

April 16, 2014

By email

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Re: Lao Holdings N.V. v. Lao People's Democratic Republic
(ICSID Case No. ARB(AF)/12/6)

Dear Mesdames and Sirs,

I write to you as instructed by the President of the Tribunal. The Tribunal has now had an opportunity to confer respecting the matters raised by the Claimant by letter dated 29 March, 2014, and the subsequent correspondence ending with the Respondent's letter of 14 April, 2014, in which the Claimant seeks certain interim relief additional to the Provisional Measures Order (PMO) dated 17 September, 2013, and the Tribunal rules as follows:

1. The Respondent acknowledges that Order 04/PM apparently dated 14 January, 2014, which purported to rescind the Prime Minister's earlier order 30/PM dated 4 November, 2013 commanding compliance with the PMO, was issued in error. The government has apologized for its mistake but we are now advised that due to the Prime Minister's state visit to China no formal rectification of the situation is possible until the week of 21 April, 2014, and even then issuance of a rectifying order is promised simply "as soon as possible" (Werner Tsu e-mail dated 8 April, 2014). Considering that the 04/PM problem was drawn to the attention of counsel for the Respondent on 29 March, 2014, and that in the meantime the

“erroneous” order 04/PM remains in effect, the delay in rescinding Order 04/PM is in clear and continuing violation of the PMO. Even if for logistical reasons it is not practicable to rescind in a formal way 04/PM until the Prime Minister’s return, it is within the Respondent’s power to communicate the fact 04/PM was issued in “error” to the relevant government officials, and in particular to the “government officials who deal with the Claimant’s investments” listed by the Claimant in its letter of 22 January, 2014 and referred to by the Claimant at page 2 of its 29 March, 2014 letter, immediately. Accordingly the Respondent is required to undertake such notification forthwith and to advise the Tribunal when this has been done. The Respondent has undertaken to arrange for the formal rescission of 04/PM as soon as “possible” after the Prime Minister’s return from China. Counsel for the Respondent is to advise the Tribunal and the other parties as soon as this “formal” rescission has been completed.

2. With respect to the disputed tax collection under Notice 0443 dated 28 March, 2014, the Tribunal considers paragraph 30(1) of the PMO to be perfectly clear when it states that the Respondent government is enjoined from “demanding that Claimant pay any amounts allegedly due pursuant to the New Tax Law” following expiry of the Flat Tax Agreement on 31 December, 2013, conditional upon the Claimant complying with the escrow arrangement referred to in paragraph 30 (4) of the PMO. In other words the focus of the PMO is not limited to the modified 80% rate imposed on casino revenue by the New Tax Law. The PMO covers all taxes “allegedly due” pursuant to the New Tax Law in its entirety. There is no exemption for tax on “non-casino gaming revenues”, despite the apparent misunderstanding of Mr Nammavong in his statement of 8 April, 2014. The Tribunal is advised by the Claimant, and it has not been disputed by the Respondent, that the taxes that are referred to in Notice 0443, are covered by articles 12, 13, 14, 15, 26 *et seq* and 43 *et seq* of the New Tax Law. Accordingly the Respondent is required forthwith to reimburse Savan Vegas by government cheque the amount of taxes collected pursuant to Notice 0443, and to refrain from further tax collection under the new Tax Law as required by the PMO until these proceedings are resolved.
3. With regard to Madame Sengkeo, the Respondent acknowledges that “the conduct alleged would, if true, be in violation of the Decision for Provisional Measures of 17 September, 2013 (PMO)”. To the extent cross-allegations are made against the Claimant, the Claimant acknowledges that “coercion of a witness is a serious matter”, as would, the Tribunal adds, be suborning false evidence in any fashion. Indeed, Mr Branson states in his letter of 14 April 2014 at pp 2-3 that “such conduct would be in violation of the parties’ duties to the Tribunal even absent the provisional measures”. The Tribunal agrees. To the extent the situation of Madame Sengkeo is bound up with the Respondent’s request to vary the PMO to permit an investigation of allegations of corruption in relation to the Claimant’s investments, the relationship between the arbitral proceedings and the proposed criminal investigation will be the subject of an oral hearing in London on 12 May, 2014. To the extent the situation of Madame Sengkeo is limited to issues of proof at the 12 May hearing, and is unrelated to the proposed criminal investigations, the prohibition against witness tampering is still absolute. Although the Claimant refers to at least one recent unwelcome contact between Madame Sengkeo and government officials, the Claimant does not identify any of the officials in question. Mr Branson advises that he discussed “the Sengkeo evidence with the senior Committee members on April 2, 2014. They had not had any contact at any time with Ms Sengkeo”, and Mr Branson’s letter continues, “They are certain that no person in the Government who has any authority or responsibility for this case has had any contact with Ms Sengkeo in connection with this case, and they are not aware that any unauthorized Government person has met with her, much less threatened her.” (Mr Branson letter, *ibid*, p 2) In the absence of any particulars from the Claimant regarding the identities of the offending government officials who seek to “coerce false testimony from her”, or the individual(s) at

ST who seek to “coerce her cooperation”, an exceptionally serious set of allegations, the Tribunal does not think it necessary to add further language to the PMO with respect to the situation of Madame Sengkeo at this time. The parties agree on the absolute duty to refrain from witness tampering of any description, both under the PMO and otherwise, and if in future particulars of any such conduct are established, whether conduct by government officials directly or (as also alleged by the Claimant) indirectly using ST “as an intermediary”, or by or on behalf of the Claimant, the consequences will be severe.

4. There is some discussion in the material as to whether certain allegations made by the parties for the purpose of the 12 May hearing will be considered by the Tribunal to be “presumptively” established. This is not so. In the next phase of these hearings, as in the jurisdictional challenge heard by the Tribunal in January 2014, the party alleging facts will be expected to prove them on a balance of probabilities.

Sincerely yours,

[Signed]

Anneliese Fleckenstein
Secretary of the Tribunal

cc:

Members of the Tribunal