The Lao People's Democratic Republic *v* Sanum Investments Ltd and another and another matter
[2013] SGHC 183

Case Number : Originating Summonses Nos 521 and 522 of 2013

Decision Date : 23 September 2013

Tribunal/Court : High Court

Coram : Quentin Loh J

Counsel Name(s) : Kirindeep Singh, Mark Jerome Seah Wei Hsien and Tan Jin Wang Ross (Rodyk & Davidson LLP) for the plaintiff; Koh Swee Yen and Chong Wan Yee Monica (WongPartnership LLP) for the first defendants; Tong Chun Fai Edwin and Fong Shi-Ting Fay (Allen & Gledhill LLP) for the second defendant.

Parties : The Lao People's Democratic Republic — Sanum Investments Ltd and another

Arbitration – interlocutory order or direction

Civil Procedure – production of documents

23 September 2013

Quentin Loh J:

1 These two originating summonses, Originating Summons No 521 of 2013 ("OS 521/2013") and Originating Summons No 522 of 2013 ("OS 522/2013"), were applications for subpoenas to produce documents to be issued against the second defendant in both applications, Lawrance Lai Wei Chong ("Lawrance Lai"). These applications were brought pursuant to s 13 of the International Arbitration Act (Cap 143A, 2002 Rev Ed) ("the IAA"). Section 13 of the IAA provides, in essence, for the Singapore courts to issue subpoenas to compel persons within Singapore to testify or to produce documents to an arbitral tribunal. This is among the various powers the court has under the IAA which may be exercised in support of international arbitration proceedings. On 31 July 2013, I allowed the applications in both OS 521/2013 and OS 522/2013 and issued subpoenas to produce documents against Lawrance Lai. Lawrance Lai filed appeals against my orders on 19 August 2013 but these were withdrawn on 19 September 2013. Nevertheless, I now give the grounds of my decision.

Background to the applications

The parties

2 The plaintiff, The Lao People's Democratic Republic ("the Lao PDR") is engaged in two on-going arbitration proceedings brought by the first defendants in the OS 521/2013 and OS 522/2013 respectively, namely, Sanum Investments Limited ("Sanum Investments") and Lao Holdings NV ("Lao Holdings") (collectively, "the Claimants").

3 The second defendant in both applications, Lawrance Lai Wei Chong, is an accountant and a partner with Ernst & Young Advisory Pte Ltd.

The arbitrations

4 The two arbitrations relate to disputes arising from gaming investments made by Sanum Investment and Lao Holdings in the Lao PDR. The first arbitration, between Sanum Investment as claimant and the Lao PDR as respondent was filed via a notice of arbitration at the International Centre for Settlement of Disputes ("ICSID") on 14 August 2012 and is governed by a bilateral investment treaty between the Lao PDR and the People's Republic of China. The second arbitration, between Lao Holdings as claimant and the Lao PDR as respondent, was filed via a notice of arbitration also at ICSID on 14 August 2012 and is governed by a bilateral investment treaty between the Lao PDR and the Kingdom of the Netherlands.

5 Various claims have been made against the Lao PDR by the Claimants in the two arbitrations but they are not all relevant to the present applications. Insofar as the claims are relevant to the present applications, they may be briefly summarised as follows.

6 It is alleged in both notices of arbitration that sometime in 2011, a dispute arose between the Claimants and the local partners to the investment (collectively referred to as "ST") in a project known as the Savan Vegas project. ST sought to obtain access to all of Savan Vegas' financial and operational documents without restriction. The Claimants refused because they said these were critical trade secrets. After the attempts to resolve the dispute reached an impasse in the autumn of 2011, ST filed a lawsuit in the Laotian court to obtain the access it sought without restriction. It is then alleged that on 10 April 2012, the Lao PDR Prime Minister's Office intervened and ordered a government audit of Savan Vegas. This, say the Claimants, effectively allowed ST the unfettered access to the documents it was seeking. They further allege that an *ex parte* request to the Laotian court to allow ST access to all of Savan Vegas' documents was granted in May 2012 without any notice to Savan Vegas.

7 Officials from the Lao PDR Ministry of Finance, local tax officials and designated members of Ernst & Young ("E&Y") from Singapore, whom the Claimants allege were selected by ST, started with the audit. The Claimants allege that the audit conducted was improper for various reasons, including, *inter alia*, the fact that the ST-designated accountants from E&Y "possessed no gaming expertise and were thus unqualified for the tasks at hand". They also challenged the propriety of the conduct of the entire audit exercise. E&Y was involved in the audit between 5 July and 10 July 2012. The audit resulted in an audit report by E&Y on 20 July 2012; the Claimants claim they have not been provided a copy of the same. Curiously, at the hearing before me, counsel for the Lao PDR in these applications informed me that while they had been provided with a copy of the report, they themselves were not sure that what they had was in fact the report actually produced.

8 According to the Claimants, arising from the audit, the Lao PDR central government began issuing demands for payments concerning three tax debts with penalties and interest. These tax demands were denominated, respectively, as a "construction tax", a "brokerage tax", and "overtime charges", and totalled US$23,759,229. The allegations against the Lao PDR include the claim that these tax demands were improperly made. Arising from these tax demands, the Claimants say that the the Lao PDR government has threatened the imposition of penal sanctions and the seizure of properties.

9 Finally, I should point out that at the time of the filing of OS 521/2013, the corresponding notice of arbitration between Sanum Investments and the Lao PDR made no mention of any claims relating to the audit and the imposition of taxes. At the hearing before me, counsel for the Lao PDR in these applications tendered a copy of the amended notice of arbitration which included and mirrored the notice of arbitration in OS 522/2013 in that it also included the same claims relating to the audit and the imposition of taxes as summarised above.

The request for the documents sought

10 Both sides in both arbitrations, Sanum Investment and Lao Holdings as the Claimants and the Lao PDR as the respondent, agreed that the documents relating to E&Y's participation in the audit were relevant and material to the arbitration. At a procedural conference before the arbitral tribunal on 8 May 2013, the parties to the arbitration jointly agreed to request that E&Y provide copies of:

(a) E&Y's engagement letter with the Lao PDR;

(b) all reports relating to Savan Vegas provided to the Lao PDR by E&Y;

(c) all correspondence or other documents exchanged between the Lao PDR and E&Y concerning the financial and accounting inspection or any potential inspection of Savan Vegas and/or Parksong Vegas & Casino Co Ltd;

(d) all drafts of reports relating to Savan Vegas created by E&Y;

(e) all E&Y internal documents (including emails, notes, memoranda and work papers) concerning the financial and accounting inspection or potential inspection of Savan Vegas or Parksong Vegas; and

(f) any and all other documents generated by E&Y related to the financial and accounting inspection or any potential inspection of Savan Vegas or Parksong Vegas.

On 31 May 2013, such a joint request was made by the parties to E&Y's offices in Singapore, Hong Kong and the Lao PDR. On 5 June 2013, E&Y indicated that it did not believe that it had sufficient authorisation to produce the documents because it had not received sufficient evidence authorising it to disclose them. The solicitors for the Lao PDR in the arbitration were informed that the documents were with E&Y in Singapore but that E&Y could not release them unless the Lao PDR Ministry of Finance approved the disclosure and paid the appropriate charges. This was despite a letter from the Lao PDR Ministry of Planning and Investment dated 30 January 2013 purportedly conferring the solicitors with the authorisation. This was ostensibly because in the mind of E&Y, its client was the Ministry of Finance and not the Ministry of Planning and Investment.

11 On 10 June 2013, the Lao PDR filed OS 521/2013 and OS 522/2013 respectively for subpoenas to produce the documents as listed in [10] above against Lawrance Lai. In these originating summonses, the Lao PDR was named as the plaintiffs and Sanum Investments and Lao Holdings as the defendants in each originating summons respectively.

12 In a letter dated 28 June 2013, the solicitors for Lawrance Lai queried the solicitors for the Lao PDR in these applications as to why it had chosen to seek to have a subpoena issued against their client when, they say, the Lao PDR Ministry of Finance had agreed to give them some of the documents requested. They further asserted that they were not convinced as to the relevance of E&Y's working papers, internal documents, correspondence and drafts to the arbitrations. They further informed that their client was not in possession of any documents relating to Parksong Vegas & Casino Co Ltd.

13 Finally, on 11 July 2013, the Lao PDR Ministry of Finance wrote to E&Y, including Lawrance Lai in Singapore, instructing them to release the said documents to the Lao PDR's solicitors in the arbitrations.

The applications before me

14 In the light of the clarification that E&Y was not involved in the affairs of Parksong Vegas & Casino Co Ltd, when the parties appeared before me, they applied to have the applications amended to remove the request for documents relating to Parksong Vegas & Casino Co Ltd. The applications were accordingly argued on that basis. By the time of the applications being heard before me, Lawrance Lai's concerns as to confidentiality of 'their client' had also been overtaken by reason of the letter from the Lao PDR Ministry of Finance instructing him to release the documents.

The relevant provisions

15 The applications before me were brought pursuant to s 13 of the IAA, read with O 69A r 7 of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) ("the ROC"). Section 13 of the IAA reads as follows:

> **Witnesses may be summoned by subpoena**
>
> **13.**—(1) Any party to an arbitration agreement may take out a subpoena to testify or a subpoena to produce documents.
>
> (2) The High Court or a Judge thereof may order that a subpoena to testify or a subpoena to produce documents shall be issued to compel the attendance before an arbitral tribunal of a witness wherever he may be within Singapore.
>
> (3) The High Court or a Judge thereof may also issue an order under section 38 of the Prisons Act (Cap. 247) to bring up a prisoner for examination before an arbitral tribunal.
>
> (4) No person shall be compelled under any such subpoena to produce any document which he could not be compelled to produce on the trial of an action.

The words used in the present s 13, "subpoena to testify" and "subpoena to produce documents", replaced the Latin names by which they were formerly known, *ie*, a writ of *subpoena ad testificandum* or a writ of *subpoena duces tecum* respectively. Order 69A r 7 of the ROC provides that O 38 rr 14–23 apply in relation to the issue of a subpoena pursuant to s 13 of the IAA. Order 38 rr 14–23 govern the issue of subpoenas generally as applicable to civil proceedings before the domestic courts in Singapore.

16 The subpoena to produce documents which the Lao PDR sought to have issued in OS 521/2013 and OS 522/2013 listed the same documents as those listed above (at [10]).

A procedural footnote

17 In the ordinary course, a subpoena is issued by the court and then served on the witness or non-party who is to be compelled under it to testify or to produce documents. The issuance of a subpoena is normally a ministerial act on the court's part. An application may then be made *inter partes* by the witness or the non-party for the subpoena to be set aside on the relevant and applicable grounds. However, in the present case, the originating summonses and supporting affidavits were served on Lawrance Lai on 14 June 2013 in advance of the hearing before me. Lawrance Lai accordingly sought the leave of the court to file an affidavit in response. At a pre-hearing conference on 27 June 2013, a Senior Assistant Registrar gave leave for his affidavit to be filed.

18 As a result, Lawrance Lai was represented by counsel at the first hearing before me on 15 July

2013 and thereafter. The arguments made by his counsel before me were, in essence, in the nature of arguments which would be made in an application to set aside a subpoena duly issued. What happened therefore was that by consent, the entire procedure was telescoped in that both the applications for the subpoenas to be issued and for them to be set aside were heard together before me at the same hearings. After hearing all the parties and after I made the order for the subpoenas to be issued against Lawrance Lai, his counsel applied for him to be added as a second defendant to both applications. In the light of the fact that the application to set aside the subpoenas had in substance already been heard and disposed of, and to give Lawrance Lai the *locus standi* to appeal against my orders and there being no objections from the other parties, I allowed him to be added as a second defendant to both OS 521/2013 and OS 522/2013.

Lawrance Lai's objections

19 The plaintiff and the first defendants in both OS 521/2013 and OS 522/2013 were all in support of the issuance of the subpoenas directed at Lawrance Lai to produce the documents. It was therefore only Lawrance Lai who objected. His objections were made on three broad grounds. He said that (i) the documents sought were not necessary for disposing of the cause or matter or for saving costs; (ii) the documents sought were not relevant and material to the arbitrations; and (iii) the subpoenas were not framed with sufficient precision as to the particular documents required to be produced.

Necessity, relevance and materiality

20 Counsel for Lawrance Lai, Mr Edwin Tong ("Mr Tong"), argued that the plaintiff, the Lao PDR, had not satisfied its burden of showing that the documents which were sought were relevant and material to the arbitrations, and that they were necessary for the disposal of the matter.

21 In particular, Mr Tong took issue with the demand to produce the "emails, notes, memoranda and work papers... concerning the financial and accounting inspection or any potential inspection of Savan Vegas". It was not disputed that E&Y, and by extension Lawrance Lai, did undertake or was involved in an audit of Savan Vegas. Mr Tong, however, argued that because these "emails, notes, memoranda and work papers" were never released to the client, they could not have been, as alleged in the notices of arbitration, relied upon by the Lao PDR to justify the imposition of taxes on Sanum Investments and Lao Holdings. I could not agree with this objection. In the course of its work, E&Y had made observations of what they inspected, interviewed relevant persons and reviewed documents. The contemporaneous records of such work done were relevant to showing the state of affairs of Savan Vegas at the time of the inspection for the purposes of the disposal of the arbitration. Further, as was explained to me by counsel for the plaintiff and counsel for the first defendants and as was apparent to me from the notices of arbitration, what is in issue in the arbitration is not only the imposition of the taxes, penalties and interests on the Claimants *simpliciter*. The propriety of the audit was also called into question in the arbitration. These allegations include, *inter alia*, the assertion that the members of E&Y who were involved were selected by ST (presumably for a sinister motive), did not possess the relevant expertise, and that the conduct of audit itself was improper (see above at [7]). Because all these were issues raised in the arbitrations which fell to the tribunals to be disposed of, the "emails, notes, memoranda and work papers" were accordingly relevant and material. These "emails, notes, memoranda and work papers" would shed light on the *circumstances* of E&Y's appointment and the audit itself. These were documents which were of more than mere marginal relevance.

22 Another objection raised by Mr Tong hinged on the fact that the drafts and internal documents of E&Y were the property of E&Y. I was referred to *Chantrey Martin (a Firm) v Martin* [1953] 2 QB

286 for the proposition that such papers remained the property of the accountants who produced them, even though they were brought into existence in connection with work done for the clients. I did not doubt this as a general proposition and I noted that Mr Tong was also not arguing that this in itself was a bar to the issue of a subpoena for such documents to be produced. Indeed, in *Kuah Kok Kim and others v Ernst & Young* [1996] 3 SLR(R) 485, the Singapore Court of Appeal ordered pre-action discovery of an accountant firm's working papers as they were found to be relevant. Instead, it was argued that the proprietary and confidential nature of an accountant's working papers imposed on the court a duty to be utterly scrupulous in ensuring that it is satisfied as to the relevance of the documents. I also did not disagree with this as a general proposition. This proposition flows from the trite principle that because a subpoena to produce documents may sometimes be an invasion into the confidentiality and privacy of a third party, the court must carefully consider and ensure that that invasion is counterbalanced by the interests of justice in the individual case: see Paul Matthews & Hodge M Malek, *Disclosure* (Sweet & Maxwell, 3rd Ed, 2007) at para 10.15. Issues of confidentiality and privacy are thus relevant discretionary factors which the court will take into account. In the present case however, as I have expressed above, I was satisfied that the documents sought were highly relevant and material to the issues raised in the two arbitrations, even adopting this heightened level of scrutiny that Mr Tong had invited me to take.

The sufficiency of precision

23 Mr Tong also objected to the issuance of the subpoenas on the ground that as framed, they lacked sufficient precision in identifying the particular documents required to be produced. A subpoena to produce documents, if framed too loosely or generally, would in the circumstances amount to "an attempt to obtain discovery against a third party": see *Sunderland Steamship P and I Association v Gatoil International Inc (the "Lorenzo Halcoussi")* [1988] 1 Lloyd's Rep 180 ("*The Lorenzo Halcoussi*"). This was an important consideration because the Singapore courts do not have the power under the IAA to order third-party discovery in aid of arbitration. The position is the same in England in respect of s 43 of the Arbitration Act 1996 (c 23) (UK) ("the AA 1996") (which is similar to our s 13 of the IAA).

24 A whole host of English authorities were cited to me in support of the proposition that a subpoena to produce documents would be an improper use of the procedure if it in effect amounts to an order for discovery. There are in fact several reasons for this distinction. First, the purpose of a subpoena is to bring evidence directly to the court. In contrast, an application for discovery is made at quite a different stage in the entire process of litigation. Under English law and our law, the purpose of discovery is to have documents disclosed *before* the hearing of any matter to allow the parties to evaluate their cases, thus clarifying the issues between them, reducing surprises at the trial and also encouraging settlement: see *Teo Wai Cheong v Crédit Industriel et Commercial and another appeal* [2013] 3 SLR 573 at [41]. It is therefore for this reason that in an application for specific discovery, the test is the well-known *Peruvian Guano* principle (*Compagnie Financière et Commerciale de Pacifique v Peruvian Guano Co* (1882) 11 QBD 55) as encapsulated in O 24 r 5(3) of the ROC, *viz*, that it is enough that the document might lead to a train of inquiry which might assist the party in his conduct of the litigation. In contrast, the test in the case of a subpoena to produce documents is more stringent, in that what is sought must be relevant, material, and necessary for the fair disposal of the matter. This reason for the distinction is in fact related to the discussion above on issue of relevance and materiality. Secondly, a subpoena is backed by the coercive power of the state in that failure to comply with a subpoena amounts to contempt of court. As such, the law requires specificity so that the recipient of the subpoena knows exactly what the court expects of him.

25 Therefore, in *Macmillan Inc v Bishopsgate Investment Trust Plc and Others* [1993] 1 WLR 1372

("*Bishopsgate Investment*"), Dillon LJ in the English Court of Appeal rejected the proposition that the test for allowing something to be produced under a writ of *subpoena duces tecum* was merely that "it is or may be relevant to the conduct of the litigation". In that case, the plaintiff in a trial sought the production by one Mr Haas, the copies in his possession of transcripts of his private examination, pursuant to s 236 of the Insolvency Act 1986 (c 45) (UK), by the liquidators of a company called Bishopsgate Investment Management Ltd. The purpose of this was to see if Mr Haas had made previous inconsistent statements to the liquidators. At first instance, Millett J set aside the subpoena on the ground, *inter alia*, that the only purpose of obtaining these documents was "to examine them in the *hope* that they may contain previous inconsistent statements which can then be put to the witness" [emphasis added]. The Court of Appeal dismissed the appeal against the order of Millett J. The court was of the view that the subpoena amounted to a mere fishing expedition and also that it had not been shown that the production of the documents was necessary for disposing of the matter.

2 6 *BNP Paribas v Deloitte and Touche LLP* [2004] 1 Lloyd's Rep 233 ("*BNP Paribas*") was another case cited to me by Mr Tong. There, BNP Paribas had brought arbitration proceedings against Avis for an alleged misrepresentation as to the value of the businesses which Avis had sold it. Avis denied the misrepresentation, averring that it had relied on the fact that their accounts were audited by Deloitte and Touche LLP ("D&T") who signed off without qualification. BNP Paribas applied under s 43 of the AA 1996 to request D&T to produce, among other things, "notes, memoranda and/or documents relating to the preparation of the statutory accounts for Dec 31, 1999 and the adjustments included therein". Morison J disallowed the application. He was of the view that what was sought amounted to an application for disclosure from a third party. Mr Tong suggested that the subpoenas sought in OS 521/2013 and OS 522/2013 bore a striking likeness to that in *BNP Paribas* and so submitted that the present applications amounted to a discovery application against a third party.

27 I did not agree with the parallels Mr Tong sought to draw between the present applications and these cases. First, unlike *Bishopsgate Investment* where what was being sought only "may" have been relevant, as I have explained (see [21] above), it was clear that what was sought in the present applications were very relevant and directly in issue in the arbitration proceedings. Secondly, i n *BNP Paribas*, the application was made by BNP Paribas alone. Avis, the counterparty in the underlying arbitration, was neutral and in fact did not take any part in the application before the English court. The stated intention of BNP Paribas there was to use the documents of D&T to show that Avis could not rely on the accounts *if* there was a misidentification of a key issue in its preparation. Just as was the case in *Bishopsgate Investment* where it was not certain that the production of the document would produce anything of value towards the disposal of the matter, it was never certain to anybody that there was such a misidentification of a key issue which BNP Paribas could rely on towards the disposal of the matter in the arbitration. The present case was quite different. What was striking to me was that *both* the Lao PDR, the respondent in the arbitrations, and the Claimants in the arbitrations, Sanum Investment and Lao Holdings, argued strongly for the subpoena to be issued against Lawrance Lai for the production of the documents. This was not a case where the Claimants were seeking to have the documents produced in the *hope* that they could in the furtherance of their case prove impropriety with what they found in them. *Both* sides in the arbitrations were in agreement that the documents were relevant and material to showing the circumstances of the audit of Savan Vegas, that being one of the issues squarely raised in the arbitration.

28 Next, I deal with the objection on the ground that the subpoenas sought were defective because they were not precise enough to enable the person sought to be compelled to produce the documents to know what is required of him. This goes to the second reason for the authorities requiring that a subpoena to produce documents should not be an application for discovery in disguise (see above at [24]). Despite the submissions by Mr Tong to this effect, there was no evidence to

suggest that Lawrance Lai did not actually know the scope of what is sought from him. In all the previous correspondence between him and the parties and in the affidavits before me, it had not been denied that these documents were in existence and in his possession, and it had not been intimated that he did not know which documents in his possession he would be required to produce under the subpoenas.

29 Finally, I note that the language used in a subpoena to produce documents may also be indicative of whether what is sought is correctly the subject of a subpoena or whether it is in truth an application for discovery in disguise. Thus, in *The Lorenzo Halcoussi* (at 185), the fact that the words "such documents to include (but not limited to)" were used suggested to Steyn J that the subpoena was in fact an attempt to obtain discovery against a third party. In the present case, Mr Tong objected to the use of the words "including..." or "any and all..." (see the list as set out above at [10]). I hence allowed the subpoenas to be amended by way of deleting the words "including" and "and all". In any event, I was of the view that these words were only indicative and not determinative of whether the subpoena was proper. Even if these words were left in, I was satisfied for all the reasons in the preceding paragraphs (see [27] and [28] above) that this was not a case of an application for third party discovery disguised as a subpoena to produce documents.

The subpoena to produce documents

30 I allowed both applications in OS 521/2013 and OS 522/2013. After the first hearing before me on 15 July 2013, I informed counsel that I was minded to grant the orders. I then asked counsel to agree on rewording the subpoenas to reflect the suggested amendments made by me. The final form of the subpoenas to produce documents issued in both OS 521/2013 and OS 522/2013 after the second hearing before me on 31 July 2013 read as follows:

> Purpose of attendance: To produce the documents specified hereunder on behalf of the Plaintiff in the said proceedings:
>
> (a) Ernst & Young's engagement letter with the Lao People's Democratic Republic;
>
> (b) All reports relating to Savan Vegas and Casino Co., Ltd ("Savan Vegas") provided to the Lao People's Democratic Republic by Ernst & Young;
>
> (c) All correspondence or other documents exchanged between the Lao People's Democratic Republic and Ernst & Young concerning the financial and accounting inspection or any potential inspection of Savan Vegas;
>
> (d) All drafts of reports, if any, relating to Savan Vegas created by Ernst & Young;
>
> (e) All Ernst & Young internal documents (emails, notes, memoranda and work papers, interview records and statements, whether written or electronic and minutes of meetings), if any, concerning the financial and accounting inspection of Savan Vegas; and
>
> (f) Any other documents generated by Ernst & Young related to the financial and accounting inspection or any potential inspection of Savan Vegas.

The words "if any" were also added to paragraphs (d) and (e) to assuage Mr Tong's fears that they were not clear enough and to limit their scope to only the documents in existence. I also indicated that I would be slow to find Lawrance Lai in contempt of court in the event that the other parties

complained that he had not produced documents in these paragraphs which he can reasonably say do not exist.

Costs

31 Mr Tong argued that as the witness compelled to produce documents under the subpoenas, Lawrance Lai was entitled to the costs of seeking legal advice in relation to and of complying with the subpoena. I was further provided with a copy of E&Y's Letter of Engagement with the Lao PDR Ministry of Finance. Clause 32 of the General Terms and Conditions of the Letter of Engagement provided:

> If we are required by applicable law, legal process or government action to produce information or personnel as witnesses with respect to the Services or this Agreement, you [the Lao PDR Ministry of Finance] shall reimburse us for any professional time and expenses (including reasonable external and internal legal costs) incurred to respond to the request, unless we are a party to the proceeding or the subject of the investigation.

On that basis, it was argued that Lawrance Lai was entitled to an order for costs on an indemnity basis.

32 I made no order as to Lawrance Lai's costs of complying with the subpoena. In my consideration, I balanced the fact that a cost order would normally be made in favour of the witness compelled to produce documents against the fact that the request in the present applications was somewhat unusual, and the fact that this was only an early round in the real dispute in the arbitration. The request was unusual in these applications because E&Y and Lawrance Lai resisted the issue of the subpoenas even though their client, the Lao PDR Ministry of Finance, had already consented to the release of the documents. This was not to say that I did not appreciate that E&Y and Lawrance Lai may have thought it necessary to resist the applications to protect their own legal and professional interests. I considered the fact that under the Letter of Engagement with the Lao PDR Ministry of Finance, Lawrance Lai could ostensibly recover such costs from them. The agreement was however stated as governed by the laws of the Lao PDR and also subject to the exclusive jurisdiction of the Lao International Arbitration Center. It may be that Lawrance Lai ought to look there to recover any costs incurred.

33 I therefore made no order as to the costs of the applications and gave parties liberty to apply.

Postscript

34 After the subpoenas to produce documents were issued, Lawrance Lai applied for stays of execution of the orders pending appeal. Besides being of the view that the principles governing the grant of a stay of execution pending appeal pointed against it being granted, I also considered the procedural orders already made in the arbitration proceedings. To have ordered a stay of the order to produce documents would have prejudiced the parties to the arbitration who were labouring under strict timelines set by the tribunals.

35 In relation to the arbitration involving Sanum Investment, "Procedural Order No 1" was made by the arbitral tribunal on 21 May 2013. In this procedural order the tribunal laid down a procedural timetable which included, *inter alia*, the order that the claimant is to submit its statement of claim on 1 October 2013. All the subsequent datelines for the filing of the various memorials have also been fixed. The date of the hearing on the merits has also been fixed to be held in Singapore in the week of 16–20 June 2014.

36 In relation to the arbitration involving Lao Holdings, "Procedural Order No 1 as Amended on the Consent of the Parties" was issued by the arbitral tribunal on 18 June 2013. Notably, the timelines for the filing of memorials have also been fixed:

> 13.1.2. Jurisdiction and Merits Schedule
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> 13.1.2.1 Claimant shall file its memorial on the merits on July 8, 2013;
>
> 13.1.2.2 Respondent shall file its counter-memorials on the merits and its objections to jurisdiction on October 8, 2013;
>
> 13.1.2.3 Claimant shall file its reply on the merits and counter-memorial on the objections to jurisdiction on January 2013 [*sic*];
>
> ...

A schedule has also been determined for the production of documents: the discovery process is envisaged to be completed by 11 December 2013 and the introduction of fresh evidentiary material will only be allowed under narrow circumstances:

> 14.10 A party shall produce the documents ordered by the Tribunal no later than December 11, 2013, or within thirty (30) days of the Tribunal's order, whichever is earlier.
>
> 14.11 The failure to produce as ordered may result in adverse inferences drawn by the Tribunal as regards the credibility of a witness or the merits of the defaulting party's case.
>
> 14.12 Further request for the production of documents sought by either party, if any, shall be permitted only at the discretion of the Tribunal. The request must be substantiated with reasons, to which the opposing party has a right of reply.
>
> 14.13 Introduction by a party of evidentiary materials following the filing of the last written submission will be permitted only in exceptional circumstances at the discretion of the Tribunal upon a reasoned written request followed by observations from the other party. Any such request shall not attach the new evidentiary materials. If the Tribunal admits the new evidentiary materials, the opposing party shall be allowed to submit evidence in rebuttal.

The hearing to be held in Singapore has also been fixed on 23–27 June 2014.

37 Finally, I ordered that Lawrance Lai is entitled to segregate the documents in categories (e) and (f) which he says are irrelevant or are privileged or for some special reason need not be produced, for my inspection and decision before they are produced to the other parties.