

**BEFORE THE
HONG KONG INTERNATIONAL ARBITRATION CENTRE**

**RE: ARBITRATION UNDER THE UNCITRAL ARBITRATION RULES (2013)
BETWEEN**

JIN HAE SEO

Claimant

-and-

THE GOVERNMENT OF THE REPUBLIC OF KOREA

Respondent

**NOTICE OF SUBMISSION TO ARBITRATION UNDER THE UNCITRAL
ARBITRATION RULES OF A CLAIM FOR DAMAGES PURSUANT TO CHAPTER
ELEVEN OF THE KOREA UNITED STATES FREE TRADE AGREEMENT**

COUNSEL FOR CLAIMANT:

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Tribunal: To be appointed

July 12, 2018

INTRODUCTION

1. Claimant Jin Hae Seo hereby submits this Notice for the Administration of Arbitration (hereinafter referred to as “Notice of Arbitration”) of her claim arising out of breaches of Chapter 11, Section A- B of the Korea United States Free Trade Agreement (hereinafter referred to as “KORUS”). Claimant is a citizen of the United States and brings this claim for arbitration averring that the Respondent has breached obligations under of KORUS Chapter 11, Section A, specifically Articles 11.5 and 11.6 and that Claimant has incurred loss or damage by reason of, or arising out of, said breaches.

2. Claimant delivered a Notice of Intent to Submit a Claim to Arbitration (hereinafter referred to as “Notice of Intent”) to Respondent on September 9, 2017, as required by Article 11.16.2, and Claimant has attempted to resolve this dispute pursuant to Article 11.15, without success. Accordingly, this claim is submitted pursuant to Article 11.16.1.(a)(i)(A). In that connection, Claimant relies on the definition of “covered investment” in Article 1.4 which defines that term to include an investment “of an investor of the other Party that is in existence as of the date of the entry in force of this Agreement or established, acquired, or expanded thereafter....”

3. KORUS Section B, Article 11.16 (3)(c) provides that claims arising under the KORUS Investment Chapter may be submitted for arbitration pursuant to the UNCITRAL Arbitration Rules (“the “UNCITRAL Rules”). This claim is submitted for arbitration to the Hong Kong International Arbitration Centre (“HKIAC”) pursuant to its Procedures (the “HKIAC Procedures”) for the Administration of Arbitration under the UNCITRAL Arbitration Rules. Article 1.1 of the HKIAC Rules of Procedures notes that said Rules “shall apply to arbitrations . . . where a treaty providing for the protection of investments or investors

(“investment treaty”) . . . provides for arbitration under the UNCITRAL Rules or words to similar effect.” Therefore those Rules are applicable to this Claim.

4. In accordance with Article 3 of the HKIAC Procedures, Claimant proposes that the HKIAC shall act as the appointing authority as set out in the UNCITRAL Rules.

5. Claimant further proposes, subject to Respondent’s concurrence, that the appointing authority appoint a sole arbitrator pursuant to Article 8.1 of the UNCITRAL Rules. Claimant recommends that the sole arbitrator be Benny Lo, Des Voeux Chambers, 38/F Gloucester Tower, The Landmark, Central, Hong Kong.

I. THE DISPUTING PARTIES

1. Claimant Jin Hae Seo (hereinafter referred to as “Seo” or “Claimant”) is an individual citizen of United States of America, and her United States passport is attached as **CE-1**.¹ Claimant’s current address is **XXXXXXXXXXXXXXXXXX** Seoul, Korea.

2. Seo submits this “Notice of Arbitration” as an investor on her own behalf.

3. The legal counsel for Claimant Seo is Charles Owen Verrill, Jr., Suite M-100, 1055 Thomas Jefferson Street, NW, Washington D.C. 20007, United States. E-mail: charlesverrill@gmail.com. Correspondence should be directed to the attention of Charles Owen Verrill, Jr., at the above address.

4. Claimant is also represented by Ik Tac Kim, Attorney at Dodam Law Firm, #301 Lawyers Tower, 125, Seochojungang-ro, Seocho-gu, Seoul, Korea. E-mail: ikkimesq@gmail.com.

¹ In this Notice, Claimant’s exhibits are identified as follows: “CE- . . .”

Copies of all correspondence should also be directed to the attention of Mr. Kim.

5. The Respondent is the Government of the Republic of Korea, represented by the Ministry of Justice, Office of International Legal Affairs, Government Complex, Gwacheon, Korea.

For the avoidance of doubt, the term Respondent as used in this Request includes all subordinate agencies of the Republic of Korea, as well as private parties acting under its direction.

II. PROCEDURAL REQUIREMENTS

1. Prior to submitting this “Notice of Arbitration”, Claimant with a view to resolving this dispute amicably through the consultation and negotiations contemplated by KORUS Article 11.15 and as required by 11.16.2, served the Respondent, the Government of the Republic of Korea with a Notice of Intent to Submit a Claim to Arbitration under Chapter Eleven of KORUS on September 9, 2017. **CE-2.**

2. Following submission of “Notice of Intent” to Respondent, the parties, with their counsel, met with representatives of the Respondent to discuss the claim in Seoul, Korea, on January 10, 2018, and February 12, 2018, but those consultations failed to result in an agreement to settle the claim.

3. Seo became a United States citizen after KORUS was ratified and entered in force on March 15, 2012.

4. The consent requirement regarding the Respondent is satisfied under the KORUS, Article 11.1.1, which states as follows: “1. Each Party consents to the submission of a claim to arbitration under this Section in accordance with this Agreement.”

5. This “Notice of Arbitration” is submitted under Article 11.16.1(a)(i)(A) of Section B of Chapter 11 of KORUS, Section 3 of the UNCITRAL Arbitration Rules, and section 6 of the HKIAC Procedures.

6. Pursuant to these provisions, Claimant Seo consented to this submission to arbitration in accordance with Article 11.18.2

7. In accordance with KORUS Article 11.18.2(b) (i), Claimant Seo waives any right to initiate or continue before any administrative tribunal or court of either Party, or other dispute settlement procedures, any proceeding with respect to any measure alleged to constitute a breach referred to in Article 11.16.

III. STATEMENT OF FACTS RELEVANT TO THE CLAIMS

1. In 2001, the claimant Seo and her husband MrXXXXPark (“hereinafter referred to as “Park”) purchased residential property located in XXXXXXXXXXXXXXXXXXXX Seoul consisting of 188 square meters of land with a house priced at \$330,000 USD (rate: 1,000 KRW:1 USD). **CE-3**. The purchase price was relatively low at the time due to the weak housing market right after the financial crisis in Korea that led it to seek financial aid from the International Monetary Fund in 1998.

2. In May 23, 2013, Seo was naturalized as a U.S. citizen while relinquishing her citizenship in Korea. Her passport is attached as Exhibit CE-1. Park remained as a citizen of Korea. The U.S. citizen, Seo owns 76% interest in the real property while Park, the husband, owns 24% of interest. On February 6, 2016, Seo’s interest in the property was established in that it was duly registered under Seo’s name as required by law on February 5, 2016. **CE-4**

3. Since the year 2012, 62,245.80 square meters of land in Daehung-dong area, in which Seo's property is located, has been designated as an area of redevelopment under Mapo-gu municipal government.

4. On March 12, 2015, the final official notice for redevelopment was posted by the Mapo-gu Municipal Office. **CE-5.**

5. On February 5, 2016, Claimant's property was registered due to "loss of citizenship."

6. On January 29, 2016, the Seoul City Government Land Expropriation Committee (hereinafter referred to as "Seoul Committee") rendered an opinion regarding the amount of compensation for more than 300 residents. The Seoul Committee indicated by a certificate that the amount of compensation for Seo and Park's property atXXXXXXXXXXXX to be the total of \$810,776 USD (\$608,916 USD for Seo and \$201,859 USD for Park). **CE-6**

7. The Committee, in its decision, declared that the beginning date of expropriation be March 18, 2016. This date is after Seo "established" her interest in the property as a national of the United States by registering it with the appropriate authorities.

8. On January 19, 2017, the Central Expropriation Committee (hereinafter referred to as "Central Committee") upheld the decision of Seoul Committee by rendering an administrative decision with a slight increase in the amount of compensation of \$43,588 USD.

9. Thereafter, the final compensation amount established by the Central Committee for Seo and Park's property at \$850,000 USD was placed in a court designated escrow account among which Seo's portion is \$641,516. **CE-7.**

10. Seo did not accept the compensation on the ground that it was far below the fair market

value of her investment as registered with the authorities at the time of expropriation.

11. Following the two above mentioned administrative procedures regarding the compensation amount, Daehung-dong, Area 2 Redevelopment Union (hereinafter referred to as “Redevelopment Union”) filed a civil complaint against Seo, Park and four (4) other individual residents in the expropriated area for “transfer of real estate ownership and eviction” pursuant to “the Act on the maintenance and improvement of urban areas and dwelling conditions for residents, Article 49, paragraph 6” The case number is listed as XXXXXXXXXXXXXXXXXXXXXXXX” CE-8.

12. The court made a decision on the civil complaint on January 11, 2017. In its opinion, the court ordered “the defendant, Jin Hae Seo, a citizen of the United States of America, to hand over the property. The same order was made to Seo’s husband as well.

13. In due course, Seo and Park received the court’s order to vacate the property. In compliance with the order to vacate, Seo’s family left the property in accordance with the order to vacate. In the meantime, the compensation funds have remained in escrow and kept intact, but no interest thereon has been recorded or paid.

IV Mental Distress

1. On or around January 19, 2016, almost a year before the court made a decision on XXXXXXXXX the Redevelopment Union representatives and a sheriff (Court’s Execution Officer) came to Seo’s residence in order to post a “Notice of Injunction to prevent the transfer of ownership of the property (“hereinafter referred to as “Notice of Injunction”) on

Seo and Park's property. **CE-9**

2. At the time of the attempted posting of the Notice of Injunction, Seo was occupying the home alone. However, without warning her and without her permission, the Redevelopment Union representatives and a sheriff (Court's Execution Officer) broke into Seo's house with the assistance of a hired locksmith and confronted Seo. As a result of this incident, Seo experienced significant shock and intimidation. Subsequently, Seo suffered from severe mental and emotional distress and has sought medical assistance until recently. **CE 10.**

V. LACK OF CONSENT

1. Seo and Park have never given consent to join the Redevelopment Union.

2. In March 2004, Seo and her family moved to California and stayed there for about ten (10) years. **CE-11.**

3. When they left for the United States, they entrusted Seo's sister to manage the residential property at issue by leaving their personal authorization stamps with Seo's sister.

4. Seo's entrustment related only to "management" and provided Seo's sister with no authority to enter into or agree to any matter affecting or potentially affecting the ownership of the property.

5. On or around March 17, 2008, while Seo's family resided in the United States and without their knowledge, Seo's sister obtained confirmation certificates for Seo's and Park's personal authorization stamps from Daehung-dong municipal office and submitted them to the Redevelopment Union at Seo's mother's request. Seo's sister did not inform Seo of the

action which was unauthorized.

6. Seo's mother, under coercion by the Redevelopment Union, requested Seo's sister to submit applications for Union membership, requiring Seo and her husband's signature.

Seo's sister had no authority to do so, but nevertheless proceeded to complete the application to join the Union by printing Seo's name and personal information. The sister also affixed the personal authorization stamps of Seo, but her signature was forged by an unknown person.

The signature of Park, who had not given any authority to Seo's sister, was also forged by an unknown person. The union later used these forged documents to claim consent by Seo and her husband despite Seo's and Park's constant objection and claim for forgery from the beginning of the dispute. **CE-12.**

7. On or around December 7, 2016, Seo was interrogated by police after the Redevelopment Union filed criminal complaints against Seo and Park individually for criminal violation of "Act on Acquisition of and Compensation for Land, Etc. for Public Works Projects" although "transfer of real estate ownership and eviction" case pursuant to "the Act on the maintenance and improvement of urban areas and dwelling conditions for residents" XXXXXXXX
XXXXXXXXXXXXXXXXXXXXX mentioned in III 11 as CE-8 was still pending and Seo had kept claiming the forgery during the entire period of the dispute. **CE-13.**

8. After brief criminal proceedings, both Seo and Park were found guilty and sentenced to "Suspension of Indictment." Since then, Seo has feared that the criminal conviction might affect her immigration status in Korea as a foreign citizen which could lead to deportation.

9. In March 2017, Seo and Park filed a criminal complaint against Seo's sister and representatives of the Redevelopment Union alleging their Consent to join Redevelopment

Union was forged by the Redevelopment Union.

10. The representative of Daehung-dong area 2 Redevelopment Union was also the representative of the Redevelopment Union in an adjacent area named “Ahyun-dong” which was redeveloped under the same law earlier than Dahung-dong. During the redevelopment of Ahyun-dong, the same issue of fraud on the number of consents to establish the Redevelopment Union was raised. This issue was finally resolved on December 7, 2012, when the Supreme Court of Korea upheld the lower court’s decision to invalidate the establishment of Redevelopment Union due to lack of legitimacy of a number of consents to establish the Redevelopment Union. (Case number:XXXXXXXXXXXXXXXXXXXXX .
CE-14.

11. On February 1, 2017, Seo had a consultation and negotiation meeting at the Daehung-dong municipal office with Mapo-gu Municipal Government, Redevelopment Team leader, Redevelopment Union Representatives and two mediators from Seoul City Government. During the meeting, in which the lack of consent was raised, the participants discussed the possibility of amicable resolution of the dispute but the attempt failed. Subsequently, on March 23, 2017, another consultation and negotiation meeting was held at the same location but no amicable resolution was reached.

12. During the negotiation process, including the meetings on February 1, 2017 and March 23, 2017 as well as other meetings, Seo kept raising the issue of fraud by appealing to Mapo-gu government officials who were present at the meetings and yet Seo’s claim for fraud was ignored when the Redevelopment Union representative showed the copy of Seo’s and Park’s personal authorization stamp and the copy of Seo’s and Park’s signature to join the

Redevelopment Union. In response, Seo continuously argued that the couple never signed the documents to join the Union and never allowed anybody to use Seo's and Park's authorized stamp for that purpose. Yet, Seo's claim was ignored without further investigation. It is alleged that the Mapo-gu government had a motive to disregard these claims since the Supreme Court of Korea had rendered an opinion to invalidate the establishment of redevelopment Union based on fraud in 2012 and set a precedent. It is to be recalled that the Redevelopment Union representative was also the representative of the Ahhyun-dong Redevelopment Union which had been declared invalid.

13. In addition to Seo and Park, there were other residents who claim the forgery committed during the process of the establishment of Redevelopment Union in the area and subsequently domestic legal proceedings have been initiated and are now pending which seek to invalidate the establishment of Redevelopment Union although Seo and Park are not the parties to those lawsuits.

VI. CLAIMS PURSUANT TO KORUS

1. On March 15, 2012, the Korea-US Free Trade Agreement went into effect following ratification. Among its provisions is Chapter 11, Investment Dispute Mechanism called "Investor State Dispute ("ISD")." As stated in the above factual background, Mapo-gu Municipal Government, Seoul City Government and the Korean Government have violated their obligations to Seo, a U.S. investor under the terms of KORUS.

2. KORUS Article 11-28 defines investment to include "every asset that an investor owns or controls, directly or indirectly, that has every characteristic of an investment" including "other tangible or intangible, movable or immovable property, and related property rights,

such as leases, mortgages, liens, and pledges.”

3. The following has been widely accepted by international investment dispute tribunals as typical characteristics of investments: duration, contribution and assumption of risk.² The real property at issue has been owned for over fifteen years with substantial amount of money invested. Seo’s real estate property ownership constitutes an investment.

4. Seo’s ownership of the property is a “covered investment” within the meaning of Chapter 1, Section A, Article 1.4, which provides that a “**covered investment**” means, with respect to a Party, an investment, as defined in Article 11, 28. . .in its territory of an investor of the other Party that is in existence as of the entry in force of this Agreement or established, acquired or expanded thereafter. . . .”

5. Seo became an American citizen as of 2013 and therefore is an investor of the other Party, which here is the Republic of Korea. The investment, which was purchased on April 4, 2001, is covered within the meaning of Article 1.4 because it was in existence as of the date of the entry in force of KORUS, and was established by Seo thereafter when her interest in the property was registered in her name on February 5, 2016.

VII EXPROPRIATION

1. Seo’s property was expropriated in violation of KORUS, Article 6 which states as follows:

1. Neither Party may expropriate or nationalize a covered investment either directly or indirectly through measures equivalent to expropriation or nationalization (expropriation), except:
(a) for a public purpose;

² See *Salini v Morocco (ICSID Case No Arb/00/04) (Decision on Jurisdiction, 23 July 2001)*

(b) in a non-discriminatory manner;
(c) on payment of prompt, adequate, and effective compensation; and
(d) in accordance with due process of law and Article 11.5.1 through 11.5.3.

2. The compensation referred to in paragraph 1(c) shall:

(a) be paid without delay;
(b) be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place (the date of expropriation);
(c) not reflect any change in value occurring because the intended expropriation had become known earlier; and
(d) be fully realizable and freely transferable.

2. The Korean law for purpose of this Notice is the “Act on the Maintenance and Improvement of Urban Areas and Dwelling Conditions for Residents.” **CE-15.**

3. The expropriation for city redevelopment was not for public purpose because its main purpose is the re-construction for private citizens seeking redevelopment.

4. Although the Act’s purported main purpose is the improvement of dwelling conditions for residents, the Respondent’s decision on the standard of dwelling condition is arbitrary and ambiguous. Further, the Respondent is a public entity, after making an initial decision, assigns the redevelopment project to private entities including the Redevelopment Union and a construction company.

5. The expropriation of Seo’s property was not done in a non-discriminatory manner because it was not authorized; and the compensation amount was determined arbitrarily. The expropriation of Seo’s property was not equivalent to the fair market value of the expropriated investment immediately before the expropriation took place.

6. The expropriation of Seo’s property was not in accordance with due process because the Respondent, and/or its subordinate agents refused to acknowledge that the documents relative to participation in the Union were tainted by coercion and forgery.

7. The State is responsible for the acts of its agents who acted wrongfully in inducing acts by Seo's mother and sister that were required by the expropriation process and related activities.

VIII FAIR AND EQUITABLE TREATMENT

1. During the process of expropriation of Seo's investment property, Respondent and/or its agents committed a violation of the fair and equitable treatment standard prescribed in KORUS Article 11.5, the Minimum Standard of Treatment.

2. The action of Respondent and/or its agents violated Claimant's expectations that it could rely on the Respondents or its agents to avoid reliance on lack of actual consent to join the Redevelopment Union and Forgery. Seo's consent was forged. These actions violated Claimant's legitimate expectations.

3. The acts of the Respondent and/or its agents in accepting the forged instrument, and failing to take the forgery into account amounts to a denial of justice under the fair and equitable treatment standard.

IX. RELIEF SOUGHT/DAMAGES

1. As a result of these violations of KORUS, Seo has suffered billions of Korean won in damages. Seo estimates damages in an amount of not less than \$2,000,000 USD, plus interest from the date of expropriation.

2. Seo has engaged an expert who has decades of experience as a statistician and real estate appraiser and has studied the Korean Officially Announced Land Price algorithm over the last 10 years. The expert has identified the failings of the OALP system by its results and its inadequate algorithm development. In terms of valuation results, the expert has determined that market-achieved sales prices in the subject neighborhood averaged more than 3 times as high as officially announced land prices in the 25 sales occurring during the first 3 months of 2016. His analysis is based on statistics, such as coefficient of dispersion, which indicates that the undervaluation of these 25 properties was systematic and complete. The expert's critique of the OALP algorithm in place in 2008 shows that only 18 basic codes and 221 explanatory variables were used to cover the entire city of Seoul, with no distinction between the zones known as "Gu", and critical accessibility variables such as distance to subway stations and distance to shopping were actually removed. Based on the relatively consistent ratio of OALP to market-derived sales prices in this neighborhood, the expert will infer a market value for the Seo House establishes a value of at least 2 billion Korean won.
3. Damages were caused by or arising out of actions by Mapo-gu municipal government, Seoul city government and the Republic of Korea that are inconsistent with their obligations contained in Chapter 11 of KORUS.
4. Damages include interest on the amounts held in escrow for the benefit of Claimant from the date of their deposit in escrow to the date of payment of the Award at a rate to be fixed by the Tribunal at no less than Libor plus two percent (2%) compounded monthly.
5. Moral damages for the pain and suffering as a result of the unlawful and unauthorized entry were incurred in the amount of not less than \$1,000,000 USD.

6. Claimant is entitled to reimbursement of the costs of this proceeding, including legal fees and costs, all costs of the arbitration and other costs as may be demonstrated to the Tribunal.
7. Claimant also demands any other relief to which the Claimant may be entitled in law or equity.

X. Reservation of Rights

1. Claimant expressly reserves all of its rights under the KORUS Treaty, customary international law, and all other rights that it has or may have under law, equity or otherwise.
2. Claimant also expressly reserves the right to further amend, supplement and augment its claims and to submit such further pleadings, arguments, exhibits, and evidentiary, materials as may be appropriate, including but not limited to witness statements, expert witness statements and studies, and oral testimony, as Claimant may in its judgment deem appropriate or as may be required to respond to any claim, allegation, or defense that may be advanced by Respondent.
3. Claimant also reserves the right to allege alternative bases of jurisdiction.

Respectfully Submitted,

S/S Jin Hae Seo, Claimant XXXXXXXXXX

S/S/ Charles Owen Verrill, Jr., Attorney for Claimant (charlesverrill@gmail.com)

S/S Ik Tae Kim, Attorney for Claimant (ikkimesq@gmail.com)

Dated this 12th Day of July, 2018

CERTIFICATE OF DELIVERY

Claimant's counsel hereby certifies that on 12th day of July, 2018 a copy of this Notice was delivered by both registered mail and electronic means to Respondent at the following address:

Attn: XXXXXXXX
Office of International Legal Affairs
Ministry of Justice of the Republic of Korea
Government Complex, Gwacheon
Korea
XXXXXXXXXXXX

S/S/ Ik Tae Kim

APPENDIX

KORUS Article 11.4 Minimum Standard of Treatment

KORUS Article 11.6 Expropriation and Compensation

INDEX OF EXHIBITS

CE-1 Copy of Claimant's US Passport

CE-2 Notice of Claim Dated September 9, 2017

CE-3 Real Estate Sales Agreement

CE-4 Certificate of Registration of Deed on Claimant's Property

CE-5 Official Notice for Redevelopment

CE-6 Compensation List in Seoul Land Expropriation Committee's Administrative Decision of January 29, 2016.³

CE-7 Escrow record

CE-8 Judgment onXXXXXXXXXX

CE-9 Notice of Injunction

CE-10 Claimant's Medical Record

CE-11 Certificate of Entry and Exit of Claimant and Husband

CE-12 Forged Consent to Join Redevelopment Union

CE-13 Criminal Prosecution against Seo & Park

CE-14 Ahyun-dong Fraud Case XXXXXXXXXXXXXXXXXXXXXXXX⁴

CE-15 The Korean Statute on Redevelopment⁵

³ Only relevant parts are translated. The pages from page 4 through 21 in the original Korean document are not translated.

⁴ Emphasis added in bold

⁵ In the Korean government's official translation of the Act into English, the word "Redevelopment Association" is used instead of "Redevelopment Union."