

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

Originating Summons No. 24 of 2014

In the Matter of Section 10 of the International
Arbitration Act (Cap. 143A)

And

In the Matter of Order 69A of the Rules of Court
(Cap 322, R 5, 2006 Rev Ed)

Between

**THE GOVERNMENT OF THE LAO
PEOPLE'S DEMOCRATIC REPUBLIC** (No ID
exists)

...Plaintiff

And

SANUM INVESTMENTS LIMITED (ID No. not
known)

...Defendant

AFFIDAVIT

I, **ALOUNKEO KITTIKHOUN**, Lao PDR Passport No. D0004966, The Ministry of Foreign Affairs of the Lao PDR, do solemnly and sincerely affirm and say as follows:

1. I am the Vice-Minister for Foreign Affairs in the Government of the Lao People's Democratic Republic ("GOL"). I am duly authorised by GOL to make this affidavit on its behalf.
2. The matters deposed to in this affidavit are matters within my personal knowledge and/or obtained from information, files and documents in my possession and are true to the best of my knowledge and belief.
3. I make this affidavit in response to the 3rd Affidavit of John K. Baldwin filed on behalf of the Defendant, Sanum Investments Limited ("**Sanum**"), on 19 March 2014 ("**JB's 3rd Affidavit**") in respect of Summons No. 884 of 2014 ("**SUM 884**").

4. SUM 884 is GOL's application for leave to adduce further evidence in Originating Summons No. 24 of 2014 ("OS 24") in the form of correspondence exchanged between GOL and the Embassy of the People's Republic of China (collectively "the Letters"), namely:
 - (a) a letter dated 7 January 2014 (No. 00058/AE.TD.4) from the Ministry of Foreign Affairs of GOL to the Embassy of the People's Republic of China ("PRC") in Vientiane, Laos ("the GOL Letter"); and
 - (b) a letter dated 9 January 2014 (No. 003/14) from the Embassy of the PRC to the Ministry of Foreign Affairs of GOL, in response to the GOL Letter ("the PRC Letter").
5. One of the main issues in OS 24 is whether the BIT applies to the Macao SAR. GOL verily believes that the GOL Letter and the PRC Letter are highly material to this issue as they set out in writing the official positions and views of GOL and the Government of the PRC in relation to the interpretation and application of the bilateral investment treaty dated 31 January 1993 between the Government of the PRC and GOL ("the BIT").
6. In particular, the GOL Letter and the PRC Letter show that both parties to the BIT share the common view, and are in agreement that the BIT has not been extended to the Macao SAR and does not apply to the Macao SAR.
7. At paragraphs 9 and 10 of JB's 3rd Affidavit, Sanum has objected to GOL adducing the Letters as evidence in OS 24, *inter alia*, on the basis that the PRC Letter is allegedly not genuine. However, this allegation is completely untrue.
8. As the Vice-Minister for Foreign Affairs of GOL, I was personally involved in and was kept informed of the process by which GOL sought and obtained the PRC Government's position on the interpretation and application of the BIT.
9. I can personally vouch for and attest to the authenticity of the GOL Letter and the PRC Letter. I have also reviewed the copies of the GOL Letter and the PRC Letter annexed to the 3rd Affidavit of Outakeo Keodouangsinh filed on behalf of GOL on 19 February 2014. I confirm that the copies exhibited therein are true and accurate copies.
10. In addition, I confirm that the official views and positions set out in the GOL Letter and the PRC Letter are consistent with, and accurately reflect what was conveyed between me and his Excellency Mr Guan Huabing, the Ambassador Extraordinary and Plenipotentiary of the PRC to Laos during our meeting on 3 January 2014.
11. I note that Sanum is taking issue with the fact that the PRC letter is not signed by an individual and does not identify the name or designation of its author. However,

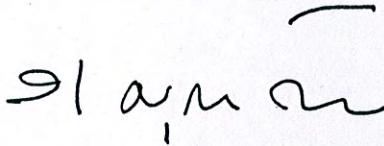
there is no merit to Sanum's complaint. There is no requirement for letters from the embassies of sovereign states to be signed by an individual. As can be seen from the PRC Letter, the document bears the seal of the PRC Embassy in Laos.

12. I note that Sanum is also alleging that GOL has not been forthcoming about the circumstances leading up to the exchange of the Letters. Again, this allegation is without basis.
13. At paragraphs 13 to 19 of the 3rd Affidavit of Outakeo Keodouangsinh filed on 19 February 2014, GOL has provided this Honourable Court with the material facts regarding the exchange of the Letters, and the reasons why GOL was not able to adduce the Letters as evidence at the time when OS 24 and the 1st Affidavit of Outakeo Keodouangsinh were filed on 10 January 2014.
14. I also wish to explain that the Letters were issued by GOL and the PRC Embassy following a process of consultation between the respective governments. The matter concerned both countries' official positions and views regarding the interpretation and application of the BIT, which is an international treaty between two sovereign states. The communications between GOL and the PRC followed the usual diplomatic protocols and diplomatic channels.
15. In GOL's counsel's letter to the Tribunal dated 19 April 2013, it was stated that GOL was "reaching out to the PRC through diplomatic channels, but it is difficult to know how quickly there can be a response". This statement was entirely accurate.
16. There is nothing unusual or sinister about the fact that the communication process between GOL and the PRC took place over an extended period of time and culminated in the exchange of the Letters in January 2014. I disagree with Sanum's assertions at paragraph 14 of JB's 3rd Affidavit that there has been an "unexplained delay" in the obtaining of the PRC Letter, or that there is anything suspicious about the circumstances regarding the exchange of the Letters.
17. It is also incorrect for Sanum to allege that GOL could have obtained the PRC's views on the BIT "months ago" and put the Letters before the Tribunal, but chose not to. As mentioned above, the Letters were issued after a normal process of diplomatic communications between the respective governments. The latter culminated in two high level meetings between representatives of the PRC and GOL. As mentioned in the GOL Letter:
 - (a) on 27 December 2013, Mr Ouan Phommachack, the then Director General of the Department of Treaties and Law of GOL met with Mr. Wu ZHIWU, Counselor, Deputy Chief of Mission of the Embassy of the PRC in Lao PDR; and

(b) on 3 January 2014, I personally attended the penultimate meeting with his Excellency Mr Guan Huabing. We spoke about our respective countries' views on the interpretation and application of the BIT, and conveyed that our respective countries were ready to issue formal correspondence to set out their official positions.

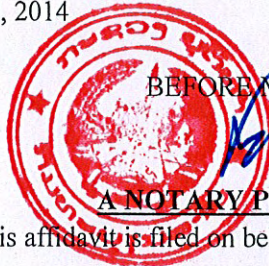
18. The GOL Letter and the PRC Letter were issued within a week after my meeting with his Excellency Mr Guan Huabing on 3 January 2014.

Affirmed in Vientiane, Laos
by the abovenamed



ALOUNKEO KITTIKHOUN

on this 4th day of April, 2014



BEFORE ME,

A NOTARY PUBLIC

This affidavit is filed on behalf of the Plaintiff.

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