NOTICE OF ARBITRATION

Under the Arbitration Rules of the International Centre for the Settlement of Investment Disputes (Additional Facility) and Article 9 of the Agreement on Encouragement and Reciprocal Protection of Investments between the Lao People's Democratic Republic and the Kingdom of the Netherlands

LAO HOLDINGS N.V.

Investor/Claimant

and

THE GOVERNMENT OF THE LAO PEOPLE'S DEMOCRATIC REPUBLIC

Party/Respondent

1. Pursuant to Articles 2 and 3 of the Arbitration Rules of the International Centre for the Settlement of Investment Disputes (Additional Facility) and Articles 9 and 13 of the Agreement on Encouragement and Reciprocal Protection of Investments between the Lao People's Democratic Republic and the Kingdom of the Netherlands ("the Treaty"), Lao Holdings N.V. (the "Investor"), a national of Aruba, Netherlands, hereby serves this notice of arbitration for breaches of the Treaty by the Government of the Lao People's Democratic Republic (the "Respondent"), as set out herein.

A. Notice that the Dispute be Referred to Arbitration

2. Pursuant to Articles 2 and 3 of the Arbitration Rules (Additional Facility) of the International Centre for Settlement of Investment Disputes (the "ICSID-AF Rules"), being Schedule C to the Rules Governing the Additional Facility for the Administration of Proceedings by the Secretariat of the International Centre for Settlement of Investment Disputes (Additional Facility Rules), the Investor hereby serves notice requesting that the dispute between itself and the Respondent, described herein, be referred to arbitration under the ICSID-AF Rules, as specified by Article 9 of the Treaty and as contemplated under Article 1 of the ICSID-AF Rules.

B. Designation of Each Party and Its Address

3. Pursuant to Article 3(1)(a) of the ICSID-AFR, the Investor designates precisely each party to the dispute and states the address of each:

Investor:

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

Addresses for Service:

Todd Weiler
Barrister & Solicitor
#19 – 2014 Valleyrun Blvd.
London, Ontario N6G 5N8
Canada
202 684 6840 (direct)
877 887 7840 (fax)
todd@treatylaw.com

Deborah Deitsch-Perez
Lackey Hershman
3102 Oak Lawn Ave.
Dallas, Texas 75219
U.S.A.
214 560 2218 (direct)
214 560 2203 (fax)
ddp@lhlaw.net

Respondent:

The Government of the Lao People's Democratic Republic
Ministry of Foreign Affairs
23 Singha Road
Vientiane Capital
Lao PDR
856-21-415-822 (direct)
856-21-414-009 (fax)

C. Indication of the Date Upon Which the Secretary General Approved the Agreement of the Parties Providing for Access to the ICSID-AF Rules.

4. As set out in more detail below, a legal dispute has arisen between the parties due to the Respondent's failure to comply with its obligations under the Treaty. Such noncompliance has been demonstrated in the conduct of the Respondent towards the Investor and its investments in its territory, which have caused, and continue to cause, increasing loss and damage.

5. Article 9 of the Treaty provides that, where one of the Contracting Parties has not become a Contracting State to the ICSID Convention, the dispute shall be submitted to arbitration: "under the rules governing the Additional Facility for the Administration of Proceedings by the Secretariat and the Centre (Additional Facility Rules)." In submitting this Notice of Arbitration, the Investor seeks confirmation – *de bene esse* - of the approval of the Secretary General as per Article 3(1)(c) of the ICSID-AF Rules and Article 4 of the ICSID-AF Administrative Rules. For the purposes of the Notice of Arbitration, the Investor assumes that the approval of the Secretary General has already been impliedly accorded under Article 4(5) of the ICSID-AF Administrative Rules.

D. Issues in Dispute and Indication of the Amount Involved

6. The Investor claims that the Respondent has acted inconsistently with Articles 3(1), 3(4), and 4 of the Treaty, and that it is presently engaged in an unreasonable and discriminatory course of conduct that is additionally inconsistent with Articles 5 and 6 of the Treaty.

7. Further, as per Articles 3(2), 3(5) and/or 4 of the Treaty, the Investor hereby invokes and relies upon the following obligations, undertaken by the Respondent for the benefit of investors from third countries, in respect of which the Respondent's conduct has also been inconsistent:

i. Article 4(1) of the 1996 *Agreement between the Federal Republic of Germany and the Lao People's Democratic Republic on the*

Encouragement and Reciprocal Protection of Investments, Article 2 of the 1996 *Agreement between the Government of the Republic of Korea and the Government of the Lao People's Democratic Republic for the Promotion and Protection of Investments*, and/or Article 2(2) of the 1995 *Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Lao People's Democratic Republic for the Promotion and Protection of Investments*;

ii. Article 3 of the 1991 *Agreement between the Republic of France and the Lao People's Democratic Republic on the Encouragement and Reciprocal Protection of Investments*;

iii. Article 6 of the 2007 *Agreement between Japan and the Lao People's Democratic Republic for the Liberalization, Promotion and Protection of Investments*;

iv. Article 2(3) of the 1996 *Agreement between the Government of the Kingdom of Sweden and the Government of the Lao People's Democratic Republic on the Promotion and Reciprocal Protection of Investments*; and

v. Article 3(2) of the 1990 *Agreement between the Government of the Kingdom of Thailand and the Government of the Lao People's Democratic Republic for the Promotion and the Protection of Investments*.

E. Nature of the Claim

8. This Notice of Arbitration is submitted in the hopes of arresting the ongoing taking of no less than US$400 million in assets located in the Lao PDR by the Respondent for the benefit of certain of its own Lao nationals. These assets were established by means of the direct investment of over US$85 million made in the country by the Investor's wholly owned subsidiary, Sanum Investments Limited. The Investor was enticed to invest in the Lao PDR on the basis of the Respondent's promises of a safe and stable economic and regulatory environment, guaranteed through the steadfast application of an unerring rule of law. That decision was made approximately five years ago. Now, within the span of less than a year, the Respondent has turned on the Investor, seemingly invoking all of its powers as a State to dispatch the Investor from the Lao PDR. Such conduct has included:

(1) Retroactively imposing over US$23 million in taxes and penalties upon the Investor's business enterprises, despite their having been explicitly prohibited by written agreement between the Investor and the Respondent;

(2) Threatening to have Lao prosecutors seize and auction off Investor's investments unless its unreasonable and discriminatory demands for the payment of onerous new fees, fines, taxes and penalties are not satisfied within ten days of its notice of assessment of such fees, fines, taxes and penalties and before Investor has had the opportunity to exercise its rights under Lao Tax law;

(3) Denying the Investor access to the domestic alternative dispute settlement facilities which were supposed to have been available to efficiently facilitate the rapid resolution of business disputes;

(4) Forcing the Investor to defend itself in the hearing of a law suit brought by the Investor's erstwhile Lao joint venture partner, over a project worth hundreds of millions of dollars, on 48 hours' notice;

(5) Being allotted little more than an hour for testimony at the aforementioned trial before declaring – on the very same day – that the Investor's entire interest in the project was thenceforth forfeited to its (suddenly former) Lao joint venture partner;

(6) Imposing a US$5 million fine on the Investor - payable immediately to the Respondent - effectively for having had the temerity to attempt to defend its investment. Orders for the seizure of Sanum's assets, to satisfy payment of this grossly unjust fine, were entered ***the day before the trial*** and were faxed to local banks ***while the trial was proceeding***;

(7) Arbitrarily revoking certain of the Investor's gaming and business licenses with no acknowledgement of the millions of dollars it invested in developing and/or operating the projects;

(8) Refusing to honor a written agreement to turn over 90 hectares of concession land for a free trade zone by arbitrarily removing the most valuable 16 hectares, which was the keystone of the project because it contained the highway frontage; and

(9) In connection with the above, reneging on a commitment to the Investor to provide a gaming license for a slot club to be included within the project and removing the 16 hectares with highway frontage, crippling the viability of the planned free trade zone after project planning and level grading of the land involved was already well underway and the Investor had already paid the $600,000 due to the Khammouane Province for initiation of the project.[1]

[1] Points 8 & 9 form the subject of a separate arbitration proceeding under the PR China – Lao PDR (which encompass the Respondent's conduct with respect to four projects: at Paksan, Paksong, Thakhaek, and Luang Prabang. Damages relating to such conduct are not being sought in this arbitration, although the facts of those expropriations are described below, in order for the Tribunal to form a complete picture of the parties' relationship.

9. The Investor has already lost many millions of dollars as a result of the aforementioned conduct of the Respondent, both in terms of the initial investments it made in establishing its facilities in the Lao PDR and in terms of revenues forgone because of the wrongly closure, or arbitrary refusal to permit the opening, of the Investor's facilities. Unless the Respondent immediately desists from its present course of conduct, and remedies the harm it has already caused, the Investor will suffer not less than US$400 million in damages as a result.

I. FACTS

10. Lao Holdings N.V. (the "Investor") is an enterprise established under the laws of Aruba, Netherlands on 28 January 2011, evidence of which is attached as **Exhibit A**. On 17 January 2012, the Investor acquired 100% of all of the shares of Sanum Investments Limited, evidence of which is attached as **Exhibit B**.

11. Sanum Investments Limited ("Sanum") is an enterprise established under the laws of Macau on 14 July 2005, evidence of which is attached as **Exhibit C**. 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 D**.

12. 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. [2]

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

13. In 2007, representatives of Sanum met with two Lao nationals, Sithat and Xaya Xaysoulivong, of ST Group, Ltd. and Xaya Construction Co. Ltd.,[3] 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.

---

[2] All enterprise values and any other loss amounts stated herein represent Sanum's percentage share of the overall value for each investment.
[3] Sitthixay Xaysana Co. Ltd. has since had its name changed to Lao River Mining Sole Co., Ltd.

14. 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).[4]

15. 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 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.

16. 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.

17. 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.

18. 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 Savan Vegas Project. At the time, the

[4] 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.

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.

19. 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 the Respondent 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.

20. 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

21. 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.

22. In the Master Agreement, ST promised to "obtain Government Approvals for [Sanum] to be the foreign partner in all joint ventures [the "Joint Ventures"] undertaken by the Parties, at [ST's] sole cost." ST also promised to bear "[a]ny and all costs, including but not limited to Government Approval costs, expenses or taxes that [ST] or the Joint Ventures incur from the Lao PDR government . . ." In short, because ST had already demonstrated that its executives enjoyed strong relationships with senior members of the Lao PDR, ST would be responsible for negotiating and paying the licensing and tax costs for the Joint Ventures - because, presumably, they would communicate more effectively with the Government than a newcomer like Sanum. In later agreements, however, ST demanded 30% of the revenues from each slot club enterprise, in order to cover the costs of its making these payments.

23. As these enterprises proceeded to generate substantial revenues, ST took that 30%. However, as Sanum would only eventually discover, ST was actually never required by the Lao PDR to make ***any*** tax payments throughout the entire period. While Sanum had understood (and appreciated) that ST's strong relationship with the Government was beneficial to the Joint Ventures, at the same time Sanum relied upon the assurances it had received from the most senior Government official that the Respondent would accord fair and equitable treatment to all foreign investors and, in particular, to the foreign investors with whom it would itself become a partner in a Joint Venture.

24. 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. 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 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.

25. In the Master Agreement, ST also agreed "to commit all of its current gaming rights and locations into the Joint Ventures within the framework of Lao PDR law. " It further promised: "all current and future gaming rights of every kind

will be exclusively those of the Joint Ventures." The Master Agreement also provided that neither ST nor "any entity in which it has any interest in [would] enter into any gaming businesses in Lao PDR without [Sanum]" and agreed "to fully and completely assist the Joint Ventures and [Sanum] in every possible way to make the Joint Ventures a success and to create value for the Joint Ventures." Importantly, at this point in the Master Agreement it was also stipulated by ST: "This full assistance shall continue indefinitely . . ." and that its "full assistance shall be comprehensive."

26. Thereafter, ST and Sanum entered into various Joint Venture participation agreements. The Participation Agreement dated 4 October 2008 concerned a Vientiane slot club at the Friendship Bridge (the "Thanaleng Club"). As noted in the Master Agreement, Sanum would eventually provide all slot machines for the slot clubs, but ST already had an existing slot machine supplier for the Thanaleng Club. As that provider's relationship with ST was scheduled to end on 11 October 2011, the Participation Agreement provided that, until October 11th, Savan Vegas would have only a 40% (instead of the contractually required 60%) share of the profit in the Thanaleng Club even though Sanum owned 60% of the club. Nevertheless, it was Sanum that would be responsible for buying millions of dollars of equipment for the Thanaleng Club and for investing large sums for marketing and other required operations.

27. The only major outlays for which ST was responsible were tax and licensing costs, for which it had already been allocated the aforementioned 30% of the enterprise's revenues from each facility. This 30% allocation came off the top, before the temporary 40/60 Sanum/ST profit allocation would be made. Moreover, based on two addenda to the Participation Agreement Sanum was also responsible for acquiring additional land for use by the slot club as well as building additional facilities. These addenda, requiring Sanum to expend millions more in improving the Thanaleng Club, occurred in 2010, the last of which was signed in November of 2010. All of these agreements (principle and addenda) confirmed that - as of 11 October 2011 - the reduced percentages specified in the Participation Agreement (i.e. reduced to account for ST's obligations to its prior slot machine provider) would end.

28. On 11 October 2011 Sanum would be entitled to its full 60% of the Thanaleng Club profits, as well as full management of the facility. Indeed one of the 2010 agreements specifically stated: "When the investments are repaid in full, the generated revenues shall then be paid 60% to ST and 40% to Sanum until the turnover date in 2011, when the terms of the Master Agreement shall prevail." Under the Master Agreement, 11 October 2011 was referred to as the "turnover date", upon which Sanum would be required to make an additional payment of US$500,000 (later increased to US$600,000) to ST in consideration of the increase in Sanum's profit share to

60%. When the turnover date arrived Sanum did indeed make, and ST accepted, that payment.

29. When Sanum first became involved with the Thanaleng Club, the club's net profit was about US$1,000,000 per year. By 11 October 2011, its net profit was almost US$3 million per month. This exponential increase was a direct result of Sanum's investment of over US$18 million into the club and its application of marketing know-how. It is perhaps not unsurprising that ST would later seek, with Respondent's apparent assistance, to misappropriate all of the returns from this hugely profitable enterprise, but Sanum was not privy to the Respondent and ST's plans in advance.

30. To safeguard its investment, Sanum obtained a series of licenses for its enterprises from the Government directly, rather than through ST, and it secured assurances from Government officials that these licenses would be routinely renewed at the end of each applicable term. Without such assurances, Sanum would have been at risk of making investments that could not be recouped within the limited initial period of any given license. Sanum would certainly not have invested millions of dollars in the Lao economy without receiving such assurances against capricious decision-making upon the date of each and every license renewal. Such licenses included: a Foreign Investment License and an Enterprise License for Savan Vegas and Casino Co., Ltd. and Paksong Vegas and Casino Co., Ltd.; a business license for Sanum's representative office in Vientiane, Lao PDR; and a gaming license for the Paksan Slot Club, granted 14 October 2007, and renewed in 26 November 2008, but revoked in October 2010. Additionally, while the Ministry of Information and Culture granted a license for a new welcome center and slot club at Thakhaek, Khammouane Province, to Savan Vegas in February 2011, it was suddenly cancelled on 11 March 2011.

The Investment Projects

31. The Joint Ventures that would constitute the keystone investments of Sanum in the Lao PDR included: the Savan Vegas Hotel and Casino Project, the Paksong Hotel and Casino Project, multiple slot club projects and the Thakhaek Free Trade Zone and Slot Club. The locations of the planned and existing slot clubs were: Thanaleng, Lao Bao, the Savannakhet Ferry Terminal, Paksan, Thakhaek and Luang Prabang. ST also had an active license for a slot club in Luang Prabang, but informal communications from officials inside the Government have informed Sanum that the Respondent would not reissue a license to an entity owned by ST and Sanum.

32. The Savan Vegas Casino Project involved a large acquisition of property and the construction of a large luxury hotel, spa and conference center with a large casino. The Savan Vegas Hotel and Casino today employs and trains almost 2000 Lao citizens and also brings over 100 skilled workers into the

country, each of who contributes to the economy generally while also specifically enhancing future economic development by providing Lao workers with advanced training in a variety of skilled occupations. To date, Sanum has invested more than US$67 million in its development of the Savan Vegas Project.

33. The Paksong Project, which is the subject of a separate arbitral proceeding, was another hotel, casino, spa and conference center undertaking. After inducing Sanum to spend more than US$1million in preliminary development, the Government cancelled the license it had previously granted to Sanum – which was worth over US$145 million to Sanum – without providing any due process or compensation, and in violation of the Project Development Agreement ("Paksong PDA") entered into by the Lao PDR, ST and Sanum.

34. The Paksan Slot Club Project is also a subject of the other arbitral proceeding. 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 leased space from an existing hotel and then made extensive improvements to enable it to serve as an attractive slot club, upgrading the hotel in the process. 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.

35. Paksan Vegas was immediately successful, adding US$1 million a year to the Savan Vegas bottom line. The facility employed numerous Lao workers before it was closed down by order of the Respondent. The closure was imposed with neither the provision of any notice nor the opportunity to be heard. Without offering the payment of any compensation the Government cancelled the Paksan Slot Club's license and has since repeatedly refused to reinstate it. Closure of the facility represented an out of pocket loss of at least US$1 million and lost enterprise value of over US$12 million.

36. 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 commenced site clearance and design work for a welcome center.

37. In addition to the welcome center, Sanum planned to develop a multi-purpose free trade zone on land that the Governor of Khammouane Province had promised to provide in Thakhaek. 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, Savan Vegas began design work and site clearance.

38. 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 uneconomic. 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. Redress for these damages is being sought in the other arbitral proceeding mentioned above.

39. The Thanaleng Club existed before it became a ST/Sanum Joint Venture, but it was a small and undistinguished facility that was generating only marginal profits. Between 2007 and 2011 Sanum invested more than US$18 million to improve the facility, to build an expansion and to provide better and more interesting games for patrons to enjoy. The Respondent's egregious conduct with respect to the Thanaleng Club is described further below.

40. The Lao Bao and Ferry Terminal Slot Clubs also existed before Sanum invested in the Lao PDR, but ST had by then voluntarily shuttered the Lao Bao Club, which consisted of no more than a vacant building without any suitable infrastructure for a successful gaming facility. Likewise the building occupied by the Ferry Terminal Club was run down and lacked the infrastructure necessary for the operation of a successful gaming facility. Sanum spent considerable sums re-developing both the Lao Bao and the Ferry Terminal properties, turning both into profitable business ventures.

(b) The True Nature of ST's Relationship with Sanum

41. Sanum's present dilemma is a classic case of the foreign investor being lured into establishing profitable investments in the territory of a host State, with promises of fair and equitable treatment, vouchsafed by the rule of law and personal assurances from high government officials. After the foreign investor has risked its capital and developed an important new economic resource for the country – here tourism – it is suddenly and arbitrarily stripped of all of its rights and entitlements in the investment enterprise by the government of the host State, either directly or by abetting the seizure of its investments by the favored local entrepreneur under color of [domestic] law.

42. Here ST has played the role of favored local, while members of the Respondent's justice, culture and revenue ministries, along with its courts and even the Prime Minister's Office, have shared the role of abettor and expropriator. Indeed, Sanum's story may be worse, given its discovery of how the President of ST, Sithat Xaysoulivong and the Vice President of the Republic, Bounnhang Vorachith, are in-laws.[5] is officials are actually related as family to one and possibly more of the very Government officials who have been orchestrating the steady erosion of Sanum's rights and assets within the Lao PDR.

43. Under the Master Agreement ST promised to use its best efforts to cause Sanum to be licensed in every way so that ST and Sanum could mutually profit from their establishment and operation of each of the Joint Ventures. Rather than fulfilling this simple obligation ST has instigated, and subsequently coordinated its efforts with, the Government in rescinding many of the licenses and concessions upon which Sanum's investments rely, and by imposing further punitive measures, such as unjustified auditing and tax demands, with increasing frequency and devastating effect.

44. In addition there is the matter of the 30% deduction from revenues generated by the Thanaleng, Lao Bao and Ferry Terminal slot clubs, which ST was supposed to use to pay taxes, but was not so used. Upon discovering these facts Sanum demanded an accounting of all such deductions from ST, which it refused to provide. The question remains as to why the Respondent's revenue officials would have foregone receipt of these tax payments without providing any notice to its business partner and valued foreign investor, Sanum. The missing sums total almost US$20 million. If it not collected by the Government, roughly 60% of these funds belong to Sanum.

[5] 64-year-old Sithat Xaysoulivong's daughter 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.

45. The interplay between ST's deteriorating contractual performance and the Government's increasing disregard for Sanum's rights, along with its growing favoritism towards ST, are demonstrated in the events described below, which have only unfolded over the last several months.

(c) The Respondent Abets ST in Its Unlawful Eviction of Sanum from the Thanaleng Slot Club, Preventing Sanum from Pursuing Arbitration over the Threatened Ouster and Then Strips Sanum of All of Its Rights, in a Summary Proceeding in Which Its Officials Also Fine Sanum US$5 Million as Punishment for Not Having Acquiesced in the Taking

46. As noted above, in 2007 Sanum entered into the Master Agreement with ST. The Agreement contemplated Sanum's majority ownership of, participation in, and eventual management of, several existing slot clubs, which were then owned and operated by ST alone. The Thanaleng Club was treated somewhat differently, however, because ST claimed to bear obligations to a third party under a pre-existing agreement for the supply of slot machines. To ensure Sanum's full participation in the profits of the enterprise, and its eventual takeover of the Thanaleng Club as contemplated in the Master Agreement, Sanum and ST entered into a Participation Agreement that would govern the relationship until the turnover date of 11 October 2011. At such time ST's obligations to the existing machine supplier would have expired and Sanum would accordingly be able to take over management of the club and see its profit participation rise to 60% from 40%. In exchange ST would be entitled to an additional payment of US$500,000 (later increased to $600,000).

47. When October 2011 arrived, however, rather than transferring management control over the Thanaleng Club to Sanum, ST announced that it had made a "mistake" about the date of the expiration of the machine supplier contract. It was alleged that, instead of 11 October 2011, the contract would only expire on 12 April 2012. ST represented that it would turn over management of the Thanaleng Slot Club to Sanum on the later date instead. As the new April 2012 turnover date approached, however, ST came up with a new claim. This time ST informed Sanum that because the Participation Agreement had expired on the original turnover date, Sanum's involvement in the club had also expired as well. As such, ST actually started issuing notices to Sanum that demanded the removal of the hundreds of machines Sanum had provided for operation of the Club. These notices also contained threats that ST would remove the machines itself if deemed necessary.

48. ST's contentions were flatly contradicted by its prior correspondence on the matter, in addition to the Master Agreement itself and the two expansion agreements, which it and Sanum had entered into in 2010. The Agreements very clearly called for additional funds to be expended by Sanum and explicitly reiterated that – as of 11 October 2011 – Sanum would enjoy

complete management control over the enterprise and a 60% share of its profits. Throughout the remainder of October and into November 2011, Sanum issued a series of default notices to ST, outlining all of ST's defaults in relation to the Thanaleng Club. During the winter Sanum attempted to negotiate an amicable resolution of ST's preposterous claim, but ST even refused to negotiate. Convinced that there would be no amicable resolution to the dispute, on 1 March 2012 Sanum filed a petition with the Lao Office of Economic Dispute Resolution ("OEDR") to initiate an arbitration proceeding, as contemplated by the parties' agreements.

49. On 11 April 2012 ST purported to unilaterally terminate the Master Agreement and all other agreements between Sanum and ST relating to the Thanaleng Club. Sanum immediately protested but on the very next day ST locked the doors of the Thanaleng Club and refused to admit any of Sanum's personnel to the premises. Worried that ST would take further actions detrimental to their interests, or otherwise damage their machines located in the Thanaleng Club, Sanum immediately petitioned the OEDR for emergency injunctive relief. On 19 April 2012 the OEDR issued a request to the People's Court for an order preventing ST from moving Sanum's machines – worth in excess of US$5 million - from the Thanaleng Club. On 20 April 2012 the People's Court issued an order to ST forbidding it from harming Sanum's assets and requiring it to operate the Thanaleng Club jointly with Sanum, as it had been operated in the past pending resolution of the parties' dispute.

50. Shortly after the court order was served on ST, however, events took a strange and unexpected turn – events that disclose behind the scenes manipulation of the legal process by senior Government officials in order to favor ST over Sanum. First ST immediately filed a petition appealing the court order. Then, on 25 April 2012 ST issued a notice declaring that it intended to remove Sanum's machines from the Thanaleng Club. On the following day the Director of the OEDR (who reports to the Respondent's Minister of Justice, Chaleum Yiapaoher) issued a new decision that actually endorsed ST's demand notice and purported to order the removal of the machines from the Thanaleng Club.

51. The official who made this decision – which approved ST's removal of the machines – was the very same person who had issued a request to the People's Court for an order prohibiting removal of the machines only days earlier. Such blatantly inconsistent conduct begs the question as to whether the OEDR Director was compelled by another party to so radically change course in ST's favor. No court order was issued in support of the decision. It was issued exclusively on the authority of the OEDR, in spite of the fact that the OEDR does not appear to possess the requisite authority to issue such an orders. Nor is there any apparent precedent for such an unassisted reversal.

52. Three days later, on 29 April 2012, ST relied upon the OEDR order of April 26th in removing Sanum's machines from the Thanaleng Club and transporting them to customs warehouses operated by the Respondent approximately 1.5 kilometers away. ST refused to allow any Sanum personnel to observe the removal process or to ensure that the machines were removed or transported properly. High ranking, armed police officers and members of the military protected and assisted ST personnel in the unlawful seizure, again citing the OEDR Order as justification. These officials used physical force to bar entry to the Club's premises by Sanum personnel and even attempted to prevent any visual observation of the machines as they were being moved.

53. On 30 April 2012 the Lao Appellate Court overturned the court order that was supposed to have provided injunctive relief against ST. Sanum was not accorded any opportunity to enter arguments or testimony of any kind before the decision was made. Sanum appealed this decision to the Supreme Court. Except for the initial appellate petition itself, Sanum was not accorded any opportunity by the Supreme Court to argue its case or submit any other evidence or argument. On 15 May 2012 the Supreme Court rejected Sanum's appeal and upheld the Appellate Court's decision. The Court made its decision within four days of having received the documentation of Sanum's appeal.

54. On 2 May 2012, without providing notice to Sanum, ST filed a new case before the People's Court contesting the validity of the Master Agreement and the other agreements between Sanum and ST. On 22 May 2012 the same OEDR Director relied upon the existence of ST's newly-filed case to summarily refuse to permit Sanum's previously filed arbitration to proceed. He did so despite the fact that Sanum had filed its request for arbitration months before ST had filed its new court case. In fact the OEDR Director purported that he actually had no jurisdiction to allow Sanum's petition to proceed despite the fact that he had earlier seen fit to issue the direction for a preliminary injunction against ST after Sanum's claim had been submitted to him in the first place.

55. On 12 June 2012 ST filed yet another case with the People's Court, this time arguing that the Participation Agreement was the only valid agreement in force between the parties regarding the Thanaleng Club and that, since the Agreement had expired, Sanum held absolutely no rights in the continued operation or ownership of the facility. Sanum did not receive official notice of this petition until 26 June, 2012. Sanum was then forced by the Court to file its defense and counterclaims to this new action by no later than 3 July 2012, one week later. The Court did so in spite of the fact that ST and Sanum had actually previously agreed to proceed with a conciliatory process before litigation. The court did not permit any evidentiary discovery or investigation to take place and it demanded that Sanum submit an

explanation and calculation of damages within approximately two weeks, which was filed on 23 July, 2012.

56. On 24 July 2012 the People's Court gave Sanum's attorney official notice that a one-day hearing, to decide the entire matter, would be held ***two days later,*** on July 26th. Given the amount of money at stake and the complex nature of the dispute, this was obviously an insufficient amount of notice. The Court nevertheless rejected Sanum's multiple requests for additional time. It also rejected Sanum's requests for a recorded or stenographic record of the proceedings, and it rejected Sanum's request for a public trial (only conceding eventually that one staff member from the U.S. Embassy could attend).

57. On the day of the hearing the Court scheduled only 2.5 hours for the entire trial – and its members did not even take the bench until after 50 minutes of that trial time had expired. ST presented no evidence, but rather only arguments by counsel. Sanum was forced to present all of the evidence it had managed to cobble together over the two days from which it had received notice, including witness testimony, in little more than a single hour. No time was accorded to counsel for Sanum to provide the Court with any arguments or with a written briefing. The Presiding Judge then directed that the proceedings were closed and stated that the parties should remain in the courtroom because the Court would be rendering a decision within a few minutes. Within 30 minutes of the close of the hearing, the Court returned with an 8-page, single-spaced, typed opinion. The Presiding Judge read the opinion out loud, but he refused to provide a copy of it to Sanum until several days later.

58. Immediately after the Judge finished reading the prepared opinion, counsel for Sanum was served with a Seizure Order - which had been issued *sua sponte* by the court ***one day before the trial.*** The order seized and/or froze all of Sanum's bank accounts. Sanum had no notice that such an Order was being considered, much less that it had already been decided before the trial had begun. Execution of the Court's Seizure Order was also effected upon several of the banks involved ***on the day before the trial***. Indeed, it would appear that, at the exact same moment counsel for Sanum was presenting evidence in the trial before the Court, Court staff were sending the Seizure Order, via facsimile, to several other banks in Savannakhet, Lao PDR at which Sanum held accounts in U.S. dollars, Thai baht, and Lao kip.

59. In its decision, not only did the Court authorize ST to cancel all contracts with Sanum regarding the Thanaleng Club - imposing a loss for Sanum of more than US$220 million – it also awarded damages to ST, in addition to imposing a penalty on Sanum, ***payable to the Respondent*** in the amount of 2% of the amount of Sanum's (denied) counterclaims against ST. This penalty

represented a fine of approximately US$5 million. Such a fine appears never to have been imposed by a Lao court before.

(d) The Arbitrarily Imposed & Unreasonably Executed Audit

60. In 2011 ST demanded to station three accountants at Savan Vegas, purportedly to double check all of the accounting but actually to serve as shadow management over the financial affairs of Savan Vegas. In reply, Savan Vegas executives reminded ST of the parties' agreed methods of exchanging information. In response, ST sought access to and production of thousands of pages of documents. In a spirit of good faith, Savan Vegas actually agreed to permit ST access to all of the documents so long as it complied with the restrictions to access contained within the Shareholders Agreement. These included, for example, adherence to a non-disclosure agreement. ST refused. After negotiations for access broke down in the autumn of 2011, ST filed a lawsuit to obtain access to all of Savan Vegas' financial and operational documents, without any restrictions. The settings of gaming machines, and the identity of customers and junket operators who bring customers to a casino are critical trade secrets of enormous competitive value. Because of the potential for ST to provide (or sell) the information to a competitor, or to use the information to harm or compete with Savan Vegas, Sanum held to its position that the parties' contractual restrictions must be observed.

61. In December of 2011 the Court directed the parties to attempt to mediate this disclosure dispute. Despite repeated attempts by Savan Vegas to contact and negotiate with ST, ST refused to even meet, much less negotiate. On 1 March 2012 Savan Vegas filed its defense with the Court. Even though the matter was thus pending, on 10 April 2012 the Prime Minister's Office intervened, ordering that a Government audit of Savan Vegas take place immediately, with ST officials to serve as a full participants and observers throughout the process. This order effectively preempted the Court's decision and gave ST the unfettered access it had been seeking – without any of the protections agreed to in, and required under, the PDA entered into between ST, Sanum and the Lao PDR. The Prime Minister's decision was not disclosed to Savan Vegas until the beginning of May. In the meantime, on 25 April 2012 ST's attorney provided *ex parte* testimony to the Court requesting that the court effectively rubber-stamp the Prime Ministerial Order, granting ST complete access to all of Savan Vegas' documents.

62. Before Savan Vegas could even respond to the ST attorney's *ex parte* submissions to the Court, on 17 May 2012 the Minister of Finance, Phouphet Khamphounvong, appointed a committee to conduct the audit. Savan Vegas did not receive notice of this decision until 21 May 2012. At the same time, the Court proceeded to grant ST's *ex parte* request to be included on the audit committee without any notice to Savan Vegas at all - thereby confirming for

ST all of the relief it had sought in its lawsuit – without conducting a trial or hearing any evidence from Savan Vegas.

63. The audit proceeded with officials from the Ministry of Finance, local Savannakhet tax officials, and designated members of the Ernst & Young accounting firm from Singapore – who were apparently selected by ST. It appears that these ST-designated accountants possessed no gaming expertise and were thus unqualified for the tasks at hand.

64. The audit was also improper under Lao law for the following reasons:

a) The membership of the audit committee included representatives of ST, who should have been prohibited from serving on the Audit Committee;
b) The material requested by the Audit Committee far exceeded what was necessary to perform the audit, nor was it reviewed by the committee or Ernst & Young, and it appears to have been requested solely for harassment purposes;
c) The time provided by the Audit Committee for the production of requested documents numbering in excess of 50,000 pages was generally less than 4 days;
d) The outside deadline for the production of documents by Savan Vegas was arbitrary and unreasonable, and it precluded the Audit Committee from receiving or reviewing documents deemed essential by Ernst & Young;
e) The Audit Committee Chairman refused to permit Ernst & Young to complete their field work or to complete their review of the materials that Savan Vegas had provided days and weeks earlier;
f) The Audit Committee refused to provide Savan Vegas with a draft of its report or permit Savan Vegas to review and comment upon a draft report;
g) In light of the incomplete review of the requested material by the Audit Committee no report could have satisfied the "reality test" stipulated under the Audit Law; and
h) The requirement of confidentiality for the information reviewed was violated in that information as to junket operations was proffered by ST's legal counsel at the Thanaleng trial – as had been predicted by Savan Vegas and raised with the Audit Committee Chairman to no avail.

65. Even to date, Savan Vegas has not been provided with a copy of the audit report. Rather, the audit report has been used by the Respondent's Finance officials to make numerous, unwarranted tax demands, as set forth below.

(e) The Unreasonable and Discriminatory Demands Issued by Lao Tax Authorities

66. On the heels of the hasty secret audit, on or about 28 June 2012, the Lao PDR central government officials responsible for taxation (the "Tax Authorities") issued three notices and demands for payment allegedly concerning three purported tax debts (including penalties and interest). These tax demands were denominated, respectively, as a "construction tax," a "brokerage tax," and "overtime charges," totaling US$23,759,229.

67. As a preliminary matter, all of these demands were issued in blatant contradiction of the Flat Tax Agreement ("FTA"), which Sanum and the Respondent had entered into on 1 September 2009, as well as the Project Development Agreement for Savan Vegas, entered into by Sanum, ST and the Lao PDR. It should be recalled that tax certainty had been a critical issue in Sanum's establishment decision. To induce Sanum to invest millions of dollars in the Lao PDR, the Respondent had promised to levy on Savan Vegas only a flat tax of US$745,000 per year between 1 January 2009 and 31 December 2013. The demands issued by the Tax Authorities plainly break the Respondent's solemn, written promises to Sanum.

(i) Alleged Construction Tax Debt

68. The US$4,167,987 so-called Construction Tax demand is improper for several reasons. First it is precluded by the FTA, which provides that during the flat tax period Savan Vegas will be exempt from the payment of any turnover/VAT tax or profit tax applicable to casino-related activities. The Tax Authorities' demand documents actually admitted that this new "construction tax" demand was largely a "turnover/value-added and profit tax." Second the PDA expressly provides that all constructions materials may be purchased and used tax-free. Third Savan Vegas and the Respondent had agreed, in writing, on 27 July 2010, that that Savan Vegas had already paid the full amount of tax due on the construction of the Savan Vegas project. Fourth it appears that the Tax Authorities have misconstrued the entries on Savan Vegas' books in order to reach their conclusions and that they additionally made serious computational errors. That these flaws exist could obviously have been expected, given how the audit was undertaken without Savan Vegas' participation and by accountants who largely did not possess the requisite experience with the specialized form of accounting used in the gaming industry.

69. On three separate occasions the Tax Authorities have already threatened that if Savan Vegas does not immediately pay the amounts levied, by the end of 10 days the Tax Authorities can and will cause Lao prosecutors to proceed with punitive actions such as: (i) the temporary or permanent seizure of the Hotel

and Casino as well as other assets; and (ii) the closure and liquidation of the Hotel and Casino.

(ii) Alleged "Brokerage" Taxes

70. Savan Vegas does business with the various "junket operators." Specifically, the casino and hotel provide gaming opportunities, food, beverages, and lodging services at reduced rates to junket operators and their customers. Savan Vegas also provides credit to the junket operators, which they, in turn, extend to their customers who engage in gaming at the casino. The operators reimburse Savan Vegas for the services provided, and all income is reported to the Tax Authorities as Savan Vegas income. Since, under the FTA, such income is "casino related" it is not subject to the payment of additional taxes.

71. Without the pretense of any authority, or grounding in generally accepted accounting practices for the gaming industry, the Tax Authorities have claimed that the junket operators provide so-called "brokerage services" to the casino and such services are allegedly performed within the Lao PDR and that therefore they are authorized to impose a tax "on the junket operators" in the amount of US$18,542,345.00 for their alleged provision of such "services." Further the Tax Authorities are claiming that since the junket operators who receive such payments are "foreign" Savan Vegas bears the obligation to withhold turnover/VAT and profits taxes and to pay all such amounts to the Tax Authorities on behalf of the junket operators.

72. Even if brokerage services were actually being performed, which they were not, the amount claimed by the Tax Authorities is, by their own written admissions, arbitrary. For example the amounts requested do not reflect any adjustment for: (i) Lao-based junket operators (as to whom Savan Vegas would have no derivative liability); (ii) discounts and rebates implemented through the "hold rate" which are exempt from taxation under the VAT Tax law; or (iii) services performed outside of the Lao PDR which are not subject to VAT tax.

73. As with the Construction Tax, the Tax Authorities are attempting to impose taxes that are improper and illegal and they are threatening to pursue the punitive actions described above against Sanum if not paid within the time demanded.

(iii) Alleged Overtime Charges

74. The Tax Authorities are also currently attempting to impose overtime charges – three years after the performance of border crossing services by the Respondent's immigration officials took place, and even though the imposition of such charges is expressly prohibited under applicable rules, regulations, and decrees.

75. Each year Savan Vegas pays millions of dollars to the Lao PDR immigration agencies for services at the Friendship Bridge, referenced above, to clear Thai nationals and other non-Lao customers crossing the border from Thailand to the Lao PDR who visit the Savan Vegas Hotel and Casino. Savan Vegas has fully paid all applicable border crossing and customs fees and charges incurred by its customers at the Friendship Bridge, for all periods applicable to the demands from the Tax Authorities. Specifically, since 2009 Savan Vegas has paid over US$5.8 million in border crossing and customs fees and charges to the Respondent. All such payments were made on a timely basis, in response to invoices prepared by the border crossing officials consistent with applicable fee schedules adopted by the Lao Immigration Agency. Now, three years later, the Tax Authorities are suddenly attempting to collect overtime charges purportedly related to such previously provided (and paid) border crossing services.

76. These demands have been made in spite of notices, issued by the Prime Minister's Office, which specifically exempt the collection of overtime fees and additionally deem attempts to impose them as inappropriate and not permitted. Specifically, Notice of 373/GS provides in paragraph 2 that at the Friendship Bridge International Checkpoints "all officials must cancel the laws (and regulations) on overtime fee collection and stop charging overtime fees."

77. Notwithstanding the existence of such a standing directive from the Prime Minister's Office, the Tax Authorities are demanding a payment from Savan Vegas, for overtime fees and charges, in the amount of 8,391,179,012 Lao Kip (approximately US$1.04 million). Further, the Tax Authorities are once again threatening the punitive action described above if all such amounts are not paid in full by the deadline unilaterally imposed by the Tax Authorities.

(f) Arbitrary Demands for an Immediate Review of Books and Records Going Back to 2008, Purportedly as Part of a Routine Income Tax Review

78. On 3 August 2012, the Respondent's Tax Authorities appeared at Sanum's Vientiane offices, having provided ten minutes' notice, at which time they demanded Sanum officials to provide voluminous amounts of information about Sanum's operations since 2008. Sanum officials were able to persuade these unexpected visitors that they should first send Sanum a written list of documents and information required, so that a thorough response could be provided. The officials stated that such a list would be delivered on the next business day, Monday August 6th, adding that they would require all of Sanum's responses immediately. The Tax Authorities did in fact serve requests for documents and information spanning 4 years on 6 August 2012.

They also demanded that they be provided within 7 days, which was manifestly unreasonable, given the scope of such demands.

79. Attending tax officials have informally admitted to Savan Vegas staff that they had been appointed by high-ranking officials with the Respondent's central government administration to inspect the income and revenue of Sanum since 2008. They further contended (seemingly before having been able to actually conduct a proper investigation) that Sanum had significantly unreported its income for all of the years in question. They added that significant penalties would have to be paid, in addition to the allegedly unreported taxes they had apparently already determined would be due.

(g) Sudden Demand for Inspection of the Lao Bao and Ferry Terminal Slot Clubs

80. Also on 3 August 2012, the Ministry of Mass Culture delivered a notice, dated 31 July 2012, stating that it would be immediately inspecting both the Lao Bao and Ferry Terminal Slot Clubs. In the face of the other actions being taken presently against Investor, it appears that the Lao PDR is attempting to manufacture a reason to shut down these clubs as well, or to seize them for ST's benefit. In the entire time period of their operation under Sanum's management, these clubs have been profitable and their operations have been orderly. No previous notifications have been received in respect of either facility for any alleged violations of Lao law.

81. The timing of the Respondent's latest regulatory action, in respect of these two clubs, follows closely upon an unsuccessful attempt by ST to lock Sanum employees out of these two facilities on 12 April 2012. Thereafter Sanum filed an OEDR petition for arbitration, which was refused on 29 May 2012.

(h) The Consequences of the Respondent's Conduct

82. As set forth above, the Respondent has already shut down the Thanaleng Club and the Paksan Slot Club, and it has prevented the Paksong and Thakhaek projects from proceeding. The losses represented in these four projects alone is not less than US$450 million, at least $220 million of which is related to the loss of the Thanaleng Club. Damages for the losses suffered by Sanum in connection with the Paksan Slot Club and the Paksong and Thakhaek projects are being sought in a related but separate arbitral proceeding.

83. The Respondent is also demanding the unreasonably expedited payment of its various unwarranted and unfairly imposed taxes. If Sanum is unable or unwilling to pay the entirety of the wholly illegitimate taxes assessed thus far (and apparently to come shortly), the Respondent has asserted it will be

entitled to seize and auction off all of Sanum's assets, in satisfaction of its demands, ten days after non-payment has been recorded.

84. When one considers the combination of: (i) the Court's pre-determined penalty of US$5 million (in relation to ST's latest lawsuit over control of the Thanaleng Club); (ii) the unprecedented and wholly unlawful construction, brokerage and overtime tax demands, all of which have all been put to Sanum over the past month; and (iii) the impending imposition of additional taxes, sanctions and penalties for phantom regulatory infractions and/or unpaid income taxes, it is apparent that the Respondent has decided to strip the Investor of all of its investments in its territory on an expedited basis.

85. Sanum is irreparably harmed with each week that passes with it not in control of its facilities. If Sanum is unable to run each of its facilities, or worse if any more are closed, customers will simply find other places to go and years of goodwill will be lost. Sanum will accordingly be calling upon the Tribunal, on the earliest possible occasion, to obtain interim relief from such manifestly unlawful and oppressive conduct.

II. LAW

86. Article 1(b)(ii) of the Treaty provides that a "national" includes a legal person constituted under the law of a Contracting Party. Article 13 of the Treaty provides that, in the case of the Netherlands, the term shall apply to enterprises incorporated in Aruba. As it was indeed incorporated in Aruba, Lao Holdings N.V. is a national of the Netherlands under the Treaty.

87. Article 1(a) of the Treaty provides: "investments means every kind of asset," including property rights, rights of ownership, claims to money, intangible rights related to goodwill and know-how, and "rights granted under public law or under contract." As demonstrated above, the Investor established and has maintained an investment in the territory of the Respondent by means of its sole ownership and control over Sanum. Sanum, in turn, has possessed rights of ownership, rights derived from contract and rights granted under public law, both directly and through its ownership and control of the investment enterprises, Savan Vegas and Paksong Vegas. The Investor accordingly has been, and is being, deprived of assets such as claims to money, tangible assets and the opportunity to employ its know-how and goodwill. As such, the investor maintains investments in the territory of the Respondent protected under the Treaty.

88. Under Article 3(1) of the Treaty, the Respondent is required to ensure fair and equitable treatment of the investments of the Investor, which is an autonomous treaty obligation not based upon standards of customary

international law.[6] The Respondent has failed to meet this standard both *in toto* and by means of discrete acts of governmental bodies. These discrete acts include, for example, the decision of a senior justice ministry official (the OEDR Director) to inexplicably reverse his previous decision, so as to arbitrarily deny Sanum access to efficacious dispute resolution by means of arbitration. They also include the omission of armed, senior border officials and police officers to take appropriate steps to ensure that the rule of law was observed when ST unilaterally and unlawfully terminated its Agreement with Sanum and converted its gaming equipment, going so far as to facilitate the exclusion of Savan Vegas employees from either obtaining access to their shared premises or even observing how Sanum's machines were being removed from them.

89. Unfair and inequitable treatment has also been received, by Sanum and Savan Vegas, before the Respondent's courts, whose cavalier disregard for basic norms of procedural fairness and manifest prejudging of the results of proceedings brought by locally-owned ST against Savan Vegas and Sanum, have effectively taken Lao Holdings N.V.'s investment in the Thanaleng Club.

90. Article 3(1) of the Treaty also prohibits the Respondent from impairing the operation, management, maintenance, use or enjoyment of investments by means of unreasonable <u>or</u> discriminatory measures. The unreasonableness of the various taxation measures being imposed upon Sanum is manifest both in the fact that their imposition contradicts explicit promises made to Sanum and in the arbitrary manner in which they have been calculated.

91. The Respondent is also obligated to "observe any obligation it may have entered into with regard to investments" of the Investor, as per Article 3(4) of the Treaty. In flagrant disregard of this international law obligation, the Respondent's tax officials have reneged both on the Respondent's FTA with Sanum and on the parties' specific agreement as to Sanum's satisfaction of all of its obligations to pay the Respondent's construction tax. The Respondent is demonstrating a patent lack of good faith in renouncing these obligations, as a pretense to imposing prohibitively burdensome new tax and fee demands upon ST and Sanum.

92. As noted above, the Treaty contains no fewer than three provisions stipulating that the Respondent must accord treatment no less favorable to investors and their investments than they would afford their own nationals or other foreign investors. The Respondent has accorded more favorable

---

[6] Article 3 of the Respondent's treaty with France provides that the right to "fair and equitable treatment" cannot be abridged either in fact or by operation of law (". . . que l'exercice du droit ainsi reconnu ne soit entravé ni en droit, ni en fait."). This broad and remedial construction must also be adopted in application of Article 3(1) of the instant Treaty, in order to satisfy the Respondent's obligation to accord treatment no less favorable to the Investor, as set out in Article 3(2).

treatment to other foreign investors in at least one half dozen other investment protection agreements. A breach of the provisions of these treaties, which grant such treatment to other foreign investors, constitutes a breach of the MFN provisions of this Treaty, i.e. Articles 3(2), 3(5) and 4 (the latter of which deals specifically with the imposition and administration of taxation measures).

93. Under Article 4(1) of the Respondent's treaty with Germany, Article 2 of its treaty with Korea and Article 2(2) of its treaty with the United Kingdom, the Respondent has promised other foreign investors "full protection and security" for their investments, without the caveat that appears in Article 3(1) of the instant Treaty, which limits the obligation to instances of "physical" protection and security. The autonomous treaty obligation, to provide full protection and security for investments, has been violated by the Respondent's courts, in the arbitrary and unfair manner in which they have prejudiced Sanum and Savan Vegas' rights to a fair and unbiased hearing. The result has been the opposite of security for the investments, as the Investors' commercial equipment has been seized and sequestered, with the tacit approval of police and border officials, its access to the remedies supposedly available under the OEDR undermined, and its bank accounts frozen, upon the surprise order of a Lao Court. Sadly, these are but a few of the many available examples of egregious conduct on the part of the Government of the Lao PDR.

94. Similarly, under Article 3(2) of the Respondent's Treaty with Thailand the Respondent has promised that Thai investors "shall enjoy the most constant protection and security" under its laws. Whereas the aforementioned "full protection and security" obligations establish an objective, international standard of justice – against which the Respondent's failures must be adjudged – the Respondent has made an additional promise to Thai investors with this provision. It requires the Respondent to ensure that its officials scrupulously observe Lao laws in their treatment of Sanum and Savan Vegas. In this regard the failure of Tax Authorities to abide by the standards of the Respondent's own audit law constitutes a failure to provide most constant protection and security in contravention of Thai investors' rights that must be extended to Sanum on a MFN basis.

95. Article 6 of the Respondent's treaty with Japan stipulates an obligation not found in the instant Treaty, i.e. to accord treatment no less favorable to the Investor – as compared either to another foreigner or to a national of the Respondent – "with respect to access to the courts of justice and administrative tribunals and agencies in all degrees of jurisdiction, both in pursuit and in defence of such investors' rights." In unashamedly rigging proceedings in favour of ST, the Respondent's judicial officials have accorded far more favorable treatment to ST than to the Investor, even as Sanum has continued to attempt to defend its rights before the Respondent's courts.

96. Finally, and again with respect to the arbitrary manner in which the Respondent's audit of Savan Vegas was executed, there is Article 2(3) of the Respondent's treaty with Sweden. This provision, which shares no analogue in the instant Treaty, requires the Respondent to "create favorable conditions for assessing the financial position and results of activities related to [Swedish investments in its territory]" by permitting them "to be subject also to [international] bookkeeping and auditing" standards, "notwithstanding its own national requirements for bookkeeping and auditing." The Respondent has breached this good faith obligation by deliberately ignoring all of the attempts made by Sanum and Savan Vegas officials for its officials to at least pay some heed to applicable international standards in conducting their audit (notwithstanding the arbitrary and discriminatory manner in which the audit was itself imposed).

97. The Investor stresses that the aforementioned recitation of facts, demonstrating how Respondent has failed to comply with its treaty obligations in a stunning variety of ways, should not be regarded as exclusive. These are but a few examples of how the egregious facts of this case have given rise to breaches of the Respondent's treaty obligations. There are many more examples of how various facts evince the breach of multiple obligations by the Respondent under applicable law.

III. ISSUES

98. Through its acts and/or omissions, either individually or *in toto,* has the Respondent failed to meet the standard of fair and equitable treatment set out in Article 3(1) of the Treaty?

99. By means of either unreasonable or discriminatory measures, has the Respondent impaired the Investor's right to maintain, use or enjoy its investments contrary to Article 3(1) of the Treaty?

100. In deliberately ignoring, and then renouncing, agreements entered into between Lao tax officials and Sanum, has the Respondent failed to observe the obligations of good faith arising from such agreements, such that it has breached Article 3(4) of the Treaty?

101. Has the Respondent acted inconsistently with Articles 3(2), 3(5) or 4 of the Treaty, by failing to accord "treatment no less favorable" to the Investor, in declining to provide the Investor with the more favorable treatment that it has promised to investors under its treaties with Germany, France, Japan, Korea, Sweden or Thailand?

102. If the answer to any of the above questions is "yes," what should be the quantum of damages, plus interest, paid by the Respondent to the Investor in order to make it whole?

F. Particularized Statement of the Investor's Claims

103. Pursuant to Article 38(1)(a) of the ICSID-AF Rules, the Investor will submit its memorial within the period of time to be determined by the Arbitral Tribunal. The Investor reserves its right to, inter alia, supplement the facts, its allegations, its submissions and its claims in its memorial as required by the circumstances, the present Notice of Arbitration being only "information concerning the issues and an indication of the amount involved," as per Article 3(1)(d) of the ICSID-AF Rules.

G. Relief Sought

104. The Investor seeks the following relief from the Arbitral Tribunal:

i. An interim order directing the Respondent to immediately desist from imposing any more fees, penalties or taxes upon Sanum Investments Ltd. or any of the Investor's investment enterprises, and to refrain from taking any measures in relation to the collection or enforcement of any of the so-called taxes and/or penalties or fees referred to in this Notice of Arbitration, including those issued by the Lao People's Court or the Tax Authorities, until the instant dispute has been resolved upon the issuance of a final award.

ii. An interim order directing the Respondent to refrain from seizing, sequestering or otherwise unreasonably interfering in any way with the Investor's assets or its investment enterprises, until the instant dispute has been resolved upon the issuance of a final award;

iii. A declaration that the Respondent has violated its obligations under the Treaty, including obligations owed on the basis of most favored nation treatment;

iv. An order that the Respondent pay to the Investor its damages resulting from the aforementioned violation which are currently estimated to be not less than US$400 million;

v. All of the costs incurred in contesting the Respondent's conduct and in proceeding with this arbitration;

vi. Pre-award and post-award interest at a rate to be fixed by the Arbitral Tribunal;

vii. Any amount required to pay any applicable tax in order to maintain the integrity of the award; and

viii. Such further relief that counsel may advise and the Arbitral Tribunal may permit.

14 August 2012

Counsel for Lao Holdings N.V.:

Dr Todd Weiler
Barrister & Solicitor
#19 – 2014 Valleyrun Blvd.
London, Ontario N6G 5N8
Canada

Ms Deborah Deitsch-Perez
Lackey Hershman
3102 Oak Lawn Ave.
Dallas, Texas 75219
USA

Served to:

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

International Centre for the Settlement of Investment Disputes
1818 H Street, NW
MSN U3-301
Washington, DC 20433
USA