

## **NOTICE OF ARBITRATION**

Under the between the Government of the People's Republic of China and the Government of the Lao People's Democratic Republic Agreement Concerning the Encouragement and Reciprocal Protection of Investments

**SANUM INVESTMENTS LIMITED**

Investor/Claimant

and

**THE GOVERNMENT OF THE LAO DEMOCRATIC PEOPLE'S REPUBLIC**

Contracting State/Respondent

1. Pursuant to Article 8(3) of the Agreement Concerning the Encouragement and Reciprocal Protection of Investments between the Government of the People's Republic of China and the Government of the Lao People's Democratic Republic ("the Treaty"), Sanum Investments Limited (the "Investor"), a national of the Macau Special Administrative Region of the People's Republic of China, hereby serves this notice of arbitration for the purposes of obtaining the compensation that is due from the Government of the Lao People's Democratic Republic (the "Respondent") under the Treaty, as set out herein.

**A. Notice that the Dispute be Referred to Arbitration**

2. With this document the Investor hereby serves notice requesting that the dispute between itself and the Respondent, described herein, be resolved by recourse to *ad hoc* arbitration, as specified under Article 8(3) of the Treaty.

**B. Designation of Each Party and Its Address**

3. The following are the official addresses of the disputing parties and for counsel to the Investor:

**Investor:**

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**Respondent:**

The Government of the Lao People's Democratic Republic  
Ministry of Foreign Affairs  
23 Singha Road

Vientiane Capital  
Lao PDR  
Telephone: 856-21-415-822  
Facsimile: 856-21-414-009

**C. Satisfaction of Consultation and Timing Requirements**

4. As set out in more detail below, a dispute has arisen between the parties in respect of the Respondent's failure to comply with certain of its obligations under the Treaty, concerning the Respondent's termination of a Project Development Agreement ("PDA") between itself and the Sanum Investments Ltd., as well as its cancellation of two gaming licenses and other concessions issued to its investment enterprise in the territory of the Respondent.
5. Article 8(1) of the Treaty provides that, as far as possible, disputes between investors of one Contracting State and the other Contracting State shall be "settled amicably through negotiation between the parties to the dispute." Article 8(3) provides that "if a dispute involving the amount of compensation for expropriation cannot be settled through negotiation within six months as specified in paragraph 1," it may be referred to arbitration, unless the dispute has already been submitted to a competent court of the host State.
6. The Respondent's decision to terminate the parties' Project Development Agreement ("PDA") for the Paksong Hotel and Casino Project, described further below, was an expropriatory act. It was taken by the Respondent's Ministry of Planning and Investment on 27 April 2010. From that time until 10 April 2012, the Investor undertook efforts to negotiate an amicable resolution to the dispute.
7. The negotiations that ensued between the parties involved the possible grant of a similar concession to the Investor, by the Respondent, in a different location within its territory. Ultimately the parties could not come to an agreement and, on 10 April 2012, the Office of the Prime Minister terminated further negotiations without the payment of any compensation.
8. Acting on instructions from the Prime Minister's Office, on 26 October 2010, the Respondent's Ministry of Information and Culture terminated the concession previously granted for operation of the Paksan Slot Club, as described further below. Between this date and 19 May 2011, the Investor engaged in strenuous efforts to negotiate with the Respondent about its closure decision, at which time the Prime Minister's Office informed the Investor that the closure decision was final.
9. On 2 March 2011 the Prime Minister's Office cancelled another gaming license granted to Investor, one for a slot club at Thakhaek, Khammouane Province. At about the same time Respondent reneged on an agreement with

Investor to concede 90 hectares of land, including specifically 16 hectares of highway frontage, for a Free Trade Zone. Without the slot club and highway frontage, the Free Trade Zone project would not be viable. The Respondent has rebuffed the Investor's attempts to amicably resolve this dispute as well.

10. Neither Sanum Investments Limited nor the investment enterprises it controls in the territory of the Respondent have submitted any of these disputes for resolution to its courts. Attempts to resolve these disputes via negotiation have been attempted but without success. As such, the requirements of paragraph (1) of Article 8 of the Treaty have been satisfied.

#### **D. Nature of the Claim**

##### **I. Facts**

11. Sanum Investments Limited ("Sanum" or "the Investor") is an enterprise established on 14 July 2005, under the laws of the Macau Special Administrative Region of the People's Republic of China, evidence of which is attached as **Exhibit A**. It was established to develop and operate resort hotel and gaming facilities, principally in the Lao People's Democratic Republic ("Lao PDR"), but is also involved in other unrelated businesses in Macau and Lao PDR.
12. Savan Vegas & Casino Co., Ltd. ("Savan Vegas") is an enterprise established under the laws of the Lao PDR on 24 August 2007, evidence of which is attached as **Exhibit B**.<sup>1</sup>
13. Paksong Vegas & Casino Co., Ltd. ("Paksong Vegas") is an enterprise established under the laws of the Lao PDR on 17 October 2007, evidence of which is attached as **Exhibit C**.<sup>2</sup>
14. The instant dispute involves three discrete matters: the cancellation of a bundle of rights, previously secured by the Investor from the Respondent, for the construction and operation of a hotel and casino complex in Paksong, Lao; the cancellation of the operating licenses for a casino gaming facility, known as the Paksan Slot Club, which was a going concern at the time of termination; and the cancellation of a gaming license (along with the retraction of key portions of a land concession for the development of a Free Trade Zone at Thakhaek, in Khammouane Province. The primary issue, in all

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<sup>1</sup> Savan Vegas was originally owned 60% by Sanum, 20% by the Lao PDR, and 20% by certain Lao nationals (defined further below as "ST"). However, due to the failure of these Lao nationals to make the required capital contributions, Sanum now holds 80% of its shares with the remaining 20% held by the Lao PDR.

<sup>2</sup> Pursuant to the relevant Project Development Agreement, described below, shares in Paksong Vegas were to be held 60% by Sanum, 20% by ST entities, and 20% by the Respondent.

of these cases, is what the appropriate amount of compensation should be for the expropriation of these investments in the territory of the Respondent?

15. The Respondent's deprivation of the Investor's rights has had very serious consequences. On each project, the Investor spent more than \$1 million individually in developing each opportunity. A study undertaken as part of planning for the Paksong Project projected earnings before interest, taxes, depreciation and amortization value ("EBITDA") of over US\$16 million by 2009, growing to over US\$19 million by 2013 – representing an enterprise value of US\$145 million to the Investor. The EBITA for the Paksan Slot Club was over US\$1 million by the time it was unlawfully shut down, representing an enterprise value to the Investor of over US\$11 million. Projections for the Free Trade Zone and associated slot club showed an EBITDA of US\$9 million, giving rise to an enterprise value to the Investor of over US\$79 million.<sup>3</sup>

**(a) Establishing the Investment:  
Assurances Provided by the Respondent**

16. In 2007, representatives of Sanum met with two Lao nationals, Sithat and Xaya Xaysoulivong, of ST Group, Ltd. and Xaya Construction Co. Ltd.,<sup>4</sup> both of which were Lao-incorporated enterprises (collectively referred to herein as "ST"), who urged Sanum to invest in the Lao People's Democratic Republic. ST represented that it had acquired certain rights from the Respondent to develop gaming enterprises and was now seeking a partner with the financial means and know-how to invest in the planned development and then successfully operate and maintain the enterprises to be established as a result.
17. ST subsequently arranged meetings between the Prime Minister of the Lao PDR, Bouansone Bouphavanh, and representatives of Sanum in 2007. Several additional meetings were held involving ST, representatives of Sanum, the Prime Minister's Office and other of the Respondent's officials. In addition, in 2007 there also occurred one meeting that was attended only by Sanum executives and the Prime Minister himself (and their attendant translators).<sup>5</sup>
18. In all of these meetings, the Prime Minister, officials from his office and other government officials were strong advocates for foreign direct investment in the Lao PDR. Several assurances were provided to the Investor, by these

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<sup>3</sup> Please note that the EBITDA figures provided in this Notice refer to the gross revenues of the relevant Joint Venture, whereas the enterprise values provided in respect of those same Joint Ventures represent Sanum's percentage share of the overall value for each.

<sup>4</sup> Sitthixay Xaysana Co. Ltd. has since had its name changed to Lao River Mining Sole Co., Ltd.

<sup>5</sup> Bouasone Bouphavanh resigned, suddenly, as Prime Minister on 23 December 2011, and was replaced by current Prime Minister Thongsing Thammavong. See: <http://inside.org.au/family-problems/> accessed 13 August 2012.

- various officials, that the country had entered a new era of economic growth, fostered by the rule of law and decided openness to foreign investment. The Respondent's officials specifically promised representatives of the Investor that if it would invest much-needed investment finances and know-how into gaming, commercial real estate and hospitality investments in the Lao PDR, the Investor would be assured both an ongoing majority control of each and every investment it made and long term protection and security both for them and for the returns they would generate.
19. In addition, during these meetings the Prime Minister and his officials also gave Sanum executives repeated assurances that the Respondent would work out a favorable and certain tax regime with the Investor. This was a critical point for Sanum because taxes are one of the most significant issues at stake when one determines whether a gaming investment will generate the profits necessary to proceed with establishment.
  20. Moreover, the Prime Minister also personally vouched for ST, assuring Sanum that ST was an honorable business and that its principals were reliable and honest businessmen who, together, would provide Sanum with a reputable and respected business partner in his country. In vouchsafing ST's reputation, the Prime Minister reassured Sanum, that ST had successfully operated for many years in the Lao PDR and that the decision to partner with ST, in particular, would be most beneficial to Sanum.
  21. Other of the Respondent's officials similarly assured Sanum representatives that, so long as the Investor lived up to its commitments to develop the contemplated projects, and to employ and teach Lao people new trades in the process, it would provide steadfast support to Sanum and all of the investment enterprises it established. Indeed, in August 2007 the Respondent even became an equity business partner with the Investor, becoming a 20% shareholder in the Paksong Vegas Project. At the time, the Prime Minister himself emphasized that his Government's shareholding would be a demonstration of the Respondent's commitment to, and strong interest in, the continued operation and fair treatment of the Investor's investments in the Lao PDR.
  22. Because the Lao PDR had been governed under a single party system for many years, largely without exposure to Western commercial and legal practices, Sanum executives were especially careful in questioning officials about whether and how private enterprise could really be protected by the Respondent on an ongoing basis. In response, the Prime Minister and other government officials represented that Lao was strongly committed to the "rule of law" which they claimed had already been implemented through official policy and legislation. The Prime Minister was vehement in personally explaining to Sanum representatives that the Respondent fully intended to protect foreign investors, noting how the Lao PDR was on track

to become a member of the World Trade Organization and other organizations promoting free trade and investment.

23. In this regard, the Prime Minister and other Government officials also stressed how the Respondent had already entered into several treaties that protected foreign investors. All of these representations were very reassuring to Sanum, and it would certainly not have invested millions of dollars in the Lao PDR had they not been provided. Sanum executives, directors and shareholders were already aware of the importance of investment protection agreements at that time, and, as Sanum's investments in the Lao PDR broadened and deepened; further steps would be taken to ensure that Sanum investments in the country would always be readily afforded the best protection made available to any foreign investors.

#### ***The Favored Local Joint Venture Partner***

24. The framework of the relationship subsequently struck between ST and Sanum was set forth in a Master Agreement dated 30 May 2007. The Master Agreement set forth the principles that were supposed to govern each of the joint ventures in which the parties would participate. ST promised to convey 60% of each of its existing gaming ventures - and all future gaming ventures - to Sanum. In exchange Sanum agreed to pay millions of dollars to ST and to finance virtually all of the costs of developing all of their planned ventures together. For example the partners agreed that US\$1.5 million would be due from Sanum to ST simply upon signing the Master Agreement. Another US\$2 million was due upon receipt of government approvals to be arranged by ST and still millions more were due upon the opening and licensing of each of the casinos and slot machine clubs planned. All of these payments, which totalled more than US\$8.5 million, were made to ST by Sanum to secure the latter's right, as the controlling investor, to develop and then profit from being the largest participant in the gaming industry in Lao. Sanum subsequently financed tens of millions of dollars in additional investments in order to actually develop these business enterprises, from which ST and the Government (as both equity partner and tax collector) have already both profited handsomely.
25. At the time Sanum was investing millions of dollars of in the Lao PDR, its executives were not aware of the full extent of the close family and business ties that apparently existed between ST officials and key members of the Respondent's central Government.<sup>6</sup> It was thus not apparent that, after a number of successful investments had been established, certain powerful individuals could harness the powers of the State to strip Sanum of its

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<sup>6</sup> For example, the daughter of 64-year-old Sithat Xaysoulivong, President of ST Group is married to the son of 74-year-old Bounnhang Vorachith, who held the position of Prime Minister from 2001 to 2006 and since that time has held the position of Vice President of the Republic.

investments for their own benefit. The Respondent's failure to disclose the complete scope and context of these personal relationships, at the time Sanum made its key establishment decisions has likely had a substantial and material impact upon the size and nature of Sanum's investments and its present losses. In short, if Sanum had known that the Government was prepared to effectively suspend the rule of law to suit well-connected local nationals, it would never have invested.

**(b) The Paksong Project**

26. On 11 April 2006 Sanum and ST Group entered into an agreement to jointly develop a hotel and casino complex in Paksong, Lao. On 6 October 2006 the Investor acquired a 50-hectare land concession from the Respondent in exchange for a 20% share in the profits of the Paksong Vegas Hotel and Casino that would be situated on it. The land was located at Kilometer 30 of the Paksong District, Champasak Province, Lao PDR.
27. On 28 May 2007 the Investor and ST entered into a Shareholders Agreement, whereby 80 shares in total were issued by Paksong Vegas. The Investor would hold 60% of the shares; ST entities would hold 20% of the shares; and the Respondent would hold the remaining 20%.
28. On 30 May 2007, the Investor entered into a Master Agreement with ST, which would govern all transactions between the parties related to their gaming investments in Lao. Then, on 10 August 2007, the Investor entered into a PDA with the Respondent and ST, the purpose of which was to memorialize the parties' agreement that the investor should take the lead in developing the 50-hectare parcel of land in Paksong that it had acquired one year earlier, into a hotel and casino entertainment complex.
29. In Article 3 of the PDA, the Respondent acknowledged that the term of the investment would be no less than 50 years, starting from 11 April 2006. Article 5 of the PDA also specified that development of the Paksong Project would require an investment of US\$25 million. It further specified that the joint venture enterprise designated to develop and administer the Paksong Project would be Paksong Vegas, which would remain majority-owned and controlled by Sanum.
30. In Article 8 of the PDA, the Respondent reaffirmed its commitment to authorize the use of the land Sanum had already acquired "according to the term of the project development." At paragraph 10 of the same provision, the Respondent also confirmed that it would grant the necessary investment and business licenses required for the joint venture enterprise to develop and operate the following:



- “5 stars hotel project including cultural and function hall and restaurant,
- Casino and nightclub (entertainment),
- Tourism development and tourism resources development,
- Health club which full of facilities included traditional massage, sauna and gym,
- Gift shop, duty free shop, mini-market and others,
- Landscape gardening and public recreation park included swimming pool, tennis court, Golf club and others,
- All kinds of car rental.”

31. The next day, 11 August 2007, the Respondent’s Committee for Planning and Investment issued a foreign investment license to the Investor for the operation of Paksong Vegas. Soon thereafter, on 24 August 2007, an enterprise license was issued to Paksong Vegas, with the understanding that it would be subsequently routinely renewed on an annual basis for the next fifty years.
32. On 14 October 2007, the Respondent granted a business license to the Investor so that it could open a representative office in Vientiane, the capital city of Lao. The office was opened later that same month. The Investor also entered into a Shareholders Agreement for Paksong Vegas with the Respondent and ST on 31 October 2007.
33. On 30 November 2007, the Investor met with the various representatives of the Respondent, updating them on the progress of the Paksong Project. Government officials indicated that they were very anxious for the project to proceed. At this meeting, the Investor informed the Respondent that the design work was almost completed and that clearing of the land had already commenced.
34. On 8 April 2008, the Head of the Respondent’s Division for Planning and Investment issued a letter to the Governor of Champasak Province informing him of a prime ministerial decree that purported to place a moratorium on all casino projects currently approved but not yet under construction. The letter specifically contained criticism of the Paksong Project on the erroneous grounds that “construction” had not commenced within 90 days of signing the PDA.
35. On 27 June 2008, Paksong Vegas executed a construction contract with China Construction and Lucky China Engineering for the construction of the Paksong Vegas Hotel and Casino Resort. The contract called for an advance

- payment of approximately US\$3.2million in mobilization fees. The Investor contributed approximately \$1 million of this amount by way of a loan to Paksong Vegas, which, obviously, no longer has the means to repay it.
36. By the autumn of 2008, the contractors were engaged in grading the land, and otherwise preparing the site for laying the building's foundations, when the Investor received orders from Respondent to immediately cease all construction activities. In addition, the property had been fenced, building plans had been finalized, the company office in Pakse was staffed and open for business, vehicles had been purchased and construction workers and other staff had been hired. Nevertheless the Respondent's Ministry of Planning and Investment subsequently affirmed the stop work order, on 15 October 2008.
  37. Just days later, on 23 October 2008, the Investor was informed that the Prime Minister's Office had revoked the gaming licenses that had been previously granted to Sanum's investment enterprises, Savan Vegas and Paksong Vegas, for the right to exclusively operating gaming facilities in the Provinces of Champasak (where the Paksong Project was located] and Saravan.
  38. Then, on 19 December 2008, the Champasak Province Department of Planning and Investment issued a request to the Investor for the surrender of all land use rights enjoyed by Paksong Vegas under the 2006 concession. In response the Investor immediately indicated its willingness to surrender its rights and interests in the Paksong Project, so long as it received two assurances: (1) that the surrendered site would not be developed by somebody else for gaming; and (2) that a suitable replacement location would be provided in which Sanum could operate the same kind of business as the one planned for Paksong.
  39. Throughout 2009 discussions ensued between the Respondent and the Investor over the grant of an alternative site. In reliance on these negotiations the Investor commissioned a feasibility study for a similar hotel and casino complex at Khonephapeng, Khong District, Champasak Province, which would be known as the Khonephapeng Grand Resort. Negotiations broke down, however, because government officials were no longer willing to grant to the Investor the same regional monopoly rights, which it had been granted for the Paksong Project, for the Khonephapeng Grand Resort. Without a transfer of exclusive operating rights, the economic fundamentals of the project would have been irretrievably compromised.
  40. Following the parties' unsuccessful negotiations, on 27 April 2010 the Respondent's Ministry of Planning and Investment purported to unilaterally terminate the Paksong PDA. The ground provided for the Respondent's repudiation of the PDA was that Paksong Vegas had failed to complete construction quickly enough, as required under the Agreement. In so doing,

the Respondent omitted mentioning the obvious fact that construction had only been halted in 2008 on its explicit orders.

41. As noted above, Sanum continued to make efforts to negotiate with the Respondent over a relocation of the Paksong Project to Khonephapeng until 10 April 2012, on the understanding that the new site would be operated on the same legal footing as had been envisioned under the PDA for Paksong Vegas (and that the Paksong Project would not be renewed and awarded to a competitor). It was on 10 April 2012 that the Prime Minister's Office issued its final repudiation of the PDA for the Paksong Project and associated concessions.
42. On 18 May 2012 one further meeting took place between representatives of the Investor and the Respondent. At that meeting the Respondent expressed its willingness to continue to consider the possibility of allowing the Investor to recommence its project at Khonephapeng. However, the Respondent apparently remained adamant that it should now be free to grant identical rights to Sanum's competitors, in the very same region.
43. In other words the Respondent has simply remained unwilling to provide suitable compensation to the Investor for the taking of the rights it had previously granted to the Investor to launch their co-venture in the Paksong Project. Indeed, Ministry of Planning and Investment officials candidly admitted, during a meeting held with the investor on 12 December 2011, that the primary reason for the Respondent's repudiation of its promises concerning the Paksong Project was precisely because officials in the Prime Minister's Office had by then, for some unknown reason, decided firmly against permitting Sanum to be involved in a business venture operating under an exclusive regional license for gaming in Lao. The value of the compensation owed for the extinguishment of these valuable commercial rights lies at the heart of this dispute.

### **(c) The Paksan Slot Club**

On 24 October 2007 the Respondent's Mass Culture Department and its Public Culture Department both issued licenses to Savan Vegas to operate a slot machine gaming facility, known as the Paksan Slot Club, at the Paksan Hotel in Phonxay Village, Paksan District, Borlikhanxay Province. These licenses were renewed on November 2008 and again on 27 October 2009. After obtaining the necessary licenses Sanum proceeded to invest approximately \$1 million in readying the Paksan facility, which would be operated on premises leased to Savan Vegas by the operators of the Paksan Hotel, including furnishing it with state of the art gaming equipment.

44. There was no Paksan Slot Club before Savan Vegas established it. It was yet another of the business enterprises in the Lao PDR that Sanum built from the

- ground up. Savan Vegas made extensive improvements to its premises at the Paskan Hotel and in doing so it also upgraded the hotel. Savan Vegas paid workers to set up the facility, installed suitable sources of power and cabling, and incurred many other costs in the process. Once the Paksan Slot Club was licensed Savan Vegas also purchased gaming equipment to furnish the slot club and thereafter maintained and managed the facility. On 25 October 2009, the Paksong Slot Club opened for business and was immediately successful.
45. The relationship between Sanum's Savan Vegas management team and provincial officials had always been cordial and productive. Savan Vegas officials always recognised and worked to address any governmental concerns or requests immediately. For example, as a gesture of goodwill towards provincial officials, Savan Vegas agreed to a request to employ two additional officers on its premises. In another case, Savan Vegas officials immediately cancelled a planned billboard advertising campaign when they were informed, in February 2010, that someone in the Prime Minister's Office had arbitrarily decided to ban such advertising. Savan Vegas reacted so quickly to the notification that its advertising campaign was halted before a single billboard was posted.
  46. Despite such seemingly genial and constructive relations cultivated by Savan Vegas officials with their provincial government counterparts and without notification of any major cases of alleged non-compliance, on 26 October 2011 the Respondent's Ministry of Information and Culture abruptly ordered the closure of the Paksan Slot Club. This unanticipated decision shocked the Investor. Based upon all of their informal contact with officials, it was assumed that the appropriate ministries would be issuing further annual renewal notices as they had in years past.
  47. Sanum / Savan Vegas officials strenuously objected to the closure decision, which led to an official meeting with numerous provincial government officials on 11 March 2011, in addition to many informal contacts. The March 11<sup>th</sup> meeting was not productive, however. Government officials were unwilling to negotiate over the closure decision, or even to fully explain the Respondent's grounds for closing the Paksan Slot Club in the first place. Officials in attendance were seemingly only interested in ensuring that the facilities would remain closed and that any outstanding taxes be paid. Savan Vegas officials had no choice but to reluctantly agree to ensure that the facility was completely out of business within three days of the meeting.
  48. On 24 March 2011 the Investor petitioned the Prime Minister's Office for authorization to reopen the Paksan Slot Club, noting that Savan Vegas had not been notified of any legitimate claim that it failed to comply with any applicable regulation. It was further noted how the Investor held legitimate

expectations as to the transparency of the decision-making process and the reasonableness of decisions over license renewals.

49. On 2 June 2011 officials from the Respondent's provincial Information and Culture Division agreed to meet with Savan Vegas officials to discuss the status of the Paksan Slot Club. At the meeting the Respondent's own gaming officials actually admitted that they were actually unaware of "all the reasons as to why the club was closed." Sanum / Savan Vegas officials at the meeting were simply told that the decision had been taken at a much higher level, in the capital, Vientiane. They recommended that Savan Vegas just keep trying to learn the whole story from government officials in Vientiane, eventually
50. Of note is the fact that the Paksan Slot Club was ordered closed by Respondent shortly after a representative of ST had demanded – and Investor had declined to provide – ST with an additional 20% of the revenues from the facility.

#### **(d) The Thakhaek Free Trade Zone**

51. In 2010 Sanum began investigating the possibility of opening a slot club and international welcome center at the site of the then future Thai-Lao Friendship Bridge III, located at Thakhaek, in Khammouane Province. Sanum began negotiations for a land concession on the property with provincial government officials and then solicited the Ministry of Information and Culture – the national ministry tasked with oversight of gaming in the Lao PDR – for a gaming license that would enable it to open a slot club on site. On 21 February 2011 the Ministry of Information and Culture granted that gaming license to Savan Vegas and so Sanum immediately caused the commencement of site clearance and design work for a welcome center.
52. In addition to the welcome center, the Investor planned to develop a multi-purpose free trade zone on 90 hectares of land that the Governor of Khammouane Province had promised to provide in Thakhaek in exchange for its investment in his province. The free trade zone land concession would have included a shopping mall, office buildings, hotel, warehousing, light industrial, and factory sites. After receiving the gaming license, and in anticipation of receiving the formal land concession promised by the Governor after negotiations with Sanum, design work and site clearance began immediately.
53. However, on 2 March 2011 – not long after the gaming license had been granted for a slot club at the Thakhaek border-crossing site – the Prime Minister's Office apparently intervened and abruptly cancelled it. No reason was provided for the cancellation and no compensation was provided to Sanum for the money already spent on development of the project or for the value of the license that had been revoked. In addition the provincial

governor effectively reneged on his agreement with Sanum to provide a concession of 90 hectares for the promised free trade zone. He did so by removing from the concession 16 hectares of highway frontage, which was obviously the most valuable piece of the property and key to its use as a free trade zone. The losses of the highway frontage and slot club license made the Thakhaek project economically unfeasible. The loss of the free trade zone opportunity deprived the Investor a project with an enterprise value to Sanum of over US\$79 million, and preparatory costs of more than US\$1 million, including a \$600,000 payment that had already been made under its agreement with the Khammouane Province, a \$35,000 consulting fee paid for a trade zone specialist and other costs for design and site work.

## II. LAW

54. Article 1(2)(b) of the Treaty provides that the term “investors” means economic entities established in accordance with the laws and regulations of each contracting State. As it was incorporated in the Macau Special Administrative Region of the People’s Republic of China, the Investor is an investor as per the Treaty.
55. Article 1(1) of the Treaty provides: “investments means every kind of asset,” including property rights, ownership interests in a business enterprise, claims to money, intangible rights such as know-how, and “concessions conferred by law.” As demonstrated above, the Investor established an investment in the territory of the Respondent by establishing Savan Vegas, entering into a PDA with the Respondent and Lao nationals, investing in real property, employing its know-how and acquiring other tangible assets in order to establish and maintain gaming facilities at Paksan and Paksong, and in obtaining concessions from the Respondent which accorded its investment enterprises an exclusive right to operate such facilities at both locations.
56. Under Article 3(1) of the Treaty, the Respondent must accord fair and equitable treatment to the investments of the Investor, as well as “activities associated with investments of investors” of another Contracting State. By arbitrarily cancelling the Paksan and Thakhaek concessions, in a manner contrary to basic principles of due process and transparency, the Respondent has failed to accord fair and equitable treatment to the Investor and its investment. In unreasonably cancelling the Paksong concessions, in a similarly non-transparent and unreasonable manner, the Respondent has also failed to honour its obligations under the fair and equitable treatment standard.
57. The Respondent’s decisions to cancel valuable concessions lawfully obtained by the Investor for the Paksan, Thakhaek and Paksong projects also constitute the expropriation of these “investments” (i.e. the concessions

granted to Sanum or to an enterprise it owned and controlled) for which compensation has not been paid. Article 4(2) provides that such compensation “shall be equivalent to the value of the expropriated investments at the time when expropriation [was] proclaimed, be convertible and freely convertible.” Thus, the parties have a “dispute involving the amount of compensation for expropriation” which has not been resolved after more than six months of negotiations between them, as per Article 8(3) of the Treaty.

58. Article 3(2) of the Treaty also provides that the “treatment” to be accorded under paragraph (1) “shall not be less favorable than that accorded to investments and activities associated with such investments of investors of a third State.” The right to defend one’s interests, in arbitration before an impartial, independent and international tribunal, is one of the most fundamental, substantive protections available to investors today. The exercise of such right, in respect of one’s investments, is obviously “***an activity associated with such investments***” (emphasis added) as contemplated in paragraphs (1) and (2) of Article 3 of the instant treaty.
59. The Respondent has accorded more favorable treatment to other foreign investors in a number of investment protection agreements it has concluded with third States. In each of these cases the Respondent has offered investors from third States the opportunity to pursue damages claims in arbitrations arising out of its promise to accord “fair and equitable treatment” to them.<sup>7</sup> One of the most crucial ***activities associated with*** any foreign ***investment*** is the vindication of legal rights accruing to it by means of independent, impartial and international arbitration, such as the dispute settlement mechanisms found in most investment protection treaties.
60. Examples of more favorable treatment being accorded by the Respondent to similarly situated foreign investors include, but are not limited to: the Respondent’s treaties with the Netherlands (Articles 3(1) and 9), the Republic of Korea (Articles 3(1) and 8(3)) and France (Articles 3 and 8), all of which offer arbitration under the ICSID Additional Facility Arbitration Rules; its treaties with Sweden (Articles 3(2) and 7(2-3)), Switzerland (Articles 3(1) and 9(2)) and the United Kingdom (Articles 2(1) and 8), all of which offer arbitration under the UNCITRAL Arbitration Rules; and its treaty with Germany (Articles 3 and 11(2)), which offers *ad hoc* arbitration.

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<sup>7</sup> In each of these cases the Respondent has promised to accord such treatment based upon the autonomous treaty standard of fair and equitable treatment, rather than a more limited variant. In contrast, for example, in its more recent agreement with Japan, the Respondent limited its Article 5 promise to accord “fair and equitable treatment” by explicitly prescribing the provision as follows: “the customary international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to investments of investors of the other Contracting Party.”

61. Pursuant to Article 3(2) of the Treaty, the Investor hereby invokes its right to receive treatment no less favorable than the Respondent has accorded to the investors of third States, such as the Netherlands, Korea, France, Sweden, Switzerland, the United Kingdom and Germany, in respect of its right to seek compensation for a breach of the autonomous standard of fair and equitable treatment treaty, through recourse to *ad hoc* international arbitration.
62. In addition, and in the alternative, should Article 8(3) of the instant Treaty be construed in such a manner as to in any way curtail or limit the access that a Chinese investor would otherwise enjoy (had it been a national of the Netherlands, the Republic of Korea, France, Switzerland, the United Kingdom or Germany), including the availability of access to arbitration under the Treaty itself, Sanum hereby invokes its right to receive treatment no less favorable than the Respondent has accorded to these third country investors, under Article 3(2) of the Treaty, as well.
63. The Investor stresses that the aforementioned recitation of facts, demonstrating how Respondent has failed to comply with its treaty obligations, should not be regarded as exclusive. The Investor will submit a particularized statement of facts, with supporting evidence, in its memorial on the merits, at a time to be determined by the Arbitral Tribunal. The Investor accordingly reserves its right to, *inter alia*, supplement the facts, its allegations, its submissions and its claims in its memorial as required by the circumstances.

### **III. ISSUES**

64. What is the amount of compensation owing to the Investor (i.e. the quantum of damages, plus interest) arising from the Respondent's cancellation of the concession rights it had granted in respect of the Paksan and/or Paksong projects?
65. On the basis of its entitlement to receive "treatment no less favorable" pursuant to Article 3(2) of the Treaty, is the Investor entitled to seek a damages award from the Tribunal for the Respondent's noncompliance with the "fair and equitable treatment" obligation found at Article 3(1) of the Treaty?
66. Through its acts and/or omissions, either individually or *in toto*, has the Respondent failed to meet the autonomous treaty standard of fair and equitable treatment, as set out in Article 3(1) of the Treaty?
67. If the answer to the above question is "yes," what should be the quantum of damages, plus interest, paid by the Respondent to the Investor in order to make it whole?



**G. Relief Sought**

68. The Investor seeks the following relief from the Arbitral Tribunal:
- i. A declaration that the Government of the Lao People's Democratic Republic has failed to pay compensation pursuant to, and otherwise acted in a manner inconsistent with, its obligations under Articles 3, 4 and 8 of the Treaty, including obligations owed on the basis of most favored nation treatment;
  - ii. An order that the government of the Lao People's Democratic Republic pay to the Investor its damages resulting from the aforementioned violation which are estimated to be not less than US\$235 million;
  - iii. All of the costs incurred in contesting the Respondent's conduct and in proceeding with this arbitration;
  - iv. Pre-award and post-award interest at a rate to be fixed by the Arbitral Tribunal;
  - v. Any amount required to pay any applicable tax in order to maintain the integrity of the award; and
  - vi. Such further relief that counsel may advise and the Arbitral Tribunal may permit.

14 August 2012

**Counsel for Sanum Investments Limited:**



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