

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Lao Holdings N.V.

v.

Lao People's Democratic Republic

(ICSID Case No. ARB(AF)/16/2)

PROCEDURAL ORDER NO. 1 (REVISED)

Members of the Tribunal

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

Secretary of the Tribunal

Mrs. Anneliese Fleckenstein

May 16, 2017

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Introduction

The first session of the Tribunal was held on March 7, 2017, at 9:30 a.m. at the International Dispute Resolution Centre located at 70 Fleet Street, London EC4Y IEU, UK. The session was adjourned at 12:33 p.m.

An audio recording of the session was made and deposited in the archives of ICSID. A transcription was also made and the transcription was distributed to the Members of the Tribunal and the parties.

Participating in the conference were:

Members of the Tribunal

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

ICSID Secretariat:

Mrs. Anneliese Fleckenstein, Secretary of the Tribunal

Attending on behalf of the Claimant:

Deborah Deitsch-Perez, Lackey Hershman, LLP
Todd Weiler, Barrister & Solicitor
John Baldwin, Lao Holdings N.V.
Shawn Scott, Lao Holdings N.V.
Jeffrey Hughes, Lao Holdings N.V.
Tucker Baldwin, Lao Holdings N.V.

Attending on behalf of the Respondent:

David Branson Esq., Tsinghua University
Kurt Lindquist II, Womble Carlyle Sandridge & Rice LLP
John Branson, Womble Carlyle Sandridge & Rice LLP

The Tribunal and the parties considered the following:

- The Draft Agenda circulated by the Tribunal Secretary on November 2, 2016, as amended by the parties on February 20, 2017.
- The Draft Procedural Order circulated by the Tribunal Secretary on November 2, 2016; and

- The parties' comments on the Draft Agenda and the Draft Procedural Order received on February 20, 2017, indicating the items on which they agreed and their respective positions regarding the items on which they did not agree.
- Following the session, the Tribunal also considered the Respondent's communication of March 24, 2017 and the Claimant's communication of March 27, 2017, regarding the seat of arbitration.

The Tribunal now issues the present Order:

Order

Pursuant to Articles 21 and 28 of the ICSID Arbitration (Additional Facility) Rules, this first Procedural Order sets out the Procedural Rules that govern this arbitration. The timetable is attached as Annex A.

1. Applicable Arbitration Rules

Article 1, 28(2) and 35 of the ICSID Arbitration (Additional Facility) Rules

- 1.1. These proceedings are conducted in accordance with the ICSID Arbitration (Additional Facility) Rules in force as of April 10, 2006.

2. Applicable Law

Article 54 of the ICSID Arbitration (Additional Facility) Rules

- 2.1. These proceedings will be conducted in accordance with the provisions of the Agreement on Encouragement and Reciprocal Protection of Investments between the Lao People's Democratic Republic and the Kingdom of the Netherlands, entered into force on May 1, 2005 ("BIT") and the applicable rules of international law.

3. Constitution of the Tribunal and Tribunal Members' Declarations

Article 13 of the ICSID Arbitration (Additional Facility) Rules

- 3.1. The Tribunal was constituted on October 6, 2016 in accordance with the ICSID Arbitration (Additional Facility) Rules. The parties confirmed that the Tribunal was properly constituted and that no party has any objection to the appointment of any Member of the Tribunal.
- 3.2. The Members of the Tribunal timely submitted their signed declarations in accordance with Article 13(1) of the ICSID Arbitration (Additional Facility) Rules. Copies of these declarations were distributed to the parties by the ICSID Secretariat on October 6, 2016.
- 3.3. The Members of the Tribunal confirmed that they have sufficient availability during the next 24 months to dedicate to this case.

4. Fees and Expenses of Tribunal Members
Administrative and Financial Regulation 14; ICSID Schedule of Fees
- 4.1. The fees and expenses of each Tribunal Member shall be determined and paid in accordance with the ICSID Schedule of Fees and the Memorandum on Fees and Expenses of ICSID Arbitrators in force at the time the fees and expenses are incurred.
- 4.2. Under the current Schedule of Fees, each Tribunal Member receives:
- 4.2.1. US\$3,000 for each day of meetings or each eight hours of other work performed in connection with the proceedings or *pro rata*; and
- 4.2.2. subsistence allowances, reimbursement of travel, and other expenses pursuant to ICSID Administrative and Financial Regulation 14.
- 4.3. Each Tribunal Member shall submit his/her claims for fees and expenses to the ICSID Secretariat on a quarterly basis.
- 4.4. Non-refundable expenses incurred in connection with a hearing as a result of a postponement or cancellation of the hearing shall be reimbursed.
5. Presence and Quorum
Articles 22(2) and 28(1) of the ICSID Arbitration (Additional Facility) Rules
- 5.1. The presence of all Members of the Tribunal constitutes a quorum for its sittings, including by any appropriate means of communication. In the event of the incapacity of a member of the Arbitral Tribunal, the proceedings shall be, or remain, suspended until the vacancy has been filled.
6. Decisions and Procedural Rulings of the Tribunal
Articles 24 and 27 of the ICSID Arbitration (Additional Facility) Rules
- 6.1. Decisions of the Tribunal shall be taken by a majority of the Members of the Tribunal.
- 6.2. Article 24(2) of the ICSID Arbitration (Additional Facility) Rules applies to decisions taken by correspondence, except that where the matter is urgent, the President may decide procedural matters without consulting the other Members, subject to possible reconsideration of such decision by the full Tribunal.
- 6.3. The Tribunal will draft all rulings, including the award, within a reasonable time period. If a ruling has not been issued within three months after the final submission on a particular matter, the Tribunal will provide the parties with status updates every three months.
- 6.4. The President is authorized to issue Procedural Orders on behalf of the Tribunal.

6.5. The Tribunal's rulings on procedural matters may be communicated to the parties by the Tribunal Secretary in the form of a letter or email.

7. Power to Fix Time Limits

Article 33 of the ICSID Arbitration (Additional Facility) Rules

7.1. The President may fix and extend time limits for the completion of the various steps in the proceeding.

7.2. In exercising this power, the President shall consult with the other Members of the Tribunal. If the matter is urgent, the President may fix or extend time limits without consulting the other Members, subject to possible reconsideration of such decision by the full Tribunal.

8. Secretary of the Tribunal

Administrative and Financial Regulation 25

8.1. The Tribunal Secretary is Anneliese Fleckenstein, Legal Counsel, ICSID, or such other person as ICSID may notify the Tribunal and the parties from time to time.

8.2. To send copies of communications by email, mail, and courier/parcel deliveries to the ICSID Secretariat, the contact details are:

Anneliese Fleckenstein
ICSID
MSN J2-200
1818 H Street, N.W.
Washington, D.C. 20433
USA
Tel.: + 1 (202) 458-4038
Fax: + 1 (202) 522-2615
Email: afleckenstein@worldbank.org
Paralegal email: dsotogarcia@worldbank.org

8.3. For local messenger deliveries, the contact details are:

ICSID Reception
701 18th Street, N.W. ("J Building")
2nd Floor
Washington, D.C. 20006
Tel.: + 1 (202) 458-4567

9. Representation of the Parties

Article 26 of the ICSID Arbitration (Additional Facility) Rules

- 9.1. Each party shall be represented by its counsel (below) and may designate additional agents, counsel, or advocates by notifying the Tribunal and the Tribunal Secretary promptly of such designation.

For Claimant

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

Ms. Deborah Deitsch-Perez
Lackey Hershman LLP Suite 777
3102 Oak Lawn Ave.
Dallas, Texas 75219
U.S.A.

For Respondent

Mr. David J. Branson
Dr. Jane Willems
School of Law, Tsinghua University
Beijing, PRC

Mr. Kurt Lindquist II
Mr. John Branson
Womble Carlyle Sandridge & Rice
One wells Fargo Center
Suite 3500
Charlotte, NC 28202

10. Apportionment of Costs and Advance Payments to ICSID

Administrative and Financial Regulation 14; Articles 28(1)(f) and 58 of the ICSID Arbitration (Additional Facility) Rules

- 10.1. By letter of October 11, 2016, ICSID requested that each party pay US\$200,000 to cover the initial costs of the proceeding. As stated in the letter, this was consistent with the general expectation in ICSID arbitration that unless otherwise agreed by the parties or decided by the Tribunal, the parties shall cover the direct costs of the proceeding in equal parts, without prejudice to the Tribunal's final decision as to the allocation of costs.
- 10.2. By letter of November 21, 2016, ICSID confirmed receipt on November 16, 2016 of the Claimant's payment of its share of the initial advance.
- 10.3. By letter of December 15, 2016, ICSID noted that the Respondent's portion of the advance remained outstanding, and invited the Respondent to indicate by December 29, 2016 when the Centre could expect payment of the advance, noting that if a response was not forthcoming, the Centre would be sending a default letter in accordance with ICSID Administrative and Financial Regulation 14(3)(d), inviting either party to pay the outstanding amount.
- 10.4. By letter of January 10, 2016, ICSID informed the parties of the Respondent's default with respect to the initial advance and invited either party to pay the outstanding portion.

- 10.5. By letter of February 6, 2017, ICSID confirmed receipt from the Claimant of payment of the Respondent's share of the initial advance.
- 10.6. During the First Session, the Respondent stated its intention not to make any advances towards the costs of this arbitration.
- 10.7. ICSID shall request further advances as needed. Such requests shall be accompanied by a detailed interim statement of account.
11. Place of Arbitration
Administrative and Financial Regulation 26; Articles 19 and 20 of the ICSID Arbitration (Additional Facility) Rules
- 11.1. By agreement of the parties at the First Session and confirmed thereafter by correspondence, New York shall be the place (legal seat) of the proceeding.
- 11.2. The Parties have agreed, however, that no hearings will be held in the United States. Hearings involving fact witness participation will be held in Singapore; hearings involving no fact witness participation may be held in Europe as an alternative to Singapore, taking into account the relevant circumstances, including issues of efficiency and cost.
- 11.3. The Tribunal may hold hearings at any other place that it considers appropriate if the parties hereafter so agree.
- 11.4. The Tribunal may deliberate at any place it considers convenient.
12. Procedural Language(s), Translation and Interpretation
Administrative and Financial Regulation 30(3) and (4); Article 30 of the ICSID Arbitration (Additional Facility) Rules
- 12.1. English is the procedural language of the arbitration.
- 12.2. Documents filed in any other language must be accompanied by a translation into English.
- 12.3. If the document is lengthy and relevant only in part, it is sufficient to translate only relevant parts, provided that the Tribunal may require a fuller or a complete translation at the request of any party or on its own initiative.
- 12.4. Translations need not be certified unless there is a dispute as to the content of a translation provided and the party disputing the translation specifically requests a certified version.
- 12.5. Documents exchanged between the parties in a language other than English under §16 below (Production of Documents) need not be translated.

- 12.6. The testimony of a witness called for examination during the hearing who prefers to give evidence other than in the English language shall be interpreted simultaneously.
- 12.7. The parties will notify the Tribunal, as soon as possible, and no later than at the pre-hearing organizational meeting (see §20 below), which witnesses or experts require interpretation.
- 12.8. The costs of the interpreter(s) will be paid from the advance payments made by the parties, without prejudice to the decision of the Tribunal as to which party shall ultimately bear those costs.
- 12.9. The Tribunal shall render the Award only in English.
13. Routing of Communications
Administrative and Financial Regulation 24
- 13.1. Written communications in the case shall be transmitted by email or other electronic means to the parties, the Tribunal Secretary, and the Tribunal.
- 13.2. Electronic versions of communications ordered by the Tribunal to be filed simultaneously shall be transmitted to the Tribunal Secretary only, who shall send them to the opposing party and the Tribunal.
- 13.3. The Tribunal Secretary shall not be copied on direct communications between the parties when such communications are not intended to be transmitted to the Tribunal.
- 13.4. The email addresses of the Members of the Tribunal are:
- | | | |
|--|--|--|
| Jean Kalicki | Klaus Reichert | Laurence Boisson de Chazournes |
| jean.kalicki@kalicki-arbitration.com | klaus.reichert@brickcourt.co.uk | laurence.boissondechazournes@unige.ch |
14. Number of Copies and Method of Filing of Parties' Pleadings
Administrative and Financial Regulation 30; Articles 31 and 32 of the ICSID Arbitration (Additional Facility) Rules
- 14.1. By the relevant filing date set forth in Annex A, the parties shall submit by email to the Tribunal Secretary and the opposing party an electronic version of the pleading with witness statements, expert reports and a list of documents,¹ and

¹ Please note that the World Bank server does not accept emails larger than 25 MB.

upload the pleading with the supporting documentation to the file sharing platform that will be created by ICSID for purposes of this case.

14.2. On the first business day following the electronic filing, the parties shall courier to the Tribunal Secretary:

14.2.1. one unbound hard copy in A4/Letter format² of the entire submission, including signed originals of the pleading, witness statements, and expert reports, together with documents (but not including legal authorities);

14.2.2. one bound hard copy in A4/Letter format of the entire submission including the pleading, the witness statements, expert reports, and documents (but not including legal authorities); and

14.2.3. two USB drives, or CD-ROMs or DVDs, with full copies of the entire submission, including the pleading, the witness statements, expert reports, documents, and legal authorities.

14.3. Also on the first business day following the electronic filing, the parties shall courier to the opposing party at the address(es) indicated at §9.1 above and to each Member of the Tribunal at the addresses indicated at §14.4 below:

14.3.1. one hard copy in A5 format, double-sided and if possible spiral bound with soft covers of the entire submission including the pleading, the witness statements, expert reports, and documents (but not including legal authorities); and

14.3.2. one minimum USB drive with a full copy of the entire submission, including the pleading, the witness statements, expert reports, documents, and legal authorities. USB drives should be Mac compatible.

14.4. The addresses of the Tribunal Members are as follows:

Ms. Jean Kalicki 201 West 72 nd St. #6A New York, New York 10023 United States of America Tel: +1 646 371 9156	Prof. Laurence Boisson de Chazournes University of Geneva, Faculty of Law 40, boulevard du Pont- d'Arve Geneva 4, 1211 Switzerland Tel: +41 (0)22 379 85 44	Mr. Klaus Reichert, SC Brick Court Chambers 7-8 Essex Street DX 302 London Chancery Lane London WC2R 3LD United Kingdom Tel: +44 20 7520 9959
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² The A4/Letter format is required for ICSID's archiving.

- 14.5. Legal authorities shall be submitted in electronic format only, unless a hard copy is specifically requested by the Tribunal.
 - 14.6. Electronic versions of a pleading shall be text searchable (i.e., OCR, PDF, or Word).
 - 14.7. Pleadings shall be accompanied by an index hyperlinked to the supporting documentation.
 - 14.8. The official date of receipt of a pleading or communication shall be the day on which the electronic version is sent to the Tribunal Secretary.
 - 14.9. A filing shall be deemed timely if sent by a party by midnight, Washington, D.C. time, on the relevant date.
15. Number and Sequence of Pleadings
Articles 33 and 38 of the ICSID Arbitration (Additional Facility) Rules
- 15.1. The parties shall submit their written submissions (also referred to in this Order as “pleadings”) in accordance with the Procedural Calendar set out in **Annex A** and with the rules set out below.
16. Production of Documents
Article 41 of the ICSID Arbitration (Additional Facility) Rules
- 16.1. Concerning the production of documents, the Tribunal may be guided by the International Bar Association Rules on the Taking of Evidence in International Arbitration (2010) (“IBA Rules”).
 - 16.2. By the date set forth in Annex A, each party may serve a request for production of documents that it assumes to be in the other party’s possession, custody or control, in the form of a Stern Schedule (see Annex B), in both Word and PDF formats. Such a request shall precisely identify each document, or narrow and specific category of documents, sought, specifying why the documents sought are relevant to the case and material to its outcome. The parties’ requests shall not be copied to the Tribunal or the Tribunal Secretary.
 - 16.3. With respect to each request for documents, by the date set forth in Annex A, each party shall respond, either by indicating that it will produce the requested documents by the date set forth in Annex A or by setting forth its objections to the request in the Stern Schedule provided by the requesting party. The parties’ responses shall not be copied to the Tribunal or the Tribunal Secretary.
 - 16.4. By the date set forth in Annex A, the requesting party shall reply to the other party’s

objections in the same Stern Schedule and file the Stern Schedule (in both Word and PDF formats) with the Tribunal, copying the other party.

- 16.5. The Tribunal shall endeavor to issue its decision on contested requests on or around the date set forth in Annex A, having regard to the legitimate interests of the parties and all relevant circumstances.
 - 16.6. A party shall produce those documents for which no objection is sustained by the Tribunal by the date set out in Annex A.
 - 16.7. The disclosure of documents under this Part shall be made electronically, utilizing a secure FTP site, in PDF format, or any other format upon which the parties may subsequently agree.
 - 16.8. Correspondence or documents exchanged in the course of this document disclosure process shall not be copied to the Tribunal, except as set out in this Procedural Order. Documents so produced shall not be deemed on record unless and until the requesting party subsequently files them as exhibits.
 - 16.9. In the event of a party's refusal or failure to produce any document, the Tribunal may consider whether an adverse inference should be drawn in respect of the facts to which the withheld or missing evidence relates.
 - 16.10. After the dates set forth in Annex A, additional requests for the production of documents may be sought by either party only with leave from the Tribunal. The request must be substantiated with reasons, to which the opposing party shall enjoy a right of reply.
17. Submission of Documents
Administrative and Financial Regulation 30; Article 32 of the ICSID Arbitration (Additional Facility) Rules
- 17.1. The Memorial and Counter-Memorial shall be accompanied by the documentary evidence relied upon by the parties, including exhibits and legal authorities. Further documentary evidence relied upon by the parties in rebuttal shall be submitted with the Reply and Rejoinder.
 - 17.2. Neither party shall be permitted to submit additional or responsive pleadings or documentary evidence after the filing of its respective last written submission in accordance with Annex A, unless the Tribunal first determines that exceptional circumstances exist based on a reasoned written request followed by observations from the other party.
 - 17.2.1. Should a party request leave to file an additional or responsive pleading or documentary evidence, that party may not annex the materials that it seeks to file to its request.

- 17.2.2. If the Tribunal grants such an application, the Tribunal shall ensure that the other party is afforded sufficient opportunity to make its observations concerning such materials.
- 17.3. The Tribunal may call upon the parties to produce documents or other evidence in accordance with Article 41(2) of the ICSID Arbitration (Additional Facility) Rules.
- 17.4. The documents shall be submitted in the following form:
- 17.4.1. Exhibits shall be numbered consecutively throughout these proceedings.
- 17.4.2. The number of each Exhibit containing a document produced by Claimant shall be preceded by the letter "C-" for factual exhibits and "CL-" for legal exhibits containing authorities etc. The number for each Exhibit containing a document produced by Respondent shall be preceded by the letter "R-" for factual exhibits and "RL-" for legal exhibits containing authorities etc.
- 17.4.3. Each Exhibit shall have a divider with the Exhibit identification number on the tab.
- 17.4.4. A party may produce several documents relating to the same subject matter within one Exhibit, numbering each page of such Exhibit separately and consecutively.
- 17.4.5. Exhibits shall also be submitted in PDF format and start with the number "C-0001" and "R-0001," respectively.
- 17.4.6. Copies of documentary evidence shall be assumed to be authentic unless specifically objected to by a party, in which case the Tribunal will determine whether authentication is necessary.
- 17.5. The parties shall file all documents only once by attaching them to their pleadings. Documents so filed need not be resubmitted with witness statements even if referred to in such statements.
- 17.6. Demonstrative exhibits (such as PowerPoint slides, charts, tabulations, etc.) may be used at any hearing, provided always that such slides or materials reflect evidence on the record (with citations to such evidence) and do not constitute or introduce any new evidence, whether directly or indirectly. Each party shall number its demonstrative exhibits consecutively, and indicate on each demonstrative exhibit the number of the document(s) from which it is derived. The party submitting such exhibits shall provide them in hard copy to the other party, the Tribunal Members, the Tribunal Secretary, the court reporter(s) and interpreter(s) at the hearing at a time to be decided at the pre-hearing organizational meeting.

18. Witness Statements and Expert Reports

Article 32 of the ICSID Arbitration (Additional Facility) Rules

18.1. Witness statements and expert reports shall be filed together with the parties' pleadings.

18.2. Neither party shall be permitted to submit any testimony that has not been filed with the pleadings, unless the Tribunal first determines that exceptional circumstances exist based on a reasoned written request followed by observations from the other party.

18.2.1. Should a party request leave to file additional or responsive testimony, that party may not annex the testimony that it seeks to file to its request.

18.2.2. If the Tribunal grants such an application, the Tribunal shall ensure that the other party is afforded sufficient opportunity to make its observations concerning such materials.

18.3. Each witness statement and expert report shall be signed and dated by the witness.

19. Examination of Witnesses and Experts

Article 42 and 43 of the ICSID Arbitration (Additional Facility) Rules

19.1. By the date set forth in Annex A, each party shall identify the factual and expert witnesses of the opposing party (having filed written statements and expert reports) whom it intends to cross-examine. Shortly after the parties' notifications, the Tribunal shall indicate whether there are any witnesses and experts not called by the parties that it wishes to question.

19.2. Parties may not call their own witnesses or experts for direct testimony if neither the opposing party nor the Tribunal has indicated an interest in examining such witness or expert. To the extent a party considers that there have been new developments since the date of the witness statement or report about which its witnesses or experts may have material evidence or opinion and that constitute exceptional circumstances for allowing additional testimony, the appropriate mechanism is not to seek to call for such witnesses or experts for direct testimony at the hearing, but rather for that party to seek leave as soon as possible after the new development to submit a supplemental written statement limited to the new developments, pursuant to paragraph 18.2.

19.3. Examination by video-conference may be permitted at the discretion of the Tribunal, if the requesting party provides justified reasons.

19.4. If a witness who has been called by a party for cross-examination fails to appear without good cause, the witness statements or reports filed on behalf of such

witness shall be disregarded and adverse inferences may be drawn by the Arbitral Tribunal.

- 19.5. Those witnesses and expert witnesses who are not called for examination by the opposing party will not be subject to an adverse inference determination. The party which submitted the witness statement or expert report may rely on the statement or report in its argument and the opposing party similarly may rely upon or challenge the statement or report in its argument.
- 19.6. Witnesses shall be examined by each party under the control of the Tribunal. At the hearing, the examination of each witness shall proceed as follows:
 - 19.6.1. The written witness statement or report of each witness called for cross-examination shall stand in lieu of the examination by the party producing the witness (“direct examination”). However, the party who presents the witness may briefly examine the witness for purposes of asking introductory questions and to enable the witness to confirm and/or correct that witness’s written statement.
 - 19.6.2. The adverse party may then cross-examine the witness on matters addressed in the statement of the witness and matters going to the credibility of the witness, with the latter limited to matters that are relevant and of which the witness has direct knowledge.
 - 19.6.3. The party who has presented the witness may then conduct a redirect examination of the witness with respect to any matters arising out of the cross-examination.
 - 19.6.4. The Tribunal may examine the witness at any time, either before, during or after examination by one of the parties. Counsel for either party may re-examine the witness with respect to any matters or issues arising out of the Arbitral Tribunal’s questions.
- 19.7. Unless the parties and the Tribunal agree otherwise, fact witnesses shall not be permitted to be present during the examination of other witnesses, or to otherwise hear or view such proceedings, until after they have been cross-examined on their own testimony. Expert witnesses shall be allowed in the hearing room at any time.
- 19.8. Notwithstanding paragraph 19.7, Claimant’s and Respondent’s designated representatives shall be permitted to attend the hearing or to otherwise hear or view such proceedings at all times. In the event any such representatives are also fact witnesses, the Tribunal may consider, in consultation with the parties in advance of the hearing, whether to schedule their examination for the beginning of the hearing, prior to the examination of other witnesses.

19.9. The Parties and the Tribunal will consider at the pre-hearing organizational meeting whether any expert witnesses should be examined by the Tribunal in conference by topic, following their examination individually by the Parties.

20. Pre-Hearing Organizational Meetings

Article 29 of the ICSID Arbitration (Additional Facility) Rules

20.1. On the date set forth in Annex A, a pre-hearing organizational meeting shall be held by telephone between the Tribunal, or its President, and the parties in order to resolve any outstanding procedural, administrative, and logistical matters in preparation for the hearing. The Tribunal will circulate an agenda in advance of the organizational meeting, to facilitate discussions between the parties regarding the matters to be discussed.

21. Hearings

Article 21(2) of the ICSID Arbitration (Additional Facility) Rules

21.1. The oral procedure for either jurisdiction alone (in the event of bifurcation) or jurisdiction and merits combined (in the event of no bifurcation) shall consist of a hearing for examination of witnesses and experts, if any, and for oral arguments.

21.2. The hearing shall be held at a place to be determined in accordance with paragraph 11 above.

21.3. The hearing shall take place on the dates set forth in Annex A.

21.4. The allocation of time during the hearing, as well as specific protocols for implementing that allocation, will be addressed during the pre-hearing organizational meeting addressed in paragraph 20 above.

21.5. The Members of the Tribunal shall endeavor to reserve at least one day after the hearing to determine the next steps and to hold deliberations.

21.6. The Respondent requested that hearings be open to the public, but the Claimant did not consent. In light of the Claimant's objections and pursuant to Article 39(2) of the ICSID Arbitration (Additional Facility) Rules, the hearings shall be held *in camera*. This confidentiality also extends to any transcripts prepared of the hearings. (Other than with respect to the hearings, the ICSID Arbitration (Additional Facility) Rules do not address the issue of confidentiality of proceedings, and no party to date has sought entry of any protective order providing for such confidentiality.)

22. Records of Hearings and Sessions

Article 28(1)(g) of the ICSID Arbitration (Additional Facility) Rules

- 22.1. Sound recordings shall be made of all hearings and sessions. The sound recordings shall be provided to the parties and the Tribunal Members.
- 22.2. Verbatim transcript(s) in the procedural language shall be made of any hearing and session other than sessions on procedural issues. Unless otherwise agreed by the parties or ordered by the Tribunal, the verbatim transcripts shall be available in real-time using LiveNote or similar software and electronic transcripts shall be provided to the parties and the Tribunal on a same-day basis.
- 22.3. The parties shall agree on any corrections to the transcripts within 20 days of the later of the dates of the receipt of the sound recordings and transcripts. The agreed corrections may be entered by the court reporter in the transcripts (“revised transcripts”). The Tribunal shall decide upon any disagreement between the parties and any correction adopted by the Tribunal shall be entered by the court reporter in the revised transcripts.

23. Post-Hearing Memorials and Statements of Costs

Article 58(1) of the ICSID Arbitration (Additional Facility) Rules

- 23.1. At the close of the hearing the Tribunal shall inform the Parties whether it would consider it useful to receive Post-Hearing submissions on any issues, in which event it will indicate expressly which issues shall be addressed by the parties therein and establish a schedule for the simultaneous exchange of any such submissions.
- 23.2. Statements of costs shall be due 30 days after the latter of the conclusion of a hearing (on jurisdiction or the merits) or the date established for the submission of Post-Hearing Memorials, if any.
- 23.3. Notwithstanding the Respondent’s position in general regarding the costs of the arbitration, as reflected in paragraph 10.2 above, the parties agree that the cost of any transcripts and recordings shall be borne by the parties in equal part. The Secretariat is exploring the mechanism for implementing this agreement regarding the sharing of costs for transcripts and recordings.

24. Publication

Administrative and Financial Regulation 22, Article 53(3) of the ICSID Arbitration (Additional Facility) Rules

- 24.1. The parties consent to ICSID publication of the award and any order or decision issued in the present proceeding.

25. Other Proceedings

- 25.1. The parties have agreed that ICSID shall administer under the Additional Facility Rules, and this same Tribunal shall be appointed to hear, a parallel *ad hoc* arbitration by Sanum Investments Limited against the Lao People's Democratic Republic, invoking the bilateral investment treaty between China and the Lao People's Democratic Republic (the "Sanum Investments Case"). To the extent feasible, the parties and the Tribunal intend to run the proceedings in tandem (if not formally consolidated), for reasons of efficiency and cost. The parties and the Tribunal may consider adjustments to the procedural timetable in Annex A to account for the time needed for initial steps in the Sanum Investments Case.

[Signed]

Jean Kalicki
President of the Tribunal
Date: May 16, 2017

Lao Holdings N.V. v. Lao People's Democratic Republic
(ICSID Case No. ARB(AF)/16/2)

Procedural Order No. 1

ANNEX A
Procedural Timetable

Description	Party / Tribunal	Period	Date
<i>Starting Date: April 28, 2017</i>			
Memorial on the Merits	Claimant	16 weeks (extended from prior 2-1/2 months)	August 18, 2017
Objection to Jurisdiction	Respondent	Same as above	August 18, 2017
Counter-Memorial on the Merits	Respondent	11 weeks (same as previous)	Nov. 3, 2017
Counter-Memorial on the Objection to Jurisdiction	Claimant	Same as above	Nov. 3, 2017
Request for Production of Documents	Parties	3 weeks (extended from prior 2 weeks)	Nov. 24, 2017
Objections to Requests for Production of Documents	Parties	2 weeks	Dec. 8, 2017
Reply to Objections to the Request for Production of Documents – Stern Schedules Sent to Tribunal	Parties	1 week	Dec. 15, 2017
Production of Documents as to Which No Objection Was Made	Parties	4 weeks after decision not to object (extended from 3 due to holidays)	Jan. 5, 2018
Decision on Objections to Request for Production of Documents	Tribunal	3 weeks after receipt of Stern Schedules	Jan. 5, 2018
Production of Documents Ordered by the Tribunal	Parties	2 weeks after Tribunal decision	Jan. 19, 2018
Reply on the Merits	Claimant	6 weeks	March 22, 2018
Reply on Jurisdiction	Respondent	Same as above	March 22, 2018
Rejoinder on the Merits	Respondent	6 weeks	May 4, 2018
Rejoinder on Jurisdiction	Claimant	Same as above	May 4, 2018
Notification of Witnesses/Experts for Cross-Examination	Parties	10 days after conclusion of the written phase	May 14, 2018
Call of Witnesses/Experts not Called by the Parties, if any	Tribunal	1 week after parties' notification	May 21, 2018

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Procedural Order No. 1

Description	Party / Tribunal	Period	Date
Pre-Hearing Organizational Meeting (by telephone)	Parties and Tribunal	2 weeks after final witness notification (same as previous)	June 4, 2018 ³
Hearing	All	8 days maximum	July 4-12, 2018 (8 days, excluding Sunday, July 8)
Post-Hearing Briefs if requested by the Tribunal	Parties	TBD	TBD
Statements on Costs	Parties	30 days after conclusion of hearing or post-hearing briefs	TBD

³ 7:30 a.m. Dallas/Mexico City, 8:30 a.m. NY/Ontario/Charlotte, 1:30 p.m. London, 2:30 p.m. Geneva, 8:30 p.m. Beijing)

ANNEX B

Model of Stern Schedule for Document Requests

Document Request No	
A. Documents or category of documents requested (requesting party)	
B. Relevance and materiality, including references to submissions (requesting party)	
C. Objections to document request (objecting party)	
D. Response to objections and request for resolution (requesting party)	
E. Decision of the Tribunal	