IN THE MATTER OF AN ARBITRATION UNDER THE ARBITRATION RULES OF THE UNITED NATIONS COMMISSION ON INTERNATION TRADE LAW AND THE KOREA-UNITED STATES FREE TRADE AGREEMENT

CASE NO. HKIAC/18117

*** *** 444, CLAIMANT

AND

THE REPUBLIC OF KOREA, RESPONDENT

CLAIMANT'S RESPONSE TO RESPONDENTS APPLICATION FOR PRELIMINARY OBJECTIONS

April 22, 2019

Arbitral Tribunal

Judge Bruno Simma (Presiding)

Mr. Benny Lo

Professor Donald McRae

Counsel fur the Claimant

Charles Owen Verrill, JR

IkTaefGM

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I. INTRODUCTION

1.1 Claimant submits this response to the Application for Preliminary Objections of the Republic of Korea ("ROIC or "Government') for an expedited determination pursuant to US-Korea Free Trade Agreement ("KORUS"), Article 11.20(6) whether the claims in the Notice of Arbitration Hied by +++ +#+ tfetfetfe ('Claimant" or "***") are claims for which an award can he made pursuant to KORUS.

1.2 Claimant submits that each of the objections raised by the Government is without merit and should be dismissed. Further, Claimant requests the Tribunal, pursuant to Article 42 of the UNCITRAL Arbitration Rules and KORUS Article 11.20(8), to order that the Respondent ROk pay all costs of this arbitration proceeding, including the fees and expenses of the Tribunal and the HKIAC, as well as Claimant's legal representation plus interest.

2. ADDITIONAL BACKGROUND INFORMATION

2.1 The Respondent's Application for Preliminary Objections ("Application"), which was Hied before the Claimant has had the opportunity to Hie a Statement of Claim, "notes" the Government's reservation of a challenge that ***'s claim to U.S. citizenship amounts "to an abuse of process" and "it appears possible that Claimant is claiming US citizenship simply so she can bring a claim under KORIJS . . ." [1] These claims are baseless speculation, prejudicial and unwarranted as demonstrated by ***'s Statement which is attached to this Response.[2] In summary:

2.2 iii and her family moved to the United States in 2004 after her husband, **** ** **** ("*###**") was hired by a US company. Under the family's plan, *** became a legal permanent resident of the United States in 2008. This is the Hrst step in becoming a U.S. citizen and requires continued residency in the United States, without extended absences, for Hve years.

2.3 And Hve years later *** filed U.S. Citizenship and Immigration and Services Form N-400. Then, after the required interview, *** was naturalized as a U.S. citizen on May 23, 2013. Under US. law, which requires a five-year waiting period, this was the earliest date that she was eligible to be naturalized. [3]

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[1] Respondent's Amended Application tor Preliminary Objections. April 12, 2019, at paragraph 9.3. Hereinafter, citations to the Application will be in the following format: "Application at__" likewise, references to the Claimant's NotLee of Arbitration, as amended including most recently with the approval of the Tribunal, will be in the following format: "Notice at___"

[2] Statement of *** *** *** attached as CW-1.

[3] Rather than a detailed explanation of U.S, citizenship lawr requirements) Form M-480 of the U.S. Citizenship and Immigration Services, Department of Homeland Security, which illustrates the process followed by Claimant to beeotne a U.S. citizen attached as CL-1 (in English).

2.4 *** relumed lo Korea as a 1J.S. citizen in 20 13, ihe year alter KORUS became effective. The reason for her return was the illness of her lather who passed away from cancer in 2014 [4] alter ***'s mother passed away in 2013.11 While *** and her family wanted to return to the United Slates after her father's death, she and her family remained in Korea because her husband obtained employment in a Korean technology company.

2.5 This narrative should put to rest any claim that *** became a U.S. citizen "simply" to take advantage of KORUS or that she has engaged in an "abuse of process." As noted, she became a permanent resident of the United States in 2008, four years BEFORE the effective date of KORUS.

3. EXECUTIVE SUMMARY

3.1 Respondent's Application is organized around four preliminary objections. However, since the first objection concerning investment has two distinct aspects (first, whether the investment has the characteristics of an investment and, second whether the investment is a covered investment), these claims, while related, are dealt with as separate objections in the following summary and the remainder of this Response

3.2 Characteristics of investment: ***"s property has the characteristics ofan investment because it is immoveable property and, consistent with KORUS Article 11.28, it has the characteristics of commitment of capital, expectation of gain or profit, or the assumption of risk. Because this definition was adopted afler the arbitral decision in Salini v. Morocco, the so-called Salini criteria which the Application deals with at length, should not be added to the characteristics specified in Article 11.28. Nor should the Tribunal decide that residential real estate does not have the characteristics of an investment. In any event, as illustrated by ***Tg Statement, the Claimant made additional investments in the property after its acquisition and all or parts of the property were rented for gain from 2003, in addition to the preexisting rent, until the Claimant and certain tenants were "ordered to leave" after eviction proceedings that were initiated on December 9, 2015.

3.3 Covered investment: While *** and her husband purchased the properly in 2001, when she was a Korean citizen, ***s properly is a covered investment because it was established and expanded after she became a U.S. citizen in 2013. The expansion is described in her Statement, which also lists tenants that occupied the rental areas and the addition ofan additional rental unit in early 2016. The word establish is not defined in KORUS and the dictionary definitions cited by ROK are hazy[6]. However, the events surrounding the surrender of her property and subsequent withdrawal from that surrender as described in the Application in paragraphs 3.10.11 to 3.10.12 clearly constitute a "re-establishment." As Respondent notes in paragraph 3.10.15 of

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[4] Basic Certificate of ***'s Parents (Father, ***, **** **), attached as C-3
C1-1 Basic Certificate of ***'s Parents. (Mother, ***, ****)
[6] **Application** at 4.32-4.36

the Application, the action of withdrawal, which was approved by officials, significantly changed Claimant's rights in the property.

3.4 Fork in the road: *** did not "elect" to assert specific claims of "that breach" regarding expropriation and the minimum standard of treatment before another tribunal or court of the Government.[7] Mere mention of KORLIS or the word expropriation or minimum standard in papers filed does not rise to a specific allegation of the breach. Further, any claims or assertions before the date of the expropriation, January 19, 2016, are irrelevant. Before that dale, no breach had occurred and negotiating statements by Claimant without the assistance of counsel prior to the breach are not allegations of "that breachNeither the Seoul Land Expropriation Committee nor the Central Land Expropriation Committee are "tribunals" within the meaning of KORIJS Annex 11-E. The Central Land Expropriation Committee had no jurisdiction to consider the validity of the Redevelopment Project and, therefore, any assertions before that Committee concerning KORIJS or validity of Redevelopment Pro ject were irrelevant. Moreover, claims made in a judicial appeal filed on February 21, 2017, without the assistance of counsel, were questions for the court to consider and NOT allegations of breach. Additionally, Claimant withdrew the appeal *** days aller filing before any action by the Respondent or joinder of issues and should not preclude this arbitration.

3.5 Time Bar: According to KORUS Article 11.18.1 the limitation period begins on the date the claimant acquires (or should have acquired) knowledge of "THE BREACH" and that the Claimant "HAS INCURRED loss or damage." The words "the breach" and "has incurred" must be given their ordinary meaning. They refer to events that have occurred, not those which may occur. This interpretation of the words "the breach" and "has incurred" rellects their ordinary (and only) meaning as required by Article 31.1 of the Vienna Convention on the Law of Treaties.[8] In this regard, ***"s claims are not time-barred. Letters to Claimant and other owners of the property were mailed by the Redevelopment Union on August 11 and 25 and September 9, 2015, aller, as ROK concedes, "the Redevelopment Union and the Claimant were unable to reach

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[7] Claimant, prior to retaining counsel, frequently made reference to the "public interest" when referring to expropriation. However, the KORUS Article 11.6 (1) fa) standard is "public purpose," which can be construed as having a different meaning than "public interest." Hence, Claimant does not, at this time, concede that she alleged any clement of "that breach" of the expropriation obligation prior to the Notice of Arbitration.

[8] Vienna Convention on the Law of Treaties 1969, United Nations,
Article 31 General rule of interpretation,
1. A treaty shall he interpreted in good faith in accordance with the ordinary meaning lo he given to the terms of the treaty in their context and in the light of its object and purpose. *(emphasis added)*
2. The context tor the purpose of the interpretation of a treaty shall comprise, in addition to the text, including iLs preamble and annexes: (a) any agreement relating lo the treaty which was made between all the parties in connection with the conclusion of the treaty; (bJ any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parlies as an instrument related to the treaty.
3. There shall be taken into account, together with the context: 12 (a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions; (b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding Us interpretation; (c) any relevant rules of international law applicable in the relations between the parties.
4. A special meaning shall be given to a term if it is established that ihe parties so intended.

agreement on the compensation amount for the property.[9]" Eviction proceedings were commenced by the Union on December 9, 2015, and the Seoul Land Expropriation Committee reached its decision on January 29, 2016. All of these events occurred less than three years before the Notice of Arbitration was Hied on July 12, 2018.

3.6. Ratione tempons: Respondent asserts that the principle of non-retroactivity applies because *** contends that her sister forged her signature to the consent required to establish the Union in 2008, before the effective date of KORUS. But this is not the pivotal factor. What *** complains of, and asserts in this arbitration, is that on numerous occasions after the effective date of KORUS, *** requested various officials of Respondent to acknowledge the forgery and its relevance to the validity of the expropriation of ***'s property, but those claims were ignored. *** 1urther contends that this was because a similar claim had been upheld by the Supreme Court of Korea in another case, in which the same union representative involved here was also involved. These are the violations of legitimate expectations and denial of justice which are the foundation of the claim under the lair and equitable treatment obligation. The breach was the alleged failure of the authorities to acknowledge, investigate, or act on implications of the forgery and this occurred after the effective date of KORUS.

4. COMMENT ON THE BURDEN OF PROOF

4.1 The revised Application adds a new section entitled "burden of "proof.[m] As the Tribunal will quickly notice, this section is based on a blatant misunderstanding of when Article 20.2 of the UNC1TRAL Rules applies. That Article requires the **Statement** of Claim to be submitted with factual evidence. While that is what Article 20.2 says, it is inapplicable here because Respondent chose to file its Application before the UNCITRAL Rules require the claimant to file a statement of claim. Here we are dealing with an Application addressed to the Notice of Arbitration which is governed by UNCITRAL Article 3.3 and which Claimant's Notice fully complies with, including the Amendment which was approved by the Tribunal. In these circumstances, the burden of proof is in KORUS Article 11.20.6 (c), which requires "the Tribunal to assume to be true "claimant's factual allegations in the notice ofarbitration (or any amendment thereof). The tribunal may also consider any facts not in dispute.

4.2 In sum, the Tribunal can ignore the totality of the Respondent's arguments regarding the "burden of proof"

[9] **Application al 3. IQ. IS.**
[10] **Application at 4.38**

5. ISSUE I: RESPONDENT'S OBJECTION THAT THE PROPERTY IS NOT AN INVESTMENT AS DEFINED IN KORUS IS WRONG ON THE FACTS AND LAW[11]

5.1 The Respondent urges this Tribunal to expand the definition of "investment" in KORUS Article 11.28 to include criteria such as "substantial" and "contribution to the host state of development." [12] This and other assertions dealt with below are without merit, particularly at this early stage of the proceedings.

(A) Salmi Criteria

5.2 KORUS Article 11.28 defines investment to include, inter alia, "tangible or intangible, moveable or immoveable property, and related property rights, such as leases, mortgages, liens and pledges." The definition also references characteristics of investments, including commitment of capital, the expectation of gain or profit, or the assumption of risk. We acknowledge that these criteria are similar to three of those described in Salini Consirutton S.p.A. v. Kingdom of Morocco, [11] which was decided eleven years before the effective date of KORUS but urge the Tribunal to recall that the Salini criteria evolved from an interpretation of Article 25 of the ICSID Convention which is not applicable in these proceedings. Therefore, assuming that the negotiators of KORUS were familiar with Salini, it is reasonable to assume that the omitted Salini criteria were purposely not adopted in Article 11.28 of KORUS and should not be applied here.

5.3 The tribunal in RREEF Infrastructure (G.P.) Limited and RREEF Pan-European Infrastructure Two Lux S.a.r.l. v. Kingdom of Spain [14] considered a similar situation in an arbitration under the Energy Charter Treaty ("ECT"). There the tribunal rejected the respondent's argument that an investment must be made with imported capital, a characteristic not in the ECT definition, stating that:

> ***"The criteria identified hy the Respondent are additional to the definition contained in the ECT. . . .There is no textual or other bases for adding them. The definition of investment must he interpreted according to Article 31 of the Vienna Convention on the Jaw of Treaties and not in accordance with tests, criteria or guidelines beyond the terms, the context or the object and purpose of the ECT. There is no test, set of criteria or guidelines that can or should be relied on in international law to restrict or replace the definition that exists in the ECT."*** [15]

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[11] Application at 4.2-1.19.
[12] Application at 4.6.
[13] **Salini ConsruttOri S.p.A. v. Kingdom of Morocco, ICSID Case No Arb/00/04, Decision on Jurisdiction, 16 July 2001. Respondent Authority 16.**
[14] RREEF Inlraslruclun: Ki.R.t Limited und RREEF Pan-liuropean Infrastructure Two Lux 5.il r.l. v. Kinadormf Spam 1**ICSID Case No. ARB/13/30), Award 6 June 2016 attached as CLA-1.**
[15] **Id at para. 167.**

5.4 This rationale should also be applied here since as we have emphasized above, the KORUS definition of investment was adopted after the Salini decision but did not adopt the substantial contribution or contribution to development tests, and they should not be applied in this arbitration.

5.5 Respondent further relies in its effort to convince the Tribunal that the Salini factors should be employed on excerpts from the writings of Professor Zachary Douglas,[16] whose views were rejected in *While Industries Australia Limited v. The Republic of India*,[17] where respondent similarly relied on the views of Professor Douglas. First, the *White Industries* tribunal reasoned that the

> *"correct* ***approach*** *to he adopted by the tribunal in* ***assessing*** *whether an 'investment has been made is to consider the plain and ordinaty meaning of the words used in the BIT . . .and to determine whether matters relied on by White satis/y the definition employed in the 5/7'."*[18]

5.6 Further the tribunal concluded that the Salini factors do not apply outside the ICSID context:

> *"The present case, however, is not subject to the ICSID Convention. Consequently, the so-called Salini test, and Douglas's interpretation of it, are simply not applicable here. Moreover, it is widely accepted that the 'double check' (namely, of proving there is an 'investment' for the purposes of the relevant BIT and that there is an 'investment' in accordance with (he ICSID Convention) imposes a higher standard than simply resolving whether there is an 'investment\ far the purposes of a particular BIT."* [19]

We submit that this Tribunal should follow the reasoning of White Industries and reject Respondent's assertions about Salini.

(B) KORUS CYIteria

5.7 Turning to the elements of the KORUS definition of investment in Article 11.28:

5.8 Tangible or intangible, moveable or immoveable property: There is no dispute that the property at issue is real estate that is immoveable property, and located in Korea.

5.9 Commitment of capital or other resources: It is clear that there was a commitment of capital by the Claimant to the purchase of an immoveable asset. After the initial investment, additional capital was committed as the Claimant and her husband continued to invest in the property up until early 2016 and only discontinued the investments after the Redevelopment

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[16] Application at 4.13-4.16.
[17] While Industries Australia Liimtcd v. the Republic of India, tJNCITRAL, Final Award, 3Q, November 201 1attached as CLA- 2.
[18] Application at 7.3.2.
[19] Id al 7.4.9. Respondents citation of a citatum of Schreuer at 4.17 of its Application is inapplicable for the same reasons as it also focuses on the ICSID Convention jurisprudence.

Union initiated eviction proceedings. While Respondent "assumes"[20] that the capital for the purchase originated in Korea, there is no basis for this presumption. In any event, the source of this capital is not relevant.

5.10 Expectation of gain or profit: Respondent cites Casinos Austria International,[21] a recent ICSID decision that interpreted Salini to exclude "non-commercial use of assets" from the concept of investment. This is, however, not the KORUS Article 11.28 test. Instead, the question is whether there is an expectation of "gain or profit" without characterization of the activity from which that "expectation" derives.

5.10.1 While it is true that a residential property, as Respondent concedes,[22] carries the risk that the value will go down, it is unrealistic to argue that this risk is irrelevant to the owner or that it demonstrates that somehow there is no expectation of gain or profit. Asset values are always an important aspect of an investor's balance sheet whether personal or corporate. Aider all, as just one example, a decline in value required to be reflected on a balance sheet limits the collateral value of the properly. Moreover, purchasing residential real estate is widely considered a way of saving for the future and the historic appreciation of real estate is a widely accepted way to provide retirement funding. It is also true "in our country's (Korean) market where the housing market has a high portion in the composition of household wealth."[21]

5.10.2 These considerations aside, the Claimant's Statement[^] and the amended Notice of Arbitration[23] informs this Tribunal that she did, in fact, rent the properly from the beginning of its purchase. The actual period of ***'s stay in the property is only about three years out of sixteen years of ownership.[26] In addition, the property included four rental units that were rented continuously from 2003 in addition to the preexisting rent to ***'s parents.[27] Following the Claimant's return to Korea for the personal reasons set forth in her Statement, improvements were made, and a fiflh rental unit was added. Although the newly added fifth rental unit was not rented under the hostile environment due to the redevelopment, the rest of the units were rented to tenants until an

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[20] Id at 4.13. Respondent's Application states that the property was purchased "presumably WLth Hinds that were already in Korea at the time."

[21] ICSID Case No. ARB/14/32, Decision on Jurisdiction, 29 June 2018; Respondent's Authority number 3.

[22] Application at 4.17.3.

[23] Lee, Sangjun & Jin, Changha, "The Study on the Relationship between Investor Sentiment and Home Prices," National Land Study, theTfSih, September 2613, p.54 attached as CL-2

[24] CW-1 Statement at 26 through 37.

[25] "The Third Amendment to the Notice of Arbitration" filed April 1, 2019 Paragraph III.I attached as C-2.

[26] "***'s National Identification Record" attached as C-3.

[27] "Rental Statement Diagram, Confirmation of Facts (Rent) and *** & ****'s bank statement" attached as C~4. In usual circumstances, Lhe owner of a house is entitled to obtain the rent record with a lump sum deposit, not a monthly rent, because such a lump sum high amount of deposit is protected under the lawr. Since the ownership of the subject property was transferred to the Redevelopment Union, *** has not been able to obtain the records from a local municipal office. It should he noted, however, that the Redevelopment Union can obtain such records.

eviction proceeding was brought against the Claimant.[28] This is clear evidence of an expectation of gain from the asset.

5.11 Assumption of risk: As noted above, the Respondent has conceded that there is a risk that the value of a real estate asset will decline. And an unrealized loss on a balance sheet has important consequences for the owner. There is also no assurance of predicted rental income. Finally, the risk of loss borne by the Claimant is what this arbitration is all about!

5.12 In summary, all three of the criteria of investment in KORUS Article 11.28 are met in this arbitration.

6. ISSUE II: CONTRARY TO RESPONDENT'S ASSERTIONS, THE PROPERTY IS A COVERED INVESTMENT AS DEFINED IN KORUS ARTICLE 1.4.

6.1 Respondent argues that while the Claimant owned the property at the date KORUS came in force, she was not at that time a citizen of Korea, and for that reason, the properly is not a covered investment as defined in KORUS Article 1.4.[30]

6.2 As occurring frequently in the Application, Respondent asserts without any reference that afler the purchase, "then lived fin the property] with her husband and children. . . .'[31] This assumption is not accurate.

6.3 Alter moving to the United States in 2004 because of her husband's employment, Claimant became a permanent U.S. resident in 2008, long before the effective date of KORUS. Then, afler the minimum five-year wait required under U.S. Law, on May 23, 2013, *** became a naturalized citizen of the United States and relinquished her Korean citizenship. Because this date is after the date on which the KORUS look effect, Respondent argues that the property was not "investment of the other party" at the effective date.

6.4 We accept that *** was not a citizen of the United Stales on the effective date of KORUS. However, we do contend that the facts demonstrate that the investment was "established, acquired, or expanded" after the effective date, and therefore is a covered investment pursuant to Article 1.4.

6.5 The narrative begins in 2001 when *** purchased the property located in ***, **********, Mapo-gu, Seoul. Just six years later, in 2007, the properly purchased by Claimant was designated as a redevelopment zone.[32] At that time, *** and her family were

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[28] CW-1 Statement at 26 through 37.
[29] Application at 4.20-4.35.
[30] Application at 4.25.
[31] Application at 4.12. Meanwhile, however, Respondent concedes that the property had tenants. Application, footnote 67.
[32] Application at 3.10.1. The subsequent history of the pre-expropriation process is described in the Application at 3.10.2-21.

living in the United Stales and consent documents necessary lo form the Redevelopment Union that were circulated to owners in the zone were not received by Claimant. Instead, the consent documents for the Claimant's property were received and signed, without ***'s permission or knowledge, by her sister who had been entrusted with the Claimant's authorization seal. This consent, together those of other owners in the zone, were claimed to be sufficient approval and, on or around May 16, 2008, the Redevelopment Union was established for the District. [33]

6.6 Although the Claimant did not authorize the consent, which was apparently relied on by the authorities, they were deemed to be participants.

{At Claimant's investment was re-established

6.7 After approval **of** a redevelopment plan the existing owners were offered the option to purchase another property in the Zone, with the value **of** their existing property to be applied to the purchase price of the parcelled property. On April 30, 2014, after *** had become a citizen of the United States, she and her husband applied to purchase such a parcelled out property. However, on August 25, 2014, after receiving a statement regarding the value of the parcelled property on July 23, 2014, the Claimant and her husband requested to withdraw the application by letter dated August 24, 2014. In this letter, they stated that "we withdraw such application and will not, under any circumstance, vacate our house. . . ."[34]

6.8 Subsequently, the Redevelopment Union sent letters to owners that had indicated an intention to withdraw on August 11 and 25, and September 9, 2015. However, as Respondent concedes, "the Redevelopment Union and the Claimant were unable to reach agreement on the compensation amount for the property."[35] Subsequently, the Union filed an application for adjudication of the value **of** the property on October 28, 2015[36] and while this matter was pending, the Union commenced eviction proceedings against Claimant and her husband on December 9, 2015.[37] The expropriation occurred by the decision **of** the Seoul Land Expropriation Committee on January 29, 2016. [38]

6.9 It is Claimant's position that **by withdrawing the property from the "parceling nut" in August 2014, the Claimant and her husband reestablished their right to the property, which they had given up by agreeing to the parceling out**. The Application observes that this action had "consequences."[39] In fact, the eviction proceedings were brought against occupancy of the property whose ownership *** and her husband had reestablished when they canceled out the application, which required and received approval. And, as Claimant stated in withdrawing, "we will not, under any circumstance, vacate our house . . ." This intention and the action taken

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[33] Application at 4.25.
[34] R-S. Claimant objected to the "assessed value" of the parcelled out apartment.
[35] Application at 3.10.13.
[36] R-IS.
[37] **R-24**.
[38] Application at 3.10.21.
[39] Application at 3.10.15.

by Claimant and her husband was subsequently confirmed when *** changed the name on the Certificates of all registered Matters for the Property to reflect her U.S. citizenship.

(B) Claimants investment was expanded

6.10 There is an additional reason why the property is a "covered investment" for purposes of KORUS Article 1.4: the property was expanded after its purchase as is demonstrated by ***'s Statement.[40]

6.11 The property when purchased had four rental units. Beginning in 2014, after the effective date of KORUS, various improvements were made to the property including the addition of a fifth rental unit in February 2016.[41]

6.12 In sum, *** "reestablished" her investment by withdrawing the application to "parcel out" and electing to regain ownership of the property and subsequently reflecting her US citizenship on the official records, and, further, she expanded the property after the effective date of KORUS.

6.13 For these reasons, the properly meets the definition of "covered investment" in KORUS Article 1.4 because the initial investment was "established, acquired, or expanded" after the date of entry in force of KORUS.

7. ISSUE III: CONTRARY TO RESPONDENT'S OBJECTION[42] CLAIMANT DID NOT MAKE ANY ALLEGATIONS OF "THAT BREACH" SUFFICIENT TO INVOKE THE "FORK IN THE ROAD" PROVISION OF KORUS ANNEX 1-E

7.1 Respondent's next objection is that Claimant has alleged before a Korean court or tribunal the same breaches now raised in this arbitration and, in the alternative, Respondent states that her actions have the same "fundamental basis" as the claims in this arbitration. Claimant submits that while Claimant made statements questioning whether the expropriation was in the "public interest" because the redevelopment benefitted private interests," the governing language in KORUS Article 11.6.1 (a) is "public purpose." All other statements by Claimant are merely observations that do not rise to the level of an "allegation." Moreover, neither the Seoul Land Expropriation Committee nor the Central Land Expropriation Committee is "tribunal" within the meaning of KORUS Annex 11-E. Finally, as we will demonstrate, the Central Land Expropriation Committee had no jurisdiction on claims concerning the validity of the Redevelopment Project.

[40] CW-1. Statement at 15 through 25.
[41] **Confirmation of** Facts regarding Home Improvement attached as C-5.
[42] Application at 5.1-5.55.

7.2 Annex 11-E of KORUS provides lhat an investor of ihe United Slates may noi submit a claim under Section A if ihe investor has "alleged that breach of an obligation . . .in any proceedings before a court or administrative tribunal of Korea."

(A) Definition of "allegation"

7.3 The decisive language of Annex 11-E is "lhat breach of an obligation." This means without a doubt that lhat the only allegations that trigger Annex 11-E are those that specify "that breach," a breach that has in fact occurred.

7.4 There are three "proceedings" where the Respondent argues lhat Claimant "alleged breaches" of obligations of KORUS. Before turning to an analysis of the statements made by Claimant in those proceedings, we submit lhat the term "allegation" must be interpreted by this Tribunal to mean more than a mere reference to KORUS without specificity or advice of counsel.

7.5 The need for a meaningful test is, in fact, best illustrated by the Respondent's argument lhat the Claimant's statement before the Seoul Western District Court on December 13, 2016, was a specific allegation of the breach.[43] But all lhat Claimant did, without the benefit of counsel, was to quote the fair and equitable treatment requirement of KORUS including "the level of police protection required under customary international law" and then she requested the "honorable justice to immediately provide protection. . . ." for Claimant and her [redacted] American children. Clearly, this was simply a summary statement of treaty obligations and a request for protection that fails under any reading to be an "allegation" of "that breach."

7.6 These observations provide a clear basis for the Tribunal here to give meaningful effect to Annex 11-E. We urge the following would satisfy the objective of the Government in insisting on Annex 11-E and provide guidance to claimants.

To wit, the "allegation of breach" must (i) slate with specificity the specific provision of KORUS involved, (ii) must state the basis for the claim of breach of the specific provision involved, and (iii) must be made in a context where the claim can be resolved by an authority with decisional powers. Supporting this interpretation is the use of the words "that breach of an obligation' in Annex 11-E, which requires specificity in the allegation.

(B) The proceedings where Claimant participated

7.8 The proceedings where Claimant participated are as follows.

7.9 Appeal to the Central Land Expropriation Committee: On October 28, 2015, the Redevelopment Union Hied an application for adjudication of the value of the property with the Seoul Expropriation Committee which issued its award on January 29, 2016. Respondent makes no claim that the Claimant raised KORUS issues in this proceeding, which is the proceeding which constituted "lhat breach" of the obligation regarding expropriation.[44]

[43] Application at 5.10.
[44] Application at 3.10.19.

7.9.1 *** did not make any allegation during the Central Land Expropriation Committee proceeding.

7.9.1.1 On May 8, 2016, the Claimant, without the benefit of counsel, filed an appeal stating that "she . . .as a United States citizen, would like to determine, within the legal framework of the kORUS FTA, whether land expropriation is appl ied to the land she owns." She then states that "according to Article 11.6 (1) ofihe KORUS FTA, direct expropriation is limited to projects serving the public **interest**."[33] [45] As we have noted, the standard is a public purpose, not public interest which the appeal described as related to the funding of institutions by tax revenues. [W]

7.9.1.2 In concluding the statement, the Claimant asserted that she had a right to a "file a complaint to the International Court of Arbitration as a KORUS FTA investor." [47]

7.9.1.3 In sum, there is no evidence that the Claimant alleged any breach of KORUS that was considered by the Committee. That is clear from the Respondent's lengthy quotations from the Claimant's second statement before the Committee, including the reference a possible treble damage claim in U.S. courts and the possibility of submission of "ihe issue regarding violations of the KORUS FTA as an official agenda of a presidential candidate at the US Presidential Election.[174]*

7.9.1.4 None of the statements in the lengthy quotations from submissions by the Claimant provided by Respondent rises to the level of an allegation as we suggest that term be defined by the Tribunal. Nor is there any statement, which rises to the level of "that breach of an obligation.[17]

7.9.1.5 The Central Land Expropriation Committee held a hearing on January 19, 2017. Eight Committee members attended the hearing. The members were one judge (in substitution for the Central Land Expropriation Committee Chairperson who, under law, is the Minister of Land, Infrastructure, and Transportation), two professors, one attorney, two appraisers and one retired government official from the same Ministry of Land, Infrastructure, and Transportation. The hearing was held, without giving the chance for any oral testimony by petitioners for two and one-half hours. During that time, 190 cases

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[45] Application at 1.13.1.

[46] Sec Application at 3.13.1 where the Claimant equated public interest institutions tended by the federal tax. This is clearly a different concept than public purpose.

[47] Application at 1.13.2.

[411] Application at 13.2.

were decided, spending less lhan one minute for each case. ***'s case was the 65lh to be decided. A6

7.9.1.6 The Claimant did not appeal to the Administrative Court against the decision of the Central Land Expropriation Committee dated January 19, 2017, which upheld the decision of the Seoul Expropriation Committees.[50]

7.9.2 The Central Land Expropriation Committee is NOT an administrative tribunal.

7.9.2.1 The Central Land Expropriation Committee is an administrative body under "the Ministry of Land, Infrastructure and Transportation" organized pursuant to "Act on Acquisition of and Compensation for Land, etc. for Public Works Projects" Article 49.

"Article 49 (Establishment) To render adjudication on the expropriation and use of land, etc., the Central Land Committee shall be established under the ***Ministry*** *of Land, Infostructure, and Transport, and a local Land Committee shall be established under the Special Metropolitan City, a Metropolitan City, Do or Special Self-Governing Province (hereinafter referred to as "City/Do"),* ***respectively.***"[51]

7.9.22 However, neither the Seoul Expropriation Committee nor the Central Land Expropriation Committee is "tribunals" for purposes of KORUS Annex 11-E. Although Article 49 of the "Compensation Act" is silent about the status and the nature of the Land Expropriation Committee, it states, "the Minister of Land, Infrastructure, and Transport shall be the Chairperson of the Central Land Committee" in Article 52(2). As the Claimant's Expert Opinion shows, "the Central Land Expropriation Committee has completely different in structure from administrative tribunal which are composed of judges such as the New York State Tax Tribunal or the UK Upper or First-Tier Tribunals/"[52]

7.9.23 Nevertheless, Respondent's quote of the Korean Supreme Court's Decision about the nature of Central Land Expropriation Committee is WRONG when it states that "the Supreme Court of Korea has also found that the Central Land Expropriation Committee has the characteristics of an administrative tribunal."[53] In nowhere in the Decision, the Supreme Court renders such an opinion. The closest language would be "however, as the procedure of appeal

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^Expert Opinion; "Is the Central Land Expropriation Committee an Administrative Tribunal?," **Professor,** ** ****4 ***, Choongnam Law School, Administrative Law & Tax Law Professor (April 2019), the fourth page excluding the cover page, "Reason 2", attached as CL-3.

[50] Application at 5.13.4.

[51] RL-2, Act on Acquisition of and Compensation for Land, etc. for Public Works Projects, ("Compensation Act") Art. 49

[52] CL-3, "Expert Opinion," the fifth page excluding the cover page, "Reason 2."

[53] Application at 5.18.

against adjudication on expropriation of ihe Land Expropriation Committee is virtually an administrative proceeding in nature."[34]

7.9.24 Assuming Respondent extended the meaning of "administrative tribunal" from "administrative proceeding," it is widely accepted that "although, in a broad sense, the administrative proceeding is a part of legal adjudication and, yet it is still administrative procedure, not judicial procedure. Also, the decision in the administrative proceeding is one of the administrative action by itself and has the characteristic of the administrative act."[55]

7.9.25 Further, Respondent's indirect quote of the Constitutional Court's Decision is MISLEADING, when it states, "the procedure before the Central Land Expropriation Committee possesses the characteristics of an administrative appeal and that it was, therefore, subject to the Administrative Appeal Act."[57] The correct quote should be "the procedure of the appeal substantially has a characteristic of an administrative proceeding in nature," which has a different connotation. As above explained, an administrative proceeding is different from a legal (judicial) proceeding. The proceeding before the Central Land Expropriation Committee, therefore, should be distinguishable from the proceeding before the Administrative Court.

7.9.26 Likewise, the same Constitutional Court Decision degrades the role of the Central Land Expropriation Committee when it reads that "adjudication of expropriation regarding the areas of land to be expropriated and compensation for loss, such appeal has a characteristic as an appeal against administrative adjudication and as a redetermination under which adjudication on expropriation by the Land Expropriation Committee is reviewed and confirmed. Hence, if any person whose rights and interests are infringed by unlawful adjudication on expropriation files an appeal against the final decision by the Central Land Expropriation Committee, it will be efficient to invalidate such expropriation by filing an appeal to the Administration Court that would finally determine legal relations regarding such expropriation."[58] Therefore, the Central Land Expropriation Committee's decision is NOT final although Respondent conditionally admits in Application 5.20 because landowners almost always file

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[54] RL-3 Supreme Court of Korea Case No. 92Nu365 dated 9 June 1992 at Para 2

[55] Itong, Jung Sun, The Administrative Law Principle (T), Pakyoungsa 2019 RN2213 attached as CLA1.

[M] Application at 5.1S. The first paragraph of 2(13). "Procedure of an appeal against the decision of Land Expropriation Committee is a dispute resolution mechanism performed by the Central Land Expropriation Committee regarding unlawful adjudication on expropriation. That is, the procedure of the appeal substantially has a characteristic of an administrative proceeding in nature. Therefore, unless Otherwise stipulated under special eases of the Act, the Administrative Adjudication Act is applicable (Supreme Court's decision tendered on June 9, 1992, Case No. 92Nu365). And the decision of the Central Land Expropriation Committee, as one of its final Judgment regarding the appeal of this case is a quasi-judicial procedure in principle."

[57] Ibid.

[58] RL-4 Constitutional Court's judgment, Case *No.* 2000Hun-ba77, dated 28 June 2001) (Case on Paragraph 1 of Article 75-2 of the Land Expropriation Act). Later part of 2(B).

legal complaints with the Administrative Court if they are not satisfied with the Central Land Expropriation Committee's decisions.

7.9.2.7 Further, the Central Land Expropriation Committee was constrained by statute from the taking any claims about validity under KORUS because it does not have a jurisdiction to invalidate the redevelopment project under Article 50 of the "Compensation Act".[59] In their appeal to the Central Land Expropriation Committee, *** couple and fourteen (14) other residents claimed that "the redevelopment project is not for the public interest and therefore either it should be invalidated or their properly should be excluded from the project. In its decision, the Central Land Expropriation Committee states that "in view of Article 50(1) of the Act, which prescribes differentiation of land expropriation procedures and explains the nature of project authorization and the matters subject to adjudication of land expropriation committees, **land expropriation committees** in **their nature may not render** any **adjudication that invalidates the authorization of a project itself or makes it impossible to implement a project** unless the authorization of such project is canceled **by** administrative litigation."(Supreme Court Decision 93 Nu 19375 rendered on November 11, **1994**).[60] *(emphasis added* **)**.

7.9.2.8 Respondent's Application 5.33 shows the summary of the fork in the road in a chart. There, it claims that "both the Central Land Expropriation Committee and Seoul Western District Court issued judgments confirming it was for a public purpose."[61] It is NOT true because the Central Land Expropriation Committee waived its decision on this issue because the issue was beyond its jurisdiction. Thus the appeal from the Seoul Land Expropriation Committee's January 29th decision was limited to the validity of the determination of value, and yet the Central Land Expropriation Committee had no jurisdiction to consider the validity of the redevelopment project. Seoul Western District Court did not discuss the issue. Therefore, ***'s statement said in this proceeding was irrelevant.

7.9.29 Finally, the Central Land Expropriation Committee that acted on January 29, 2016, set the compensation and established the escrow was acting in accordance with statute and was a state "actor" in accordance with the International Law Commission ("ILC") Rules on "Responsibility of State for Internationally Wrongful Acts."[62] In this regard, the expropriation date was the

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[59] RL-2. Compensation Act, Art. 50 (Matters to be Adjudicated).

[60] R-23, "Decision of Central Land Expropriation Committee, at "3. Determination of this Committee A. With respect to the claim of" thereafter, in the middle of the 2nd paragraph.

[61] Application at 5.33.

[62] Respondent's Authority 22. "Responsibility of States for Internationally Wrongful Acts 2001," International Law Commission, United Nations.

dale of the Committee's decision on January 29, 2016, nr the later dale on March 18, 2016, as Seoul Committee slated in its Decision.

7.10 The Eviction Proceedings before the Seoul Western District Courl: Initialed by the Redevelopment Union on December 9, 2015, ihe sole issue to be decided by the court was the ownership of the properly. Therefore, the statements in the Claimant's Preparatory documents did not raise issues (or allegations) that were germane to the issue before the court. Moreover, while Claimant's first Preparatory Statement quoted at length in the Application at 3.15 argues that the act was in conflict with KORUS, it does not make any specific claims other than a repetition of the public interest argument which, as we have noted, is unrelated to public purpose.

7.10.1 There is a general statement in the eviction proceedings by Claimant that "1 am not subject to the Korean land compensation law and that the Act on Improvement of Urban Areas contains provisions that are in conflict with the application of current market price, the serving of the public interest, and the government's direct expropriation under the KORUS FTA, which legally prevails over the Act . . ." [63] This then is simply a claim that she is not subject to the Act. For example, the statement that the "Act" has provisions "that are in conflict with the application ofthe current market price. . . ." simply does not meet the requirement of a specific allegation of "that breach." Nowhere in the statements is there a reference to the criteria for determining whether an expropriation meets the Treaty standard. As the Tribunal is aware, there are four elements of the expropriation standard in Article 11.6 and all four must be satisfied.

710.2 More to the point, the Notice of Arbitration posits as the breach of KORUS the decision ofthe Seoul Land Expropriation Committee on January 29, 2016. [64] Yet the statements by Claimant *** quoted above relate to the validity of the Act on Urban Areas itself, not the application of that Act by the Committee which is where the violation of KORUS occurred. There is therefore in those statements about the Act no allegation of "that breach."

7.10.3 Later in the Second Preparatory Statement Claimant, as we have already pointed out above, simply recited some and summarized other aspects of the fair and equitable treatment and full protection and security provisions of KORUS Article 11.5 (2) without making any claims of a violation and therefore there was no allegation of a breach of the fair and equitable treatment and full security obligations. And as we have noted, Claimant concluded by pleading with the "honorable Justice" to provide "protection over **** citizens of the United Slates of America (myself and my ***** children). . ." There is no way that this plea on behalf of not only the Claimant, but also her *****children, can be characterized as an "allegation" of any specific breach of any provision of KORUS.[65]

7.10.4 The judgment simply ordered that Claimant and defendants "hand over the property."

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[63] Application at 3.15.
[64] C-2, Notice at III. 6.
[65] Application at 3.17.

7.11 The Appeal from the Eviction Decision: *** filed an appeal from the Western District Court's eviction decision on February 21, 2017.[66]

7.11.1 It is first significant that *** phrased the appeal as a series of questions that she would like to "cover" instead of making any allegation of a specific breach. ***'s appeal states she would "like to cover whether compensation has been justly made." This is very different from stating that the decision of the Seoul Land Expropriation Committee setting compensation on January 19, 2016, was a breach of KORUS Article 11.6.1.[67]

7.11.2 In any event, the issues *** wanted to cover with the Court on the appeal were moot and no issues were ever joined because the Claimant withdrew the appeal *** days after it was filed.

7.11.3 The notice of appeal was filed by *** on February 21, 2017. Subsequently, the appeal was withdrawn on ******** **, ****. The notice of appeal was not served on the Appellee, the Redevelopment Union before the Appeal was withdrawn. No docket number or case number was assigned. No public notice was posted regarding this appeal. Nothing was done before the appeal was withdrawn according to the Case Summary of the Eviction Case.[68]

7.11.4 According to the Korean Civil Procedure Act, Article 267 (Effect of Withdrawal of Lawsuit): "(1) No lawsuit shall be deemed to have been pending from the beginning before the court so far as the withdrawal is concerned.[33] In this case, *** withdrew her Appeal in its entirely and, therefore, the appeal should be considered non-existing from the beginning.[69]

7.11.5 Thus, there were no proceedings, no response by the government and therefore the appeal cannot be considered an allegation in the sense of Annex 11-E.

7.11.6 In summary, there was never a specific allegation of "that breach with regard to any specific KORUS obligation" that rises to the level of an election sufficient to invoke Annex 11-E.

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[66] Application at 3.20-3.22.

[67] *** did mention discrimination hut incorrectly referenced KORUS Article 11.6 (2). Application at 3.20.

[68] Case Summary ofthc Eviction Case attached as C-6. The "case summary" entitled "Feb 22, 2017, Execution letter and certificate of delivery for the Plaintiff, Daehung Area 2 Housing Redevelopment Union" means that the Redevelopment Union Litter prevailing in the trial court level received an execution letter to enforce the trial court's judgment (in the eviction proceeding) and also received a "certificate of service" which proves the completion of service of the trial court's judgment on the defendant ***. This "certificate" was MOT a certificate of service of the notice of appeal on the Appellee.

[69] Civil Procedure Act, 2017 attached as CL-5.

8. ISSUE IV: THE CLAIM WAS TIMELY SUBMITTED TO ARBITRATION AND IS NOT TIME BARRED AS ASSERTED BY RESPONDENT[70]

8.1 Respondent's next Preliminary Objection is that the Claimant is time-barred by KORUS Article 11.18 from asserting (i) that the forged consent to join the Redevelopment Union violated the Claimant's legitimate expectations, (ii) that the redevelopment was not for a public purpose, and (iii) that the compensation was not adequate. For the reasons stated below, Claimant submits that none of these objections have merit.

8.2 KORUS Article 1118.1 focuses on the date that the claimant first acquired, or should have acquired, knowledge of the breach . . .and knowledge that the claimant . . . .has incurred loss or damage."[1] The key words in this Article then are "**the breach**" and **"incurred loss or damage."** Both of these clauses refer to events ("breach" and "incurred") that have happened, and the requisite knowledge is of the events that have happened. This reading of the critical words "the breach" and "incurred loss or damage" is required by Article 31.1 of the Vienna Convention on the law of Treaties ("VCLT") which specifically states that "A treaty shall be interpreted in good faith **in** accordance with the ordinary meaning to be given to the terms of the treaty . . ."

8.3 In accordance with VCLT Article 31.1, the ordinary meaning of "the breach" is a breach that has occurred, and the ordinary meaning of "incurred" loss or damage is loss or damage that has been incurred, and the relevant knowledge is knowledge of the breach and the loss or damage incurred. Thus, the knowledge that a breach might occur or that losses might be incurred cannot and should not be considered to implicate KORUS Article II.18.1.

8.4 Turning now to the Respondent's arguments which for the most part involve assertions about knowledge of a reasonable possibility of breach or loss, which cannot be a basis for a time bar under the clear and unambiguous language of KORUS 11.18.1.

> 8.4.1 Denial of legitimate expectations and justice: Respondent claims the Claimant was aware of the "alleged forgery" of the consent to join the Redevelopment Union much earlier than three years before the date of the filing of the Notice of Arbitration on July 12, 2018. This contention totally misses the point! It is not the forgery that is at issue. Instead, it is the failure of the Respondent and its officials to take action relative to the expropriation that constitutes the denial of justice.
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> > 8.4.1.1 On the facts as alleged, the earliest date at which the Claimant requested that officials take action to remedy the injustice that resulted from the forgery was during the eviction proceedings that were commenced by the Union on December 9, 2015, which is less than three years before the filing of the Notice of arbitration.[71]

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[71] Application at ¶¶ 6.1-6.30.
[71] Application at 6.17.

8.4.1.2 Later, according to paragraph V.11 of the Notice of Arbitration, the Claimant also raised the lack of consent to the participation in the Redevelopment Union in a meeting at the Daehung-dong municipal office with Mapo-gu Municipal Government, Redevelopment Team Leaden Redevelopment Representatives and two mediators from Seoul City Government in negotiations on February L 2017. Then in Paragraph V.12, Claimant asserted:

> *"During the negotiation process, including the meetings on February l, 2017, and March 23, 2017, as well as other meetings, *** kept raising the issue of fraud by appealing to Mapo-gu government officials who were present at the meetings and yet ***'s claim for fraud w(ls ignored...."*

8.4.1.3 Claimant further asserted that another redevelopment union (the **********) had been declared invalid by the Supreme Court of Korea for lack of consent and that the Redevelopment Union Representative in the Daehung-dong area (where Claimant's property is located) at the meetings in March and February 201.7, was also the representative of the $$$$$$$$$$ union of the redevelopment area which had been declared invalid. [72]

8.4.1.4 The basis for Claimant's fair and equitable treatment claim is that ihe Respondent or its agents "violated Claimant's expectations that it could rely on ihe Respondent and/or its agents to avoid reliance on lack of actual consent to join the Redevelopment Union and Forgery." Claimant also asserted that the "acts of Respondent and/or its agents amounts to a denial of justice."[73]

8.4.1.5 These assertions all relate to actions/or inactions by Respondent or its agents in 2015 and 2017, dates that are well within the limitation period.

8.4.1.6 We emphasize that the alleged breach of the legitimate expectations and denial of justice claims were made for the first time in the Notice of Arbitration.

8.4.1.7 Thus, while we acknowledge that Claimant may have been aware of the forgery at an earlier date that is irrelevant to the claim of denial of legitimate expectations and denial of justice.

8.4.2 Public Purpose: Respondent argues that the Claimant should have known abouL the "public purpose" of the redevelopment because the area was designated as a redevelopment zone as early as 2007. [74] However, even if *** had knowledge of the public purpose, or should have had such knowledge, that is just one of the lour elements of a lawful expropriation and as we have stressed, the expropriation occurred on January 29, 2016.

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[71] C-2. Notice at V.11.
[73] C-2 Notice at VIM.3.
[7J] Application at 6.20.1.

8.4.2.1 It is worth noting at this point that even if *** had knowledge that ihe development union was established for a public purpose as early as 2007, which we do not concede, she had no basis for filing a claim under KORUS because the compensation amount was only finally determined when the Seoul Expropriation Committee issued its decision on January 29, 2016, and placed the compensation for Claimant and others involved in escrow.[75] Stated another way, assuming that *** had knowledge of the "public purpose' as early as 20007, what would have been her recourse under KORUS? Everything else related to the expropriation and the fair and equitable treatment claims did not occur until years later. This narrative in fact demonstrates the rationality of giving the words "the breach" and "incurred loss or damages" their ordinary meaning as we contend.

8.4.3 Compensation: As Claimant has alleged, the Seoul Land Expropriation Committee issued its decision on the amount of compensation for more than 300 members of the Daehung-dong, including Claimant, on January 29, 2016. Importantly, the Committee also declared that the beginning date of the expropriation would be March 18, 2016, [76] Both of these dates are less than three years prior to the filing of the Notice of Arbitration on July 12, 2018.

8.4.3.1 Prior to the Committee's determination on compensation, the Respondent claims that Claimant was "aware of the likely amount. . ." due to communication of 23 July 2014." [77] A month later, the Claimant withdrew her application for a parcelled out apartment afler seeing ITS assessed value announced by the Mapo-gu Office. . . ." [78]. In the withdrawal letter, Claimant stated that she and her husband "will not under any circumstance, vacate our house." In any event, during these preliminary actions, there was no loss or damage "incurredas required by KORUS Article 11.18.1.

8.4.32 We note that the Redevelopment Union commenced eviction proceedings on December 9, 2015, which was afler the rejection of parceling out, but before the final determination on the compensation amount (i.e., "that breach'), which did not occur until January 29, 2016. In these proceedings, the principal issue was ownership of the property, which she was ordered to "handover" on January 11, 2017.[79]

8.4.33 The question here is when the Claimant had knowledge of the breach, or "should have acquired knowledge that the claimant . . .has incurred loss or damage." First of all, even though the eviction proceedings were pending, Claimant did not have knowledge of the breach until January 29, 2016, when the

[75] Application at 3.10.21.
[76] C-2. Notice al III. 6-7. In as much as the Committee acted on January 29, 2016, and placed funds in escrow al that time, we will use that date as the expropriation date.
[77] Application at 6.23.1.
[711] Application at 6.23.2.
[79] Application at3.19.

Seoul Land Expropriation Committee issued its decision on the amount of compensation. While *** was aware the process was underway, she continued to contest its validity until the Committee acted on January 29, 2016.

8.4.3.4 So, the next question is whether Claimant should have been aware of that breach prior to January 29, 2016, or should have first acquired knowledge that she "has incurred loss or damage prior to that date" KORIJS Article II. 18.1 The key language here is "has incurred." This wording obviously means that something final has taken place. *** was only certain a loss "has incurred" on January 29, 2016.

8.4.35 At about this time and in the months that followed Claimant did not abandon her assertion and belief that the consent to join the Redevelopment Union was forged and of no validity, as evidenced by her statement that she and her husband "will not, under any circumstances, vacate our house."[80] During this period and in the months that followed, Claimant and her husband made changes to the property as detailed in her Witness Statement. And, during this time, the property was rented. Clearly, this continued investment is not consistent with "awareness" that the final compensation (which was not determined until January 29, 2016) would constitute a breach ofKORUS.

8.4.3.6 The renovations and rentals come to an end when the eviction proceedings against the Claimant and her husband were finally concluding on January 11, 2017, with an order stating that the Claimant and other defendants in the proceeding should "hand over" the property.

8.4.37 It is accepted that Claimant was aware that it was likely that there would be an expropriation when the eviction proceedings commenced in December 2015 but did not know what the compensation would be despite the various pronouncements. Since the eviction proceedings were initiated less than three years before the Notice of Arbitration was filed and were followed by the Seoul Land Expropriation Committee determination of the compensation amount on January 29, 2016, the Notice of arbitration was not time-barred.

8.4.3.8 In sum, Article 11.18.1 properly read in accordance with Article 31 of the VCLT defines the breach as the first pivotal starting date for the limitation period. That breach occurred on January 29, 2016.

8.4.39 The next question is when the Claimant had knowledge that a loss was incurred, again defined in accordance with Article 31 of the VCLT, and the answer is obvious: January 29, 2016.

[80] Application at 3.10.12.

9. ISSUE V: RATIONE TEMPORIS: THE RESPONDENT'S ASSERTION SITHAT THE CLAIMS ARE BARRED BY KORUS ARTICLE 11.1 (2) HAVE NO MERIT

9.1 The Respondent argues that ihe claims based on the forged consent to join the Redevelopment Union are barred because the forgery took place prior to the effectiveness of KORUS, citing Article 1.1 (2).[A1] While Claimant acknowledges that the forgery occurred in 2008, her claim is that the Respondent in proceedings after the effective date of KORUS ignored Claimant's contentions that her signature to the consent document was forged. For example, it is stated in the Notice of Arbitration that in February and March 2017, consultation and negotiation meetings were held between Claimant and government officials and the redevelopment union representatives. During these meetings, Claimant continued to raise the issue of fraud, yet her claim was ignored without further investigation. [81]

9.2 Claimant also alleged that the Mapo-gu government had a motive to ignore the Claimant's contentions because (i) the Supreme Court of Korea had invalidated another redevelopment union because of fraud, (ii) the Redevelopment Union Representative at the meetings with Claimant had also been the representative of the ********** redevelopment union which had been invalidated by the Supreme Court, and (iii) other residents of the Redevelopment Union where ****s property was located had claimed fraud in its establishment.[84]

9.3 In these circumstances, the fact that the forgery occurred before the effective date of KORUS in 2012 is irrelevant, since the actions alleged to deny Claimant fair and equitable treatment occurred long after the effective date.

9.4 Mondev International v. United States of America[85] is not applicable here. That decision involved a Massachusetts statutory exemption of public authority from liability that was enacted before the North America Free Trade Agreement became effective. After that date, a court upheld the application of the exemption and that decision was challenged as a breach of NAFTA Article 1105 (1). The tribunal disagreed, holding that it "is not disputed by the Claimant that this decision was in accordance with Massachusetts law, and it did not involve on its face anything arbitrary or discriminatory or unjust, i.e., any new act which might be characterized as in itself a breach of Article 1105 (1)." [86] Here, the circumstances are totally different, because while the forgery occurred before the effective date of KORUS, the acts alleged regarding the Respondent's inactions regarding the forgery occurred after the effective date of KORUS. It is

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[81] Application at 7.1- 7.10.
[82] Application at 7.1- 7.6.
[83] C-2. Notice at V- 11 and V-12.
[84] C-2. Notice, see also paragraph V- 13.
[85] Respondent Authority number 10, "Mondev International v. the United States of America," ICSID Case No ARB (AFV99/2, Award, 11 October 2002.
[86] Id. on page 56.

those acts ihai are alleged lo violate the fair and equitable treatment obligations of KORUS Article 11.5 [87]

10. **CONCLUSION** AND **RELIEF** REQUESTED

For the foregoing reasons, and any reasons Claimant may submit later, The Claimant respectfully requests the Tribunal to dismiss the Respondent's Application for Preliminary Objection and pursuant to Article 42 of the UNCITRAL Arbitration Rules and KORUS Article 11.20 (8) to order the Respondent to pay all costs of this proceeding, including the fees and expenses of the Tribunal, the costs of the HKIAC, and Claimant's legal fees and expenses.

The Claimant restates and incorporates the reservation of its rights as stated in Paragraph X of the Notice of Arbitration.

RESPECTFULLY SUBMITTED

April 22, 2019.

Counsel for the Claimant

[87] Id. Sec in this regard, the tribunal's footnote 92 in Mondev which stales: "Compare Consudo ct al. v. Argentina, IACHR, Report N 2S/92, 2 October 1992,, where immunity from prosecution and suit was extended after the entry in force of the Convention in respect of acts committed before its entry in force. The Inter-American Commission had no difficulty in rejecting Respondent's objection ratione temperis; it went on to hold that the conferral of inrun unity was in breach of the Convention."