madam Sengkeo's bank account – her son-in-law's bank account. Isn't it true that that money was there to stop the court case from having a judgment – the money was there so you could get the slot club shut down and negotiate with Mr Sithat?

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[67] Amended Transcript, 5 September 2018, at p. 9,23-25 to p. 10, 1-4.

[68] Mr. Baldwin testified that he wrote to President Choummaly Sayasone requesting the Government to shut down the Thangaleng Slot Club:

> "Sanum asks that the Government suspend that the slot machine licence at the Vientiane Friendship Bridge. We believe that a temporary suspension will encourage the parties to negotiate and come to terms so they can work together. Once the parties have reached an agreement, formed a joint venture that is approved by the relevant ministries, and determine that they can operate the Vientiane…Bridge Slot Club together, the licence would be reinstated. Until then, Sanum requests your assistance in suspending the licence and allowing time and space to work [together] towards peace with [the] ST Group." Correct? So, as I said, you were trying to get a space to negotiate your way out of this trouble with ST.
> A. Yes.

Amended Transcript, 5 September 2018, p. 7, 19-25 to p. 8, 1-11.

[69] In re-examination, Mr. Baldwin testified about the National Assembly as follows:

> MS DEITSCH-PEREZ: You spoke with Mr Branson about the Thanaleng lobbying. Can you tell us where you first got the idea to lobby the assembly with respect to Thanaleng?
> A. Yeah. I was having breakfast with Deputy Prime Minister Somsavath – we were having oatmeal – and he – I said I got – I have to get – make peace with Sithat somehow and I – how do we do it and he said, you know, it's a tough row, because, you know, she's joined at the hip with Bounnhang – you know, with vice-president Vorachith, Bounnhang Vorachith, and he said I – there's not very many people that are going to be able to help you with this, you've got to make peace with Sithat and Vorachith, so I said, "Well, who can help me do that?", and he said, "Well, two places – the politburo and the National Assembly", and he said the politburo, "That's difficult, so I would suggest that you reach out to the National Assembly."

Amended Transcript, 5 September 2018, p. 171, 3-22.

> A. The money was specifically earmarked to do lobbying with the National Assembly.
>
> Q. Well, we just established that y**ou have a good friend who is the fourth most powerful person in the country**. Wasn't the money for him to shut down the club so you could stop the court decision?
>
> A. No.[70] (emphasis added)

146. The Claimants argue that there is no evidence that Mr. Anousith paid money to any Government official. He received fees as a consultant to lobby the National Assembly to shut down the Thanaleng Slot Club. He was entitled to spend that money as he wished. Laos is a cash economy. Payment of large amounts of cash in respect of legitimate transactions is not unusual.[71] Cash does not signal illegality.

6.3.3.2.3. The Tribunal's Analysis

147. Once again, the payment to Mr. Anousith is deeply suspicious. There is no documentation of any consultancy. There is no explanation of the work for which almost $200,000 were paid to him and deposited in his personal bank account. The mandate to lobby the "National Assembly" seems far-fetched. Moreover, despite the alleged payment of bribes, the Thanaleng Slot Club was not shut down. In the circumstances, the Tribunal is unable to find "clear and convincing evidence" that a bribe was made or even offered through Mr. Anousith. However, on the lower "probabilities" standard, the Tribunal concludes that it is more likely than not that a

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[70] Amended Transcript, 5 September 2018, p. 15, 3-18.

[71] Testimony of Mr. John Baldwin, Transcript, 26 January 2017 Hearing, SIAC Case No. ARB/143/14/MV, pp. 12667-1268, Exhibit SRE-163:

> **Q. And then the next day, on July the 12th there was a withdrawal of a hundred thousand, correct, in cash?**
> A. It shows a withdrawal of a hundred thousand.
> **Q. What did you tell Mr. Anousith to do with that hundred thousand?**
> A. I didn't tell him to do anything with that money.
> **Q. I see. Why did you think he took out a hundred thousand of the 193 you just sent him?**
> A. We paid him a fee, we didn't – it's his money to do with as he wishes.
> * * * * *
> **Q. Was his job to get a government minister to shut down the Thanaleng Slot Club?**
> A. No.
> **Q. What was it to do?**
> A. We had hired, we had hired him to lobby the national assembly to ask them to shut down the Thanaleng slot club. (emphasis added)

bribe was paid to an unidentified Government official or officials in an unsuccessful effort to advance the Claimants' agenda at the Thanaleng Slot Club.

6.3.4. Fourth Allegation – The Claimants Arranged for a Further $575,000 Bribe to Madam Sengkeo to Prevent Her from Testifying in These Proceedings

148. In 2014, when the initial phase of these proceedings was pending, the Government sought to have Madam Sengkeo testify. To that end, she was provided with a written assurance of immunity dated 7 May 2014, if she provided "information and documents related to offering of bribery to government of [sic] official(s) who were performing accounting audit activities at Savan Vegas and Casino Co., Ltd."[72]

149. At a pre-hearing conference on 14 May 2014, the Claimants (amongst other matters) applied to the Tribunal to allow Mr. Baldwin to make a "personal loan" to Madam Sengkeo of US $575,000.[73] Given the importance and sensitivity of Madam Sengkeo's evidence potentially to be given at the merits hearing, the Tribunal declined to give its permission for a US $575,000 loan to her from Mr. Baldwin.

150. The initial hearing on the merits proceeded in Singapore in June 2014. Madam Sengkeo did not attend to testify for the Government.

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[72] Letter of Immunity from Government's Anti-Corruption Office dated 07/05/2014, Exhibit SRE-140:

LETTER OF ASSURANCE

Re: Protection of the rights and best interests of individuals who provide information for anti-corruption purpose

The President of the Government Inspection Committee issues a Letter of Assurance for protection to Ms. Sengkeo Phimmasone, aged 60, a business person, residing at Xangkhou Village, Xaythany District, of Vientiance Capital. The assurance of protection is for her contribution in the anti-corruption efforts by providing information and documents related to offering of bribery to government of official(s) who were performing accounting audit activities at Savan Vegas and Casino Co., Ltd. In accordance with Article 08, Chapter I of the Law on Anti-Corruption, the Government Inspection Committee issues this Letter, and informs the ministries and organizations, provinces and domestic and foreign organizations to acknowledge based on this Letter of Assurance for Ms. Sengkeo Phimmasone, and this Letter serves as legal evidence.

[73] See evidence of Mr. John Baldwin, Transcript, 26 January 2017 Hearing, SIAC Case No. ARB/143/14/MV, p. 1391, Exhibit SRE-163, Respondent's Opening Submission, Slide 182.

6.3.4.1. The Respondent's Argument

151. Mr. John Baldwin, having been denied the Tribunal's permission, arranged for a third party, Mr. Gary Morris,[74] to make Madam Sengkeo a US $575,000 "loan" which was undocumented and was not in fact a loan,[75] but an inducement to keep Madam Sengkeo from testifying. There is no evidence that the Claimants' loan of US $300,000 in July 2012 or the third party "loan" of US $575,000 of May 2014, being a total of

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[74] Testimony of Mr. John Baldwin, Transcript, 16 June 2015 Hearing, SIAC Case No. ARB/143/14/MV, p. 213, Exhibit SRE-163:

> Mr. Branson: Mr. Baldwin, did you ever provide that additional loan guarantee of 575,000 to Ms. Sengkeo?
> **A. No**.
> Q. What did you do instead?
> **A. I asked one of my friends to lend her money on other assets.**
> Q. Did you guarantee that loan?
> **A. I did not have to.**
> Q. Mm?
> **A. I did not have to.**
> Q. Why not?
> **A. The assets that she pledged were of sufficient value that he was content with the loan that was made.**
> Q. Okay, so you arranged for her to get another loan?
> **A. Yes.**

[75] Amended Transcript, 5 September 2018, p. 43, 12-23:

> Q. When did Madam Sengkeo ask you for the $575,000?
> A. My recollection is perhaps two weeks before the [ICSID] hearing [in May 2014]. (p. 25, 16-18)
> * * * * *
> Q. I see. So in May 2014, when your counsel asked this tribunal to allow you to pay her or lend – guarantee, rather, $575,000, what did you do after the tribunal refused to bless that?
> A. I started asking mutual friends, people that I know, to lend money, if they would lend – make her a loan. (p. 27, 19-25)
> * * * * *
> Q. And what loan documentation did he get to secure that loan?
> A. My understanding, and my recollection, is that there are mortgages – there were mortgages given by Madam Sengkeo on significant pieces of real estate that she owned in Vientiane. (p. 28, 8-13)
> * * * * *
> Q. – to ask Madam Sengkeo?
> A. No.
> Q. How about your good friend, Gary Morris, have you asked him to show you any loan documents that he has?
> A. No.
> Q. So the two people that, supposedly, are your good friends haven't produced any documents to you to produce to the tribunal?
> A. No.
> Q. Has she paid back the 575 to Mr Morris?
> A. I don't know.

US $875,000 has been repaid except for US $15,000, leaving US $860,000 not accounted for.[76]

6.3.4.2. The Claimant's Argument

152. Mr. Baldwin had a long-standing business relationship with Madam Sengkeo which, over time, developed into personal friendship. It was perfectly normal for Madam Sengkeo to seek a personal loan and for Mr. Baldwin to arrange it. There is no evidence whatsoever that the loan of US $575,000 or any part thereof was intended by Mr. Baldwin, or understood by Madam Sengkeo, as an inducement not to testify. Madam Sengkeo,[77] who now lives outside Laos, was being improperly pressured by the Government to give false evidence to support its bribery and corruption case[78] and it is therefore quite understandable that she wished to avoid being a witness. Mr. Baldwin's explanation of the loans to Madam Sengkeo is not rebutted and there is no evidence inconsistent with his version of events.

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[76] Testimony of Mr. John Baldwin, Transcript, 26 January 2017 Hearing, SIAC Case No. ARB/143/14/MV, p. 1392, Exhibit SRE-163:

> Q. Has Ms. Sengkeo paid any of that money back?
> A. I don't know.
> Q. It means that, as we sit here today, that you lent her 300,000, Mr. Morris, Mr. McCain's colleagues lent her 575, that's $875,000. Has she paid you back?
> A. She paid me back 500,000 baht.
> Q. That's 15,000 US?
> A. Baht money.

[77] Mr. Baldwin testified to his friendship as follows:

> …but my friendship with Madam Sengkeo is – is - I mean, Madam Sengkeo and I had a great relationship. I mean, it wasn't - she is my friend. I mean, she - we went to many, many, many dinners. I hung out with her family. We – you know, she's my friend. I mean, there was nothing untoward about my business relationships with her.

Amended Transcript, 5 September 2018, p. 38, 12-20.

[78] Mr. John Baldwin testified in re-examination:

> Q. What else did you hear from Peep about Madam Sengkeo's situation?
> A. Madam Sengkeo has been under – it's been – what I've been told is that Madam Sengkeo has been under a great deal of pressure by the government of Lao to sign documents making allegations that were not true and she has been very worried about the consequences of this on not only just her economic state, her property holdings and even her personal safety –
> JUDGE BINNIE: When you say you have been told, who told you?
> A. Peep. Peep told me, and the – madam – Peep [a Sanum employee] has expressed to me that Madam Sengkeo has expressed to her that she just feels there's an enormous amount of pressure and an enormous amount of personal harm that she is subject to if she doesn't do everything the government asks her to, whether it's true or not. It's there – she says it's been stressed to her it doesn't matter that it's true; she needs to help the government of Lao in their efforts.

Amended Transcript, 5 September 2018, p. 161, 4-25.

6.3.4.3. The Tribunal's Analysis

153. The US $575,000 loan, coming on top of the previous loan of US $300,000, of which only US $15,000 were repaid bristles with "red flags". Mr. Baldwin clearly intended to sidestep the Tribunal's denial of permission by arranging for the US $575,000 loan from a third party. Given Madam Sengkeo's central role in dealings between the Claimants and the Government over many years, her testimony would have shed crucial light on the legality or illegality of many of the disbursements at issue in the Respondent's allegations.

154. Mr. John Baldwin testified:

> Q. So when **Mdm Sengkeo withdrew US$80,000 in cash on July 20**, the day before you went to visit your good friend, the **Deputy Prime Minister**, what do you think she was going to do with those US dollars?
>
> A. It was Mdm Sengkeo's money to do what she wanted. She represented to me that **she needed the loan to pay construction bills**.[79] (emphasis added)

155. It cannot be said that the bare payment of US $875,000 to Madam Sengkeo is "clear and convincing evidence" of bribery. There is no evidence to contradict Mr. Baldwin's evidence of her need for funds. There are other possible explanations for their disbursement.

156. On the whole, however, while the Tribunal is unable to find "clear and convincing evidence" that the money was paid to Madam Sengkeo to bribe Government Ministers, the Tribunal is nevertheless satisfied on the lower standard of balance of probabilities that Mr. Baldwin and Madam Sengkeo were involved in channeling funds illicitly to Lao Government officials, and further that she was paid to secure her loyalty and to avoid her testifying on behalf of the Government, thereby obstructing justice.

157. The coincidence of the timing of "loans" of US $875,000 (less one repayment of US $15,000) to Madam Sengkeo and the Claimants' urgent need for Government intervention on its behalf at critical junctures of its business (the termination of the E&Y audit and the attempt to shut down the Thanaleng Slot Club), together with Madam Sengkeo's role as the Claimants' principal go-between with the Government, which

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[79] Amended Transcript, 5 September 2018, p. 23, 4-11.

Mr. Baldwin describes as a corrupt Government, compels an inference of Mr. Baldwin's unlawful conduct and through Mr. Baldwin, the culpability and bad faith of both LHNV and Sanum, on whose behalf he acted.

158. The Government's failure to track down bribe-takers or to provide a convincing explanation of its efforts (even if on occasion unsuccessful) to do so, weighs against the Government's case, although the fact that the key witness, Madam Sengkeo, herself refused to cooperate made the Government's task more difficult.

159. Possibly the Government prefers to spare itself some embarrassment by declining to put whatever it knows about "bribe-*takers*" into the record of the Tribunal.

160. Be that as it may be, the circumstances disclosed to the Tribunal do not rise to the level of "clear and compelling evidence" of corruption.

161. However, the Tribunal's conclusion that corruption of Government officials is established to the lower standard of "balance of probabilities" is relevant to the issue of the Claimants' good faith, which is dealt with below.

6.3.5. Fifth Allegation – Bribery Scheme in June 2015 to Restore Control of Savan Vegas to the Claimants

162. The Respondent seized control of the Savan Vegas and gambling facilities on 15 April 2015. Its right to do so was eventually confirmed by an arbitral tribunal constituted under the SIAC by its Award dated 29 June 2017.[80]

163. Prior to the SIAC Award, however, the Claimants asserted a right under the 2014 Settlement to take back control[81] on the basis they had managed to sell their investments on the open market prior to the 15 April 2015 deadline imposed as a term of the

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[80] SIAC Award dated 29 June 2017.

[81] Email from Mr. Gene McCain to Mr. John Baldwin and Mr. Shawn Scott dated 15 May 2015, Exhibit SRE-156:

> The Buyers have also made it clear that Sanum Investments Ltd. must be given back control of the management of the Casino for the Buyers to regain confidence that the Laos government will honor the Deed of Settlement and so that Sanum can be given time to get the revenue and operations back to where they should be. The Buyers are [sic] require that the Deed of Settlement be reinstated and that the terms of the Deed are followed.

Respondent's Opening Submission, Slide 195.

Settlement with the Government. The allegedly genuine third-party offer to purchase dated 14 April 2015 was from an entity called **MaxGaming Consulting Services Limited (Macau)** ("**MaxGaming**").[82] Its CEO, Mr. Angus Noble, represented in writing that MaxGaming had funds available to complete the transaction and intended to do so.[83] In testimony before the SIAC tribunal in January 2017, Angus Noble acknowledged that these representations were false.[84] He repeated this retraction to this Tribunal at the Hearing. The MaxGaming transaction did not proceed and was found by the SIAC tribunal to be a sham.[85] Having heard Mr. Noble's evidence, this Tribunal also concludes that the 14 April 2015 offer was a sham. Indeed Mr. Noble more or less concedes that it was a sham.

6.3.5.1. The Respondent's Argument

164. The MaxGaming offer was a fraudulent scheme perpetrated by the Claimants in order to regain control of Savan Vegas[86] from the Government. The Claimants had every

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[82] Email and attachment from Mr. Tucker Baldwin to Mr. Gene McCain dated 10 June 2015, Exhibit SRE-157:

> I, the undersigned, hereby acknowledge that Sanum Investments Co., Ltd. is aware of and supportive of Mr. Eugene McCain and Mr. Ben Gersten acting on behalf of Maxgaming Consulting Services, Ltd. in their efforts to resolve the Savan Vegas and Gaming Assets dispute such that the terms of the Deed of Settlement and the original PDA and Land Concession rights are reinstated and implemented on terms which will allow Maxgaming to complete their purchase of Savan Vegas Casino.

[83] Letter from Mr. Angus Noble to Mr. John Baldwin and Mr. Shawn Scott dated 29 April 2015, Exhibit SRE-155:

> I have reconfirmed that our funds are available and allocated for this acquisition. My partners in the acquisition are eager to complete the purchase and move forward on their plans for expanding and upgrading the facilities. With the major changes in the Macau gaming industry, our acquisition of Savan Vegas could not be better timed.

[84] Testimony of Gus Noble, Transcript, 26 January 2017 Hearing, SIAC Case No. ARB/143/14/MV, p. 1484, Exhibit SRE-163:

> **Q. Is any of that true?**
> A. No, it is not.
> **Q. Wasn't true?**
> A. No.

Respondent's Opening Submission, Slide 190. See also Testimony of Gus Noble, Transcript, 26 January 2017 Hearing, SIAC Case No. ARB/143/14/MV, pp. 1493-1494, Exhibit SRE-163:

> **Q. They say your financial backers. At that time you didn't have any financial backers, did you, June 9, 2015?**
> A. No, I did not.

Respondent's Opening Submission, Slide 199.

[85] SIAC Award dated 29 June 2017.

[86] Email and clean copies of Gersten's Consulting Agreement, Exhibit SRE-158, Respondent's Opening Submission, Slide 186. Consultants were retained to advance the transaction for success fees totaling US $11 million.

interest in pre-empting the Government's seizure of Savan Vegas and putting a halt to the Government's access to the books of Savan Vegas and records targeted by a Government audit into alleged wrongdoing at Savan Vegas including money laundering and embezzlement.

6.3.5.2. The Claimant'sArgument

165. While unrealistic, Mr. Noble genuinely believed he could orchestrate the purchase, which he testified was, for him, "the chance of a lifetime."

6.3.5.3. The Tribunal's Analysis

166. The MaxGaming offer was indeed a sham, but bribery and corruption, as opposed to fraud and chicanery, is not established.

6.3.6. Sixth Allegation – Miscellaneous Acts of Bribery and Corruption

167. Other allegations of bribery and corruption were made:

(a) offer of a US $7 million bribe to the Prime Minister of Laos for approval of a licence to establish a casino in the capital city of Vientiane;[87]

(b) a bribe of US $80,000 to the Governor of the Province of Champasak to approve a slot club at Chong Mek;[88] and

(c) bribes totalling US $106,000 to Government officials to enable the opening and continued operation of the Paksan Slot Club.[89]

There is no "clear and convincing" evidence against the Claimants in support of any of these additional claims of bribery and corruption.

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[87] Respondent's Counter-Memorial, para. 97.

[88] Respondent's Counter-Memorial, paras. 100-101; Respondent's Rejoinder, paras. 21-22.

[89] Respondent's Counter-Memorial, paras. 102-104.

168. As the Claimants point out, the Respondent has identified only two possible Government bribe takers, namely Mr. Bounnong (but there is no indication he has been investigated) and Madam Manivone. The evidence is that Madam Manivone was put under investigation only after refusing to testify for the Respondent.[90] The Claimants state that on 29 May 2014, the Respondent promised its Rejoinder would reveal the results of its investigation. It did not.

169. The Claimants complain, rightly, that the Respondent's failure to offer any credible explanation for not pursuing the investigation of its own employees, or indeed even to attempt to identify the alleged bribe-takers, weighs against the credibility of these miscellaneous allegations.[91]

170. Nevertheless, in the Tribunal's view, none of these additional allegations is supported by sufficient evidence to warrant further inquiry or comment.

6.4. The Claimant's Lack of Good Faith

171. Much of the Claimant's case rests on the allegation that it proceeded in all respects in good faith but was thwarted at every turn by a corrupt and devious Government acting in bad faith. On the contrary, the evidence is clear that the Claimants dealt in bad faith with the Government from the initial signing of the Paksong Hotel and Casino PDA calling for a US $25 million hotel and casino to the financial irregularities in the operation of the Savan Vegas Hotel and Casino. The Claimants never intended to build a US $25 million facility in Paksong. From the Claimants' perspective, the benefit of

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[90] See the Respondent's email to the Tribunal dated 29 May 2014, Claimants' Closing Submission, Slide 12.

[91] The Claimants cite *Wena Hotels Ltd. v. Arab Republic of Egypt*, ICSID Case No. ARB/98/4, Award, 8 December 2000, CLA(LH)-070, which rejected the Government's bribery defence in part for failure to show the implicated Government official was investigated and prosecuted:

> 116. Although the Tribunal believes Minister Sultan's testimony that he was not personally aware that "Mr. Kandil was an agent to Farargy" and that when he did learn about it, "I passed that to the prosecutor requesting a full-fledged investigation", it is undisputed that Mr. Kandil was never prosecuted in Egypt in connection with this agreement. Regrettably, because Egypt has failed to present the Tribunal with any information about the investigation requested by Minister Sultan, the Tribunal does not know whether an investigation was conducted and, if so, whether the investigation was closed because the prosecutor determined that Mr. Kandil was innocent, because of lack of evidence, or because of complicity by other government officials. Nevertheless, given the fact that the Egyptian government was made aware of this agreement by Minister Sultan but decided (for whatever reasons) not to prosecute Mr. Kandil, the Tribunal is reluctant to immunize Egypt from liability in this arbitration because it now alleges that the agreement with Mr. Kandil was illegal under Egyptian law.

the Paksong PDA was a monopoly to block other more serious investors from offering gambling facilities in Champaska and Salavan Provinces. Having obtained the monopoly, the Claimants attempted to force the Government's hand in relocating the project to what, from the Government's perspective, was a much less attractive site. The bad faith continued through the disputes over the Savan Vegas Hotel and Casino, which was built but operated in defiance of Sanum's reporting obligations to the Government (and, when the books were eventually opened, revealed significant financial irregularities). The bad faith continued further up to its recent efforts to deter Madam Sengkeo's appearance to testify at the merits proceeding and the sham MaxGaming offer to purchase Savan Vegas in April of 2015.

172. The principle of good faith arises in investment treaty arbitrations in various contexts. Tribunals, of course, regularly refer to Article 31(1) of the VCLT for the rule that treaties shall be interpreted in good faith. The obligation extends to a duty of parties to arbitrate in good faith.[92] In *Phoenix v. Czech Republic*, the tribunal referred to Phoenix's "initiation and pursuit of this arbitration" as "an abuse of the system of international ICSID investment arbitration."[93] (The tribunal found an abuse of rights in that case by the "claimant's creation of a legal fiction in order to gain access to an international arbitration procedure to which it was not entitled."[94])

173. The Tribunal listened carefully to the testimony of Mr. John Baldwin and found him to be an argumentative witness who preferred evasion to candour. Much of his testimony was simply not credible. He proceeded in bad faith from the outset in assuring the Government that he intended to invest US $25 million at the Paksong site, which by his own account was likely to be highly unprofitable.

174. Mr. Baldwin is the directing mind of both Claimant companies. His conduct throughout was to advance their corporate interests. His bad faith conduct is their conduct. While

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[92] *Libananco Holdings Co Limited v. Republic of Turkey*, ICSID Case No. ARB/06/8, Final Award, Exhibit CLA-168, where good faith was discussed in the context of the alleged interception and surveillance by Turkish police of legally privileged communications between the claimant, its counsel and witnesses. See also Born, *International Commercial Arbitration* at pp. 1008-1014 and *Methanex Corporation v. United States of America*, UNCITRAL (1976), Final Award, Exhibit CLA-259.

[93] *Phoenix Action, Ltd. v. The Czech Republic*, ICSID Case No. ARB/06/5, at para. 144, Exhibit RA-25.

[94] *Ibid*., para. 143.

the Government's conduct was at times aggressive and inappropriate in relation to the Settlement (as documented, for example, in the Second Material Breach Application), nevertheless the Claimant failed to establish that the Government acted in bad faith in relation to the investors or the investments.

175. It is well established that the bad faith conduct of the investor is relevant to the grant of relief under an investment treaty.[95]

176. To summarize, the particular acts of bad faith by Mr. Baldwin on behalf of the Claimant of most concern to the Tribunal are:

(a) misrepresentations made to the Government to obtain Paksong Hotel and Casino PDA on the strength of a promise to make a US $25 million investment on the site which, in the Tribunal's view, the Claimants never intended to pursue;

(b) likely making illegal payments to Government officials to stop the E&Y audit of the Savan Vegas Hotel and Casino;

(c) likely attempting to obstruct justice with the payment of US $875,000 to Madam Sengkeo directed, as to US $575,000, to the obstruction of the due process of this arbitration by paying Madam Sengkeo not to testify;

(d) attempting to mislead the Treaty Tribunals with the sham offer to purchase the Savan Vegas from MaxGaming Consulting.[96]

177. As will be seen, the Claimant's claims for expropriation fail on the facts. However, having listened to Mr. Baldwin's explanations over several hearings of his dealings

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[95] See UNCTAD Series on International Agreements III, *Fair and Equitable Treatment* (2012) at pp. 83-85:

> Investor conduct has emerged as a relevant factor in the analysis of FET claims by arbitral tribunals. It may be relevant in two ways. First, **it may justify the measure taken against the investor by the respondent country**. Thus in *Genin v. Estonia*, the tribunal found that the Estonian national bank had good reasons to revoke the operating license of the claimant's investment because the claimant had failed to disclose relevant facts. In such cases, the adverse measure serves as a State's reaction to, or a sanction for the investor's conduct…**Fraud or misrepresentation on the part of an investor may form the basis of a legitimate regulatory interference with its rights. In such cases, even the outright termination of the investment may be justified, provided it is a proportionate response to the investor's conduct in light of the relevant domestic laws of the host State**...in some situations, an investor's own conduct may be held to be a cause for the harm suffered.

[96] Although the MaxGaming incident occurred after the date of Settlement, it was fully debated at the Hearing and formed part of the corpus of the bad faith allegations.

with Laos, the Tribunal wishes to leave in no doubt its conclusion that Mr. Baldwin and Sanum exhibited manifest bad faith in various efforts not only to manipulate the Government to advance their gambling initiatives but, in the instance of Madam Sengkeo, to manipulate the arbitration process itself.

7. THE CLAIM FOR EXPROPRIATION

7.1. Thanaleng Slot Club

7.1.1. Background

178. At its origin, the dispute underlying the Thanaleng claim is a contractual dispute between two private parties, Sanum and ST. They had signed a **Master Agreement** on 30 May 2007, where they agreed "to negotiate and work towards entering into certain joint ventures, represented by necessary agreements, which shall convey 60% of all 2nd Party's [ST] gaming businesses located in the country of Lao PDR … This Agreement is not intended to be a definitive agreement but only provides the Parties' general understandings of their relationship. The Parties agree to work together in good faith to negotiate and finalize all necessary agreement to fully implement the concept and terms set forth in this Agreement."[97] The Respondent's treatment of the Thanaleng situation is part of the "totality of the facts" said by counsel for the Claimants to be relevant to Sanum's Treaty claims.[98]

179. On 4 October 2008, Sanum and ST signed a Participation Agreement for Thanaleng ("**Participation Agreement**"). Under this agreement, Sanum agreed to supply to ST certain slot machines, on a "generated revenue sharing/participation basis."[99] This agreement was meant to expire on 11 October 2011 when an existing contract of ST with another supplier of slot machines expired. As explained by Sanum, "the expiration of the Participation [Agreement] is only the end of percentage of profit distribution and proportion of shareholding of each party in the business participation of the Slot Club, which shifted from ST Group who used to receive 60% to receive 40% instead, and

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[97] Master Agreement, Exhibit C(B)-1.

[99] Participation Agreement, Exhibit C(B)-6.

Sanum who used to receive 40% to receive 60%, and at the same time (after 11 October 2011) there shall change or create a joint venture company of which Sanum holds 60% and ST Group 40%."[100]

180. The controversy arose because Sanum and ST disagreed on whether the Master Agreement remained in force and was valid and created binding obligations on the parties, despite the expiration of the Participation Agreement. Was the Participation Agreement a temporary agreement just to cover the period of time when other slot machine supplier contracts were in place? Once those machine supplier contract expired on 11 October 2011, did the Master Agreement and other agreements referenced above remain in effect and control the contractual relationship between Sanum and the ST Group?[101]

7.1.2. The Claimants' Argument

181. The Claimants argue that they were deprived of their investment by flawed court proceedings tainted by interference by the Respondent and without payment of compensation. The Claimants summarize the measures for which they seek relief as follows: "Beginning with premature termination of the OEDR proceedings on orders from the Minister of Justice, and police participation in Sanum's eviction from the Thanaleng Club, and ending with manifestly unreasonable judgments rendered by the courts of Laos, Respondent directed a result in favor of ST that deprived Sanum of its entitlement to 60% of the revenues generated by its investment in the Thanaleng Slot Club. The entire process was marred by manifest procedural defects, as well as producing a result that was substantially unreasonable."[102]

182. At the closing of the Hearing, the Claimants confirmed that their Thanaleng claim in this proceeding is not based on denial of justice but on the allegation that the totality of

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[100] See Sanum's Defense and Counterclaim in the proceedings before the Lao Commercial Court dated 3 July 2012, Exhibit C(B)-181.

[101] *Ibid*. The term "supplier contract" is used in singular or plural indistinctly in the original text.

[102] Claimants' Closing Submission, Slide 25; Amended Transcript, 7 September 2018, p. 23, 21-25 to p. 25, 8-21.

the Respondent's treatment substantially deprived the Claimants of the enjoyment of their investment without the payment of compensation.[103]

183. The Claimants insist that Sanum did have an ownership interest in Thanaleng as established in the Master Agreement, and invested millions of dollars in Thanaleng. The Claimants argue that the Respondent's interpretation of the Master Agreement is contrary to the understanding and conduct of the parties to this agreement; it was a binding agreement that contemplated future negotiations between Sanum and a would-be supplier of slot machines and not between Sanum and ST. The fact that the Master Agreement contemplated additional agreements does not detract from its binding character. The Claimants point out that when ST sought the judicial annulment of the Master Agreement, the document was described as the "basic agreement defining rights in order to manage the relations between both parties."[104]

184. The Claimants dispute the relevance of the cases relied on by the Respondent because in the instant case the Respondent consistently treated the Master Agreement as legally binding, "[o]nly Laos – for the first time in these proceedings – has ever characterized the Master Agreement as an agreement to agree that did not generate legally enforceable rights."[105]

185. According to the Claimants, ST refused repeatedly to accept payment in exchange for a contractually-required exchange of rights which did not extinguish the rights of Sanum, "but merely constituted another breach by ST of its obligations to relinquish control of the club to Sanum."[106]

7.1.3. The Respondent's Argument

186. The Respondent submits that the decision of the Lao Courts concerns a private dispute between ST and Sanum and there was nothing untoward in the various judicial proceedings in Laos. According to the Respondent, the Claimant has committed abuse of process by pursuing contradictory claims in parallel arbitrations against Laos based

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[103] Claimants' Closing Submission, Slide 68.
[104] Claimant's Reply, para. 37.
[105] *Ibid*., para. 39.
[106] *Ibid*., para. 48.

on the same treaties and the same economic interests. In this respect the Respondent, at the Hearing, recounted the timeline of the procedure:

> We have in July 2012 the decision of the Lao Commercial Court. Immediately, before they exhausted their local remedies, which they are required to do under international law, they filed this arbitration alleging that the Thanaleng court decision was a denial of justice and an expropriation. Later they amended to say it's an expropriation.
>
> In June 2015, there was a decision by the LHNV tribunal on the first material, the breach application. They didn't prevail.
>
> Three months later, they filed the SIAC arbitration against ST on the same contracts, alleging that the Lao court proceedings had no meaning, they were just -- how would one say it?
>
> One would say their view of the Lao court proceedings in Singapore was that they were a voluntary mediation. If you don't like the result of a mediation, you withdraw and you go to court. That's how they're treating the Lao court proceeding when they go to Singapore: it didn't matter, is it wasn't definitive.
>
> So, they get an ST SIAC Award in August 2016. They filed it in the Lao courts in 2017.
>
> Then the Lao courts refused to enforce it in August 2017. On 1 September 2017, they filed a denial of justice claim in the new ICSID arbitration. Then in December 2017, the second material breach application was granted, reinstating this tribunal to hear the Thanaleng case again.
>
> So they have these conflicting – once you issued the second material breach decision, it revived these two treaty claims that are in conflict with the treaty claims they had filed in September 2017.[107]

187. The Respondent further explained:

> Sanum said in these cases that the 26 July 2012 decision of the court was expropriation number one. They said their rights were expropriated, that's the claim here, and they filed the first BIT claims in August 2012.
>
> But the second BIT arbitration says that the date of expropriation was August 2017 when the Lao courts refused to enforce the SIAC award, and that's the subject of the second BIT arbitration.
>
> So you have these inconsistent claims made by the same claimant under the same treaties, based on the same facts. We say that's an abuse of process.[108]

7.1.4. The Tribunal's Analysis

188. The Thanaleng claim relates to a dispute between the Claimants and ST. It concerns the Respondent only to the extent of the Respondent's alleged interference in court

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[107] Amended Transcript, 3 September 2018, p. 143, 6-25 to p. 144, 1-17.

[108] *Ibid*., p. 145, 5-19.

proceedings, and only if its actions could be characterized as a violation of international law.

189. The Claimants have placed the weight of their argument on the alleged interference of the Respondent in the Lao Commercial Court proceedings in 2012. But the dispute resolution provision in the Master Agreement (Article 2.10)[109] provides for a four-stage mechanism. At the fourth stage, after a party to the Master Agreement has exhausted the remedies available in the Lao Courts, it may submit the dispute to arbitration if it is unsatisfied with the result without the need to demonstrate a breach of due process or other violations in the conduct of the court proceedings.

190. The Claimants also explained that the four-step mechanism provided for in the Master Agreement has been found to violate Lao law and, therefore, "any award rendered under the mechanism that differed from the judgment of the Lao Courts would [not] be enforceable in Laos (the only country where the ST's assets are now located) as a matter of Lao public policy.'"[110]

191. Sanum has exercised in full the four levels of remedies provided for in the Master Agreement. After exhausting its recourse to the Lao Courts, Sanum initiated the SIAC arbitration in 2015. In 2016, the SIAC tribunal awarded Sanum the $200 million it had claimed.

192. The Claimants say that they have not been able to enforce the SIAC award and link the inability to enforce it to the alleged interference of the Respondent in the Lao Commercial Court in 2012. As explained by the Claimants at the Hearing:

> The problem is, looking at the totality of the circumstances, the Lao Court of Appeals – and that's the highest level in an enforcement proceeding – won't

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[109] "If any dispute shall arise, the Parties agree to conduct an amicable negotiation. If such dispute cannot be settled by mediation, the Parties may submit such disputes to the Resolution of Economic Dispute Organization or Courts of the Lao PDR according to the provision and law of Lao PDR in accordance with this Agreement. All proceedings of the arbitration shall be conducted in Lao and English languages.

Before settlement by the arbitrator under the Rules of the Resolution of Economic Dispute Organization, the Parties shall use all efforts to assist the dispute resolution in accordance with the laws of Lao PDR.

If one of the Parties is unsatisfied with the results of the above procedure, the Parties shall mediate and, if necessary, arbitrate such dispute using internationally recognized mediation/arbitration company in Macao, SAR PRC." Master Agreement, C(B)-001.

[110] Claimant's Closing Submission, Slide 69.

> allow enforcement of the SIAC award and so the original action that the government took in ramming the original decision through to benefit ST and forcing claimants to have to go to that additional stage, to have to go to the fourth stage, that allowed ST the time to move all of its assets back into Laos and put the claimants in a position where they would be dependent on going to Laos to enforce the award against ST where the same thing, or worse, could happen. So, there was a distinct consequence at the stage of the measure relating to the Thanaleng proceeding in 2012.
>
> Even if the claimant could then go on to the SIAC proceeding, which it did, there was still a consequence and there was still harm caused by that action, because being able to go to the fourth tier, that didn't right the ship. That didn't enable Sanum to have a clear path to recovery. So there's still consequences to what the government did in 2012."[111]

193. The Claimants want to skip over the fact that Sanum has a valid arbitral award against a private party in which it was awarded 200 million dollars after it exhausted the remedies in the Lao Courts for the alleged interference of the Respondent in the Lao Commercial Court back in 2012. The alleged inability to enforce the award is not before this Tribunal and it has not been proven by the Claimants that "there was a distinct consequence [of the Government's alleged interference] at the stage of the measure relating to the Thanaleng proceeding in 2012."[112] There is simply no persuasive evidence that the alleged interference of the Respondent in the proceeding of a lower court interfered with the steps taken by the Claimants to exercise their rights under the Master Agreement and, in particular, their recourse to SIAC arbitration.

194. The Claimants say their claim in the SIAC arbitration was not for the full amount of the value lost in Thanaleng. The Claimants explained why Sanum capped its claim for damages:

> in part because ST did not appear and that raised the issue of whether or not they were going to hide assets, such that it was fruitless to seek the full value of Thanaleng. The full value of Thanaleng, I know we're bifurcated so we're not going to talk very much about those kind of things, but the full value of Thanaleng is more than 400 million in order to not have the fees, and in light of the practical recognition that ST was likely hiding its assets, we capped the SIAC claim at 200 million. So it won't be possible to recover the full amount from ST to cover the cost of the damage that the government caused by directing the Thanaleng case in Laos.[113]

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[111] Amended Transcript, 7 September 2018, p. 40, 19-25 to p.41, 1-17.

[112] Amended Transcript, 7 September 2018, p. 41, 7-9.

[113] Amended Transcript, 3 September 2018, p. 125, 3-16.

195. The Respondent is not responsible for the decision of the Claimants to self-limit the amount of the claim against ST. The evidence does not establish any improper interference by the Respondent in the court proceedings.

196. In sum, the Tribunal concludes that the claim for expropriation in respect of the Thanaleng investment lacks any merit.

7.2. Paksong Vegas Hotel and Casino

7.2.1. Background

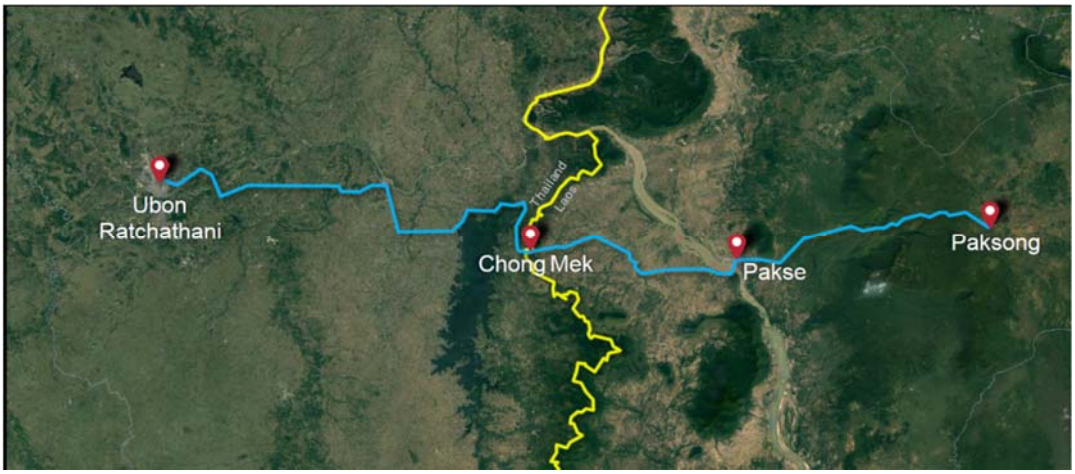
197. On 10 August 2007, a Project Development Agreement was concluded between Lao PDR, and Sanum, the Laotian company Nouansavanh Construction Co. Ltd., and Mr. Sittixay Xaysana for the development of the Paksong casino ("**Paksong PDA**"). Under the Paksong PDA, a Laotian entity, Paksong Vegas and Casino Co. Ltd., was set up with Lao PDR holding 20%, Sanum 60% and the ST entities 20%. The Paksong PDA required the Company to build and operate a $25 million hotel casino and golf resort in the Paksong district of Champasak Province.

7.2.2. Location of Paksong

198. As explained by the Claimants, the location was challenging:

> "The challenges were both logistical and commercial. Logistically, Paksong's location meant that transportation of construction materials would be more costly than at the Savan Vegas site, as access to the site was more difficult and time consuming, and that other construction costs would be significantly higher than those of Savan Vegas. Also, the concession was located on the side of a large hill which precluded the building of simple, large buildings to house the hotel and casino and other amenities. Commercially, since Paksong was not located on the border with Thailand or even in a population center in Laos that was easy to access, it lacked a readily identifiable customer base. The challenges of attracting customers made it difficult to identify the optimal type of facility to construct on the site."[114]

[114] Statement of Claim, para. 63.



(Respondent's Opening Submission, Slide 96)

199. Mr. Baldwin testified about the problem posed by Paksong's distance from the Thai border:

> Another challenge posed by Paksong Vegas had to do with its customer base. Because Lao citizens generally are restricted from playing table games, the customer base for our casinos consists largely of Thai citizens who live in Northeastern Thailand. However, because Paksong Vegas would be located deep in Laos's interior, without easy access to the border, we were concerned that it would be difficult to attract customers to the casino. [115]

200. These challenges notwithstanding, Mr. John Baldwin testified that the Paksong project package "came with very valuable benefits. Chief among these were the monopoly gaming rights in Champasak and Salavan Provinces granted to Paksong Vegas under the PDA."[116]

201. Due to the challenges posed by the site, on 31 March 2008, Paksong Vegas proposed to the provincial government, *inter alia*, to move the entire project to the area near Chong Mek. On 29 April 2008, the proposal was rejected by the provincial government.

202. On 21 August 2008, the office of the Prime Minister advised that Paksong Vegas was to return Paksong and pursue only the project at Khone Phapheng (where the Government also favoured development) together with other interested parties. The

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[115] First Witness Statement of Mr. John Baldwin, 1 October 2013, para. 32.

[116] *Ibid*., para. 64.

notice from the Champasak Provincial Office requested Sanum "to follow the agreements already reached by higher authority and only do the work at Kilometer 30 in Paksong. (According to instructions from the Government Secretariat, if the company cannot comply, then the project must be placed on hold for now)."[117] The notice added that "[i]t is not approved to open casino branches in Paksong and other places, only at Khone Phapheng. The Paksong land (Kilometer 30) will be returned to the Government."[118]

203. On 23 October 2008, the Prime Minister's Office issued a notice, purporting to strip Paksong Vegas of its monopoly rights. The Prime Minister's Office also reiterated that Yingsoksay, the operator of the existing hotel and resort in the area, could look for other foreign investors to develop Khone Phapheng; Paksong Vegas could participate in that development if it chose to do so, but either way, according to the Prime Minister's Office, it no longer had the exclusive right to do so. Further, on 19 December 2008, Champasak provincial authorities instructed Paksong Vegas to return the land concession it had been granted so it could be used for "another purpose," referencing the Prime Minister's 21 August 2008 notice.[119]

204. On 30 January 2009, a meeting was held in the MPI's offices. It was attended by all Lao agencies concerned and Paksong Vegas. The Paksong Vegas and Casino Development Project and the Khone Phapheng Entertainment Complex Project Development were discussed. The Tribunal will re-visit this meeting in its analysis.

205. On 27 April 2010, the MPI terminated the PDA because Paksong Vegas had not signed a land concession agreement in accordance with Article 4 of the PDA, and construction on the project had been delayed for more than two years, which affected the "social-economic development plan of Champasak province."[120] Termination of the PDA was re-affirmed by the Respondent on 10 April 2012.

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[117] Notice from Champasak Provincial Office conveying denial of the proposed relocation of "higher authority". Exhibit C(S)-309.

[118] Exhibit C(S)-311.

[119] *Ibid*., para. 76.

[120] Statement of Claim, para. 82.

7.2.3. The Claimant's Argument

206. The dispute concerns the termination of the Paksong PDA and the revocation of the concomitant land concession. For the Claimant, the actions of the Respondent constitute an expropriation under Article 4 of the BIT. The Claimant argues that the Respondent ignores the evidence that Lao authorities had ordered Sanum to cease construction and two years later without prior notice cancelled the PDA on grounds of failing to develop the land.

207. The Claimant questions the Respondent's defence to the expropriation claim. First, there is no contemporaneous evidence that Sanum repudiated the PDA when it proposed to relocate. Second, the Respondent ignores the work done by Sanum.[121] Third, the contention that Sanum lacked necessary funds has never been raised before, and the Respondent has not followed the PDA's procedures to establish "financial inability". Fourth, cancellation to avoid the Claimant's monopoly rights does not absolve the Respondent from the claim of expropriation.

7.2.4. The Respondent's Argument

208. The Respondent claims that Sanum was not a ready, willing and able investor for the Paksong project. According to the Respondent, Sanum forfeited the concession because the location was not commercially acceptable. The Respondent explains that Paksong and Savannakhet were linked; they were part of a bargain: whoever would develop Savannakhet, an excellent commercial site, must also develop the less attractive Paksong. According to the Respondent, Paksong is in the Champasak province and, in addition to Paksong, two other locations in that province are mentioned in the record: Chong Mek and Khonephapheng. The Respondent contends that Sanum was only interested in Chong Mek, but not in either of the other sites. The provincial government was keen to develop the remote areas while Sanum was interested in more profitable sites; the interests of Sanum as a commercial developer and of the provincial government were not aligned.

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[121] See slide 20 of Claimant's Opening Argument.

209. The Respondent argues that it is impossible to read into the Paksong PDA the right claimed by Sanum to build other casinos or slot clubs. The PDA gives Sanum the exclusive right to operate in the provinces covered by the PDA, which simply means "no one else would be allowed to build a casino or slot club in those provinces."[122] The Respondent affirms that there has never been an additional casino or slot club. There has not been expropriation of "monopoly rights".[123] According to the Respondent, Mr. Baldwin's assertion that Sanum could not build at Paksong because the Government "would no longer respect its monopoly rights" is frivolous. Mr. Baldwin refused to develop Paksong because he did not want to lose money on a project doomed to commercial failure."[124]

7.2.5. The Tribunal's Analysis

210. The issues to be addressed by the Tribunal may be formulated as follows: Was the act of termination of the PDA an expropriatory measure or the exercise by the Respondent of its right to terminate the PDA for failure of Paksong Vegas to meet its obligations? In addition, what weight should be given to the allegation that the procedure for termination provided for in Article 19 of the PDA was not followed?

211. First of all, what were the rights of Sanum in Paksong Vegas? In its Reply, the Claimant notes that "Laos does not dispute that Claimant possessed property rights through Paksong Vegas that could be subject to expropriation, most notably, the valuable monopoly rights in Champasak Province acquired pursuant to the Paksong Vegas PDA."[125] The Respondent did not question this understanding of the Claimant in the Rejoinder or the Opening Statement at the Hearing. However, at the closing, the Respondent argued that the Claimant had no cognizable property right based on the definition of the term "Land Map" in the PDA.[126] This definition explains that the seal of the Government Agency affixed to the land lease demonstrates "conclusively that

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[122] Respondent's Rejoinder, para. 91.
[123] *Ibid*., para. 91.
[124] *Ibid*., para. 97.
[125] Reply, para. 133.
[126] Respondent's Closing Statement, slide 30.

the right to lease that piece of land belongs to the company."[127] But the company as defined in the PDA means the parties to the Paksong PDA, one of which is the Claimant.

212. Second, what is the extent of Paksong Vegas's monopoly rights in Champasak province? As confirmed by Mr. Baldwin's testimony at the Hearing, Mr. Baldwin wanted to develop a site at Chong Mek. He agreed that the monopoly rights were limited to the Paksong development area and did not include Chong Mek, "unless the government agreed to modify this. The way it's written right now, it does not include Chong Mek but it doesn't say we can't ask for modifications."[128] Mr. Baldwin also confirmed that he really knew that the Government policy was not to approve a move to Chong Mek.

213. Third, did Paksong Vegas forfeit its rights when the Claimant informed the Lao Government that it did not wish to pursue the project at Paksong? The Claimant has explained that the proposal of 31 March 2008 remained subject to Government approval. On 29 April 2018, the Government rejected the proposal and instructed Sanum to "follow the agreements already reached by higher authority and only do the work at Kilometer 30 in Paksong. (According to instructions from the Government Secretariat, if the company cannot comply then the project must be placed on hold for now)."[129]

214. The terms of the notice rejecting the proposal affirm that at the time, the Government's intention was not to terminate the PDA, but to request that the existing agreements be respected, and only if the company could not comply, to stop the project for the time being. The Respondent has argued the Claimant's forfeiture of the rights of Paksong Vegas in this proceeding in 2014, six years later. If this would have been the case, it would not have been necessary for the Government to terminate the PDA in 2010.

215. Was the Respondent entitled to terminate the PDA in 2010? Sanum has argued that it had been asked to stop work at Paksong and that was the only reason why the work was

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[127] Underlined in red in the original. PDA, SRE-4, para. 9.

[128] Amended Transcript, 4 September 2018, p. 216, 19-22.

[129] Exhibit C(S)-309, Notice from Champasak Provincial Office to Champasak Division for Planning and Investment, dated 29 April 2008.

behind. However, the minutes of the meeting held on 30 January 2009 show that the meeting chair "cited many deficiencies of the company [Paksong Vegas] in its performance of the contract."[130] More significantly, among the unanimous resolutions reached at this meeting, Paksong Vegas accepted that "in the past it has not carried out the Paksong Vegas project as scheduled in the contract and as it was presented to the Province."[131] According to the minutes: "The meeting agreed to have Paksong Vegas and Casino Co., Ltd. to follow instructions in Lao Government Notice No. 1469/GS, dated 21 August 2008 and Notice No. 1887/GS, dated 23 October 2008. The main points of discussion were: not to approve opening branches of the Casino in Paksong and other areas, but to allow casino operations only in Khone Phapheng Development Project. The land in Paksong Development Project (KM30) is to be returned to the Government. No exclusive rights are to be granted, and the agreement with Paksong Vegas and Casino Co., Ltd is to be revised."[132]

216. The Tribunal observes that the Claimant admitted, at the meeting of 30 January 2009, that "it has not carried out the Paksong Vegas project as scheduled in the contract and as it was presented to the Province." Mr. Baldwin also testified at the Hearing that no contract to build a $25 million five-star hotel with a casino and nightclub was ever signed.[133]

217. What is the significance of the lack of notice by the Respondent to Paksong Vegas under Article 19 of the PDA? According to Article 19, notice was required indicating the non-performance and giving 90 days to correct it. It is undisputed that the Respondent did not give notice to Paksong Vegas of non-performance of the obligations under the PDA. But Paksong Vegas had not made the investment it had promised in the PDA within the expected timeframe as admitted by Paksong Vegas. It had also agreed at the meeting of January 30, 2009 to operate a casino in Khone Phapheng, and "[a]s for the Paksong project, the company is happy to follow the government's guidance."[134] As recorded in the same meeting, the Government's guidance was to

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[130] Exhibit C(S)-320. Minutes dated 6 February 2009.

[131] *Ibid*.

[132] *Ibid.*

[133] Amended Transcript, 5 September 2018, p. 63, 4-7.

[134] Minutes dated 6 February 2009, p. 2, C(S)-320.

return the land to the Government.[135] In the circumstances, the Tribunal finds there was no need for Paksong Vegas to be further notified. The Respondent had been clear in that the PDA would need to be revised and Sanum had agreed to revise it. The Claimant had not complied with the terms of the PDA and could not reasonably keep its monopoly rights indefinitely while at the same time maintaining that the development of Paksong was a losing proposition not worth a US $25 million investment. **Mr. Baldwin confirmed at the Hearing that no contract to build a $25 million five-star hotel with a casino and nightclub was ever signed.[136]**

218. The Tribunal finds that the Claimant lost its rights under the PDA because it breached its terms and, by its own admission, the Paksong site could not be developed. This Claimant's admission contradicts its argument that work was being done and, if not done, was due to the Government order to stop the work. The loss of Paksong was not an expropriation, it was termination for breach of contract. The monopoly rights cherished by Sanum had a concomitant obligation to invest, which Sanum admits it did not fulfil.

7.3. Paksan Slot Club

7.3.1. Background

219. As told by Sanum and not disputed by the Respondent, the relevant facts are that "[s]oon after Sanum agreed to partner with ST, it discovered that there was an existing slot club in operation in the Paksan district of Bolikhamxay Province – one of the provinces in which Savan Vegas has the exclusive right to operate. To enforce that exclusive right, ST asked the Government of Bolikhamxay Province to shut down the club, and it did so."[137] The existence of the slot club led Savan Vegas to open its own club at the same location, the Paksan Hotel.

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[135] Minutes dated 6 February 2009, p. 2, C(S)-320; Notice from the Prime Minister's Office to the Minister of the MPI, 21 August 2008, C(S)-311; Notice from the Prime Minister's Office to the MPI et al., 23 October 2008, C(B)-497.

[136] Amended Transcript, 5 September 2018, p.63, 4-7.

[137] Statement of Claim, para. 89.

220. The **Ministry of Information and Culture** ("**MIC**") granted Savan Vegas a one-year license to operate a slot club in the Bolikhamxay Province on 24 October 2007. The MIC renewed the license on 26 November 2008.

221. After the lease of the former club expired in October 2008, Savan Vegas signed its own lease on 25 December 2008 and refurbished the space in the Paksan Hotel formerly occupied by the slot club. The club re-opened on 25 October 2009 and the MIC renewed the slot license for another year on 27 October 2009.

222. On 18 February 2010, the Prime Minister's Office ordered the slot club license to be cancelled: "The authorization to open an electronic gaming club granted to Savan Vegas Ltd. by the Information and Culture Department of Bolikhamxay Province is not in accordance with regulations in that it exceeds the authority of that office. Therefore, you should stop operation of electronic gaming at Paksan Hotel. Further, the company is no longer authorized to erect an advertising billboard in Bolikhamxay Province."[138]

223. The license was not renewed in 2010. On 11 March 2011, the Government ordered the MIC and the provincial Governor to close the club within three days. The club closed on 13 March 2011. Sanum and Savan Vegas petitioned the Prime Minister to re-open the club. The petition was denied on 19 May 2011 and Savan Vegas was ordered to comply with Notice No. 305.

7.3.2. The Claimant's Argument

224. The Claimant contends that the Respondent's closure of the Paksan slot club constitutes an unlawful taking. In the Statement of Claim, the Claimant attributes the closure to the dissatisfaction of ST with the Claimant on whether revenues of the Paksan slot club and the concomitant tax obligations should be consolidated with those of Savan Vegas. As told by the Claimant, "[i]n a meeting they [ST] had with Sanum in the fall of 2010, ST demanded they be paid 30% of Paksan's gaming revenues, regardless of what any agreement said. If Sanum did not agree, ST would have the club shut down … ST then proceeded to make good on their threat. Sanum soon learned that ST had convinced

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[138] Exhibit C(S)-326, p. 3.

officials at the MIC to issue a notice instructing Savan Vegas to close the Paksan club."[139]

225. The Claimant also disputes the Respondent's contention that most patrons were Lao people because there is no bridge at Paksan. The Claimant points out that there is a ferry to cross to and from Thailand. Secondly, this argument was not used to close the club as it is evident in the minutes of the Government meeting held on 11 March 2011 where the closure was decided.[140] The minutes only refer to Notices No. 305 and 470/MCD that Savan Vegas claims not to have seen earlier. Indeed, in the case of Notice No. 305, Savan Vegas affirms that it became aware of it in this arbitration.

226. The Claimant points out that, "prior to filing its Statement of Defense in this arbitration, Laos had never asserted that the closure of Paksan was justified by non-compliance with the Savan Vegas PDA, failure to obtain a separate Foreign Investment License, or the MIC's supposed lack of authority to issue slot club licenses. In fact, Savan Vegas was never made aware of the existence of Notice No. 1957 until this arbitration."[141] Furthermore, the Claimant recalls that the Respondent withdrew the accusing witness statement on Lao people being allowed to gamble at the Paksan Hotel.

227. The Claimant further argues that, "although Paksan's license had expired at the time of the club's closure, by permitting the club to continue operating without a license and by assuring Savan Vegas that its license was in the process of being renewed, the Government *de facto* extended Sanum's rights in the Paksan investment."[142]

7.3.3. The Respondent's Argument

228. In the Reply, the Claimant questions the merit of

> Laos's attempt to rely on a number of Government instruments that it claims deprived the MIC of authority to issue slot club licenses. Notice No.1957, issued by the Prime Minister's Office on 4 November 2008, did not, as Laos now claims, require that all slot club licenses be issued by the Prime Minister's Office rather than by the MIC. Critically, Notice No. 1957 is titled 'Solution for the slot machine business issues in Khammouan Province and

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[139] Statement of Claim, para. 100.

[140] *Ibid*., para. 175.

[141] *Ibid*., para. 169.

[142] *Ibid*., para. 171.

> Vientiane City', and it is addressed only to the governors of those areas, as well as the MIC, the MPI, and the Minister of Public Security. Thus, on its face, it has no application to Bolikhamxay Province, where the Paksan slot club was located. Moreover, Notice No. 1957 provides that 'the Government', and not just the Prime Minister's Office, has the right to issue slot club licenses. The MIC is undoubtedly part of the Lao Government. As to Notice No. 545, issued by the Prime Minister in March 2008, and now claimed by Laos to 'have barred new casinos and slot clubs', this was issued after Paksan received its first operating license in 2007.[143]

229. In the Rejoinder, the Respondent affirms that a "*de facto*" license cannot be expropriated "when the real one year license had expired."[144] The Respondent admits that it is the first time that it argues that Savan Vegas was not authorized to operate a slot club in Paksan. The Respondent states: "it is the first time, but the position is correct in law. A party operating outside the terms of its license and concession agreement cannot claim an illegal expropriation of an illegal business."[145]

7.3.4. The Tribunal's Analysis

230. A first issue to be addressed by the Tribunal is the disputed meaning of monopoly in the PDA. Article 9 reads as follows:

> The Company has been granted monopoly rights for its casino business operation only with the condition that the Government shall not approve and grant any other parties or entities who put up their applications for the operation of certain casino business in the two neighboring provinces close to the project development zone of the Company, namely Salavan and Champasak throughout the concession period of 50 years.
>
> However, should there have any applications submitted by any parties or entities, all those shall be made through the consent and approval of both the government and the authorized investors who have management rights."[146]

231. The Claimant's argument that Savan Vegas' foreign investment license permitted Savan Vegas to operate gambling facilities in all three provinces where it had monopoly finds no support in the terms of the PDA. The Claimant and ST in fact recognized the need to have a specific slot license at Paksan and applied for its renewal year after year.

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[143] Reply, para. 168. Footnotes omitted.

[144] Rejoinder, para. 101.

[145] *Ibid*., para. 102.

[146] PDA, Article 9, para. 24, RE-04.

On the other hand, the argument of the Respondent that the Paksan operation was illegal under the Law on Investment Promotion may be correct in law, as affirmed by the Respondent in the Rejoinder,[147] but of doubtful persuasiveness when the MIC had issued the Paksan slot club a license three times during the period 2007-2009.

232. The Respondent has argued that the license was terminated in February 2010 and that the Claimant had operated the Paksan slot club without a license for about a year. On the other hand, the Claimant has affirmed that it was not aware of Notice No. 305 of 18 February 2010.[148] Irrespective of whether the license was terminated by order of the Prime Minister's Office, it is undisputed that the Paksan slot club continued to operate beyond the term of its license. For the Tribunal, the key fact is that the license granted in 2009 had expired in October 2010 and had not been renewed. Monopoly rights kept competitors out but did not entitle Savan Vegas to establish and operate other gambling facilities unless those other facilities were specifically authorized. The Claimant has not shown that Savan Vegas had a right to the license's renewal or even that it attempted to renew the license.

233. At the time of the Paksan slot club's closure, the club was operating without a license and there is no documentary evidence that the Respondent had created any legitimate expectation in the Claimant that the license would be renewed or that it may operate *de facto* as if it had a license. The Claimant's argument about a *de facto* license begs the question of why Sanum had applied for the license's renewal in the preceding years. The Tribunal concludes that the license expired on its own terms and had terminated when the slot club was ordered to be closed.

7.4. Thakhet Casino and Hotel Resort

7.4.1. Background

234. In 2010, Sanum started negotiations with the Committee for the Laos-Thailand Friendship Bridge III Economic Zone Development (the "SEZ" and the "SEZ Committee") for a land concession at the foot of a planned bridge to cross the Mekong

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[147] Rejoinder, para. 102.

[148] Notice to the MIC and the governor of the Bolikhamxay Province, dated February 18, 2010, Exhibit C(S)-326, p. 3.

River. The negotiations resulted in a MOU between Sanum and the SEZ Committee dated 20 October 2010. The MOU contemplated a land concession to Sanum of about 90 hectares in the SEZ, payment by Sanum of $900,000 to allow the provincial government to compensate individuals occupying the land, and $400,000 to be paid upon signature of the MOU. The MOU required Sanum to sign a land concession within 30 days and secure all necessary approvals from the central and local governments within one year prior to building on the concession land.

235. On 4 February 2011, Savan Vegas submitted a proposal for a slot club to the Governor of the Khammouane Province and the MIC. The proposal was supported by the Governor and, on 21 February 2011, the MIC approved the Savan Vegas's Welcome Center and Slot Club. Shortly thereafter, on 2 March 2011, the Prime Minister's Office directed the MIC to revoke its approval because slot club licenses may only be issued "by the Government", which was interpreted by the Prime Minister to mean the Prime Minister's Office.[149] On 29 March 2011, Sanum and Savan Vegas petitioned the Prime Minister's Office to grant permission to open the Welcome Center and Slot Club in the SEZ. The petition was rejected in October 2011.

7.4.2. The Claimant's Argument

236. According to the Claimant, the SEZ Committee had been negotiating with Sanum a PDA and a land concession for the project, and by the end of 2011 the negotiations were near completion. But then, "the Government sent Sanum a substantially revised PDA, which removed approximately 16 hectares from the land that the SEZ Committee had previously committed to grant Sanum in the MOU." The Claimant affirms that the removal of these 16 hectares compromised the feasibility of the project because they fronted Highway 13 and the access road to the bridge.

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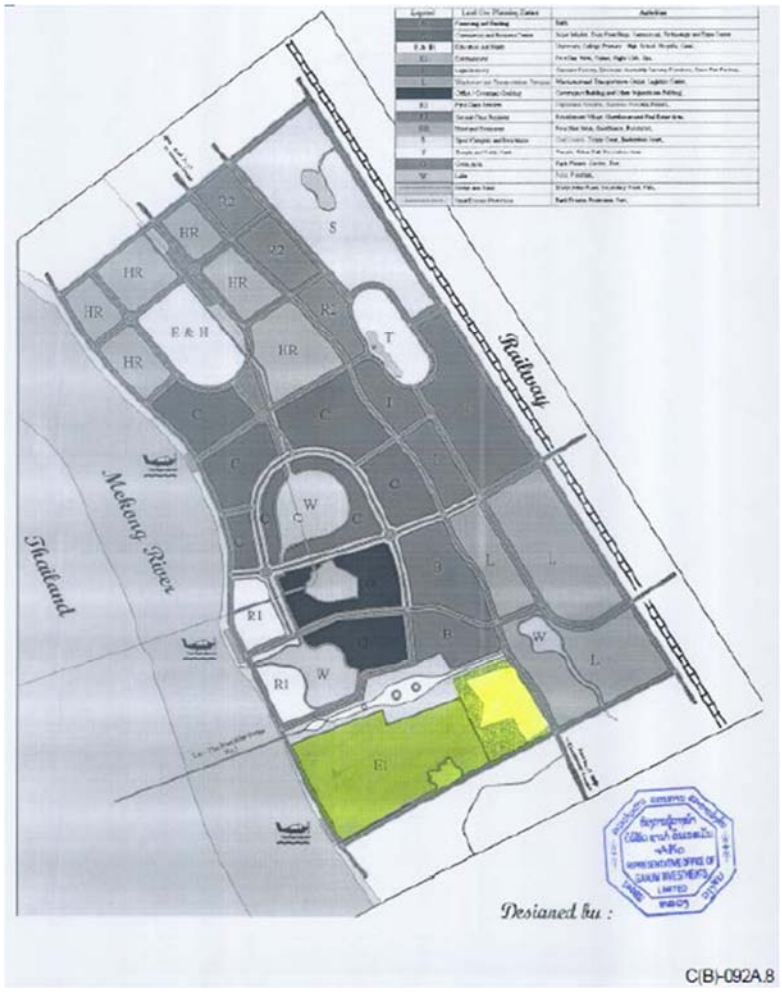
[149] Notice from the Prime Minister's Office to the Minister of Information and Culture, 2 March 2011, Exhibit C(B)-337.



(*Source, Claimant's Opening Presentation, Slide 23, C(B)-0092) Disputed 16 hectares colored in yellow*)

237. According to the Claimant, the map above, which was appended to the 2010 MOU, showed Sanum's Highway 13 Frontage. However, the Respondent notes that Sanum never made an application for a license or PDA to the MPI for the Thakhet development, as required by the Law on Investment Protection. Instead, on 4 February 2011, Savan Vegas applied to the MIC for a license for a small slot club. At the time, because of the order to close Paksan, Savan Vegas should have been aware that the MIC had no authority to approve gambling licenses. In the application, Savan Vegas referred to the MOU and attached the PDA, under which Savan Vegas affirmed that it had the right to operate in three provinces. On 21 February 2011, the MIC authorized gambling in Thakhet. On 2 March 2011, the Prime Minister revoked the authorization and re-affirmed this decision on 7 October 2011 in view of the further request of Savan Vegas on 29 March 2011. At the request of Sanum, the president of Sanum met with

relevant ministries on 25 November 2011, and again it was reiterated to Sanum that the authorization to operate slot machines in Khammouane Province was illegal.

238. The Claimant in the Reply points out that the SEZ Committee was appointed by the central Government, that the Government specifically instructed Sanum to negotiate the PDA and land concession agreement with the SEZ Committee, and that the 30 days to sign the land concession run as from approval by the SEZ Committee of a feasibility study, master plan, social-economic and environmental impact study. The Claimant contends that it submitted these documents, but negotiations of the PDA fell apart because of the removal of the 16 key hectares. The Claimant points out the changing reasons adduced by the Government to justify the removal of those hectares. First, the Respondent had said that there was a holdout landowner who wanted more money; later, it argued that the 16 hectares were never included in the concession.

239. The Claimant affirms that at the time it was not aware of Notice No. 305, and that, in any case, this Notice does not deprive the MIC of its authority to issue slot licenses. According to the Claimant, Savan Vegas reasonably believed that the MIC was the relevant authority to which it should direct its application. This understanding was supported by Respondent's contemporaneous actions. For example, the Khammouane Governor wrote to the MIC a letter of support on the province's behalf. The MIC approved the application on 21 February 2011.[150]

7.4.3. The Respondent's Argument

240. The Respondent contends that the Claimant has not been able to rebut the Respondent's position that Sanum never obtained a license, a concession or a PDA from the Respondent. The Respondent points out that in the Reply, the Claimant admits that the parties had not reached agreement on whether the 16 hectares were included in the land concession or the terms of the PDA: "it is patently clear as a matter of law that when parties do not agree on material terms during the negotiations, they do not have an

[150] Reply, para. 189.

agreement. The parties never concluded those negotiations and never signed the agreements."[151]

241. At the closing of the Hearing, the Respondent explained that the 16-hectare issue was irrelevant because the key land was next to the bridge on the side of the river rather than on the road frontage land as there would be a need to isolate the gambling area, including space for customs control.

242. As regards the slot license, the Respondent has alleged that it was obtained through bribes paid by Mr. Bouker to Mr. Boumong at the MIC.

7.4.4. The Tribunal's Analysis

243. It was decided in the Tribunal's ruling on the Merits of the Claimant's Second Material Breach Application that, in the Tribunal's view,

> the Claimant has not established a land entitlement that includes the disputed 16 hectares, and there is no undertaking by the Government in Section 22 to use its powers of eminent domain to expropriate the existing private owners for the financial benefit of the Claimant. Refusal to expropriate private land for the private gain of the Claimant does not constitute evidence of 'bad faith.'[152]

244. This decision was reached by the Tribunal in the context of whether the Government breached Article 22 of the Deed of Settlement by failing to negotiate the Thakhet related agreements in good faith. The Tribunal considers that the Claimants have also failed to establish rights to the remainder of the land referred to in the MOU. Sanum had 365 days from the date of the Land Concession Agreement to seek all the approvals for all investment activities described in the MOU. In turn, before the Land Concession Agreement could be signed, Sanum needed to complete a Feasibility Study, a Master Plan and a Socio-Economic and Environmental Impact Study for the Land Concession, all to be approved by the Concessioner. The Land Concession Agreement required by the MOU was never signed; it never went beyond the negotiation stage. Despite face to face negotiations over the PDA throughout the summer and fall of 2011, Sanum and

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[151] Rejoinder, para. 105.

[152] Decision on the Merits of the Claimant's Second Material Breach Application, 15 December 2017, para. 195.

the SEZ Committee had not finalized the terms of the PDA, including the land concession.[153] In the overall picture, whether or not Sanum had obtained a licence had no impact on the viability of its Thakhaek project.

245. In the view of the Tribunal it is clear from the MOU that Savan Vegas could not expand to Thakhaek in the Kammouane Province without the "**final approval from all governmental authorities (central and local)**."[154] The MOU provides for the eventuality that the approval is forthcoming and also in case it is not.[155] Furthermore, the MOU subjects the exact location of the Concession Land to a future agreement: "Once the exact location of the Concession Land has been agreed upon, the Concessionee will confirm its acceptance of the Concession Land in writing to the Concessioner."[156] There was never any agreement in this respect.

246. The MOU shows that Savan Vegas' monopoly rights did not encompass a right to establish slot clubs or casinos beyond the area covered by the Savan Vegas PDA:

> If the Concessionee would like to expand the casino or slot business of Savan Vegas, which is an investment project of Sanum Investments Limited according to the Foreign Investment License no. 09507 [not readable], dated 17 August 2007 to the Concession Land to be a branch (Welcome Center) of Savan Vegas *such expansion shall be proposed, approved and agreed in writing from the Government* first before implementing such expansion. The Khammouane Province wilfully [sic] support the expansion of Savan Vegas to the Land Concession according to the appropriate procedures and regulations.[157]

247. As regards to the slot license, the Tribunal notes that the Respondent's witnesses from the MIC and the Government Secretariat Office have claimed that the license was issued by mistake.[158] The Respondent has argued that the MIC had no authority to issue the license because of Notice No. 1957 of the Prime Minister and says that the license was procured by a bribe. Leaving aside the issue of the bribes allegedly paid by the Claimants, the Tribunal observes that the license was effective for less than ten days

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[153] Reply, para. 182; Exhibit SRE-101.

[154] MOU, clause 2.3(c).

[155] MOU, clauses 2.3(c) and (d).

[156] MOU, clause 3.1.

[157] MOU, clause 3.3.

[158] Reply, para. 316 and footnote 767: Witness Statements of Xypheng Vongpanya, at para. 7, and of Phimphone Sengthong at para. 9.

and that the revocation was justified on the lack of authority of the MIC to grant it. The Tribunal appreciates that Notice No. 1957 refers to the Government and is not explicitly limited to the Prime Minister's office but by 2011 Sanum was fully aware that the Prime Minister's Office was the essential authority on the Claimants' gambling ventures in Laos. The Prime Minister's Office never approved the Claimants' gambling project in Thakhaek. The Claimants had just finished a bruising encounter with the Government over the Claimants' failure to fulfill its obligations in respect of the Paksong Hotel and Casino project. By 2011, the Claimants had entirely failed to live up to their Paksong commitments, while pretending otherwise. The Claimants had demonstrated themselves not to be good faith investors.

248. In the Tribunal's view, the Claimants were seeking in bad faith (even if not by bribes) to manipulate Government officials to obtain approvals to which the Claimants were not entitled. It is significant that the MIC licence was issued to Sanum in February 2011 by the same Minister that was ordered to cancel the Paksan license for lack of authority one year earlier in February 2010.

249. Negotiations for the renewal of the Flat Tax Agreement had stalled by March 2011. The Government was agitating for accountability in respect of its 20% interest in Savan Vegas. The Claimant alleges that the 16-hectare parcel on Highway 13 was essential to the success of the Thakhaek project, yet negotiations for the 16-hectare parcel never reached agreement in the Tribunal's view. Thus Sanum acquired no rights in Thakhaek property. There was no Land Concession Agreement for a site on which gambling facilities *could* be built. The other approvals that would have been required contingent on the signing of the Land Concession Agreement (which never happened) became moot. The Thakhaek project was not expropriated. The licence was revoked for good and sufficient cause. The project itself never came into legal existence. The MOU provided that the Claimant's Thakhaek project could not proceed without "the final approval of, by or from all Government authorities (central and local)" which was never obtained. The Tribunal appreciates the chagrin of the Claimant at paying US $400,000 which, in the end, did not result in a viable project but the failure cannot be attributed to any actionable fault on the part of the Government.

250. The Tribunal concludes that there is insufficient evidence of bad faith on either side in respect of Thakhek. It was simply a commercial possibility that never reached the stage of agreement.

8. COSTS

251. The Respondent Government claims costs for the period from 23 February 2017 through 22 February 2019 in respect of lawyers' fees in the amount of US$ 1,161,611.48 and expenses of US$ 151,640.83, being in total US$1,313,252.31. These fees are exclusive of and apart from the costs sought by the Government arising out of *Lao Holdings N.V. v. The Government of the Lao People's Democratic Republic*, ICSID Case No. ARB(AF)/12/6, which was not consolidated with this case, but for the most part heard jointly with it. (The Respondent Government claims a total of $2,780,736.03 in respect of both the ICSID and PCA proceedings). By way of comparison, the Claimants indicated that if successful (and even if not wholly successful) they would be seeking $20,929,951.36 in total in respect of both the ICSID and PCA proceedings. The Claimant's claim, unlike the Respondent's claim, does include the expenses and charges of the respective Secretariats.

252. Article 40 of the UNCITRAL Rules provides:

> 1. The arbitral tribunal shall fix the costs of arbitration in the final award and, if it deems appropriate, in another decision.
> 2. The term "costs" includes only:
>
> (a) The fees of the arbitral tribunal to be stated separately as to each arbitrator and to be fixed by the tribunal itself in accordance with article 41;
>
> (b) The reasonable travel and other expenses incurred by the arbitrators;
>
> (c) The reasonable costs of expert advice and of other assistance required by the arbitral tribunal;
>
> (d) The reasonable travel and other expenses of witnesses to the extent such expenses are approved by the arbitral tribunal;
>
> (e) The legal and other costs incurred by the parties in relation to the arbitration to the extent that the arbitral tribunal determines that the amount of such costs is reasonable;
>
> (f) Any fees and expenses of the appointing authority as well as the fees and expenses of the Secretary-General of the PCA.

253. Article 42 of the 2010 UNCITRAL Rules provides:

> (1) The costs of the arbitration shall in principle be borne by the unsuccessful party or parties. However, the arbitral tribunal may apportion each of such costs between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case.
>
> (2) The arbitral tribunal shall in the final award or, if it deems appropriate, in any other award, determine any amount that a party may have to pay to another party as a result of the decision on allocation of costs.

254. According to Article 42, the costs of the arbitration "shall in principle be borne by the unsuccessful party or parties" but grants the Tribunal discretionary power to apportion costs, based on what is reasonable in the circumstances of the case. While there is some variation in tribunals' practices, the prevailing approach of international investment tribunals is to order costs to follow the event. The Claimants themselves have endorsed this principle in putting forward their own claim for the "costs and expenses of this proceeding, including attorneys' fees".[4]

255. According to the Claimants, the quantum of their original claims if wholly successful, might have reached US $1 billion.

256. The costs claim advanced by Sanum and LHNV include US $10,109,872.71 for legal work prior to the Settlement of 15 June 2014. The Respondent's claim commences post-settlement, specifically from 23 February 2017 — i.e., after the date Claimant Sanum filed its Second Material Breach Application before the PCA Tribunal. From and after 23 February 2017, the two cases (PCA Case No. 2013-13 and ICSID Case No. ARB(AF)/12/6) proceeded in parallel although, as mentioned, not consolidated.[5] Thus, after 23 February 2017, work on all written submissions, evidentiary applications, interim conferences and hearings as well as the Hearing were combined, then evenly divided as between the PCA proceedings and the ICSID proceedings. In the result, the Respondent seeks an order that the Claimant Sanum pay 50% of its legal costs, including lawyers' fees and expenses, incurred from 23 February 2017 through the present.

257. The Claimant points out that it was successful on a number of the interlocutory matters including a defeat of the Government's jurisdictional challenges and establishment in the Second Material Breach Application, that the Government had failed in two

important aspects to honour the Settlement, namely, the establishment of a new FTA to assist in the sale of Savan Vegas, and the Government's failure to halt existing and potential criminal proceedings. These were important successes for the Claimants, but in the end, they failed to establish after years of litigation any liability on the part of the Government in respect of any of their myriad of claims of Treaty violations (as distinguished from two breaches of the 2014 Settlement Agreement, as mentioned).

258. In the circumstances the Tribunal thinks it appropriate, in its discretion, to award the Respondent Government its costs.

8.1. Expenses

8.1.1. Travel Expenses

259. The Respondent's travel expenses represent travel to Singapore twice by various witnesses and the Respondent's lawyers and staff, for matters involving the Tribunal. These travel expenses also include travel to Laos, Paris, and Hong Kong for matters such as fact development, evidence gathering and document review.[159]

8.1.2. Miscellaneous Services and Expenses

260. The remainder of the Respondent's expenses relate to services and expenses required to pursue the arbitrations, some of which were incurred in-house and others by external vendors. Such services include translation services; court reporter and transcript fees; express delivery expenses; research; and trial preparation services in Singapore, such as copying, binding presentations, and creating witness and evidentiary notebooks.

261. The Respondent's total expenses (other than legal fees) requested in this arbitration amount to US $151,640.83.[160] This sum, taken together with legal fees of US $1,161,611.48, produces a total cost award of US $1,313,252.31.

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[159] Respondent's Submission on Costs, para. 18.

[160] Respondent's Submission on Costs, paras. 19-20.

8.2. Arbitration Costs

262. The costs of the arbitration, including the fees and expenses of the Tribunal, PCA registry fees and direct expenses, amount to (in USD):

Arbitrators' fees	
Dr. Rigo Sureda[161]	US $529,880.84
Prof. Hanotiau[162]*	US $427,888.71
Prof. Stern[163]*	US $441,258.91
Travel and other expenses incurred by the arbitrators	US $90,737.66
Costs of PCA registry and other assistance required by the arbitral tribunal	
PCA registry fees	US $155,593.00
PCA registry expenses	US $23,343.89
Other expenses	US $104,168.85
Total	US $1,772,871.86

263. The above costs have been paid out of the advances made by the Parties, which were not made in equal parts. The Claimant made advance payments for a total of US $1,355,000.00 and the Respondent made advances for a total of US $465,000.00. The Tribunal orders the Claimant Sanum to bear all the arbitration costs of the PCA proceeding, including the fees and expenses of the Tribunal and PCA. Accordingly, the Tribunal orders the Claimant to pay the Respondent US $465,000 for the expended portion of the Respondent's advances to the PCA.

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[161] In Euro, Dr. Rigo Sureda's fees amount to EUR 425,538.75.

[162] In Euro, Prof. Hanotiau's fees amount to EUR 339,983.60.

[163] In Euro, Prof. Stern's fees amount to EUR 350,968.81.

* The fees and expenses of Prof. Hanotiau and Prof. Stern have been equally divided between the PCA and ICSID proceedings. The amount shown here represents the PCA portion.

9. DISPOSITION

264. In the Tribunal's view, the Claimants have failed to meet the evidentiary onus of establishing facts necessary to support their legal arguments. The claims are therefore dismissed.

265. The Claimant Sanum shall pay the Respondent its legal costs of US $1,313,252.31.

266. The Claimant Sanum shall bear all the arbitration costs of the PCA proceeding, including the fees and expenses of the Tribunal and PCA. Accordingly, the Claimant Sanum shall pay the Respondent US $465,000 for the expended portion of the Respondent's advances to the PCA. The PCA shall reimburse the unexpended balance of the deposit to the Claimant Sanum in the amount of US $47,128.14.

Signature page follows.

DATED THIS 6TH DAY OF AUGUST 2019

Professor Brigitte Stern
Arbitrator

Professor Bernard Hanotiau
Arbitrator

Dr. Andrés Rigo Sureda
Presiding Arbitrator