

[REDACTED]

Claimant

-and-

The Government of the Republic of KOREA

Respondent

**NOTICE OF INTENT TO SUBMIT CLAIM TO ARBITRATION UNDER KOREA
UNITED STATES FREE TRADE AGREEMENT CHAPTER ELEVEN**

[REDACTED], CLAIMANT

[REDACTED], Dodam Law Firm,

[REDACTED]

[REDACTED]

Phone: [REDACTED], E-mail: [REDACTED]

**Statement Required by Article 11.16 of the Korea United States Free Trade Agreement
with respect to the Dispute between [REDACTED], Claimant, and the Republic of
Korea**

Pursuant to Article 11.16 (2) of “Korea United States Free Trade Agreement” (hereinafter referred to as “KORUS FTA”) and with a view to resolving this dispute amicably through the consultation and negotiations contemplated by KORUS FTA, Article 11.15, the disputing investor and Claimant, [REDACTED], respectfully serves the respondent, the Government of the Republic of Korea with this Notice of Intent to Submit a Claim to Arbitration under Chapter Eleven of the KORUS.

I. Names and Address of Disputing Investor

1. [REDACTED] (hereinafter referred to as “the Claimant”), as a claimant, is an individual citizen of the United States of America. The Claimant’s current address is [REDACTED].
The Claimant submits this Notice of Intent to Submit a Claim to Arbitration as an investor on her own behalf.
2. The Claimant is represented by [REDACTED], Attorney at Dodam Law Firm, [REDACTED]
[REDACTED]. E-mail:
[REDACTED]. Copies of all correspondence should be directed to the attention of [REDACTED].

<RELEVANT FACTS>

**II. Expropriation of the Claimant's Property in [REDACTED]
("Investment I")**

A. Factual Background

3. On May 18, 2005, the Claimant purchased an eighteen (18) unit studio apartment building (the "Investment I") located in [REDACTED]
[REDACTED] with a view to starting a rental property business.
4. On June 29, 2005, the Claimant's interest in the Investment I was duly registered under her name with her address at [REDACTED]
[REDACTED]
5. The Investment I was popular among students attending Daegu Health College and Daegu Science University due to its close proximity to those schools. Therefore, the Investment had generated a stable annual rental income of USD 54,000 for the Claimant since 2005.¹
6. When the Claimant purchased the property in 2005, she was a U.S. citizen living in the U.S. (Please see the copy of the first page of "the Claimant's U.S. Passport").
The Claimant was naturalized to the U.S. citizen around 1984.

¹ 18 units x KRW 250,000/month (average rental fee for a studio in Taejun-dong in 2019) x 12 months = KRW 54,000,000; exchange rate of USD 1 = KRW 1,000

7. After the Claimant purchased the property in 2005, she continued to reside in the U.S. until April 2018 when she came to Korea to resolve the issue involving her property to be expropriated.
8. On December 22, 2015, Daegu Book-gu municipal government granted a permission to establish a "Housing Union" (hereinafter referred to as "union") for the purpose of building an apartment complex with 532 units in 24,728 square meters of land in Taejun-dong area, in which the Claimant's property is located.
9. In November 2017, the Claimant got concerned after hearing about the union's plan to demolish old houses in Taejun-dong and build an apartment complex. The Claimant flew to Korea to find out whether her property was included in the project. The union told her that it was not. Since the Claimant believed the union's confirmation, she planned to open a real estate agency office in her building and subsequently obtained a permit from Daegu-city, Buk-gu office. However, the Claimant later learned that her property was included in the project.
10. On July 23, 2019 Daegu city government authorized the "Housing Construction Project" (hereinafter referred to as the "construction project").
11. After acquiring ninety-five percent (95%) of consent to join the union from the property owners in the construction project area, the union, pursuant to the Article 22.1 of the Housing Act, requested the sale of the property from the Claimant, who did not join the union.
12. The first request for the sale of the property in writing was made on February 14, 2019, and the Claimant did not sell her property.

13. The second request for the sale of the property in writing was made on March 5, 2019, and the Claimant did not sell her property.
14. The third request for the sale of the property in writing was made on March 22, 2019, and the Claimant did not sell her property.
15. The fourth request for the sale of the property in writing was made on June 3, 2019, and the Claimant did not sell her property.

B. Administrative Procedures and Decisions

16. On June 26, 2019, the union filed a civil complaint against the Claimant to seek the “transfer of the ownership of the claimant’s property” with the Daegu District Court. The case number is listed as Daegu District Court, [REDACTED], [REDACTED].
17. On October 1, 2019, the union amended its complaint.
18. In the Claimant’s preparation answer filed in September, 2019, the Claimant stated that her property should not be expropriated because her property is her main household income.
19. In the Claimant’s answer filed on December 9, 2019 to the complaint, the Claimant stated that she could not accept the plaintiff’s request for the sale of the property and her property should be excluded from the expropriation because she is a U.S citizen who is entitled to file an investor state dispute under the Korea-US FTA.

20. Further, in her answer, the Claimant stated that she was told by the union that her property would not be included in the project when she visited Korea in November 2017. However, later, her property was involved in the project without her knowledge and consent.
21. Although the Claimant, in her answer, mentioned the fair market value of the property in her second answer filed on January 3, 2020, the price per pyong (3.3m x 3.3m) was arbitrarily estimated and inserted without the Claimant's authorization by a hired 'administrative legal aid' ("hengjungsa" in Korean). The Claimant later discovered the administrative legal aid's unauthorized act regarding the estimated fair market value of her property and subsequently filed a criminal complaint against the administrative legal aid. Further, the Claimant suspects that the 'administrative legal aid' may have acted without the Claimant's authorization for the benefit of the union.
22. On January 9, 2020, the Daegu District Court made a decision on the case for the transfer of ownership filed by the union. In its opinion, the court ordered "Defendant to receive 1,349,750,700 KRW... and to hand over the property."
23. After the court decided against the Claimant, the Claimant filed a Notice of Appeal on February 24, 2020 with the assistance of the same 'administrative legal aid' above mentioned with an unauthorized stamp made by the administrative legal aid.
24. However, Appeal was withdrawn on May 25, 2020, before a hearing date and before the court rendered a decision on the Appeal.
25. Nullification for the expropriation of the property authorization [REDACTED]

filed by the Claimant against the union was dismissed by the Daegu District Administrative Court.

26. The compensation money has been placed in a public escrow and later was withdrawn by the Claimant on July 8, 2020, with a “reservation of the right to appeal.”

C. Mental Distress of the Claimant

27. In 2017, the Claimant found shattered glass from Korean liquor (“soju”) bottle scattered around in the parking lot of the Claimant’s property.
28. In January 2019, several electric meters in the Claimant’s property (Investment I) caught fire, and firefighters who inspected the scene advised the Claimant to report the incident to the local power company. In addition to reporting to the power company, the Claimant also reported it to the Daegu Gangbuk police because she believed someone intentionally caused the fire. However, the police did not investigate it thoroughly.
29. On or around April 18, 2019, one of the electric meters at the Claimant’s property was caught on fire again. This time, the Claimant contacted the U.S. Embassy in Korea for assistance. In return, the U.S. Embassy requested a police investigation.
30. Despite the formal request from the U.S. Embassy, the police did not start to investigate. Yet, the Claimant found that a vacant unit in the Investment I had a hole through which water leaked to the electric meter. The Claimant suspected that

someone intentionally punched the hole because there was none when the unit was remodeled just before the incident.

31. Later, the Claimant moved the electric meter and installed a CCTV near the electric meter. Since then, there has been no more fire.

32. Around May 2019, the gas company called the Claimant to inform her that gas was leaking from a broken gas meter on her property (Investment I). Somehow, CCTV was blocked. Again, this frightened the Claimant because it could have caused an explosion. Although the Claimant reported the incident to the local police, no investigation took place.

33. On June 3, 2019, the union again requested the Claimant to sell the Investment I. However, The Claimant refused.

34. As a result of these incidents, the Claimant experienced significant shock and intimidation. Subsequently, the Claimant suffered from severe mental and emotional distress and has received medical assistance up until the time this Notice of Intent is filed.

D. Consultation and Failed Negotiation

35. From February 2019 to June 2019, the union, by sending four (4) letters of the request for sale, offered to purchase the Claimant's property.

36. The Claimant did not accept the union's offers because she did not want to participate in the reconstruction, and the offered amount of compensation was far below the fair

market value.

37. No further negotiation was held after the union filed a civil complaint against the Claimant for the transfer of the ownership, and thereafter, no amicable resolution was reached.

III. The Claimant's property in [REDACTED] ("Investment II")

A. Factual Background

38. On November 10, 2000, the Claimant purchased a studio apartment building located in [REDACTED] with a view to starting a rental property business.

39. On December 12, 2000, the Claimant's interest in the Investment II was duly registered under her name with her address at [REDACTED]
[REDACTED].

40. When the Claimant purchased the property in 2000, she was a U.S. citizen living in the U.S.

41. After the Claimant purchased the property in 2000, she continued to reside in the U.S. until April 2018 when she came to Korea to resolve the issue involving her property (Investment I) to be expropriated.

42. The Investment II was popular among students attending Daegu Health College and Daegu Science University due to its close proximity to those schools and generating a substantial amount of rental income annually.

43. Beginning 2014, however, the annual rental income began to decrease when members of the student body and/or faculty of Daegu Health College and Daegu Science University, and certain real estate agents colluded so that only those landlords who paid real estate agent(s) commission fee much higher than that was determined by the relevant law got students from those schools as tenants.

B. Administrative and Judicial Relief Sought

44. The Claimant submitted several complaints to various administrative and judicial authorities: She alleged 1) the members of the student body and/or faculty of Daegu Health College released student contact information to and received monetary compensation from certain real estate agents; 2) those studio-building landlords, who colluded with the above mentioned certain real estate agents, illegally renovated the studio units by adding kitchen to the units and thus often caused fires inside building three times; and 3) this constituted a violation of various other law and regulations.

45. In 2014 and around February 2016, the Claimant petitioned for investigation regarding the illegal renovation of the landlords who colluded with certain real estate agents to Daegu-city, Buk-gu, municipal office. Yet, the Claimant has not received any meaningful response from the municipal office.

46. Given no answer from Daegu-city, Buk-gu municipal office, on May 29, 2017, the Claimant petitioned for investigation regarding the illegal renovation of the landlords who colluded with certain real estate agents to the Ministry of Land, Infrastructure and Transport. Yet, the Claimant has not received any meaningful response.

47. On December 20 2014, the Claimant submitted a complaint to the Anti-Corruption &

Civil Rights Commission ("ACRC"), alleging every year the members of the student body and/or faculty of Daegu Health College and Daegu Science University released almost all student contact information to and received monetary compensation from certain real estate agents in violation of the Monopoly Regulation and Fair Trade Act ("Fair Trade Act") and the Licensed Real Estate Agent Act of Korea, thereby causing serious monetary damage to landlords, including herself, who did not collude with the student body and/or faculty. The complaint to "ACRC" [REDACTED] was transferred to the Supreme Prosecutors' Office ("SPO"), then to the Daegu District Prosecutors' Office ("Daegu PO"), which had the jurisdiction over the matter. However, the Claimant has not received any meaningful investigation result.

48. The Claimant filed another complaint with ACRC alleging violation of the Licensed Real Estate Agents Act on December 31, 2019 [REDACTED]. Yet, the Claimant has not received any meaningful investigation after the complaint was transferred to Daegu-city and Dagu-city, Buk-gu municipal office, respectively.

49. The Claimant filed another complaint with ACRC alleging prejudicial investigation by police with ACRC around late 2016 [REDACTED], which was transferred to Daegu Police Department and yet did not receive any meaningful result.

50. The Claimant also lodged complaints to other governmental entities, including 1) Daegu Gangbuk Police Station, alleging violation of the Building Act on January 29, 2015, and November 10, 2016; 2) Daegu Gangbuk Police Station, alleging violation of the Personal Information Protection Act on July 27, 2016 [REDACTED]; 3) Board of Audit and Inspection of Korea on December 4, 2017 [REDACTED]; and 4) Ministry of Education on January 23, 2018 [REDACTED].

██████████. However, the Claimant has not received any meaningful investigation results.

51. Further, the Fair Trade Commission ("Commission"), which holds the exclusive right to find indictments for a violation (Article 71) of the Fair Trade Act, decided not to indict in its opinion rendered on January 7, 2020, because, even though more than two business entities must have interacted for the Fair Trade Act to apply, neither the student body nor the faculty was "business entity" within the meaning of the Fair Trade Act ██████████.

52. Around May 2020, the Claimant, through her attorneys, filed a criminal complaint with Daegu District Prosecutor's Office alleging violation of the Building Act, violation of the Personal Information Protection Act, violation of the Licensed Real Estate Agents Act, and fraud. ██████████. However, Daegu PO dismissed the Claimant's criminal complaint.

<CLAIMS RAISED BY THE CLAIMANT PURSUANT TO KORUS>

53. In 2012, Korea US Free Trade Agreement was ratified with chapter 11, Investment Dispute Mechanism called "Investor-State Dispute ("ISD")."

54. As stated in the above factual background, Daegu Book-gu Municipal Government, Daegu City Government and the Korean Government have violated their obligations to the Claimant, a U.S. investor under the terms of KORUS.

IV. Investment

55. KORUS Article 11-28 Definition of investment, (h), includes other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens, and pledges.
56. 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 to twenty years with a substantial amount of money invested and has been exposed to the fluctuation of the real property market. The Claimant's real estate property ownership constitutes investment prescribed in KORUS and under relevant arbitral decisions.
57. The Claimant's studio apartment buildings in [REDACTED] constitute "investment" within the meaning of Article 11.28 of the FTA. There is no question that her real property qualifies for an "asset" under the Article as it expressly mentions "immovable property" as an example in subparagraph (h).

V. Consent

58. The Claimant was a United States citizen when KORUS FTA was ratified, and thus consent requirement is satisfied under the KORUS FTA, ARTICLE 11.17:

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

CONSENT OF EACH PARTY TO ARBITRATION which states as follows:

1. *Each Party consents to the submission of a claim to arbitration under this Section in accordance with this Agreement.*
2. *The consent under paragraph 1 and the submission of a claim to arbitration under this Section shall satisfy the requirements of:*
 - (a) Chapter II (Jurisdiction of the Centre) of the ICSID Convention and the ICSID Additional Facility Rules for written consent of the parties to the dispute;*
 - and*
 - (b) Article II of the New York Convention for an "agreement in writing."*

VI. Expropriation

59. The Claimant's property (Investment I) was expropriated in violation of KORUS

FTA, ARTICLE 11.6: EXPROPRIATION AND COMPENSATION, 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;*
 - (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.

60. The Korean law for the purpose of this Notice is the "The Housing Act"

61. The expropriation for the construction project was not for public purposes because its main purpose is to build an apartment complex for private citizens.

62. Although the Act's main purpose is "contributing to the residential stability of people and the improvement of residential standards," the government's decision on the improvement of residential standards is arbitrary and ambiguous. Further, in a construction project in Taejun-dong area, the government as a public entity, upon approval of the civil union's request for construction, assigns the construction project to private entities including the construction union and a construction company.

63. The expropriation of the Claimant's property was not done in a non-discriminatory manner because it was not authorized; first, not included, later included, and the compensation amount was determined arbitrarily. The expropriation of the Claimant's property was not equivalent to the fair market value of expropriated investment immediately before the expropriation took place.

64. The expropriation of the Claimant's property was not in accordance with due process

and, particularly, emotional distress was involved due to suspicious incidents involving the fire on the electric meter, gas leaking, and shattered glass in the parking lot.

VII. Fair and Equitable Treatment

65. Korea violated the minimum standard of treatment (“MST”) it was obliged to provide to the Claimant’s Investment, including fair and equitable treatment (“FET”), and full protection and security (“FPS”) pursuant to Article 11.5 of the FTA.

66. Article 11.5 of the FTA obliges Korea to “accord to covered investments treatment in accordance with customary international law, including fair and equitable treatment and full protection and security” while: (1) FET “includes obligation not to deny justice in criminal, civil, or administrative adjudicatory proceedings in accordance with the principle of due process embodied in the principal legal systems of the world”; and (2) FPS “requires each Party to provide the level of police protection required under customary international law.” Annex 11-A of the FTA further provides that “the customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the economic rights and interests of aliens.”

67. During the process of expropriation of the Claimant’s investment property in [REDACTED] [REDACTED] a violation of the fair and equitable treatment standard prescribed in “KORUS Article 11.5, Minimum Standard of Treatment” has occurred because the Claimant’s requests for a police investigation on fire on the electric meter, gas

leaking and shattered glass in the parking lot were denied and, therefore, justice in accordance with the principle of due process was denied.

68. Under the FTA, Korea is obliged to provide the level of police protection required under customary international law for the investment from physical damage. And the customary international law mandates Korea to exercise “reasonable diligence” or “due diligence” to prevent such damage as confirmed by previous tribunals in Koch Mineral and Ampal and Biwater. Specifically, pursuant to the Biwater tribunal, Korea “must show it has taken all measures of precaution to protect” the investment.

69. In the present case, the first incident of fire should have put the local police on alert to exercise due diligence to protect the Investment I from the series of attacks that followed: Due to the conflict over the Investment that began since 2017, the Claimant had grounds to believe there was a person or persons who would benefit from her Investment I physically removed. So, she reported to the police. However, the police, ignoring the desperate cry of a foreign investor, failed to take “reasonable, precautionary and preventive action” to protect the Investment I from the following attacks, which could have potentially led to not only the loss of the Investment I but of life as well.

70. Further, The Claimant suffered from severe mental and emotional distress from the incident and the inaction of the police.

VIII. Denial of Justice

71. With regard to the Claimant’s Investment in [REDACTED].

(“Investment II”), Korea failed to accord FET by Denying Justice.

72. The *Swisslion* tribunal held that “[n]ot to deny justice implies at a minimum giving access to the courts.”³

73. The Tribunal in *Grand River* also confirmed by citing Brownlie that the “[d]enial of justice exists when there is a denial, unwarranted delay or obstruction of access to courts...”⁴

74. The Claimant suffered monetary damage from the acts of third parties who colluded to gain an unfair advantage. So, she relentlessly endeavored to have her case presented in courts by filing complaints to various government authorities, including police, ACRC, and PO. However, her every effort to acquire access to courts was denied.

IX. Consultation and Negotiation

75. Pursuant to KORUS Article 11.15: Consultation and Negotiation, The Claimant made good faith efforts to resolve the dispute in an amicable way by engaging in dialogue with the union during the period when the union’s four requests for sales were being made. Yet, the efforts have failed up until now although The Claimant understands

³ *Swisslion DOO Skopje v. The Former Yugoslav Republic of Macedonia*, ICSID Case No. ARB/09/16, Award, 6 July 2012, para. 263.

⁴ *Grand River Enterprises Six Nations, Ltd., et al. v. United States of America*, ICSID, UNCITRAL, Award, 12 January 2011, para. 223.

that further efforts should be made pursuant to KORUS Article 11.15.

X. Local Remedy Not Pursued

76. The Claimant did not seek any local remedy after expropriation was finally declared, choosing instead to submit this Notice of Intent, thus satisfying the requirement prescribed in KORUS, ANNEX 11-E.

XI. Relief Sought

77. As a result of these violations of KORUS, The Claimant has suffered billions of Korean won in damages. The Claimant reserves the right to elaborate and expand on these claims, including but not limited to actual damages and moral and/or restitution damages. If the consultations and negotiation are unsuccessful, the Claimant will submit, in her own right, a claim for arbitration seeking compensation for the damages caused by or arising out of Daegu Buk-gu municipal government, Daegu city government and the Republic of Korea's measures that are inconsistent with their obligations contained in Chapter 11 of KORUS, along with interest and cost. The Claimant estimates damages in an amount of not less than \$4,000,000 USD.

July 7, 2022

Respectfully submitted,

Dodam Law Firm

[REDACTED]

[REDACTED]

[REDACTED]

Tel: [REDACTED]

E-mail: [REDACTED]

[REDACTED]

Signature of the Claimant, [REDACTED]