sIN THE MATTER OF AN ARBITRATION UNDER THE ARBITRATION RULES OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW AND THE FREE TRADE AGREEMENT BETWEEN THE REPUBLIC OF KOREA AND THE UNITED STATES OF AMERICA

BETWEEN

ELLIOTT ASSOCIATES, L.P.

Claimant

AND

REPUBLIC OF KOREA

Respondent

CLAIMANT'S REPLY SUBMISSION ON REMITTED ISSUE
30 JUNE 2026

THREE CROWNS

KOBRE & KIM

TABLE OF CONTENTS

I. INTRODUCTION

1. In its Submission dated 27 April 2026, EALP set out how this Tribunal has already determined that, on the basis of an extraordinary evidential showing made available due to the work of the ROK's own Special Prosecutor:

   a. The Blue House, the MHW,[1] through the Minister of Health and Welfare Mr. Hyeong-pyo Moon (***Minister Moon***) and others, caused the NPS to vote in favor of the Merger, as a matter of fact; and

   b. Did so with EALP individually and specifically in their crosshairs, so as to make that cause and effect sufficiently proximate to satisfy the international law test of legal causation.

2. The key question that arises for the Tribunal in these remitted proceedings is, therefore, whether and how the English Court's different decision as to the legal status of the NPS—in its view *not* a (*de facto*) State organ—affects those determinations already made.

3. It is EALP's simple submission that it obviously does not, for these reasons:

   a. The causation and proximity that this Tribunal has already found to exist was unrelated to, and not dependent on, the legal status of the NPS as a State organ or not;

   b. Rather, it was based on an overwhelming factual record of Blue House, Minister Moon and MHW orders and directions to the NPS, and the NPS's implementation of those orders and directions, regardless of whether the NPS had the legal status of a State organ or not.

4. For its part, the ROK does not offer an answer to that narrow question of how a different decision as to the legal status of the NPS could possibly impact this Tribunal's existing decisions on factual and legal causation; for it has no different answer to give.

---

[1] Defined terms, unless otherwise specified, have the same meaning as in the Claimant's Amended Statement of Claim, Statement of Reply and Defense to Preliminary Objections, Rejoinder on Preliminary Objections, Post-Hearing Briefs and Submission on Remitted Issue.

5. Instead, the ROK proceeds to recycle its failed arguments of the past on causation. They simply do not address the evidence of the government directions that were given to the NPS, and how the NPS implemented them. Indeed, the ROK stipulated to much of this evidence in the proceeding presided over by this Tribunal and which led to the Award. Rather, the ROK posits again a case of what *might* have happened, how the NPS *might* have voted, in the absence of the government coercion it undoubtedly received and followed.

6. But the ROK's attempt to resort to a hypothetical exercise of what might have been is wrong as a matter of law, as this Tribunal has already determined. And rightly so, EALP respectfully submits: when a State has subverted a decision-making process, it is not open to it to cavil with causation by positing that an "honest" or "fair" decision-maker would have reached the same outcome; nor is it open to the State to seek to take the benefit of any evidentiary uncertainty created by its own subversion of the decision-making process.[2]

7. It is also an artifice as a matter of fact, for reasons that the Tribunal has already heard and accepted. And so the ROK attempts to argue, once again, that:

   a. There were merits to the Merger;[3]

   b. Other shareholders of SC&T voted in favor of the Merger;[4]

   c. It was not out of the ordinary that the Experts Voting Committee (***EVC***) was bypassed in the process of deciding the Merger vote;[5] and

---

2 *See Amco Asia Corporation and others v. Republic of Indonesia*, ICSID Case No. ARB/81/1, Award in Resubmitted Proceedings, 31 March 1990, **Exh CLA-237**, ¶¶ 74–75, 139, and especially 174.

3 *See, e.g.*, Response to Notice of Arbitration, ¶ 4; SOD, ¶¶ 448–451; ROK's Rejoinder, ¶¶ 216(c), 448; ROK's Post-Hearing Brief, ¶¶ 9, 92; ROK's Reply Post-Hearing Brief, ¶ 30. *See also* Annex A, rows 4–5.

4 *See, e.g.*, Response to Notice of Arbitration, ¶ 5; SOD, ¶¶ 415–420, 463, 483–484; ROK's Rejoinder, ¶¶ 243–245; Arbitration Hearing, Day 2, 67:10–68:5 (Counsel for the ROK) and Day 9, 110:3–11 (Counsel for the ROK); ROK's Reply Post-Hearing Brief, ¶ 54. *See also* Annex A, row 13.

5 *See, e.g.*, ROK's Rejoinder, ¶¶ 439–440; Arbitration Hearing, Day 2, 135:9–20 (Counsel for the ROK); ROK's Post-Hearing Brief, ¶ 93; ROK's Reply Post-Hearing Brief, ¶ 38. *See also* Annex A, row 11.

d. Ultimately, that the Investment Committee might have voted in favor of the Merger even if it had not been presented with the doctored numbers and fabricated synergy effect calculation, that the ROK does not contest it was presented with.[6]

8. Of course, none of these arguments is new; all of them were tried before the Award; and none of them stopped the Tribunal from finding that causation in fact and law had been established. And none of them is affected by a different decision as to the legal status of the NPS. Thus the ROK's already-failed case on causation:

a. Does not address the evidence of the NPS informing EALP directly before the government intervention that it would not support the Merger;[7]

b. Does not address how the NPS's own proxy advisor, the Korean Corporate Governance Service, advised it, in unequivocal terms, to vote against the Merger because it was overwhelmingly destructive of value for the NPS;[8]

c. Does not address how, in parallel circumstances, the NPS directed its decision in relation to the proposed merger between SK C&C Holdings and SK Holdings (the ***SK Merger***), just a few weeks before, to the EVC, which voted against that merger;[9] and

---

6 *See, e.g.*, SOD, ¶¶ 453–459; ROK's Rejoinder, ¶¶ 225–227, 231–234, 246–252, 441, 444–450; Arbitration Hearing, Day 2, 128:21–129:25 (Counsel for the ROK) and Day 9, 111:4–9 (Counsel for the ROK); ROK's Post-Hearing Brief, ¶¶ 91–92, 94; ROK's Reply Post-Hearing Brief, ¶ 31–33. *See also* Annex A, rows 3, 12.

7 First Smith Statement, ¶¶ 28–29; Second Smith Statement, ¶ 43; Third Smith Statement, ¶ 7(v); Letter from Elliott to NPS, 3 June 2015, **Exh C-187**, p. 3 (EALP's record of a meeting between EALP and NPS, noting that the NPS agreed that "an all-shares merger between the Company [SC&T] and Cheil Industries on the basis of current respective share prices simply could not be beneficial to the Company's shareholders given the Company's currently depressed equity market value and the extreme over-valuation of Cheil Industries' equity.").

8 KCGS, "Report on Analysis of Agenda Items of Domestic Listed Companies (2015) - Samsung C&T", 3 July 2015, **Exh C-402**, pp. 1–3 (recommending that, "[t]he present merger of SC&T and Cheil raises serious concerns in terms of shareholder value. We recommended that a vote be cast in disapproval of this merger."). *See also* "South Korea advisory firm recommends NPS vote against Samsung deal", Reuters, 7 July 2015, **Exh C-32**; "KCGS Advises NPS to Oppose Samsung C&T Merger", The Korea Bizwire, 9 July 2015, **Exh C-37**.

9 [NPSIM], "Review of Referral of SK-SK C&C Merger to the Experts Voting Committee", [10 June 2015], **Exh C-385**, p. 1 ("[C]onsidering the need to set clear standards for exercising voting rights on mergers in cases of restructuring of *chaebol* corporate governance in the future, the issue [of the SK Merger] needs to be referred to the Experts Voting Committee."); "Exercise

d. Ultimately, relies on hypothetical non-facts and simply ignores the evidence of an overwhelming number of the Investment Committee members who themselves have confirmed that, but for the fabricated synergy effect calculation that they were presented with, they would not have voted in favor of the Merger.[10] Indeed, they could not do so without violating the NPS's investment principles.[11]

9. So far as legal causation is concerned, while the ROK seeks to engage in a legal debate as to what the relevant standard of "proximity" involves as a matter of international law, it utterly ignores the overwhelming evidence that:

a. The ROK had EALP specifically front of mind, and in its crosshairs, as it conceived and executed the intervention that caused the NPS to vote the way it did;[12]

---

of Voting Rights for Domestic Share Management", 17 June 2015, **Exh R-102**, p. 1 (the NPS Investment Committee referring the decision on the SK Merger to the Experts Voting Committee); MHW, "Report on the 2015 2nd Special Committee on the Exercise of Voting Rights Meeting Result", 24 June 2015, **Exh R-109**, p. 1; NPS Press Release, 24 June 2015, **Exh C-204** ("[W]hen considering the merger ratio, the timing of retirement of treasury stock, and other such factors, [the Experts Voting Committee] determined that there were concerns that it would damage SK Holdings' shareholder value, so it decided to oppose the merger."). *See also* "NPS decides to oppose SK M&A", Hankyoreh, 24 June 2015, **Exh C-26**.

10 Statement Report of [redacted] to the Special Prosecutor, 28 December 2016, **Exh C-472**, pp. 10–11; Second Statement Report of [redacted] to the Special Prosecutor, 27 December 2016, **Exh C-467**, pp. 7–8, 14; Transcript of Court Testimony of [redacted] (Moon/Hong Seoul Central District Court), **Exh C-502**, pp. 14–15, 38; Transcript of Court Testimony of [redacted] (Moon/Hong Seoul Central District Court), 10 April 2017, **Exh C-500**, pp. 8, 12 (confirming the prosecutor's statements); Transcript of Court Testimony of Won-yeong Choe and [redacted] (JY Lee Seoul Central District Court), 20 June 2017, **Exh C-515**, p. 6; Second Statement Report of [redacted] to the Special Prosecutor, 28 December 2016, **Exh C-471**, p. 7; Transcript of Court Testimony of [redacted] (Moon/Hong Seoul Central District Court), 5 April 2017, **Exh R-291**, p. 55; Statement Report of [redacted] to the Special Prosecutor, 28 December 2016, **Exh C-474**, p. 17; Statement Report of [redacted] to the Special Prosecutor, 28 December 2016, **Exh C-473**, pp. 21–22. *See also* EALP's Opening Presentation, 15 November 2021, slide 68.

11 Fund Operational Guidelines, **Exh C-194** Article 4 (the Fund Operational Guidelines require that the NPS's voting decisions must be made in accordance with principles of "profitability", "stability" and "public benefit", and should not be subverted for other purposes); Voting Guidelines, **Exh C-309**, Articles 3, 4, 6 and Annex 1, Article 34 (the Voting Guidelines require that voting decisions made on behalf of the National Pension Fund are exercised in good faith and for the benefit of Korean pension holders, and shall be exercised in a manner so as to deny proposals which would lower shareholder value or be contrary to the interests of the Fund). *See also* Seoul High Court Case No. 2017No1886, 14 November 2017, **Exh C-79**, p. 71.

12 [Blue House], "Direction of the National Pension Service's Exercise of Voting Rights regarding the Samsung COT Merger", undated, **Exh C-588**, p. 41 (a Blue House memorandum noting

b. Not only was the effect of its intervention on EALP specifically foreseeable, but it was foreseen, as was the likely investment treaty claim against the ROK that would result;[13]

c. Taken together, the evidentiary record in this case satisfied any reasonably conceivable international law test of proximity, including the test that the Tribunal has already adopted, and which it is not able, and has no reason to, depart from.

10. In short, despite the ROK's success in delaying the enforcement of an award rendered against it now some three years ago, in relation to serious violations of international law that now date back over a decade, what remains of this arbitration is very simple. We invite the Tribunal to confirm the logical conclusions of its prior decisions without any further delay.

* * *

11. In the remainder of this Reply Submission on the Remitted Issue (***Reply***), EALP demonstrates that:

"Elliott[’s]" opposition to the Merger and observing that "[o]ppos[ing] the merger" would be perceived as tantamount to "help[ing] a foreign hedge fund."); Second Suspect Examination Report of Jin-su Kim to the Special Prosecutor, 9 January 2017, **Exh C-488**, p. 6; Work diary of [Won-yeong Choe], entry dated [25 June 2015], **Exh C-367**, p. 4; [Blue House], "Review of Domestic Companies' Measures to Defend Management Rights Against Foreign Hedge Funds", undated, **Exh C-587**; Transcript of phone calls between Team Leader [redacted] and Deputy Director Jin-ju Baek, 18 April 2017, **Exh C-333**, p. 12; "[[redacted]], "Issues in Case the Investment Committee Votes on the SC&T Merger", [7 or 8 July 2015], **Exh C-420**, p. 3; [Ministry of Health and Welfare], "Action Plans for Initiating Discussions at the Investment Committee", [8 July 2015], **Exh C-419**, p. 1. *See also* Seoul High Court, Park, **Exh C-286**, p. 87 (recounting President Park's testimony that "[a]t the time of the Merger, I found it regrettable and worrisome that [Samsung], a leading corporation in Korea, was being attacked by [Elliott], a foreign hedge fund."); Transcript of Court Testimony of Ki-nam Kim (JY Lee Seoul Central District Court), 14 June 2017, **Exh C-514**, p. 19; Transcript of Court Testimony of Jong-beom An (JY Lee Seoul Central District Court), 4 July 2017, **Exh C-520**, p. 41.

13 Transcript of Court Testimony of Wan-seon Hong (Moon/Hong Seoul Central District Court), 17 May 2017, **Exh C-511**, p. 55; Statement Report of Hong-seok Choe to the Special Prosecutor, 5 January 2017, **Exh C-483**, pp. 39–40, 42; Transcript of Court Testimony of Ki-nam Kim (JY Lee Seoul Central District Court), 14 June 2017, **Exh C-514**, p. 19; Transcript of Court Testimony of Wan-seon Hong (JY Lee Seoul Central District Court) (Part Two), 21 June 2017, **Exh C-517**, p. 74; Transcript of Court Testimony of Jong-beom An (JY Lee Seoul Central District Court), 4 July 2017, **Exh C-520**, pp. 24, 28, 30–33, 37, 41; Transcript of Court Testimony of Jong-beom An (Moon/Hong Seoul High Court), 26 September 2017, **Exh C-525**, p. 12.

a. The ROK improperly seeks to expand the remitted issue beyond the English Court's Order (***Section II***);

b. The Tribunal's binding findings already establish factual causation (***Section III***);

c. The Tribunal's binding findings already establish legal causation (***Section IV***); and

d. EALP is entitled to its costs (***Section V***).

12. EALP's Reply is accompanied by legal authorities **CLA-237** to **CLA-241** and ***Annexes A*** and ***B***.

II. THE ROK SEEKS TO EXPAND THE REMITTED ISSUE BEYOND THE ENGLISH COURT'S ORDER

13. The issue that has been remitted to the Tribunal is as follows:

> Did the breaches of the Treaty found to have been constituted by the measures of the Blue House, the Minister of Health and Welfare, and the Ministry of Health and Welfare cause loss or damage to the Claimant, and the relief to be awarded for such loss or damage?[14]

14. As set out in EALP's Submission and as further detailed in this Reply, the Tribunal has already made factual findings in its Award that confirm that the conduct of the Blue House, Minister Moon and the MHW caused EALP's loss.[15] These findings are undisturbed by the English Court's conclusion that the NPS did not have the legal status of a (*de facto*) State organ under international law. They are binding on the ROK and not open to relitigation: the Court has explicitly

---

[14] *Republic of Korea v. Elliott Associates, L.P.*, CL-2023-000395, Order of Foxton LJ, 18 March 2026 (the ***Order***), **Exh CLA-226**, ¶ 3.

[15] *See below*, Section III. *See also* EALP's Submission on Remitted Issue, 27 April 2026 (***EALP's Submission***), ¶¶ 52–63.

stated that the remittal order "will not affect or allow Korea to revisit findings which have not been set aside."[16]

15. The sole issue before the Tribunal thus is narrow, straightforward and largely one of confirmation: *Does the determination by the Court that the NPS may not be regarded as a State organ alter the Tribunal's finding that the legal requirement of causation is met?* The answer is 'no'.

16. The ROK, however, improperly seeks to broaden the scope of these remittal proceedings, relying in particular on paragraph 265 of the Court's Judgment in which it held that:

> While I accept that there are passages in the Award which provide support for EALP's characterisation of the Tribunal's assessment, given the findings at [814] and [821] both of which expressly refer to and rely upon the fact that the acts of NPS have been found to be acts of Korea, I am not persuaded that it is open to me to conclude on a fair reading of the Award that the Tribunal has found that, even if the acts of NPS are not attributable to Korea, legal and factual causation are established in respect of the breaches constituted by the Blue House Measures alone.[17]

17. Drawing on this paragraph, the ROK contends that findings of both factual and legal causation are nowhere to be found in the Award,[18] and that the Tribunal is entitled to consider the issue of causation entirely "afresh".[19] That is not an accurate understanding of paragraph 265 of the Court's Judgment; nor is it an accurate reading of the Award. And this Tribunal is certainly not required to—indeed it is not entitled to—consider "afresh" issues it has already determined.

18. Paragraph 265 must be understood in context. It addresses a particular aspect of section 67 of the English Arbitration Act, which gives a court discretion *not* to set

---

16 *See Republic of Korea v. Elliott Associates, L.P.*, CL-2023-000395, Ruling on Consequential Issues, 18 March 2026 (the ***Ruling***), **Exh CLA-227**, ¶ 7.

17 *Republic of Korea v. Elliott Associates, L.P.* [2026] EWHC 368 (Comm) (the ***Judgment***), **Exh CLA-222**, ¶ 265. *See also* ROK's Submission on the Remitted Issue, 7 June 2026 (***ROK's Submission***), ¶ 24.

18 *See, e.g.*, ROK's Submission, ¶ 41(d).

19 *See* ROK's Submission, ¶ 3. *See also* id., ¶ 28(b).

aside any part of an award, *even if* it reaches a different view from the Tribunal on an issue of jurisdiction, where the court determines that its different decision on jurisdiction would not have made any difference to the outcome of the Award.

19. The English Court will only exercise that discretion where it is beyond doubt that its own different finding on jurisdiction would not have affected the outcome. By way of example, in the case of *Integral Petroleum SA v. Melars Group*, the sole arbitrator (Mr. Laurie Craig) had found that he did not have jurisdiction. Seized of a set-aside application by the unsuccessful claimant in that case, the court found that the sole arbitrator was wrong so to decide because he did have jurisdiction. The English Court nevertheless did not set aside his award because the sole arbitrator had also included express statements in his award in which he made clear that he would have decided against the claimant on liability even if he had found that he had jurisdiction.[20]

20. Against this backdrop, the ROK submitted to the Court that it could not exercise this discretion to allow the Award entirely to stand unless it was "completely clear" that the Court's different decision on a jurisdictional issue would make no difference.[21] Accepting this submission on the limited discretion that exists under section 67 not to set aside an award where it has reached a different decision than the tribunal, the Court declined to exercise it. It did so because, even though it found that there were numerous indications in the Award that a different decision on NPS attribution would not have affected the Tribunal's findings on causation,[22] the Tribunal had made an express statement at paragraph 814 of the Award that it was not required to find that the actions of the Blue House and MHW alone caused EALP's loss in light of its finding that the NPS was also the ROK.[23]

---

20 *Integral Petroleum SA v. Melars Group Ltd*, [2015] EWHC 1893 (Comm), **Exh CLA-239**, ¶¶ 26–27 (holding that the issue of whether to grant relief in a s. 67 application is discretionary, and that the court may decline to grant relief if it finds that a jurisdictional error has had no effect on the merits of the claim and the relief granted). *See also* Judgment, ¶ 255.

21 *Republic of Korea v. Elliott Associates, L.P.*, CL-2023-000395, High Court Hearing Transcript, Day 3 (4 December 2025), **Exh CLA-224**, 164:16–21.

22 Judgment, **Exh CLA-222**, ¶ 264.

23 *See* Judgment, **Exh CLA-222**, ¶ 265.

21. In short, the Court's judgment was that, in light of the Tribunal's position not to rule on the issue in the original Award, it fell to the Tribunal itself—and not the Court—to determine whether its existing findings on causation remained unchanged.

22. In this regard, and as the ROK cannot credibly deny, the Award contains numerous findings relevant to and concerning causation that have not been set aside, continue to bind the Parties and the Tribunal, and that therefore circumscribe the scope of the issues to be considered on remittal. EALP set out those pertinent findings in its Submission,[24] and addresses them again in ***Section III***, below.

23. By way of example, the Tribunal found in various places in its Award—as a matter of fact—that the NPS acted effectively as an instrument of the MHW in the implementation of a government policy:

> [The ROK] through the MHW, intervened in the NPS's vote on the Merger and instructed the NPS to ensure that the vote would be in favor of the Merger; and [t]he NPS, under the direction and instructions of the MHW, took steps to ensure that the vote would be conducted by the Investment Committee rather than the Experts Voting Committee, influenced the vote conducted by the Investment Committee, including by fabricating a synergy effect of the Merger that had no basis in fact and meeting with members of the Investment Committee, to the effect that the Investment Committee voted in favor of the Merger.
>
> . . . the NPS did not take its decision independently, based on the commercial merits of the Merger, but acted under the direction and instructions of the MHW and thus effectively as an instrument of the MHW in the implementation of a governmental policy.[25]

24. These findings of fact were unrelated to, and not dependent on, the Tribunal's separate finding that the NPS had the legal status of a (*de facto*) State organ. As a result, they were not set aside, and they most certainly cannot be considered

---

24 *See* EALP's Submission, Section II.B.1.

25 Award, ¶¶ 602, 623.

"afresh". They therefore delimit the facts that are open for consideration in these proceedings. As noted in EALP's submissions in the Case Management Conference of 7 April 2026, a remittal revives the Tribunal's jurisdiction "only to the extent of the Court's remission". [26] English law does not permit "[t]he reopening by the arbitrators of findings which there were no grounds for remitting and which they had already conclusively decided".[27]

25. As a result, the remitted issue is narrow in scope and delimited by the findings in the Award that survived set-aside. Those findings: (i) establish as a matter of fact that the Blue House, Minister Moon and/or MHW caused the NPS to vote in favor of the Merger, and that the NPS's casting vote caused the Merger to be approved, leading to EALP's loss;[28] and they also (ii) confirm that the consequences of the ROK's unlawful conduct were sufficiently foreseeable, and therefore proximate, to satisfy the test for legal causation.[29]

III. THE TRIBUNAL'S BINDING FINDINGS ALREADY ESTABLISH FACTUAL CAUSATION

26. The Tribunal has already made findings on factual causation and determined the test for factual causation under international law. In short, the Tribunal has already held that the *burden* of proof was on EAL to satisfy, and that the applicable *standard* of proof is the balance of probabilities. The Tribunal held that this burden was amply discharged by EALP on the evidence before it. These findings are not open to the ROK to relitigate.

27. EALP proceeds next to recall those findings and the overwhelming weight of evidence they were based on, before addressing why the handful of new decisions the ROK has introduced into these proceedings could not in any event have

---

26 EALP's submissions for the case management conference, 7 April 2026, ¶ 17 (quoting *Glencore International AG v. Beogradska Plovidba (The "Avala")* [1996] 2 Lloyd's Rep 311, **Exh CLA-217**, p. 316).

27 *Sans Souci Ltd v. VRL Services Ltd* [2012] UKPC 6, **Exh CLA-229**, ¶ 17.

28 *See below*, Section III.

29 *See below*, Section IV.

disturbed them. EALP begins, however, by recalling the Tribunal's existing finding as to the test for factual causation under international law.

A. THE TRIBUNAL HAS ALREADY CONFIRMED THE TEST FOR FACTUAL CAUSATION UNDER INTERNATIONAL LAW

28. In paragraph 815 of its Award, the Tribunal held that the relevant test for establishing factual causation "involves the determination of whether the claimant would have suffered the claimed loss or damages in the absence of the alleged breach".[30] In its Submission, the ROK acknowledges that, "in that paragraph, the Tribunal set out its views as to the applicable legal test[]" for factual causation.[31] Nevertheless, ignoring the finality of the Tribunal's holdings, and in an attempt to change those "views", the ROK seeks to modify the clear legal standard already identified by the Tribunal in two ways, neither of which has any merit.

29. *First*, the ROK attempts to impose an elevated standard of proof on the Tribunal in determining factual causation, from the "balance of probabilities", to something more akin to a criminal standard of "almost certain" or "very likely".[32] In so doing the ROK impermissibly attempts to rerun an argument that failed in the original arbitration proceedings that but-for causation "require[s] a showing of probability that is significantly higher than a pure balance of probabilities."[33] The ROK does so on the basis of the Tribunal's reference in its Award to the fact that EALP accepted[34] that it was required to demonstrate, as part of its case on quantum, "that the claimed [increase in the value of its shares] would have occurred in 'all probability'",[35] as well as a quote from the Award on Damages in *Bilcon v.*

30 Award, ¶ 815.

31 *See* ROK's Submission, ¶ 46.

32 ROK's Submission, ¶ 70(a).

33 ROK's Submission, ¶ 68. *Cf.* SOD, ¶¶ 400–407; ROK's Rejoinder, ¶¶ 427–434; ROK's Post-Hearing Brief, ¶¶ 87–90; ROK's Reply Post-Hearing Brief, ¶ 56.

34 *See* Award, ¶ 887 (recounting that "[t]he Claimant submits that, in the Claimant's favored but-for scenario, the Merger would have been rejected, and the market price of SC&T's share 'would, in all probability' have instantaneously converged upon its 'intrinsic value.'").

35 Award, ¶ 931.

Canada that also used the phrase in "all probability" in the context of providing the quantum of the investor's damages.[36]

30. However, the Tribunal did not accept the ROK's argument (which was made at length[37]) that the "in all probability" language used by the *Bilcon* tribunal imposed a higher standard of proof than that traditionally applied in international arbitration. To the contrary, at paragraphs 266 and 581 of its Award (both paragraphs preceding the Tribunal's discussion of causation that the ROK ignores[38]), the Tribunal held in clear terms that:

   a. "There is also no dispute between the Parties that in reaching affirmative findings of fact in criminal matters the Korean courts apply a higher standard of proof (i.e., beyond a reasonable doubt) *than the standard applicable in this arbitration (i.e., balance of probabilities)*."[39]

   b. "The Parties agree that the *applicable standard of proof in making this determination is balance of probabilities.*"[40]

31. In so doing, the Tribunal cited to a footnote in EALP's Reply supporting the position that a single standard of proof applies both to breach and to causation:

> [T]he single case that the ROK cites for its 'in all probability' / 'sufficient degree of certainty' assertion, *Bilcon v. Canada*, does not articulate a higher standard of proof than the general standard applied in international law, namely the 'balance of probabilities' or 'preponderance of the evidence' standard.[41]

---

36 *See* ROK's Submission, ¶¶ 73–77 (citing *Bilcon of Delaware, Inc. and others v. The Government of Canada* (UNCITRAL), Award on Damages, 10 January 2019, **Exh RLA-90**).

37 *See* SOD, ¶ 469; ROK's Rejoinder, ¶¶ 432–433. *See also* Award, ¶ 719 ("The Respondent . . . contends that, in international law, a 'high standard of factual certainty' is required to establish causation. The Respondent cites the award in *Bilcon v. Canada*").

38 *See* ROK's Submission, ¶¶ 66–77.

39 Award, ¶ 266 (emphasis added).

40 Award, ¶ 581 (emphasis added).

41 EALP's Reply, ¶ 506.

32. Nowhere in the Award did the Tribunal articulate a separate, higher standard of proof. Rather, the Tribunal cited to and quoted from EALP's legal authorities at length, all of which confirm that, regardless of the specific phrasing used, "international arbitration proceedings . . . do[] not impose on the Parties any burden of proof beyond a balance of probabilities."[42]

33. *Second*, the ROK also attempts to revive its already-failed argument that EALP must demonstrate (to its purported higher degree of proof) that in no other factual scenario in which the NPS had acted independently would EALP have suffered the same harm.[43] This approach materially departs from the causation test applied in the Award.

34. To recall, the Tribunal has decided that the factual causation analysis "involves the determination of whether the claimant would have suffered the claimed loss or damages in the absence of the alleged breach".[44] As EALP explained in its submissions in the arbitration, that analysis does not require positing all possible factual scenarios to rule them out.[45] The factual findings from the actual world are directly relevant to the counterfactual analysis: they demonstrate that the NPS's vote was not the product of an independent commercial assessment, but of the ROK's unlawful intervention. The but-for analysis does not ask the Tribunal to speculate as to the basis on which an Investment Committee member *might* have supported the Merger, absent the ROK's unlawful intervention; rather, it asks the Tribunal to interrogate the evidence that the Investment Committee member *did in fact* support the Merger because of the ROK's unlawful intervention.

35. The Tribunal will be familiar with the Parties' positions on this issue, because the ROK's argument is one that the Tribunal has already considered and already

42 Award, fn. 880 (citing *Ioannis Kardassopoulos and Ron Fuchs v. Republic of Georgia*, ICSID Case Nos. ARB/05/18 and ARB/07/15, Award, 3 March 2010, **Exh CLA-133**, ¶ 229).

43 *See* ROK's Submission, ¶¶ 49, 80. *Cf.* ROK's Post-Hearing Brief, ¶ 87; ROK's Rejoinder, ¶¶ 152–153; Award, ¶¶ 754–755 ("The Respondent contends that, even if one were to assume that the Respondent had intervened in the NPS's voting processes, there would be no Treaty breach if either the NPS could have voted the same way absent its intervention or the Merger could still have been approved absent the NPS's affirmative vote.").

44 Award, ¶ 815.

45 *See* EALP's Reply Post-Hearing Brief, ¶¶ 48–49; EALP's Post-Hearing Brief, ¶¶ 167–168.

rejected. During the Geneva hearing, Mr. Garibaldi asked the ROK to explain its causation argument in the following way:

> The problem I have is that I don't understand what is the theoretical or conceptual basis for the second argument, that causation is broken, a chain of causation is broken when the human agent [] who acted *could have achieved the same result* acting on his own without influence.[46]

36. The ROK had no answer to the Tribunal's question in the original arbitration.[47] The Tribunal thus proceeded to make clear in its Award that the causation inquiry does not require positing "potential events" that did not in fact occur.[48] While the Tribunal's finding on this point was set aside on the limited basis that the Court could not be sure that it was not premised on, or interrelated with, the Tribunal's finding that the NPS was a (*de facto*) State organ, it is of course open to the Tribunal itself to confirm it.

B. THE TRIBUNAL HAS ALREADY CONFIRMED THAT THE ROK CAUSED EALP'S LOSS AS A MATTER OF FACTUAL CAUSATION

37. EALP explained in its Submission on the Remitted Issue why factual causation has already been established on the basis of the applicable standard of proof and correct test for but-for causation.[49] To recall, there are three links in the causal chain between the ROK's breaches and EALP's loss: (i) the conduct of the Blue House, Minister Moon and the MHW (which the Tribunal has found to be in breach of the Treaty) caused the NPS to vote in favor of the Merger; (ii) the NPS caused the Merger to be approved; and (iii) the Merger caused EALP's loss.

38. In the sub-sections that follow, EALP addresses the assertions made in the ROK's Submission by reference to these three steps in the causal chain.

---

46 Arbitration Transcript, Day 2, 132:12–18 (Tribunal) (emphasis added).

47 *See* EALP's Reply Post-Hearing Brief, ¶ 49 ("The ROK deliberately avoids addressing Mr. Garibaldi's question, because it has no good answer to it.").

48 *See* Award, ¶ 822.

49 *See* EALP's Submission, ¶¶ 22–39.

1. The Blue House, Minister Moon and the MHW caused the NPS to vote in favor of the Merger

(i) The evidentiary record before the Tribunal

39. As the Tribunal will recall,[50] the ROK's illegal intervention, and its effect in leading the NPS to vote in favor of the Merger, is amply supported by an extraordinary weight of evidence that is uncommon in international arbitration.[51] That evidence emerged from Korea's own criminal investigation of its senior government officials that revealed extraordinary testimonies, statements and documents that would not otherwise have seen the light of day, and left no doubt that the NPS was subverted to vote in the manner the Blue House, Minister Moon and the MHW directed. That evidence was, in turn, relied on by the Korean courts in the Moon/Hong proceedings to make factual findings that confirm the causal chain between the conduct of the Blue House, the MHW and the NPS—findings of fact that the ROK *repeatedly stipulated to* in the underlying proceedings.

40. EALP recalls the most relevant underlying evidence below, including contemporaneous evidence of why the NPS voted as it did and how the NPS would have voted in the absence of any unlawful ROK intervention in that voting process.

<u>The NPS had recently voted against the SK Merger in similar circumstances, and had informed EALP that it would be voting against this Merger as well</u>

41. An important background to the ROK's intervention is that the NPS was, in parallel with considering the merits of the SC&T-Cheil Merger, also tasked with deciding how to vote on a proposed merger between two affiliated companies within the SK chaebol—SK C&C Holdings and SK Holdings (the ***SK Merger***)—which shared many of the same characteristics of the Merger. Like the Merger, the SK Merger also involved succession of control issues for a chaebol, and a merger ratio that threatened to effect a substantial transfer of value from the target to the acquirer, thereby benefitting a key stakeholder at the expense of minority

---

50 *See* EALP's Post-Hearing Brief, ¶¶ 161–171.

51 *See* Separate Opinion of J. Christopher Thomas, 20 June 2023, ¶ 56.

shareholders.[52] The NPS noted at the time that the NPS's decision on the SK Merger (which would predate the NPS's decision on the SC&T-Cheil Merger by around two weeks) was intended to set "*clear standards*"—i.e., a benchmark—for exercising voting rights on mergers for future chaebol restructurings, including the SC&T-Cheil Merger, and that the SK Merger decision should therefore be referred to the EVC to decide.[53]

42. As the Tribunal noted, the decision on the SK Merger was in fact referred to the EVC to decide, including because the merger was deemed "controversial for being advantageous for [the] largest shareholders" and because the vote was "difficult" to decide.[54] The EVC subsequently voted against the merger on 24 June 2015, noting that it was "not easy to judge . . . whether the merger would increase the company's growth potential and create synergy" and that the merger threatened to "damage shareholder value".[55]

43. The parallels between the SK Merger and the SC&T-Cheil Merger were obvious at the time, and the benchmark set by the EVC's vote on the SK Merger evidently signaled how the NPS would likely decide on the SC&T-Cheil Merger.[56] As one Blue House official told Korean prosecutors:

---

52 [NPSIM], "Review of Referral of SK-SK C&C Merger to the Experts Voting Committee", [10 June 2015], **Exh C-385**, pp. 1–2; NPS Press Release, 24 June 2015, **Exh C-204** ("when considering the merger ratio, the timing of retirement of treasury stock, and other such factors, [the Experts Voting Committee] determined that there were concerns that it would damage SK Holdings' shareholder value, so it decided to oppose the merger."); MHW, Direction of Voting Rights, 24 June 2015, **Exh R-108**. *See also* Reply, ¶¶ 98–103, 113–114; EALP's Post-Hearing Brief, ¶¶ 32–33. *See also* Statement Report of [redacted] to the Public Prosecutor's Office, 25 November 2016, **Exh C-457**, pp. 5–6 (previously untranslated); [[redacted]], "Issues in Case the Investment Committee Votes on the SC&T Merger", [7 or 8 July 2015], **Exh C-420**, p. 1.

53 [NPSIM], "Review of Referral of SK-SK C&C Merger to the Experts Voting Committee", [10 June 2015], **Exh C-385**, p. 1 (emphasis added) ("Considering the need to set clear standards for exercising voting rights on mergers in cases of restructuring of *chaebol* corporate governance in the future, the issue [of the SK Merger] needs to be referred to the Experts Voting Committee.").

54 Award, ¶ 226 (quoting Transcript of Court Testimony of [redacted] (Moon/Hong Seoul Central District Court), 26 April 2017, **Exh C-508**, p.6). *See also* MHW, "Report on the 2015 2nd Special Committee on the Exercise of Voting Rights Meeting Result", 24 June 2015, **Exh R-109**, p. 1; First Cho Statement, ¶¶ 15–16.

55 MHW, "Report on the 2015 2nd Special Committee on the Exercise of Voting Rights Meeting Result", 24 June 2015, **Exh R-109**, p. 1.

56 For example, senior officials in Samsung's Future Strategy Office exchanged messages on the day of the SK Merger vote noting that the EVC's decision "may be a signal regarding the Samsung case . . . ." *See* Record of text messages between Chung-ki Jang and various recipients, 24 June–9 July 2015, **Exh C-421**, p. 13231; Reply ¶ 103.

> Around late June 2015, the [NPS] referred the voting on SK merger to the Experts Voting Committee rather than the internal Investment Committee, and the Experts Voting Committee decided to oppose the merger. *Given this, the Cheil Industries and Samsung C&T merger could have been opposed [by the NPS] if nothing was done*.[57]

44. The NPS's anticipated voting intentions with respect to the SC&T-Cheil Merger were also made clear to EALP directly at a meeting in Seoul on 18 March 2015 between NPS representatives and Messrs. James Smith and Joon-ho Choi of EALP. At that meeting, the NPS *agreed* that a SC&T-Cheil merger at then-current share prices would be "highly detrimental to SC&T shareholders".[58] Mr. Smith subsequently confirmed this in a contemporaneous letter to the NPS, in which he recorded the NPS's position that an all-shares merger at prevailing share prices "simply could not be beneficial to [SC&T]'s shareholders, given [SC&T]'s currently depressed equity market value and the extreme over-valuation of Cheil Industries' equity."[59]

45. This contemporaneous evidence of the NPS's stated voting intentions prior to the ROK's unlawful interference in the Merger vote remains uncontested. Not only did the ROK not present any witnesses to contest it in the original arbitration proceedings, but it notably avoided asking Mr. Smith any questions on cross-examination about his evidence of his meeting with the NPS.[60]

The Blue House directed that the NPS support the Merger

46. Just days after the EVC's rejection of the SK Merger, President Park set in motion a chain of instructions that would cascade through the Blue House, the MHW and

---

57 Second Suspect Examination Report of Jin-su Kim to the Special Prosecutor, 9 January 2017, **Exh C-488**, p. 8 (emphasis added).

58 First Smith Statement, ¶¶ 28–29; Second Smith Statement, ¶ 43; Reply, ¶¶ 40–47; EALP's Post-Hearing Brief, ¶ 26

59 Letter from Elliott to NPS, 3 June 2015, **Exh C-187**, p. 3. *See also* EALP's Post-Hearing Brief, ¶ 26; Reply, ¶ 450(b).

60 *See* Reply, ¶¶ 41–42; EALP's Post-Hearing Brief, ¶ 26 and fn. 35. The English Court also accepted that "something to this effect was said" at the meeting, on the basis that Mr. Smith "wrote confirming such a statement after the meeting . . . without contradiction and his evidence on this issue was not challenged in cross-examination in the arbitration." (Judgment, **Exh CLA-222**, ¶ 35).

ultimately the NPS to unlawfully intervene in the exercise of the NPS's vote on the Merger in order to secure a favorable vote.

47. On or around 29 June 2015, President Park directed her Senior Presidential Secretaries to instruct Blue House Senior Executive Officials Messrs. Jin-su Kim and Hong-in Noh to "take good care of the NPS voting rights issue regarding the Cheil Industries and Samsung C&T merger".[61] Her Senior Presidential Secretary then instructed his subordinates at the Blue House, including Senior Executive Official Mr. Jin-su Kim, that, per "the President's orders", the NPS "should exercise its voting power wisely and enable the merger to proceed", since EALP was objecting to the Merger.[62] Mr. Kim stated that the Presidential Secretaries understood this direction to be an "order" to "ensure that the merger was accomplished," and that they "handled [their] work accordingly"[63] and instructed the executive officials in charge of the NPS.[64]

48. This Presidential order was also communicated to the MHW,[65] including Minister Moon, who understood that it was the President's intention to set the direction of

---

61 Second Suspect Examination Report of Jin-su Kim to the Special Prosecutor, 9 January 2017, **Exh C-488**, p. 5; Senior Presidential Secretary Won-yeong Choe's contemporaneous notes of the meeting confirmed the same instruction (see Work diary of [Won-yeong Choe], entry dated [25 June 2015], **Exh C-367**, p. 4). *See also* EALP's Post-Hearing Brief, ¶ 40(b); Reply, ¶ 105(a)–(b).

62 Second Suspect Examination Report of Jin-su Kim to the Special Prosecutor, 9 January 2017, **Exh C-488**, p. 7. *See also* Reply, ¶ 105(c).

63 Second Suspect Examination Report of Jin-su Kim to the Special Prosecutor, 9 January 2017, **Exh C-488**, p. 6. *See also* Fourth Suspect Examination Report of Hyeong-pyo Moon to the Special Prosecutor, 5 January 2017, **Exh C-482**, p. 9 (confirming that, in his view, the Senior Presidential Secretaries at the Blue House must have received instructions from President Park concerning the Merger: "[s]ince the two Offices of Senior Presidential Secretaries were working on this together, it is likely that someone superior—the President or the Chief Presidential Secretary—had instructed them to do so."); EALP's Post-Hearing Brief, ¶ 40(b); Reply, ¶ 105(a).

64 Second Suspect Examination Report of Jin-su Kim to the Special Prosecutor, 9 January 2017, **Exh C-488**, pp. 8–9. *See also* Reply, ¶ 105(c), (d).

65 Seoul High Court, Park, **Exh C-286**, pp. 87–90; Seoul High Court, Moon/Hong Decision, **Exh C-79**, pp. 37–38. *See also* EALP's Post-Hearing Brief, ¶ 40(c); Reply, ¶¶ 104, 105(e), 108(a). EALP notes that the ROK has introduced purported "corrections" to certain translations of the Korean court judgments and documents from the Korean court proceedings. As noted in EALP's Letter of 22 May 2026, responding to the ROK's Application to introduce new evidence, these translations are plainly self-serving and ultimately of little assistance to the Tribunal in deciding the remitted issue. The ROK did not raise any translation concerns during the original arbitration, and in some cases purports now to "correct" translations that the ROK itself submitted in the original arbitration. For the avoidance of doubt, EALP does not consider any "corrections" to be necessary and relies on the translations that the Parties agreed upon and that were presented to the Tribunal in the original arbitration.

the NPS's exercise of voting rights so that the Merger could be approved.[66] Minister Moon then instructed the MHW's Mr. Nam-kwon Jo, Director of the Office of Pension Policy (***Director General Jo***), that the Merger needed to be approved,[67] which was understood by Director General Jo as an instruction to ensure the Merger was approved by the NPS's Investment Committee.[68]

The MHW ensured that the vote would be decided by the Investment Committee, not the EVC

49. The Presidential order was communicated by MHW officials to the NPS. On 30 June 2015, at a meeting with NPS officials, the MHW's Director General Jo instructed the NPS's Chief Investment Officer, Mr. Wan-seon Hong, who also chaired the Investment Committee (***CIO Hong***), to "have the Investment Committee decide on the SC&T-Cheil merger."[69] This instruction was made with the understanding that there would be a greater chance of the Merger being approved by the Investment Committee rather than the EVC.[70] Director General

66 Second Suspect Examination Report of Jin-su Kim to the Special Prosecutor, 9 January 2017, **Exh C-488**, p. 24. *See also* Seoul High Court, Moon/Hong Decision, **Exh C-79**, p. 38; Award, ¶ 602 (finding that "[t]he Respondent, through the MHW, intervened in the NPS's vote on the Merger and instructed the NPS to ensure that the vote would be in favor of the Merger"); EALP's Post-Hearing Brief, ¶ 40(c); Reply, ¶ 108(a).

67 Seoul High Court, Moon/Hong Decision, **Exh C-79**, p. 29; Seoul Central District Court, Moon/Hong, **Exh C-69**, p. 44. *See also* Award, ¶ 586; Reply, ¶ 108(b).

68 Transcript of Court Testimony of Nam-kwon Jo (Moon/Hong Seoul Central District Court), 22 March 2017, **Exh C-497**, pp. 12, 47 ("[Moon] said, 'I think it would be good for the Samsung merger to go through', and I remember him saying it in favorable terms. . . . My judg[e]ment of 'it would be good for the Samsung merger to go through' was that, in order to do so, there was a possibility that going to the Experts Voting Committee would face opposition, so I did so thinking that the best way to implement the instructions, the Minister's words, was for the Investment Committee to make the decision."). *See also* Reply, ¶ 108(b).

69 Seoul Central District Court, Moon/Hong, **Exh C-69**, p. 7; Seoul High Court, Moon/Hong Decision, **Exh C-79**, pp. 29–33; Transcript of Court Testimony of Nam-kwon Jo (Moon/Hong Seoul Central District Court), 22 March 2017, **Exh C-497**, pp. 12–13; Transcript of Court Testimony of Wan-seon Hong (JY Lee Seoul Central District Court) (Part One), 21 June 2017, **Exh C-516**, p. 13. *See also* Award, ¶ 586; EALP's Post-Hearing Brief, ¶ 41(a); Reply, ¶ 108(c).

70 Seoul High Court, Moon/Hong Decision, **Exh C-79**, p. 14; Transcript of Court Testimony of Nam-kwon Jo (Moon/Hong Seoul Central District Court), 22 March 2017, **Exh C-497**, pp. 12, 14–16 (Director General Jo confirmed with the ROK's prosecutors that, "given the recent SK Merger, there was a possibility that the SC&T Merger vote could also be sent to the external EVC and voted against". Accordingly, Director General Jo decided that "the Investment Committee should decide directly [on the Merger vote] . . . in order for the vote to be passed as instructed"); Transcript of Court Testimony of Wan-seon Hong (JY Lee Seoul Central District Court) (Part One), 21 June 2017, **Exh C-516**, p. 13. *See also* EALP's Post-Hearing Brief, ¶ 41(a); Reply, ¶ 108(b)–(c).

Jo confirmed that he further warned CIO Hong that the MHW's instructions were not to be made public since the NPS should have decided this matter "independently", emphasizing that "*even a mere child*" would know to conceal the MHW's intervention.[71]

50. In the face of the MHW's instruction, NPS officials repeatedly pushed back, explaining that the matter should be sent to the EVC, because the EVC had been "created for this reason".[72] The MHW, however, concluded based on internal assessments that, given the independence and track record of the EVC (notably, its recent vote against the similar SK Merger), it would be difficult to ensure the approval of the Merger via the EVC.[73] The MHW described the Investment Committee as "fit for purpose" because it could be subjected to greater MHW

---

71 Transcript of Court Testimony of Nam-kwon Jo (Moon/Hong Seoul Central District Court), 22 March 2017, **Exh C-497**, pp. 14–15 (emphasis added); Seoul High Court, Moon/Hong Decision, **Exh C-79**, p. 14 Seoul Central District Court, Moon/Hong, **Exh C-69**, pp. 44–45. *See also* Award, ¶ 598; EALP's Post-Hearing Brief, ¶ 41(a); Reply, ¶ 108(c).

72 Transcript of phone calls between Team Leader [redacted] and Deputy Director Jin-ju Baek, 18 April 2017, **Exh C-333**, p. 12. (On 1 July 2015, NPS official Mr. [redacted] explained to the MHW's Deputy Director Jin-ju Baek that the EVC "was created for this reason", i.e., to decide on decisions such as the Merger vote.); Transcript of Court Testimony of [redacted] (Moon/Hong Seoul Central District Court), 26 April 2017, **Exh C-508**, p. 12. (On 6 July 2015, senior NPS officials met again with Director General Jo to explain this, concluding "I set forth an opinion that it would be appropriate to refer the matter to the Experts Voting Committee"). Seoul High Court, Moon/Hong Decision, **Exh C-79**, pp. 15–16; Seoul Central District Court, Moon/Hong, **Exh C-69**, p. 7; Transcript of Court Testimony of Jin-ju Baek (Moon/Hong Seoul High Court), 26 September 2017, **Exh C-524**, p. 4. *See also* Reply, ¶ 114; EALP's Post-Hearing Brief, ¶ 41(b).

73 [Ministry of Health and Welfare], "Point-by-Point Action Plan on Exercise of Voting Rights", [6 July 2015], **Exh C-410**, pp. 1–2; [Ministry of Health and Welfare], "Scenarios for Responding to Experts Voting Committee's Discussion on Exercise of Voting Rights", [6 July 2015], **Exh C-409**, p. 2. *See also* Reply, ¶ 114(d).

pressure and influence.[74] Deputy Minister Lee confirmed the point: because the EVC route was uncertain, the MHW sought a "sure way to approve" the Merger.[75]

51. Accordingly, on 8 July 2015, Minister Moon instructed his officials to "have the Investment Committee make [the] final decision in favor of the merger".[76] Director General Jo then called a meeting with NPS officials on the same day, where he instructed CIO Hong that "[i]t's the Minister's order, so the Investment Committee should vote in favor of the Merger."[77]

52. The EVC objected firmly, being of the view that the Merger decision should be referred to it.[78] Its Chairman wrote to CIO Hong and other Investment Committee members on 10 and 11 July 2015, noting that the Merger was "an agenda item for which it is difficult for the Investment Committee of the NPSIM to make a decision within itself", requesting referral to the EVC, and stating that the failure to refer the matter to the EVC was "*extremely inappropriate*" and in "*defiance of the purpose of existence of the Experts Voting Committee*."[79] The ROK's own fact

---

74 [Ministry of Health and Welfare, Draft], "Analysis of Pros and Cons of Exercising Voting Rights at Each Level", [undated, the final Report was sent to the Blue House on 8 July 2015], **Exh C-583**, p. 1 (noting that the outcome of a decision by the Experts Voting Committee was "uncertain[]" and there was a "[n]eed to continue managing members to maintain the votes"); [Ministry of Health and Welfare], "Action Plans for Initiating Discussions at the Investment Committee", [8 July 2015], **Exh C-419**, p. 1; Second Suspect Examination Report of Jin-su Kim, **Exh C-488**, p. 11; Transcript of Court Testimony of Tae-han Lee, 22 March 2017, **Exh C-496**, pp. 14–16; Transcript of Court Testimony of Nam-kwon Jo (Moon/Hong Seoul Central District Court), 22 March 2017, **Exh C-497**, pp. 28–32, 47; Third Statement Report of Ki-nam Kim to the Special Prosecutor, 3 January 2017, **Exh C-479**, p. 17. *See also* Award, ¶¶ 587 and 598; Reply, ¶ 114(d).

75 Transcript of Court Testimony of Tae-han Lee, 22 March 2017, **Exh C-496**, pp. 14–15. *See also* Reply, ¶ 114(f).

76 Transcript of Court Testimony of Tae-han Lee (Moon/Hong Seoul Central District Court), 22 March 2017, **Exh C-496**, pp. 15–16; Seoul High Court, Moon/Hong Decision, **Exh C-79**, pp. 17–18; Seoul Central District Court, Moon/Hong, **Exh C-69**, p. 8; Seoul High Court, Park, **Exh C-286**, pp. 83–84. *See also* Award, ¶¶ 587, 598; Reply, ¶ 114(f); EALP's Post-Hearing Brief, ¶ 41(c).

77 Transcript of Court Testimony of Nam-kwon Jo (Moon/Hong Seoul Central District Court), 22 March 2017, **Exh C-497**, pp. 32–33; Seoul High Court, Moon/Hong Decision, **Exh C-79**, pp. 17–18; Seoul Central District Court, Moon/Hong, **Exh C-69**, p. 8; Seoul High Court, Park, **Exh C-286**, pp. 83–84; PPO Second Indictment of JY Lee, **Exh R-316**, p. 57. *See also* Award, ¶¶ 587–588, 592, 598, 602(b); Reply, ¶ 114(f); EALP's Post-Hearing Brief, ¶ 41(c).

78 Seoul Central District Court, Moon/Hong, **Exh C-69**, pp. 9–10; Statement Report of [redacted] to the Public Prosecutor's Office, 25 November 2016, **Exh C-457**, pp. 15–16. *See also* Reply, ¶ 116.

79 Letter from [redacted] (EVC Chairperson) to Members and Joint Administrative Secretaries of the NPS Experts Voting Committee, re: NPS Experts Voting Committee Convocation Notice,

witness, Mr. Cho, a member of the EVC, testified at the Geneva hearing that the EVC considered CIO Hong's decision to be "*outrageous*".[80] This was because, as Mr. Cho explained, the EVC was not simply an advisory body but an "independent", "deliberative and decision-making body", that the SC&T-Cheil Merger was initially expected to be submitted to it, and its members protested that the EVC would be rendered meaningless if such important matters were withheld from it.[81]

53. The Blue House, MHW and NPS officials also expressed concern at the time that their failure to refer the decision to the EVC would breach Korea's international law obligations. CIO Hong testified that he felt at the time that "[i]f the [Investment Committee] decided to approve the [M]erger, the NPS would suffer from an ISD claim initiated by foreign hedge funds like Elliott".[82] Multiple ROK officials subsequently noted that the NPS's decision-making procedure in respect of the Merger was improper.[83] Both Minister Moon and Director General Jo also

---

11 July 2015, **Exh C-429**, pp. 2–3 (emphasis added); Arbitration Transcript, Day 3, 211:12–215:10 (Mr. Young-gil Cho); Email from [redacted] (Experts Voting Committee) to various Ministry and NPS officials, 10 July 2015, **Exh C-427**, p. 1; Statement Report of [redacted] to the Public Prosecutor's Office, 25 November 2016, **Exh C-457**, pp. 15–16; Seoul Central District Court, Moon/Hong, **Exh C-69**, pp. 9–10. *See also* EALP's Post-Hearing Brief, ¶ 41(d); Reply, ¶¶ 153–154.

80 Arbitration Transcript, Day 3, 201:5–202:3, 210:18–211:11 (Mr. Young-gil Cho) (emphasis added).

81 Statement Report of Young-gil Cho to the Public Prosecutor's Office, 28 November 2016, **Exh C-459**, pp. 4–7, 11–13; Arbitration Transcript, Day 3, 210:18–215:10 (Mr. Young-gil Cho). *See also* EALP's Post-Hearing Brief, ¶ 41(d); EALP's Reply Post-Hearing Brief, ¶¶ 30–31; Reply, ¶¶ 114(d), 116–118.

82 Transcript of Court Testimony of Wan-seon Hong (Moon/Hong Seoul Central District Court), 17 May 2017, **Exh C-511**, p. 55; Transcript of Court Testimony of Ki-nam Kim (JY Lee Seoul Central District Court), 14 June 2017, **Exh C-514**, p. 19; Transcript of Court Testimony of Wan-seon Hong (JY Lee Seoul Central District Court) (Part Two), 21 June 2017, **Exh C-517**, p. 74; Transcript of Court Testimony of Jong-beom An (JY Lee Seoul Central District Court), 4 July 2017, **Exh C-520**, pp. 24, 28, 30–33, 37, 41; Transcript of Court Testimony of Jong-beom An (Moon/Hong Seoul High Court), 26 September 2017, **Exh C-525**, p. 12. *See also* Award, ¶ 360; Reply, ¶¶ 121; EALP's Post-Hearing Brief, ¶ 41(f).

83 The Blue House's Executive Official Mr. Hong-in Noh testified that "[i]t is not a legitimate exercise of authority" for the Blue House or the MHW to "interfere with the NPS vote" and that "[t]he voting rights must be independently exercised by the National Pension Service Investment Management in the direction that increases shareholder value" (Second Statement Report of [Hong-in Noh] to the Special Prosecutor, 7 January 2017, **Exh C-485**, p. 40); Second Statement Report of Ki-nam Kim to the Special Prosecutor, 22 December 2016, **Exh C-461**, p. 6; Fourth Suspect Examination Report of Hyeong-pyo Moon to the Special Prosecutor, 5 January 2017, **Exh C-482**, p. 9; Transcript of Court Testimony of Nam-kwon Jo (Moon/Hong Seoul Central District Court), 22 March 2017, **Exh C-497**, p. 15; Transcript of Court Testimony of Wan-seon

confirmed that, under the principle of "independent fund management", the Blue House and the MHW should not be involved in the NPS's voting decision,[84] and that a MHW instruction not to refer a matter to the EVC would "greatly violate" that principle.[85]

NPS officials implemented the Government's direction

54. The MHW and NPS recognized that, in order to avoid controversy over having the Investment Committee decide on the Merger vote, the NPS Research Team would need to provide "clear supporting materials".[86] Accordingly, CIO Hong ordered the NPS's Research Team to prepare a report identifying what an "appropriate" merger ratio would be, with a view to showing that the terms proposed by the SC&T Board were within the range of what the NPS deemed acceptable.[87]

55. On 30 June 2015, the NPS Research Team, led by Mr. [redacted], concluded that an appropriate merger ratio reflecting a 'neutral' valuation was 1:0.64,[88] confirming that the Merger at the proposed ratio of 1:0.35 would be hugely damaging to the NPS, notwithstanding its smaller interest in Cheil. Indeed, Mr.

Hong (JY Lee Seoul Central District Court) (Part Two), 21 June 2017, **Exh C-517**, p. 73–74; Transcript of Court Testimony of Won-yeong Choe and [redacted] (JY Lee Seoul Central District Court), 20 June 2017, **Exh C-515**, p. 26. *See also* Reply, ¶ 120; EALP's Post-Hearing Brief, ¶ 41(g).

84 Transcript of Court Testimony of Nam-kwon Jo, 22 March 2017, **Exh C-497**, pp. 5–7; Fourth Suspect Examination Report of Hyeong-pyo Moon to the Special Prosecutor, 5 January 2017, **Exh C-482**, p. 9; Fund Operational Guidelines, **Exh C-194**. *See also* Reply, ¶ 120.

85 Transcript of Court Testimony of Nam-kwon Jo, 22 March 2017, **Exh C-497**, p. 7.

86 [Ministry of Health and Welfare], "Action Plans for Initiating Discussions at the Investment Committee", [8 July 2015], **Exh C-419**, pp. 1–2.

87 Seoul High Court, Moon/Hong Decision, **Exh C-79**, pp. 20, 23–25; [[redacted]], "Strategies to Overcome Controversy Surrounding the Undervaluation of SC&T with respect to the Merger", [26 May 2015], **Exh C-378**, p. 1939; Seoul Central District Court, Moon/Hong, **Exh C-69**, pp. 52–54; Seoul High Court Case No. 2020Na2021570, 14 December 2021, **Exh C-773**, pp. 22–23. *See also* Award, ¶ 589; Reply, ¶¶ 123–130; EALP's Post-Hearing Brief, ¶ 42(a).

88 Seoul High Court, Moon/Hong Decision, **Exh C-79**, p. 21; Seoul Central District Court, Moon/Hong, **Exh C-69**, p. 51; [NPSIM Research Team], "Exhibit 7 Comparison of Fair Value Assessment", [30 June 2015], **Exh C-393**, p. 26; Statement Report of [redacted] to the Special Prosecutor, 2 January 2017, **Exh C-478**, pp. 6–7 ("[a]round the fourth week of June, so after June 22nd or so, Team Leader [redacted] suddenly told us to calculate the enterprise value and merger ratio for Cheil Industries, so I calculated the merger ratio whenever I had a moment since I was busy with other work and arrived at 1:0.64, which I put together in a report around June 30th and reported for the first time to Team Leader [redacted]."). *See also* EALP's Post-Hearing Brief, ¶ 42(a); Reply, ¶ 128(a).

[redacted] had previously stated that "[t]he controversy on undervaluation [of SC&T] will be difficult to overcome except through a direct or indirect change in the merger ratio."[89]

56. On 7 July 2015, CIO Hong and Mr. [redacted] met with Samsung's JY Lee and tried to persuade him to revise the Merger Ratio in a direction that would be fairer to SC&T shareholders. JY Lee refused, stating that: "there is no Plan B" and "[the Merger] must go through *at all cost*".[90]

57. CIO Hong directed Mr. [redacted] to "try harder," which Mr. [redacted] understood as an order to "steer the merger ratio or synergy in a direction favorable for the Merger."[91] In just a few days, by 9 July 2015, the Research Team had revised its valuations several times over by arbitrarily increasing the discount rate of 25% to 41% on SC&T shares, and more than doubling the valuation of an asset owned by Cheil, in order to boost the value of Cheil shares.[92] In doing so, the Research Team arrived at a merger ratio of 1:0.46, which still indicated that the Merger would be damaging to the NPS in the amount of KRW 138.8 billion (approximately USD 120 million at the time).[93]

58. The MHW and NPS therefore understood that a focus on the Merger Ratio at the Investment Committee meeting would compel opposition to the Merger, and that

---

89 [[redacted]], "Strategies to Overcome Controversy Surrounding the Undervaluation of SC&T with respect to the Merger", [26 May 2015], **Exh C-378**, p. 1939.

90 [[redacted]], NPS CEO Meeting Notes, 7 July 2015, **Exh C-413**, p. 1 (emphasis added). *See also* 2015 National Audit - National Policy Committee Minutes, 14 September 2015, **Exh C-50**, p. 80; [NPS Fund Audit Department], "Investment Committee Report on Audit on SC&T-Cheil Merger Voting Rights", November 2015, **Exh C-446**, p. 9.

91 Statement Report of [redacted] to the Special Prosecutor, 9 January 2017, **Exh C-487**, p. 7279. *See also* Award, ¶ 589; EALP's Post-Hearing Brief, ¶ 42(a); Reply, ¶ 128(c).

92 Seoul High Court, Moon/Hong Decision, **Exh C-79**, p. 21. *See also* Statement Report of [redacted] to the Special Prosecutor, Exh C-478, pp. 12–13.

93 Seoul High Court, Moon/Hong Decision, **Exh C-79**, pp. 23, 33; Seoul Central District Court, Moon/Hong, **Exh C-69**, pp. 51–52; NPSIM Research Team, "Report on Appropriate Valuation Calculation of Cheil Industries and SC&T", 10 July 2015, **Exh C-426**, p. 2; Statement Report of [redacted] to the Special Prosecutor, 2 January 2017, **Exh C-477**, p. 9. *See also* EALP's Post-Hearing Brief, ¶ 42(a); Reply, ¶¶ 128, 131–132.

if the NPS's then-current calculations of the neutral ratio were to be sent to the Committee without more, the NPS "will refuse" to support the Merger.[94]

59. Unable to manipulate its valuations further, the Research Team was directed to fabricate a Merger "synergy effect" of "roughly KRW 2 trillion" to plug the anticipated KRW 138.8 billion of losses for the NPS and justify the Merger Ratio.[95] Under Mr. [redacted] direction, in the span of a few hours, the Research Team came up with a synergy effect which was precisely the amount needed to offset the remaining losses.[96]

60. In a meeting with Korea's Prosecutor, the member of the Research Team who produced this 'synergy effect', Mr. [redacted] confessed that it was "reverse-engineer[ed]," that the figure was obtained by "arbitrarily multiplying numbers together," and that they "[do] not make any sense to anyone."[97] Mr. [redacted] further explained that he had no experience calculating merger synergies, had previously worked on only unrelated industries, and was instructed to give a "rough" calculation that came out to KRW 2 trillion by that same day.[98] Mr. [redacted] likewise admitted that synergy was "impossible to quantify" and that telling the Investment Committee that the hastily calculated figure was synergy "was a mistake."[99]

---

94 Transcript of phone calls between Team Leader [redacted] and Deputy Director Jin-ju Baek on 2 July 2015 around 5:52PM, 25 April 2017, **Exh C-506**, pp. 7–8 ("if the materials end up going to the Investment Committee as they are, then just like in the past SK case, the Investment Committee did not have an in-depth discussion on the SK case. And our Director said that, "We will refuse"). *See also* Reply, ¶ 128(b)–(d).

95 Seoul High Court, Moon/Hong Decision, **Exh C-79**, pp. 23–26; Seoul Central District Court, Moon/Hong, **Exh C-69**, pp. 15, 52–55; Statement Report of [redacted] to the Special Prosecutor, 2 January 2017, **Exh C-477**, pp. 9–11 ("Since this roughly KRW 138.8 billion in losses are losses that would result if the NPS' post-merger stake is 6.73%, then the merger synergy required to offset this 100% comes out to roughly KRW 2 trillion. Team Leader [redacted]'s order was to calculate synergy so that that figure resulted."). *See also* Award, ¶ 589; Reply, ¶¶ 131–132; EALP's Post-Hearing Brief, ¶ 42(b).

96 Statement Report of [redacted] to the Special Prosecutor, 2 January 2017, **Exh C-477**, pp. 9–11, 16; Statement Report of [redacted] to the Special Prosecutor, 9 January 2017, **Exh C-487**, p. 7280. *See also* Award, ¶ 589; Reply, ¶¶ 131–132; EALP's Post-Hearing Brief, ¶ 42(b).

97 Statement Report of [redacted] to the Special Prosecutor, 2 January 2017, **Exh C-477**, pp. 16–17. *See also* Reply, ¶ 131; EALP's Post-Hearing Brief, ¶ 42(c).

98 Second Statement Report of [redacted], [redacted] and [redacted] to the Special Prosecutor, 25 December 2016, **Exh C-462**, p. 19; Statement Report of [redacted] to the Special Prosecutor, 2 January 2017, **Exh C-477**, pp. 11–13. *See also* Reply, ¶ 132.

99 Statement Report of [redacted], 26 December 2016, **Exh C-466**, pp. 17–18. *See also* Reply, ¶ 132.

61. The manipulated valuations and fabricated synergy effect were presented to the Investment Committee on 10 July 2015 when it decided how to vote. During the meeting, Investment Committee members repeatedly raised concerns regarding the potential loss to the NPS that could arise from the Merger Ratio. For example, Mr. [redacted] Head of Risk Management, pointed out that in light of the Voting Guidelines, the Investment Committee had to be assured that the Merger would cause no loss to shareholder value.[100] Similarly, Mr. [redacted], Head of Investment Strategy, referred to the potential loss resulting from the Merger and noted that the synergy had been calculated concretely to offset any such loss.[101] Another Investment Committee member, Mr. [redacted] Head of Global Equities and Fixed Income, was also aware of the potential loss to the NPS, and pointed out the large disparity between the NPS's valuation-based merger ratio of 1:0.46 and the Merger Ratio of 1:0.35.[102]

62. In response, Mr. [redacted] repeatedly assured Investment Committee members that they could be confident of the merits of the Merger because of the fabricated synergy calculations, and that said synergy effect could overcome the Merger Ratio loss.[103] For example, Mr. [redacted] told the Committee on multiple occasions that "*the synergy effect of the merger should also be considered*",[104] that "[w]*hat*

---

100 [redacted], Minutes of the Investment Committee Meeting, 10 July 2015, **Exh C-428**, p. 3 ("[c]oncerning the change in the percentage of shareholding, if you look at the relevant principle for the exercise of voting rights, there's a guideline requiring shareholder value to be considered to give a vote in favor. It looks like it depends on how you look at shareholder value, and while there seem to be no issues concerning the merger ratio, (1) there still should also be no dilution of shareholder value in terms of the future shareholder value. As such, there should be proof in this regard.").

101 [redacted], Minutes of the Investment Committee Meeting, 10 July 2015, **Exh C-428**, pp. 3–4 ("There is a difference in the fair values, and therefore synergy cannot offset the entire loss even if we hold stakes in both companies. We need to calculate the concrete synergy effect that will be created in the future.")

102 [redacted], Minutes of the Investment Committee Meeting, 10 July 2015, **Exh C-428**, p. 3 ("0.45 based on EV/EBITDA, but based on what [redacted] said it's not a small disparity."); NPSIM, Analysis Regarding the Merger of Cheil Industries and Samsung C&T, **Exh R-127**, pp. 38–40.

103 NPSIM Management Strategy Office, "2015-30th Investment Committee Meeting Minutes", 10 July 2015, **Exh R-128**, pp. 9–12. *See also* Award, ¶ 591; Reply, ¶ 137.

104 NPSIM Management Strategy Office, "2015-30th Investment Committee Meeting Minutes", 10 July 2015, **Exh R-128**, p. 9 (emphasis added). *See also* [redacted] Minutes of the Investment Committee Meeting, 10 July 2015, **Exh C-428**, p. 3 (noting CIO Hong's statement that "[m]y understanding is that the merger ratio is not an issue with regard to the shareholder value, and that it should be looked at from a synergy perspective.").

is important is the synergy effect",[105] that "*a synergy effect of KRW 2 trillion or more can be achieved*",[106] and that his team arrived at a synergy value "*estimated [at] over KRW 2 trillion*".[107] Similarly, CIO Hong told Investment Committee members that the advice given to the Committee by Mr. [redacted] and his team "takes into account the offsetting effect of holding both companies' shares, *and the synergy effect.*"[108]

63. The Investment Committee meeting minutes record that the Committee decided to "*agree to the merger in view of its synergy effect.*"[109]

64. The record also shows that, prior to and during the Committee meeting, CIO Hong pressured individual Investment Committee members to support the Merger. Prior to the meeting, he selected members under his influence, called members into his office and told them they should view the Merger "in a positive light."[110] During the meeting, he approached members, telling them that, if the NPS caused the Merger to fail, the NPS would be seen as having "sold out" to a foreign hedge fund.[111] The Korean courts found, and the Tribunal accepted, that CIO Hong

105 NPSIM Management Strategy Office, "2015-30th Investment Committee Meeting Minutes", 10 July 2015, **Exh R-128**, p. 10 (emphasis added).

106 NPSIM Management Strategy Office, "2015-30th Investment Committee Meeting Minutes", 10 July 2015, **Exh R-128**, p. 11 (emphasis added); Transcript of Court Testimony of [redacted] (Moon/Hong Seoul Central District Court), 8 May 2017, **Exh C-510**, p. 26 (confirming the prosecution's characterization that [redacted] "didn't set forth any specific basis" for the KRW 2 trillion figure).

107 NPSIM Management Strategy Office, "2015-30th Investment Committee Meeting Minutes", 10 July 2015, **Exh R-128**, p. 11 (emphasis added).

108 NPSIM Management Strategy Office, "2015-30th Investment Committee Meeting Minutes", 10 July 2015, **Exh R-128**, p. 10 (emphasis added).

109 NPSIM Management Strategy Office, "2015-30th Investment Committee Meeting Minutes", 10 July 2015, **Exh R-128**, p. 16; Seoul High Court, Moon/Hong Decision, **Exh C-79**, pp. 60–61; Seoul High Court, [redacted] **Exh C-773**, pp. 19–20, 26, 30. *See also* Reply, ¶ 137(g); EALP's Post-Hearing Brief, ¶ 42(d); EALP's Demonstrative No. 2 at the Hearing (showing the outcome of the vote if the NPS had voted against the Merger or if the NPS had abstained from voting); EALP's Demonstrative No. 3 at the Hearing (showing the Investment Committee members' votes at the meeting).

110 Seoul High Court, Moon/Hong Decision, **Exh C-79**, pp. 20, 25–26, 53 Transcript of Court Testimony of [redacted] (Moon/Hong Seoul Central District Court), 19 April 2017, **Exh C-505**, pp. 23–24; Statement Report of [redacted] to the Special Prosecutor, 26 December 2016, **Exh C-463**, p. 7 Statement Report of [redacted] to the Special Prosecutor, 27 December 2016, **Exh C-468**, p. 26. Reply, ¶¶ 141–143; EALP's Post-Hearing Brief, ¶ 42(e).

111 Suspect Examination Report of [Wan-seon Hong] to the Special Prosecutor, 26 December 2016, **Exh C-464**, pp. 41–42 (confirming CIO Hong personally nominated and appointed three Investment Committee members, contrary to prior practice) and 46; Statement Report of [redacted]

thereby "actively *induced*" the Investment Committee members to vote in favor of the Merger and breached his official duties.[112]

65. Several Investment Committee members subsequently *confirmed that they relied on the synergy effect calculation to vote in favor of the Merger*, and would not have voted in favor if they had known it was fabricated.[113] For instance:

a. Investment Committee member Mr. [redacted] stated that "[a]fter hearing the explanation from the Research Team, I thought that their forecast on generation of synergy from the merger, etc. was quite reasonable, *so I decided to vote in favor of the merger*."[114] When asked if he would have approved the Merger even "if the KRW 2 trillion synergy amount to offset the estimated loss of KRW 130 billion arising from the Merger was not justified or fabricated," Mr. Kim responded "*surely not*."[115]

b. Investment Committee member Mr. [redacted] stated to the Special Prosecutor that "*I made my decision based on the discussion process in the Investment Committee and viewed the future synergy effect as positive*. If

---

to the Special Prosecutor, 26 December 2016, **Exh C-463**, p. 7; Statement Report of [redacted] to the Special Prosecutor, 26 December 2016, **Exh C-465**, p. 7; Seoul High Court, Moon/Hong Decision, **Exh C-79**, pp. 25–26, 53; Seoul Central District Court, Moon/Hong, **Exh C-69**, pp. 17, 49–50, 55–56. *See also* Award, ¶¶ 591, 594; Reply, ¶¶ 141–150; EALP's Post-Hearing Brief, ¶ 42(e).

112 Seoul Central District Court, Moon/Hong, **Exh C-69**, pp. 17–18; Seoul High Court, Moon/Hong Decision, **Exh C-79**, p. 72. *See also* Award, ¶¶ 591, 596–597, 602(b) (finding that the NPS, under the direction and instructions of the MHW, "influenced the vote conducted by the Investment Committee, including by fabricating a synergy effect of the Merger that had no basis in fact and meeting with members of the Investment Committee, to the effect that the Investment Committee voted in favor of the Merger.").

113 Seoul Central District Court, Moon/Hong, **Exh C-69**, pp. 54–55. *See also* Award, ¶ 598; EALP's Post-Hearing Brief, ¶¶ 169–170; Reply, ¶ 140.

114 Statement Report of [redacted] to the Special Prosecutor, 28 December 2016, **Exh C-472**, p. 10 (emphasis added).

115 Statement Report of [redacted] to the Special Prosecutor, 28 December 2016, **Exh C-472**, p. 10 (emphasis added).

the synergy effect was false, I would have also opposed".[116] Mr. Sin also stated to the Special Prosecutor that:

> [T]he Research Team leader, who is the expert on that issue, very confidently said in that capacity that the synergy effect would be KRW 2 trillion or more, and *this very much influenced my decision to vote in favor of the merger. Without this, it would have been difficult for me to approve the merger because the numbers clearly showed that the merger would result in a loss*.[117]

c. Investment Committee member Mr. [redacted] testified in court that his vote in favor of the Merger was decisively based on his reliance on the synergy effect presented by the NPS Research Team, confirming that he "voted to approve the merger at the Investment Committee meeting *because [I] trusted the Research Team's analysis of the synergy effect* as explained by Team Leader [redacted]".[118]

d. Investment Committee member Mr. [redacted] also confirmed to the Special Prosecutor that he "thought that the Research Team conducted a thorough analysis to calculate the merger synergy . . . when the Research Team experts confidently explained their findings with all the supporting numbers, I couldn't help but trust them, and *I cast my vote according to that trust*."[119]

66. The number of Investment Committee members who confirmed that but for the fabricated synergy effect calculation they would not have voted in favor of the Merger (complete with references to those documentary confirmations on the

---

116 Second Statement Report of [redacted] to the Special Prosecutor, 27 December 2016, **Exh C-467**, p. 14 (emphasis added). *See also* Transcript of Court Testimony of [redacted] (Moon/Hong Seoul Central District Court), **Exh C-502**, pp. 14–15, 38.

117 Second Statement Report of [redacted] to the Special Prosecutor, 27 December 2016, **Exh C-467**, p. 7 (emphasis added).

118 Transcript of Court Testimony of [redacted] (Moon/Hong Seoul Central District Court), 10 April 2017, **Exh C-500**, p. 8 (confirming the prosecutor's statement) (emphasis added).

119 Statement Report of [redacted] to the Special Prosecutor, 28 December 2016, **Exh C-472**, pp. 10–11 (emphasis added).

record), was compiled for EALP's oral opening submission in Geneva, and the ROK still has no answer to it.[120]

2.Key Facts: Step 3 – Chief Investment Officer Hong's compliance with the Order

Investment Committee Member	Actual Vote	Vote but for fabricated synergy effect	Evidence
Wan-seon Hong *CIO*	YES	YES?	Instructed by the Ministry to vote in favor of Merger *Court Testimony of Nam-kwon Jo (District Court, Moon/Hong), C-497, pp. 32-33 {C/497/18-19}*
[redacted] *Head of Alternative Investment*	YES	NO	Stated that he would not have voted in favor of Merger, but-for synergy effect *Court Testimony of [redacted] (District Court, Moon/Hong), C-500, p. 12 {C/500/3}*
[redacted] *Head of Domestic Equity Investment*	YES	NO	Stated th[redacted]d not have voted in favor of Merger, but-for synergy effect *Evidence of [redacted] to Korea's Prosecutor, C-471, p. 7 {C/471/2}*
[redacted] *Head of Investment Operation*	YES	NO	Stated that he would not have voted in favor of Merger, but-for synergy effect *Evidence of [redacted] to Korea's Prosecutor, C-472, p. 10 {C/472/2}*
[redacted] *Head of Overseas Alternative Investment*	YES	NO	Stated that he probably would not have voted in favor of Merger, but-for synergy effect *Evidence of [redacted]o Korea's Prosecutor, C-474, p. 17 {C/474/3}*
[redacted] *Head of Passive Investment*	YES	NO	Stated that the synergy effect "affected" the IC's votes on Merger *Evidence o[redacted]o Korea's Prosecutor, C-473, p. 22 {C/473/5}*
[redacted] *Head of Risk Management*	YES	NO	Stated that the synergy effect "very much" influenced his decision to vote in favor of Merger *Evidence of [redacted] to Korea's Prosecutor, C-467, pp. 7-8 {C/467/3-4}*
[redacted] *Head of Overseas Securities*	ABSTAINED	LIKELY NO	Challenged the Merger Ratio, but told he could rely on synergy effect *Minutes of Investment Committee Meeting on 10 July 2015, R-128, p. 10 {R/128/11}*
[redacted] *Director of Risk Management*	ABSTAINED	LIKELY NO	Challenged the Merger Ratio, but told he could rely on synergy effect *Minutes of Investment Committee Meeting on 10 July 2015, R-128, p. 11 {R/128/12}*
[redacted] *Head of Investment Strategy*	SHADOW VOTE	LIKELY NO	Challenged the Merger Ratio, but told he could rely on synergy effect *Minutes of Investment Committee Meeting on 10 July 2015, R-128, p. 11 {R/128/12}*
[redacted]	ABSTAINED	LIKELY NO	Instructed by the Ministry to vote in favor of Merger *Court Testimony of Nam-kwon Jo (District Court, Moon/Hong), C-497, pp. 14-16 {C/497/4-6}*
Tae-il Ahn *Head of Bond Investment*	YES	UNKNOWN	Unknown

68

67. After the Investment Committee's decision on 10 July 2015, the MHW put pressure on the EVC to mute its criticism of being bypassed. While the EVC had initially wanted to issue a press release describing the Committee's decision as "unlawful," the MHW's Director of National Pension Finance, Mr. Hong-seok Choe, pressured them to tone down their release. The final press release indicated only that the EVC had not taken a position on the Merger because it had not been asked to.[121] This watered-down position was important, as the SC&T shareholder vote took place on the same day as the press release, 17 July 2015.[122] The result was that the NPS voted in favor of the Merger at the SC&T shareholder meeting on 17 July 2015.

120 *See* EALP's Opening Presentation, 15 November 2021, slide 68.

121 Statement Report of Young-gil Cho to the Public Prosecutor's Office, 28 November 2016, **Exh C-459**, p. 12; EVC Press Release, 17 July 2015, **Exh C-44**. *See also* EALP's Post-Hearing Brief, ¶ 41(e); Reply, ¶¶ 156–159.

122 Forensic [Database] Print of Tae-han Lee, 24 June-17 July 2015, **Exh C-432**, p. 3; Statement Report of Young-gil Cho to the Public Prosecutor's Office, 28 November 2016, **Exh C-459**, p. 12. *See also* Reply, ¶ 159.

(ii) The Tribunal found that the ROK's conduct caused the NPS's vote in favor of the Merger

68. Having had the benefit of being presented with this primary evidence, the Tribunal made the following findings in its Award.

<u>The Blue House and MHW ensured that the vote on the Merger was taken by the Investment Committee rather than the EVC, because the EVC would have rejected the Merger, given the recent precedent of the SK Merger</u>

69. The Tribunal held that "[a]ccording to policies set by the NPS for the Merger, the voting rights were to be exercised by the EVC."[123] The Tribunal also held that, as it became evident that a referral of the matter to the EVC, which had decided on the earlier SK Merger, would not "guarantee" the approval of the Merger, in the morning of 8 July 2015, Minister Moon "instructed [Mr. Nam-kwon Jo] to have the Merger motion reviewed by the Investment Committee instead of Experts Voting Committee."[124]

70. The ROK argues that these were not findings of fact by the Tribunal, but simply a summary of the findings of the district court in the Moon/Hong proceedings.[125] The ROK also asserts that neither of these findings establishes that, had the ROK acted lawfully, the vote would have been referred to the EVC.[126] Neither of those arguments is correct, and the suggestion that these facts were in dispute prior to the Award is highly misleading.

a. Prior to recalling the findings in the Moon/Hong proceedings, the Tribunal noted in its Award that "*[t]he essential facts underlying these decisions are not in dispute between the Parties*."[127] This is because the ROK

---

123 Award, ¶ 598.

124 Award, ¶ 587 (quoting Seoul Central District Court, Moon/Hong, **Exh C-69**, p. 8).

125 ROK's Submission, ¶ 52(a).

126 ROK's Submission, ¶ 52(b).

127 Award, ¶ 581 (emphasis added).

repeatedly stipulated to the factual findings of the Korean courts in the original arbitration.[128]

b. The Tribunal did not simply recite the undisputed findings of the Korean court judgments. In paragraph 598 of the Award, the Tribunal recalled the key underlying "evidence" that had been presented in this arbitration supporting the conclusions in the Moon/Hong proceedings.[129]

c. After recounting those undisputed findings (which were found to a criminal standard of proof[130]), the Tribunal held in paragraph 602 of its Award that the factual findings of the Korean courts establish that the NPS acted "under the direction and instruction of the MHW".[131] The Tribunal then reiterated the persuasive nature of the Korean courts' decisions in the Moon/Hong proceedings, expressly holding in its discussion of causation that *"[t]here is no evidence before the Tribunal in the present proceedings that would cause the Tribunal to second-guess the findings of the Korean courts*."[132] The Tribunal thus manifestly endorsed the findings of the Korean courts as its own, and there is no basis for the ROK to treat them otherwise.

---

128 *See* Arbitration Transcript, Day 2, 17:10–12 (Counsel for the ROK) (acknowledging that the ROK is "stuck with the decisions of [its] own courts."); Arbitration Transcript, Day 2, 16:17–19 (Counsel for the ROK) (acknowledging that the ROK "do[es] not deny the facts as they are presented to you in relation to the convictions that have been pronounced by the courts."); Arbitration Transcript, Day 9, 87:10–12 (Counsel for the ROK) ("[t]he Republic of Korea in no way seeks to resile from the decisions of its courts."); ROK's Post-Hearing Brief, ¶ 45 (noting that "to the extent the Korean courts have made affirmative factual findings, this Tribunal should respect those findings and avoid making contrary findings unless the Tribunal has, before it, evidence that it could weigh—including against the courts' findings—to reach its own factual conclusions on a balance of probabilities."). *See also* Award, ¶ 266 (noting that "[t]here is no dispute between the Parties that the Tribunal may rely on the factual findings of the Korean courts unless the Tribunal has been presented with evidence to the contrary, in which case it should weigh the evidence to reach its own factual conclusions."); EALP's Submission, ¶ 81(d).

129 Award, ¶ 598.

130 *See* Award, ¶ 603.

131 Award, ¶ 602.

132 Award, ¶ 820 (emphasis added).

The MHW ordered CIO Hong to take measures so that the Investment Committee voted in favor of the Merger

71. The Tribunal held that:

> On 30 June 2015, CIO Hong met with Mr. Nam-kwon Jo, Director of Pension Policy Bureau of the MHW, to discuss the Merger. Mr. Jo told CIO Hong that 'the Merger must be decided on by the Investment Committee.' . . . *Pursuant to Mr. Jo's instruction*, CIO Hong subsequently 'exert[ed] pressure in favor of the Merger by conferring the voting right to the Investment Committee as opposed to the Experts Voting Committee and by exerting pressure on the Investment Committee employees who were under his supervision to agree on the Merger in the Investment Committee meeting.'[133]

CIO Hong achieved this by doctoring the valuation of the merging companies and directing that a synergy effect be fabricated to deceive the Investment Committee members who would not otherwise have supported the Merger

72. As noted in paragraphs 54 to 61 above, the NPS Research Team was instructed to manufacture a justification to support the Merger Ratio desired by Samsung by revising its valuations several times until it was unable to manipulate its valuations of SC&T and Cheil any further.

73. In the face of that evidence, the Tribunal found that CIO Hong "had clearly understood the merger ratio to be unfavorable to SC&T shareholders",[134] and nevertheless directed the NPS Research Team, through Mr. [redacted] to fabricate a synergy effect in order to neutralize the economic harm to the NPS that, under its own Voting Guidelines, would have required the NPS to vote against the Merger.[135]

---

133 Award, ¶ 588 (quoting Seoul Central District Court, Moon/Hong, **Exh C-69**, pp. 13–15) (emphasis added).

134 Award, ¶ 596 (quoting Seoul Central District Court, Moon/Hong, **Exh C-69**, pp. 62–63).

135 *See* Award, ¶¶ 595–597 (citing Seoul Central District Court, Moon/Hong, **Exh C-69**, pp. 61–66. *See also* Award, ¶ 286 (citing Seoul Central District Court, Moon/Hong, **Exh C-69**, pp. 9, 17–18, 62).

74. The Tribunal held that:

> On 9 July 2015, Mr. [redacted] reported to CIO Hong that 'if the Merger goes through with Samsung's merger ratio of 1 (Cheil): 0.35 (SC&T), . . . the Merger would cause a loss of at least 138.8 billion won to the NPS.' . . . when hearing this report, *CIO Hong ordered Mr.* [redacted] *'to fabricate a merger synergy effect that was needed to offset the expected 138.8 billion won of damages in order to justify the NPS's support for the Merger*.' On the same day, *Mr.* [redacted] *instructed a member of his research team to create the required synergy effect of 2 trillion won, to offset the expected loss of the same amount.*[136]

The Tribunal noted that the report was prepared "in a single day" and confirmed the required synergy effect, even though there were "no facts to substantiate [the] assumptions".[137]

75. The Tribunal also found that "CIO Hong subsequently ordered Mr. [redacted] to attend the Investment Committee meeting to brief the members of the Committee on the fabricated synergy effect." [138] The Tribunal further recalled that, in the Moon/Hong proceedings, the Seoul Central District Court held that:

> Minister Moon, in his capacity as Minister of Health and Welfare 'possessed broad guiding and supervisory authority over the NPS, intervened in the exercise of voting rights of the shares of the NPS, put pressure on the members of the Investment Committee of the Investment Management *so that they decide in favor of the Merger*.'[139]

---

136 Award, ¶ 589 (quoting Seoul Central District Court, Moon/Hong, **Exh C-69**, p. 15) (emphasis added).

137 Award, ¶ 589 (quoting Seoul Central District Court, Moon/Hong, **Exh C-69**, p. 15).

138 Award, ¶ 589.

139 Award, ¶ 594 (quoting Seoul Central District Court, Moon/Hong, **Exh C-69**, pp. 65–66) (emphasis added).

The Investment Committee members did not vote in favor of the Merger for independent, commercial reasons, but instead acted under the direction and control of the MHW

76. The Tribunal held that "CIO Hong 'convened and convinced the Investment Committee to vote in favor of the Merger motion based on the fabricated figures.'"[140] The Tribunal further recalled that in the Moon/Hong proceedings before the Seoul Central District Court, "[a] number of the Investment Committee members testified that *they would likely have voted against the Merger had they known that the synergy effect was fabricated*"[141] and that "CIO Hong . . . spoke with a number of other members of the Investment Committee, both before and during the meeting",[142] including saying to one member "*[i]f the merger falls apart the hedge fund will denounce to me to the [Wan-yong Lee] that sold out on the national wealth. I hope you'll make a good decision*."[143] Accordingly, the Tribunal held that "[t]he Respondent, through the MHW, intervened in the NPS's vote on the Merger and instructed the NPS to ensure that the vote would be in favor of the Merger";[144] and that–

> The NPS, under the direction and instructions of the MHW, took steps to ensure that the vote would be conducted by the Investment Committee rather than the Experts Voting Committee, influenced the vote conducted by the Investment Committee, including by fabricating a synergy effect of the Merger that had no basis in fact and meeting with members of the Investment Committee, to the effect that the Investment Committee voted in favor of the Merger.[145]

140 Award, ¶ 587 (quoting Seoul Central District Court, Moon/Hong, **Exh C-69**, p. 9).

141 Award, ¶ 598 (citing Seoul Central District Court, Moon/Hong, **Exh C-69**, p. 54) (emphasis added).

142 Award, ¶ 598 (citing Seoul Central District Court, Moon/Hong, **Exh C-69**, pp. 55–56) (emphasis added).

143 Award, ¶ 598 (quoting Seoul Central District Court, Moon/Hong, **Exh C-69**, pp. 55–56) (emphasis added).

144 Award, ¶ 602(a).

145 Award, ¶ 602(b).

77. The ROK attempts to brush aside these findings on the basis that the Tribunal was recalling what occurred "in the *actual* world",[146] rather than in the ROK's posited counterfactual world in which the ROK had acted lawfully.[147] For the reasons explained above, this argument fundamentally misconstrues the applicable legal test.[148]

78. Accordingly, the Tribunal's findings of fact regarding the *actual* events leading up to the Merger vote establish that the ROK's unlawful interference caused the NPS to vote in favor of the Merger. Further, these are all findings that are entirely unaffected by the Court's Judgment. This is clear from the fact that these portions of the Award have not been set aside, which in turn flows from the fact that these are factual findings that are in no way contingent upon the status of the NPS as a *de facto* State organ under international law. They are not open to the ROK to relitigate.

(iii) The ROK's recycled factual causation arguments have already been rejected by the Tribunal

79. Even if the Tribunal were to allow the ROK to relitigate its arguments on factual causation, those arguments would be familiar to it, because the ROK's Submission simply rehearses the same arguments on factual causation from the original arbitration proceedings, which the Tribunal has already considered and rejected based on its careful review of the evidence before it. These repeated arguments are comprehensively set out in ***Annex A*** to this Reply, which identifies where they can also be found in the ROK's submissions that preceded the Award.

80. The ROK's main recycled hypothetical causation arguments—i.e., what might have happened had the Blue House acted lawfully and not subverted the NPS—and the obvious responses to them are addressed next.

---

146 ROK's Submission, ¶ 55 (emphasis in original).

147 ROK's Submission, ¶ 55. *See also* id., ¶ 49.

148 *See above*, Section III.A. *See also See Amco Asia Corporation and others v. Republic of Indonesia*, ICSID Case No. ARB/81/1, Award in Resubmitted Proceedings, 31 March 1990, **Exh CLA-237**, ¶¶ 74–75, 139, and especially 174.

The ROK has already made, and the Tribunal has already rejected, the failed argument that the vote on the Merger did not have to go to the EVC

81. In its Submission, the ROK argues, once again,[149] that the NPS was entitled to circumvent the EVC or that the Investment Committee would ultimately have decided on the Merger vote in a counterfactual in which the NPS acted independently.[150]

82. As EALP successfully submitted in the original arbitration,[151] the argument fails for various reasons.

a. The record demonstrates that a materially similar merger vote, i.e., the SK Merger vote, had been referred to the EVC shortly before the announcement of the SC&T-Cheil Merger.[152] As the NPS itself stated to the MHW at the time, and the ROK does not appear to contest, the SK Merger was referred to the EVC because there was a controversy regarding the fairness of the merger ratio and, as the first *chaebol* restructuring conducted through a merger, it was intended to set a benchmark for future merger votes.[153] As the NPS further stated, since the Merger was considered to be even more controversial than the SK Merger, failure to provide a clear rationale for accepting the Merger on its terms would be contrary to the SK Merger precedent and the NPS's decision-making

---

149 *See, e.g.*, SOD, ¶¶ 453–459; ROK's Rejoinder, ¶¶ 225–227, 231–234, 246–252, 441, 444–450; Arbitration Hearing, Day 2, 128:21–129:25 (Counsel for the ROK) and Day 9, 111:4–9 (Counsel for the ROK); ROK's Post-Hearing Brief, ¶¶ 91–92, 94; ROK's Reply Post-Hearing Brief, ¶ 31–33. *See also* Annex A, row 12.

150 ROK's Submission, ¶¶ 114–117, 133–139.

151 *See* EALP's Post-Hearing Brief, ¶¶ 32, 41.

152 EALP's Post-Hearing Brief, ¶ 32.

153 [NPSIM], "Review of Referral of SK-SK C&C Merger to the Experts Voting Committee", [10 June 2015], **Exh C-385**, p. 1 ("[c]onsidering the need to set clear standards for exercising voting rights on mergers in cases of restructuring of *chaebol* corporate governance in the future, the issue [of the SK Merger] needs to be referred to the Experts Voting Committee"); [[redacted]], "Issues in Case the Investment Committee Votes on the SC&T Merger", [7 or 8 July 2015], **Exh C-420**, p. 1 (noting the reasons for referral of the SK Merger to the Experts Voting Committee, "there was a controversy over appropriateness of the merger ratio . . . Since this was the first merger case that was directly connected to reorganization of corporate governance and succession of control of a chaebol group, the Experts Voting Committee was requested to make a decision."). *See also* Seoul Central District Court, Moon/Hong, **Exh C-69**, p. 44.

system.[154] Indeed, in its Submission, the ROK now accepts that "[t]here is evidence suggesting that, prior to the unlawful interference of the MHW, CIO Hong may have intended to follow the same procedure [as the SK Merger] with respect to the Merger", and it was because of the MHW's objections to this procedure that CIO Hong did not follow the SK Merger precedent.[155]

b. The record further demonstrates that the NPS itself believed strongly that the decision on the Merger vote should be taken by the EVC and not the Investment Committee. For example, in early July, following the MHW's instruction that the Investment Committee (and not the EVC) should decide on the Merger vote, NPS officials repeatedly pushed back, explaining to the MHW that the matter should be sent to the EVC.[156] On 1 July 2015, Mr. [redacted] from the NPS explained to the MHW's Deputy Director Jin-ju Baek in a telephone call that:

> if I have to be frank, in this case, is the Merger the sort of matter which really should be discussed in the [Experts Voting Committee], since it is a controversial matter in society and many other aspects cannot be decided based on a simply 100% monetary calculation by inputting into a calculator and making a decision? In reality, it's not. There are many things right now – there's talk about Elliott and many things involved, so the decision-making itself in this case involves many complex issues that are difficult to view just from one perspective – the *Experts Voting Committee was created for this reason* . . . if we are supposed to handle this, decide it internally [at the Investment Committee] there is no need for the Experts Voting Committee from now on.[157]

---

154 [[redacted]], "Issues in Case the Investment Committee Votes on the SC&T Merger", [7 or 8 July 2015], **Exh C-420**, p. 1. *See also* Seoul Central District Court, Moon/Hong, **Exh C-69**, p. 45.

155 ROK's Submission, ¶¶ 115–116 ("In the event, the MHW raised objections to this procedure and it was not followed").

156 Seoul High Court, Moon/Hong Decision, **Exh C-79**, pp. 13–16; Seoul Central District Court, Moon/Hong, **Exh C-69**, p. 7. *See also* Reply, ¶ 114.

157 Transcript of phone calls between Team Leader [redacted] and Deputy Director Jin-ju Baek, 18 April 2017, **Exh C-333**, p. 12 (emphasis added). *See also* Reply, ¶ 114(a).

And on 6 July 2015, senior NPS officials met again with Director General Jo to reiterate the same point. Mr. [redacted] for example, reiterated to MHW officials that if "a case with many societal issues is decided upon by the Investment Committee alone, then there may be criticism that this incapacitates the Experts Voting Committee".[158] Mr. [redacted] was met with an aggressive retort that he was essentially "opposing" the Merger by insisting that the vote be taken by the EVC.[159] The evidence therefore amply confirms what the NPS would have done, but for the Government's insistence that the EVP be bypassed.

c. The record also demonstrates that the EVC was of the view that the Merger decision should be referred to it.[160] When the Merger decision was not referred to the EVC, its Chairman wrote to CIO Hong and other NPS officials: (i) expressly noting that he found the Merger to be "an agenda item for which it is difficult for the 'Investment Committee of the NPSIM' to make a decision within itself,"[161] and asking for the matter to be referred to the EVC, as he was entitled to do in accordance with the Fund Operational Guidelines;[162] and (ii) noting that the failure to refer the matter to the EVC was "extremely inappropriate."[163] Consistent with the relevant

---

158 Seoul High Court, Moon/Hong Decision, **Exh C-79**, pp. 15–16; Seoul Central District Court, Moon/Hong, **Exh C-69**, p. 7; Transcript of Court Testimony of Jin-ju Baek (Moon/Hong Seoul High Court), 26 September 2017, **Exh C-524**, p. 4; Transcript of Court Testimony of [redacted] (Moon/Hong Seoul Central District Court), 26 April 2017, **Exh C-508**, p. 12. *See also* Reply, ¶ 114(b).

159 Seoul Central District Court, Moon/Hong, **Exh C-69**, p. 7; Seoul High Court, Moon/Hong Decision, **Exh C-79**, pp. 15–16; Transcript of Court Testimony of [redacted] (JY Lee Seoul Central District Court), 27 June 2017, **Exh C-518**, p. 5 (quoting Director General Jo's statement at the meeting between Director General Jo, Mr. [redacted] Mr. [redacted] and Mr. Lee) (emphasis added).

160 Seoul Central District Court, Moon/Hong, **Exh C-69**, pp. 9–10. *See also* Statement Report of [redacted] to the Public Prosecutor's Office, 25 November 2016, **Exh C-457**, pp. 15–16 ("we the [EVC] members were also preparing to deliberate on the Samsung merger in our own way. But then suddenly, the Investment Committee made a decision on its own"); Reply, ¶¶ 116, 153–154.

161 Email from [redacted] (Experts Voting Committee) to various Ministry and NPS officials, 10 July 2015, **Exh C-427**, p. 1. *See also* Seoul Central District Court, Moon/Hong, **Exh C-69**, pp. 9–10.

162 Fund Operational Guidelines, **Exh C-194**, Article 5(5)(6) (providing that the Chairman of the EVC is entitled to require that a matter be referred to the EVC).

163 Letter from [redacted] (EVC Chairperson) to Members and Joint Administrative Secretaries of the NPS Experts Voting Committee, re: NPS Experts Voting Committee Convocation Notice,

rules, this triggered an independent requirement for the vote on the Merger to be referred to the EVC.[164]

d. The ROK's sole fact witness, Mr. Cho, testified at the Geneva hearing that, as the only lawyer on the EVC, he drafted the Chairman's letter to CIO Hong and other Investment Committee members which concluded that the failure to refer the decision to the EVC was "extremely inappropriate" and "in defiance of the purpose of existence of the Experts Voting Committee."[165] Mr. Cho also confirmed at the hearing that he was "surprised" that the decision was not referred to the EVC, and that the EVC believed this was "inappropriate" and "outrageous."[166]

e. Blue House, MHW and NPS officials also expressed concern at the time that their failure to refer the decision to the EVC would breach Korea's international law obligations and attract a Treaty claim by this Claimant (and others).[167]

f. The record also demonstrates that the MHW and NPS considered that the EVC would oppose the Merger. MHW officials testified that, given the "dispositions" of the EVC members, it would be "difficult" to have the

---

11 July 2015, **Exh C-429**, p. 2. *See also* Email from [redacted] (Experts Voting Committee) to various Ministry and NPS officials, 10 July 2015, **Exh C-427**, p. 1.

164 Fund Operational Guidelines, **Exh C-194**, subparagraph 6 of Article 5(5) (the Experts Voting Committee shall "review and decide on each of the following matters regarding the exercise of voting rights for stocks held by the National Pension Fund, etc. . . . 6. Other matters that the Expert[s] Voting Committee Chairperson deem necessary."); Regulations on the Operation of the Special Committee on the Exercise of Voting Rights, 9 June 2015, **Exh R-98**, Article 2(6). *See also* First CK Lee Report, ¶¶ 90–91; Second CK Lee Report, ¶¶ 69–75.

165 Arbitration Transcript, Day 3, 211:12–215:10 (Mr. Young-gil Cho). *See also* Letter from [redacted] (EVC Chairperson) to Members and Joint Administrative Secretaries of the NPS Experts Voting Committee, re: NPS Experts Voting Committee Convocation Notice, 11 July 2015, **Exh C-429**, p. 2.

166 Arbitration Transcript, Day 3, 201:5–202:3, 210:18–211:11 (Mr. Young-gil Cho).

167 *See, e.g.*, Transcript of Court Testimony of Wan-seon Hong (Moon/Hong Seoul Central District Court), 17 May 2017, **Exh C-511**, p. 55; Transcript of Court Testimony of Ki-nam Kim (JY Lee Seoul Central District Court), 14 June 2017, **Exh C-514**, p. 19; Transcript of Court Testimony of Wan-seon Hong (JY Lee Seoul Central District Court) (Part Two), 21 June 2017, **Exh C-517**, p. 74; Transcript of Court Testimony of Jong-beom An (JY Lee Seoul Central District Court), 4 July 2017, **Exh C-520**, pp. 24, 28, 30–33, 37, 41; Transcript of Court Testimony of Jong-beom An (Moon/Hong Seoul High Court), 26 September 2017, **Exh C-525**, p. 12. *See also* Reply, ¶¶ 121, 521, 528–532.

EVC vote in favor of the Merger,[168] including because "*there were many members of the Experts Voting Committee who had opposing dispositions*."[169] The ROK ignores this contemporaneous evidence in its Submission.

The ROK has already made, and the Tribunal has rejected, the failed argument that various factors purportedly "weighed in favor of approving the Merger" and would have caused the NPS to vote in favor of the Merger in any event

83. In its Submission, the ROK again[170] recycles its failed argument that there were "[f]actors weighing in favor of approval" of the Merger.[171]

84. As was the case in the original arbitration, to the extent any such factors existed, none addressed the simple fact that the NPS stood to lose—even by its own padded estimates—an enormous amount of value from the Merger. Even after the NPS's attempts to doctor its initial merger valuations (at the direction of CIO Hong), it calculated a loss in value to the NPS alone of KRW 138.8 billion from the Merger[172]—an enormous, and prohibitive loss of value to the NPS that contradicted the NPS's Voting Guidelines.[173] If the NPS Research Team had maintained its initial appropriate merger ratio of 1:0.64, the loss would have been much greater. In the original arbitration, EALP's quantum expert, Mr. Boulton, estimated that the NPS likely suffered a loss more in the range of KRW 552 to 617 billion.[174]

---

168 Transcript of Court Testimony of Nam-kwon Jo (Moon/Hong Seoul Central District Court), 22 March 2017, **Exh C-497**, pp. 26–27

169 Fourth Statement Report of Ki-nam Kim to the Special Prosecutor, 4 January 2017, **Exh C-481**, p. 12 (emphasis added).

170 *See, e.g.*, Response to Notice of Arbitration, ¶ 4; SOD, ¶¶ 448–451; ROK's Rejoinder, ¶¶ 216(c), 448; ROK's Post-Hearing Brief, ¶¶ 9, 92; ROK's Reply Post-Hearing Brief, ¶ 30. *See also* Annex A, row 5.

171 ROK's Submission, ¶¶ 88–98.

172 *See* NPSIM Research Team, "Report on Appropriate Valuation Calculation of Cheil Industries and SC&T", 10 July 2015, **Exh C-426**, p. 2; Statement Report of [redacted] to the Special Prosecutor, 2 January 2017, **Exh C-477**, pp. 9–10.

173 *See, e.g.*, Seoul Central District Court, Moon/Hong, **Exh C-69**, pp. 61–62, 66–69.

174 *See* Reply, ¶ 509(h); Second Boulton Report, ¶ 8.3.5 and Figure 24. *See also* "[Parliamentary Inspection of State Administration in 2019] NPS Loses KRW 700 Billion Due to Illegal

85. What is more, none of these recycled arguments of alleged factors "weighing in favor" of the Merger alters the contemporaneous evidence discussed above that the Investment Committee members voted in favor of the Merger *because of the fabricated synergy effect* and not because of the various other factors that the ROK claims to have weighed in favor of the Merger.[175] Indeed, the Minutes of the Investment Committee meeting record that the Committee decided to support the Merger "*in view of its synergy effect*".[176] None of the ROK's other factors in favor of the Merger is referred to in the Committee's conclusions.

<u>The ROK has already made, and the Tribunal has already rejected, the failed argument that some proxy advisors recommended supporting the Merger</u>

86. The ROK raises, once again,[177] the failed argument that some "Korean securities analysts viewed the Merger positively", and that the market's reaction to the Merger was "mixed".[178] However, there is a reason why this recycled argument has already failed.

a. The source of the information it relies on is a press release from SC&T itself on 8 July 2015, released immediately after the major proxy advisors had strongly advised SC&T shareholders to vote *against* the Merger.[179]

b. The record has already demonstrated that Samsung influenced and even suborned these analysts to support the Merger. For instance, the former CEO of Hanwha Investment & Securities confirmed to a Korean

---

Involvement in SC&T Merger . . . Losses Equivalent to Retirement Funds for 1.3 Million People", *Today News*, 9 October 2019, **Exh C-675** (recording that "according to materials submitted by the NPS to the office of National Assemblywoman Choun-sook Jung, a member of the Democratic Party and the Health and Welfare Committee of the National Assembly, the NPS, which had approved the merger, sustained a total loss of approximately KRW 681.5 billion on its investment in SC&T from the announcement of the merger on May 26, 2015 to March 2019, comprising approximately KRW 368.7 billion from direct investment and KRW 312.8 billion from investment under consignment. Especially, as of November 2018, the total valuation loss stood at KRW 749.2 billion.").

175 *See above*, ¶¶ 62–65.

176 NPSIM Management Strategy Office, "2015-30th Investment Committee Meeting Minutes", 10 July 2015, **Exh R-128**, p. 16 (emphasis added).

177 *See, e.g.*, SOD, ¶ 80. *See also* Annex A, rows 5–6, 13.

178 ROK's Submission, ¶¶ 96–97.

179 *See* S Yoon, "How do the domestic securities analysts view the 'Samsung C&T Merger'?", *Digital Daily*, 8 July 2015, **Exh R-11**.

Congressional hearing in December 2016 that Samsung applied significant pressure on Korean securities analysts and brokerage firms.[180]

c. The ROK conceded in the original arbitration that *all* the major proxy advisors[181] "criticized the Merger Ratio and recommended that shareholders of Samsung C&T vote against the Merger."[182]

d. The ROK also fails to address the more pertinent evidence that the NPS's own proxy advisor, the Korean Corporate Governance Service, which the NPS had engaged to advise on the Merger vote in accordance with its Voting Guidelines,[183] explicitly advised the NPS to vote *against* the Merger.[184]

The ROK has already made the failed argument that other shareholders voted in favor of the Merger

87. The ROK raises, once again,[185] the failed argument that the Tribunal should look to "the voting behavior of other SC&T shareholders that were not subject to any

180 National Assembly Secretariat, Minutes of the Fourth Special Committee on Parliamentary Investigation to Clarify the Truth regarding Suspicions of Monopoly of State Affairs by Civilians such as Soon-sil Choi regarding the Geun-hye Park Government, 346th Session, 6 December 2016, **Exh C-460**, p. 39. *See also* Milhaupt Report ¶¶ 37–39.

181 *See* KCGS, "Report on Analysis of Agenda Items of Domestic Listed Companies (2015) - Samsung C&T", 3 July 2015, **Exh C-402**; ISS Special Situations Research, "SC&T: proposed merger with Cheil Industries", 3 July 2015, **Exh C-30**; Glass Lewis Report, 17 July 2015, **Exh C-43**.

182 SOD, ¶ 82.

183 ASOC, ¶ 67. *See also* "South Korea advisory firm recommends NPS vote against Samsung deal", *Reuters*, 7 July 2015, **Exh C-32**.

184 KCGS, "Report on Analysis of Agenda Items of Domestic Listed Companies (2015) - Samsung C&T", 3 July 2015, **Exh C-402**, p. 1. The KCGS also recommended that Cheil shareholders oppose the Merger (KCGS, "Report on Analysis of Agenda Items of Domestic Listed Companies (2015) - Cheil Industries", 3 July 2015, **Exh C-403**, p. 1.

185 *See* SOD, ¶¶ 483–484 ("[e]ven after the NPS had determined how it would vote, many other shareholders had to—and did—vote in favour or abstain from voting or decline to attend the EGM for the Merger to be approved. There were numerous permutations and variables on how each shareholder would make its decision, and how the collective result of each shareholder's individual decision-making would add up. That the ultimate result of all these shareholders' individual decisions was the Merger's being approved was simply too remote a possibility for the NPS to be held responsible for that approval, even after it had taken the decision to vote in favour of the Merger . . ."). *See also* id., ¶ 17(b), 17(e), 415–420, 463; Response to Notice of Arbitration, ¶ 5; ROK's Rejoinder, ¶¶ 243–245; Arbitration Hearing, Day 2, 67:10–68:5 (Counsel for the ROK) and Day 9, 110:3–11 (Counsel for the ROK); ROK's Reply Post-Hearing Brief, ¶ 54; Annex A, row 13.

such interference".[186] However, there is again a reason why this recycled argument has already failed.

a. As the record in this arbitration demonstrates, shareholders likely followed the lead of the NPS in voting in favor of the Merger. As EVC member Mr. [redacted] testified: "decisions by the NPS play an important role particularly in how domestic institutional investors make their decisions . . . *I think it has a significant influence on individual investors as well*."[187] Thus, in its "*Action Plans*" document, the MHW anticipated that an early decision on the Merger vote by the NPS would "*give positive signals to domestic and foreign institutions while ending wasteful debate at an early stage*" about how to vote on the Merger.[188] Indeed, in the original arbitration, the ROK accepted that the NPS vote "may" have influenced how these shareholders voted.[189]

b. In any event, the relevant question is not how other shareholders voted, but how the NPS—with its casting vote—voted to bring the Merger about.

88. In summary, there are overwhelming reasons why these recycled arguments failed before, even if it was open to the Tribunal to determine factual questions "afresh", which it is not. The ROK's hypothetical scenario of what might have been without the illegal government intervention breaks down in the face of one simple fact. A determinative number of NPS Investment Committee members have confirmed that they would not have supported the Merger but for the forged synergy effect calculation with which they were presented.[190]

89. The ROK's reliance on additional Korean court judgments does not challenge that evidence at all.

---

186 ROK's Submission, ¶ 141.

187 Transcript of Court Testimony of [redacted] (Moon/Hong Seoul Central District Court), 19 April 2017, **Exh C-504**, pp. 22–23 (emphasis added).

188 [Ministry of Health and Welfare], "Action Plans for Initiating Discussions at the Investment Committee", [8 July 2015], **Exh C-419**, p. 1 (emphasis added).

189 *See* SOD, ¶ 420.

190 *See* EALP's Post-Hearing Brief, ¶ 169 and evidence cited therein. *See also above*, ¶¶ 62–65.

(iv) The Additional Judgments do not disturb the Tribunal's binding factual findings

90. The ROK seeks to rely on a series of new judgments rendered by the Korean courts, purportedly as new evidence, somehow to undermine the Tribunal's binding factual findings. These include judgments from the criminal proceedings brought against JY Lee for market manipulation (***JY Lee Unlawful Merger Judgments***) and civil proceedings brought by SC&T shareholders against the ROK (***Shareholder Claims Judgments***; together, the ***Additional Judgments***).[191] They do not affect the Tribunal's findings.

91. *First*, the Additional Judgments do not constitute new primary "evidence" at all. As further detailed in ***Annex B***, they are the judicial decisions of other fora addressing different causes of action, different legal standards applied to different evidentiary records. As the ROK itself has declared in another context: "[t]o state the obvious, the fact that one decision-making tribunal has decided to take a particular approach does not mean that its decision was correct."[192]

92. *Second*, contrary to the ROK's insinuation,[193] the Tribunal's findings of fact in its Award were not based exclusively on the criminal convictions of Minister Moon and CIO Hong. To the contrary, the Tribunal had before it the primary evidentiary record that underlay those Judgments, and concluded on the basis of its own review of the evidence that it had no reason to doubt the factual findings in the Moon/Hong Judgments.[194] This primary evidence forms part of the record of the arbitration because of this Tribunal's orders on document production,[195] and it was extensively detailed in EALP's written and oral submissions in the original arbitration.[196]

93. *Third*, none of the criminal convictions against President Park, Minister Moon or CIO Hong has ever been overturned, nor indeed has the conviction of Mr. JY Lee

---

191 *See, e.g.*, ROK's Submission, ¶¶ 91, 99.

192 ROK's Submission, ¶ 13.

193 *See* ROK's Submission, ¶¶ 49–55.

194 *See* Award, ¶¶ 581–582.

195 *See* Procedural Order No. 8, Annex I.

196 *See, e.g.*, EALP's Post-Hearing Brief, Section II.B; EALP's Reply, Section II.B–D.

for corrupting a public official.[197] Nor do the Moon/Hong Judgments have any less legal authority than any of the Additional Judgments that the ROK has now submitted; in fact, the Additional Judgments adopted the facts as found by the Moon/Hong Judgments and did not make any contradictory factual findings. This remains so notwithstanding the Additional Judgments that the ROK relies on to suggest that the prior bases for the Tribunal's factual determinations must be reopened "afresh".

94. *Finally*, and in any event, the Additional Judgments, in significant ways, do not materially depart from the prior judgments in substance:

a. Shareholder Claims Judgments:[198] These civil claims against the ROK under the State Compensation Act were premised on, and expressly adopted, the findings from the Moon/Hong Judgments that Minister Moon abused his authority over the NPS and CIO Hong breached his official duties.[199] The Seoul Central District Court reaffirmed those findings, accepting that Minister Moon's conduct "may have affected the result" of the vote and that ROK officials "exercised . . . a certain degree of influence" over the Investment Committee.[200] It dismissed the claims by applying a domestic law test for joint torts that has no relation to the international law standard before this Tribunal.[201] Contrary to the ROK's characterization, the court *did not* find that the NPS voted independently of the MHW's intervention.[202] Rather, it held that the NPS' act of voting in favor of the Merger was "an independent exercise of rights as a shareholder" and so could not be a 'joint' tort with the actions of ROK's

197 *See* Award, ¶¶ 270–273, 277–280, 284–288.

198 *See also* Annex B, Section II.

199 Shareholder Claims District Court Judgment, Case No. 2020GaHap600079, 25 November 2022, **Exh R-389**, pp. 3–7, 10; Shareholder Claims High Court Judgment, Case No. 2023Na2000796, 12 February 2026, **Exh R-390**.

200 Shareholder Claims District Court Judgment, **Exh R-389**, pp. 10–12.

201 Shareholder Claims District Court Judgment, Case No. 2020GaHap600079, 25 November 2022, **Exh R-389**, pp. 12–14; Shareholder Claims High Court Judgment, Case No. 2023Na2000796, 12 February 2026, **Exh R-390**, pp. 6–7. *See also* EALP's Response to ROK's Application, 22 May 2026, ¶ 23(i).

202 ROK's Submission, ¶ 183(a)–(d).

public officials, including Minister Moon.[203] In short, the court declined to find that one shareholder's vote gave rise to a breach of duty to another shareholder as a matter of Korean law. The Seoul High Court recognized this distinction, stating (with express reference to the Tribunal's Award and the award in *Mason*) that "the absence of the [NPS]'s liability under Korean law does not extinguish [the ROK's] liability under international law."[204]

b. JY Lee Unlawful Merger Judgments:[205] These criminal proceedings against Mr. JY Lee and others for alleged market manipulation under the Capital Markets Act ended in an acquittal on those charges alone, leaving untouched both the Moon/Hong Judgments and Mr. JY Lee's separate conviction for bribery and embezzlement.[206] The questions they address (the Merger's business purpose, ratio, and timing) are not new.[207] The Award analyzed the materially identical Merger Nullification judgment's

203 Shareholder Claims District Court Judgment, Case No. 2020GaHap600079, 25 November 2022, **Exh R-389**, pp. 12–13.

204 Shareholder Claims High Court Judgment, Case No. 2023Na2000796, 12 February 2026, **Exh R-390**, p. 7.

205 *See also* Annex B, Section III.

206 JY Lee Unlawful Merger District Court Judgment, Case No. 2020GoHap718, 920 (Consolidated), 5 February 2024, **Exh R-391**; JY Lee Unlawful Merger District Court Judgment, Case No. 2024No635, 3 February 2025, **Exh R-392**; JY Lee Unlawful Merger District Court Judgment, Case No. 2025Do2805, 17 July 2025, **Exh R-393**; Seoul High Court Case No. 2019No1937, 18 January 2021, **Exh C-712**, pp. 25–26.

207 For example, Case No. 2016GaHap510827, Seoul Central District Court, 19 October 2017, **Exh R-20**, p. 12 (Purpose of the Merger: "Moreover, even if the Merger was part of the comprehensive succession process, it cannot be said that the purpose of the Merger is improper just because the purpose of strengthening control . . . was included in the Merger"); p. 17 (Merger Ratio: "[I]t is questionable whether the Merger Ratio was unfavorable to Samsung C&T and its shareholders and even if it was somewhat unfavorable to Samsung C&T and its shareholders, the terms were based on the relevant laws and there does not appear to be any special circumstances such as acts of market price manipulation and unfair trading under the Capital Markets Act"); and pp. 19–20 (Timing of the Merger: "[T]he claim that if a specific date, other the actual Initial Date, was set as the Initial Date, it would have been more favorable to Samsung C&T cannot serve as grounds that the Merger Ratio calculated from another certain point in time other than the Initial Date is unfair, given that it is generally difficult to predict the changes in company value because it is not fixed and also to predict changes in the share prices, a relevant indicator, which constantly fluctuates . . . the differences between the share prices of Samsung C&T and Cheil around the Initial Date does not appea[r] (sic) to be unusually large compared to the difference in share prices of the two companies on a different date and since there is no evidence that there was a systematic 'share price manipulation' by the Samsung Group, as claimed by the Plaintiffs, it cannot be determined that the Initial Date was particularly unfavorable to Samsung C&T Accordingly, it cannot be seen that the merger price and Merger Ratio which were based on the share market prices around the Initial Date is manifestly unfair.").

findings and held they disclosed "no contradiction, in substance" with, and did "not upset" the findings from the Moon/Hong Judgments.[208] While the ROK relies on a single passage from this Judgment,[209] it ignores the separate finding that Minister Moon and CIO Hong "exerted . . . influence" over the Investment Committee and that CIO Hong faced "repeated external pressure" from ROK officials.[210]

95. Accordingly, the binding findings of fact that the Tribunal reached in its Award should not be reopened on the basis of the Additional Judgments.[211]

2. The Tribunal has already found that the NPS's vote caused the Merger's approval

96. The next link in the causal chain concerns the relationship between the NPS's vote and the approval of the Merger. Again, this issue has already been fully ventilated by the Parties and considered by the Tribunal.

97. The Merger needed the support of two-thirds of the shareholders present and voting at the Extraordinary General Meeting in order to pass.[212] The Merger ultimately passed with 92,023,660 votes in favor.[213] Given its 17,512,011 shares in SC&T (or 11.21%), if the NPS had voted against the Merger proposal or abstained, the shares in favor of the Merger would have been 56.30% or 64.88%, respectively, in either case short of the 66.67% required for the Merger to be

---

208 Award, ¶¶ 605, 611, 614, 621. *See also* EALP's Response to ROK's Application, 22 May 2026, ¶¶ 23(iii), 48.

209 *See* ROK's Submission, ¶ 183(e), referring to JY Lee Unlawful Merger District Court Judgment, Case No. 2020GoHap718, 920 (Consolidated), 5 February 2024, **Exh R-391**, p. 748.

210 JY Lee Unlawful Merger District Court Judgment, Case No. 2020GoHap718, 920 (Consolidated), 5 February 2024, **Exh R-391**, pp. 440, 433, 748.

211 *See* Award, ¶¶ 582–625; 816–820.

212 Commercial Act, 20 May 2014, **Exh C-127**, Article 522 (Merger Agreement and Resolution to Approve Merger Agreement) ("(1) In order to effect a company merger, a merger agreement shall be prepared and be approved by a general meeting of shareholders . . . (3) A resolution for approval under paragraph (1) shall be adopted in accordance with Article 434."); Article 434 (Special Resolutions for Amendment to Articles of Incorporation) ("A resolution under Article 433 (1) shall be adopted by the affirmative votes of at least two thirds of the voting rights of the shareholders present at a general meeting of shareholders and of at least one third of the total issued and outstanding shares.").

213 *See* Case No. 2016GaHap510827, Seoul Central District Court, 19 October 2017, **Exh R-20**, p. 4. *See also* EALP's Post-Hearing Brief, ¶ 172.

approved.[214] Thus the Seoul High Court in the Moon/Hong proceedings concluded that the NPS held the casting vote on the Merger[215]—indeed, this was precisely why the NPS was targeted for intervention by the ROK.[216]

98. The Tribunal agreed. In its Award, the Tribunal confirmed that:

a. "*[T]he NPS had a de facto casting vote* as the largest shareholder of SC&T";[217] and

b. "[C]onsidering the ownership of SC&T's shares and the interests of several SC&T shareholders, [the NPS's] vote in favor of the Merger, which held 11.21% of shares in SC&T, was *absolutely necessary* to secure more than two-thirds of the participating votes required to approve the Merger. Accordingly, *the [NPS] came to have the de facto casting vote that would determine whether the Merger would proceed*."[218]

99. In its Submission, the ROK does not contest that the NPS held the casting vote on the Merger and that it is "the subject of binding findings, which have not been set aside."[219] There is therefore no dispute between the Parties that the Tribunal has already held that but for the NPS's vote in favor of the Merger, the Merger would not have been approved,[220] and that this finding is unaffected by the English Court's conclusion as to the legal status of the NPS under international law.

---

214 *See* EALP's Post-Hearing Brief, ¶ 172; Reply, ¶ 514.

215 *See* Seoul High Court, Moon/Hong Decision, **Exh C-79**, p. 9 ("[T]he [NPS] came to have the *de facto* casting vote that would determine whether the Merger would proceed"); Seoul Central District Court, Moon/Hong, **Exh C-69**, p. 7. *See also* EALP's Post-Hearing Brief, ¶¶ 172–173; Reply, ¶¶ 513–516.

216 *See* [Blue House], "Direction of the National Pension Service's Exercise of Voting Rights regarding the Samsung C&T Merger", undated, **Exh C-588**, p. 41; [Ministry of Health and Welfare], "Report on NPS Exercise of Voting Rights regarding Samsung C&T and Cheil Industries Merger", [9 July 2015], **Exh C-424**, p. 5215. *See also* ROK's Submission, ¶ 57 (acknowledging that the NPS held the "casting vote on the Merger").

217 Award, ¶ 817 (quoting Seoul Central District Court, Moon/Hong, **Exh C-69**, p. 61) (emphasis added).

218 Award, ¶ 818 (quoting Seoul High Court, Moon/Hong Decision, **Exh C-79**, p. 9) (emphasis added).

219 ROK's Submission, ¶ 57.

220 *See* EALP's Submission, ¶¶ 27–29.

3. The Tribunal has already found that the Merger caused EALP's loss

100. The final link in the causal chain concerns the relationship between the Merger and EALP's loss. This was a point on which the Parties submitted considerable fact and expert evidence, which is summarized at paragraphs 175 to 176 and 187 to 256 of EALP's Post-Hearing Brief.

101. Ultimately, the Tribunal agreed that the Merger caused a loss to EALP, holding in its Award that:

a. "The merger ratio was such that major shareholders of the Samsung Group such as [JY Lee] would be at a gain, and SC&T shareholders would be at a loss" and "*the approval of the Merger had a direct effect of profiting the major shareholders of the Samsung group* such as [JY Lee]".[221]

b. "The Korean Courts have thus found that . . . *there was therefore a direct causal link between the NPS's vote on the Merger and the loss suffered by the NPS and other SC&T shareholders, including the Claimant*. . . . There is no evidence before the Tribunal in the present proceedings that would cause the Tribunal to second-guess the findings of the Korean courts."[222]

c. "[T]he Claimant's loss . . . [is] the difference between SC&T's share price on the valuation date, 16 July 2015, and the price at which the Claimant subsequently disposed of its shareholding",[223] as "[t]his is a loss that the Claimant would have suffered as a result of the Respondent's breach, as it would indeed have 'locked in,' or realized, the reduction in value of the Claimant's investment in SC&T as a result of approval of the Merger";[224] and

d. "The Claimant's total loss on its entire stock of 11,125,927 shares it held on the valuation date of 16 July 2015 . . . amounts to

221 Award, ¶ 817 (quoting Seoul Central District Court, Moon/Hong, **Exh C-69**, pp. 61, 63–64) (emphasis added).

222 Award, ¶¶ 819–820 (emphasis added).

223 Award, ¶ 932.

224 Award, ¶ 933.

> KRW 68,744,114,123, or approximately KRW 68.7 billion (KRW 13,358,357,723 for the Putback Shares + KRW 55,385,756,400 for the non-putback shares). . . . [T]his is therefore the amount to which the Claimant is, in principle, entitled under the Treaty in compensation of the loss of value of its investment as a result of the Respondent's breaches of the Treaty."[225]

102. In its Submission, the ROK does not contest that the Tribunal concluded that the Merger caused a loss to EALP, and that it was quantified.[226] Instead, the ROK contends that "that is not the same question as what loss (if any) was caused by the Blue House Measures."[227] It is unclear if the ROK's argument is that the Merger cannot be considered as part of the causal chain (for reasons that are unstated), or something else entirely. Either way, this is no answer to the clear findings on EALP's loss in the Award, all of which are unaffected by the English Court's Judgment and remain binding on the Parties and the Tribunal.

IV. THE TRIBUNAL'S BINDING FINDINGS ESTABLISH LEGAL CAUSATION

103. The narrow issue that *has* been remitted to the Tribunal is whether its finding of legal causation in the Award is affected by the English Court's conclusion as to the legal status of the NPS as a *de facto* State organ. The answer is 'no'.

104. As detailed in this Section, the Tribunal has already held that the standard for legal causation under international law is met when there is a proximate and unbroken causal chain between the State's breaches and the investor's loss, and that foreseeability is relevant to this analysis (***Section IV.A***). That is a standard that EALP has already met:

---

225 Award, ¶ 938. This amount was later reduced to KRW 62,206,067,478, or approximately KRW 62.2 billion (KRW 6,820,311,078 for the Putback Shares + KRW 55,385,756,400 for the non-putback shares). *See* Decision on Requests for Correction and Interpretation of the Award, 1 September 2023, ¶ 65(a)(10).

226 *See* ROK's Submission, ¶ 58.

227 *See* ROK's Submission, ¶ 58.

a. The Tribunal has already made findings on legal causation that remain binding (***Section IV.B.1***);

b. Those findings include that the conduct of the Blue House, Minister Moon and the MHW led directly to the NPS's vote on the Merger (***Section IV.B.2***); and

c. The Tribunal's findings are entirely unaffected by either the Additional Judgments that have now been submitted by the ROK (***Section IV.B.3***) or the ROK's loss of chance argument, which has already been considered and rejected by the Tribunal (***Section IV.B.4***).

A. THE TRIBUNAL APPLIED THE CORRECT TEST FOR LEGAL CAUSATION UNDER INTERNATIONAL LAW

105. In its Award, the Tribunal already held that legal causation concerns "whether the claimed loss or damage is sufficiently closely linked to the alleged breach," which "may be determined in terms of whether the claimed loss or damage is a 'direct' result of the alleged breach, or whether it is 'proximately' caused by the alleged breach" (these two formulations being "technically distinguishable but in substance equivalent ways of stating the applicable test").[228] The Tribunal further clarified that legal causation will not be established where there is "an intervening cause that breaks the chain of causation, rendering the alleged loss or damage 'indirect' or too 'remote' to be compensated."[229]

106. While the ROK accepts that the Tribunal has already "set out its views as to the applicable legal test[]" for causation at paragraph 815 of the Award,[230] it contends that "the Tribunal did not hold that the test for legal causation is satisfied by foreseeability and did not apply a foreseeability test."[231] The ROK appears to rely

---

228 Award, ¶ 815.

229 Award, ¶ 815.

230 *See* ROK's Submission, ¶ 46.

231 ROK's Submission, ¶ 173(a). *See also* id., fn. 322 ("Claimant appears to contend that the Tribunal's findings in respect of foreseeability mean that 'it is simply not open to the ROK to relitigate in these proceedings whether the causal chain was sufficiently proximate.' Claimant's Submission, ¶ 74. That is wrong, as foreseeability is not the determining test for legal proximity.").

on the fact that the Tribunal did not explicitly refer to the term "foreseeability" at paragraph 815 of the Award. However, this is a strained and incorrect reading of one paragraph of the Award.

107. As numerous tribunals have made clear, "proximity and foreseeability are related concepts" precisely because "a chain of causality must be deemed proximate, if the wrongdoer could have foreseen that through successive links the irregular acts finally would lead to the damage."[232] If the Tribunal had wished to exclude foreseeability from the causal analysis, and thereby depart from the approach routinely taken by other tribunals, it would have done so clearly. It did not.

108. To the contrary, elsewhere in the Award, the Tribunal repeatedly noted the foreseeability of EALP's harm, both in its findings on the ROK's preliminary objections and on the merits, none of which has been set aside.[233] In particular, the Tribunal held at paragraph 360 of its Award that EALP's harm was *both foreseeable and foreseen* by the ROK:

> *Not only was the effect of the Respondent's intervention in the NPS's vote on the Claimant's investment reasonably foreseeable at the time the intervention occurred; as a matter of fact, the Respondent foresaw at the time that the Claimant's investment would be adversely affected by the intervention*, as it was very much a matter in the public domain, and well known to the Blue House, the MHW, and the NPS, that the Claimant opposed the Merger. Moreover, the evidence shows that Minister Moon and CIO Hong in particular invoked the Claimant's opposition to the Merger as an argument to persuade other officials of the MHW and the NPS, and the members of the NPS's Investment Committee, to support the Merger.[234]

232 *Joseph Charles Lemire v. Ukraine* (ICSID Case No. ARB/06/18), Award, 28 March 2011, **Exh RLA-56**, ¶ 170. *See also Ioannis Kardassopoulos and Ron Fuchs v. Republic of Georgia*, ICSID Case Nos. ARB/05/18 and ARB/07/15, Award, 3 March 2010, **Exh CLA-133**, ¶ 469.

233 *See* Award, ¶¶ 359–361.

234 Award, ¶ 360 (emphasis added).

109. Similarly, Mr. Thomas observed in his Separate Opinion that:

> The weight of the evidence shows that *had it not been for the unexpected emergence of the Claimant's highly publicized proxy campaign, the measures relating to the voting of the NPF's shares would likely not have been adopted or maintained in the first place*. The measures, intended by the President to assist the succession plan by means of a vote in favour of the Merger, *necessarily were intended to defeat the Claimant's proxy battle*, in respect of which it had acquired its 7.12% shareholding in SC&T. Whether the President intended to harm the Claimant's covered investment is not clear. But what is clear is that upon the giving of her directive, unbeknownst to the Claimant, it was engaging in a waste of time and money in launching a proxy battle *that was destined to fail*, and at least to that extent it was harmed.[235]

110. The ROK is thus wrong to suggest that foreseeability, or the fact that EALP's loss was foreseeable precisely because it was intended,[236] was somehow implicitly eliminated from the Tribunal's considerations of whether the ROK's conduct caused harm to EALP. To the contrary, the foreseeable *and foreseen* consequences of the ROK's illegal conduct were a common thread in the Tribunal's analysis of its jurisdiction and the merits.

111. In any event, and for the avoidance of doubt, EALP's case on legal causation has never relied solely on the foreseeability of the harm it suffered (although, for the reasons stated above, this would suffice to satisfy the requirements for establishing causation as a matter of law). As detailed in the Award, EALP's position, consistent with that set out in the ILC's Articles on State Responsibility[237] and the United States' Non-Disputing Party Submission[238], is that legal causation is established if the harm suffered was "foreseeable, *not too remote, and . . . the natural consequence of the wrongful act*."[239] As demonstrated in the following

---

235 Separate Opinion of J. Christopher Thomas, 20 June 2023, ¶ 71 (emphasis added).

236 *See below*, ¶ 112.

237 *See* Commentary to the ILC Articles, **Exh CLA-38**, Article 31.

238 *See* Award, ¶ 723 (citing to the US Non-Disputing Party Submission, ¶¶ 10–11, which in turn cited Commentary to the ILC Articles, **Exh CLA-38**, Article 31).

239 *See* Award, ¶ 707 (citing EALP's Reply, ¶ 504) (emphasis added)

Section, this is a standard that was—and continues to be—overwhelmingly satisfied by the evidence before the Tribunal.

B. THE CAUSAL CHAIN BETWEEN THE ROK'S BREACHES AND EALP'S LOSS IS PROXIMATE, UNBROKEN AND FORESEEABLE

112. As explained in EALP's Submission on the Remitted Issue, the Tribunal has made numerous findings that establish that the causal chain between the unlawful conduct of the President, Minister Moon or the MHW was the proximate cause of EALP's loss. In particular, the Tribunal has held that:

a. "[T]he MHW . . . intervened in the NPS's vote on the Merger and instructed the NPS *to ensure that the vote would be in favor of the Merger*";[240]

b. "The NPS, *under the direction and instructions of the MHW*, took steps *to ensure that the vote would be conducted by the Investment Committee* rather than the Experts Voting Committee";[241]

c. "*[W]hen voting on the Merger, the NPS did not act independently and for commercial purposes . . . but acted under the direction and instructions of the MHW and thus effectively as an instrument of the MHW in the implementation of a governmental policy*";[242]

d. "The Korean Courts have . . . found that the NPS held a casting vote, and that there was therefore *a direct causal link between the NPS's vote on the Merger and the loss suffered by the NPS and other SC&T shareholders*, including the Claimant. There is no evidence before the Tribunal in the present proceedings that would cause the Tribunal to second-guess the findings of the Korean courts";[243]

---

240 Award, ¶ 602(a) (emphasis added).

241 Award, ¶ 602(b) (emphasis added).

242 Award, ¶ 623 (emphasis added).

243 Award, ¶¶ 819-820 (emphasis added).

e. "*There is no evidence before the Tribunal of any intervening act that would have broken the chain of causation between the NPS's vote and the claimed loss and damage*."[244]

113. These findings were unsurprising in light of the overwhelming evidence of proximity between the ROK's violative conduct and the harm that befell EALP. As the Tribunal will recall, this is the rare case where there is evidence that the State breached its Treaty obligations *intentionally* in order to ensure that the NPS voted in favor of the Merger.[245] Given the NPS's casting vote, the ROK's conduct ensured that the Merger would be approved. Indeed, it was because the ROK was aware that the NPS held the casting vote that it was targeted by the Blue House and the MHW.[246] Moreover, the record shows that EALP was front and center of the ROK's thinking as it embarked on its illegal intervention:

a. A Blue House memorandum considering the advantages and disadvantages of the Blue House "interven[ing] in the NPS's exercise of voting rights," specifically noted "Elliott['s]" opposition to the Merger and observed that "[o]ppos[ing] the merger" would be perceived as tantamount to "help[ing] a foreign hedge fund."[247]

b. Soon thereafter, in late June 2015, President Park decided to "actively intervene[]" in the NPS's vote on the Merger.[248] Again, following this decision, President Park specifically identified "Elliott" as a key obstacle in the ROK's efforts to "ensure that the merger was accomplished."[249]

---

244 Award, ¶ 821 (emphasis added).

245 *See* EALP's Post-Hearing Brief, ¶ 186.

246 *See* Reply, ¶¶ 89–91, 513. *See also* [Yeong-sang Lee's] Handwritten Memo, undated, **Exh C-585** (noting that President Park and her Blue House staff specifically identified "*[s]hares held by [the] NPS*" as a means by which to "help" the Lee Family and "pursue a win-win strategy" to ensure that "*the crown prince [JY Lee]. . . securely inherit[s] the throne*" of the Samsung empire.") (emphasis added).

247 [Blue House], "Direction of the National Pension Service's Exercise of Voting Rights regarding the Samsung C&T Merger", undated, **Exh C-588**, p. 41.

248 Seoul High Court, Park, **Exh C-286**, p. 90.

249 Second Suspect Examination Report of Jin-su Kim to the Special Prosecutor, 9 January 2017, **Exh C-488**, p. 6. *See also* Work diary of [Won-yeong Choe], entry dated [25 June 2015], **Exh C-367**, p. 4; [Blue House], "Review of Domestic Companies' Measures to Defend Management

c. In light of the specific targeting of EALP, Blue House officials specifically noted that implementing President Park's order risked an ISDS claim from EALP.[250]

114. On the basis of this evidence, the Tribunal (as well as Mr. Thomas in his Separate Opinion[251]) concluded that EALP's loss as a result of the conduct of the Blue House, Minister Moon and the MHW was both foreseeable *and foreseen*.[252] Indeed, it was intended or at least assumed by the ROK, since it was a known consequence of the manipulated vote. In its Submission, EALP noted this evidence as further demonstrating how the test for legal causation under international law is overwhelmingly satisfied in this case.[253] That is, the causal chain was far from "complex and uncertain"[254]—it was straightforward and guaranteed.

115. Notwithstanding those clear findings, the ROK seeks to breathe life into its prior failed argument that proximate causation has not been established *at all*.[255] In particular, the ROK argues that "the Tribunal's original finding of legal causation" allegedly "rested on attribution" and thus should be ignored entirely.[256]

116. Specifically, the ROK contends that:

a. The causal chain between the conduct of the Blue House, Minister Moon and the MHW is "too indirect", "complex and uncertain";[257]

Rights Against Foreign Hedge Funds", undated, **Exh C-587**. *See also* Seoul High Court, Park, **Exh C-286**, p. 87 (recounting President Park's testimony that "[a]t the time of the Merger, I found it regrettable and worrisome that [Samsung], a leading corporation in Korea, was being attacked by [Elliott], a foreign hedge fund.").

250 *See* Transcript of Court Testimony of Jong-beom An (JY Lee Seoul Central District Court), 4 July 2017, **Exh C-520**, pp. 28, 30–33. *See also* Transcript of Court Testimony of Wan-seon Hong (Moon/Hong Seoul Central District Court), 17 May 2017, **Exh C-511**, p. 55.

251 *See* Separate Opinion of J. Christopher Thomas, 20 June 2023, ¶ 71.

252 *See* Award, ¶ 360.

253 *See* EALP's Submission, ¶¶ 68–73.

254 ROK's Submission, ¶ 179.

255 ROK's Submission, ¶¶ 177–179.

256 ROK's Submission, ¶ 181.

257 ROK's Submission, ¶¶ 175–176, 179, 182.

b. Findings of the Korean courts, post-dating the Award, purportedly establish that there was no proximate causation;[258]

c. Even if foreseeability is a component of legal causation in this analysis, the "specific loss" has to be foreseen, and—in something of an obvious non-sequitur—the evidence here does not establish that the ROK "intentionally" breached the Treaty;[259] and

d. EALP's loss "falls outside the scope of the rule breached" because, according to the ROK, EALP's loss is that of a fair "*process*" and an "opportunity to prevail in that process", which should be assessed through the lens of a "loss of a chance" rather than the loss of a particular outcome.[260]

117. EALP addresses these arguments in turn, below.

1. The Tribunal's findings on legal causation remain binding

118. The ROK is wrong to argue that all of the Tribunal's findings on legal causation should be ignored because they start from the assumption that the NPS's conduct was attributable to the ROK, for two reasons.

119. *First*, if the Tribunal's findings on legal causation were premised on an incorrect application of the law on attribution, then those findings would have been set aside by the English Court. They were not. Rather, both factual and legal findings survived set-aside because they were made *independent* of any assumption as to the legal status of the NPS.

120. Thus, irrespective of the status of the NPS under international law, the Tribunal's findings on the causal connection between the NPS's vote, on the one hand, and the success of the Merger at the Shareholders' meeting and resulting harm caused to EALP from the Merger itself, on the other hand, are binding on the ROK and the Tribunal, and not open to relitigation. Rather, what falls to be confirmed now

258 ROK's Submission, ¶¶ 183–184.

259 *See* ROK's Submission, ¶¶ 178–179.

260 ROK's Submission, ¶ 187.

is whether the unlawful conduct of the President, the Minister of Health and Welfare, and the MHW was the proximate cause of the NPS's vote on the Merger.

121. *Second*, and for the avoidance of doubt, international law does not allow a State to escape international responsibility simply because the causal chain involved acts by third parties, especially if those acts were under the direction and control of the State.[261]

2. The Blue House Measures led directly to the NPS's vote on the Merger

122. The chain of causation in this case is not especially long, and its length did not prevent the Tribunal from finding that causation had clearly been established. It is not the first tribunal to do so. Thus, for example, the ICSID tribunal in *Joseph Charles Lemire v. Ukraine*, quoting the 1923 holding of the US-German Mixed Commission on the principles of reparation, found that–

> [i]t matters not whether the loss be directly or indirectly sustained so long as there is a clear, unbroken connection between Germany's act and the loss complained of. – *It matters not how many links there may be in the chain of causation connecting Germany's act with the loss sustained, provided there is no breach in the chain and the loss can be clearly, unmistakably and definitely traced, link by link, to Germany's act*. . . . All indirect losses are covered provided only that in legal contemplation Germany's act was the efficient and proximate cause and source from which they flowed.[262]

261 *Cf. CME Czech Republic B.V. v. Czech Republic*, UNCITRAL, Partial Award, 13 September 2001, **Exh CLA-101**, ¶¶ 575–585 (finding the State liable for breaches of the treaty regardless of the conduct of third parties within the causal chain); *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, ICJ Rep 2007, p. 43, **Exh CLA-24**, ¶¶ 396–397 (finding that organs of Serbia were not responsible for the massacres at Srebrenica because there was not sufficient evidence of its direction and control over the relevant third-party paramilitaries. Significantly, however, the mere fact that third parties fell within the causal chain itself was not dispositive).

262 *See Joseph Charles Lemire v. Ukraine* (ICSID Case No. ARB/06/18), Award, 28 March 2011, **Exh RLA-56**, ¶ 166 (emphasis added). *See also Mason Capital L.P. (U.S.A.) and Mason Management LLC (U.S.A.) v. Republic of Korea*, PCA Case No. 2018-55, Final Award, 11 April 2024, **Exh CLA-219**, ¶ 814 ("In the Tribunal's view, the remoteness criterion cannot be understood as requiring the aggrieved party to show that the wrongful act is the 'dominant', 'operative' or 'underlying['] cause of the loss. This would effectively reverse this allocation of the burden of proof. Neither does the claimant have to establish that the breach is the 'the last, direct

123. In the present case, there were three links in the causal chain that the Tribunal has already had no difficulty contemplating: (i) the conduct of the President, the Minister of Health and Welfare, and the MHW in causing the NPS to vote in favor of the Merger; (ii) the NPS, which held the casting vote on the Merger, causing the Merger to be approved; and (iii) the Merger causing EALP's loss.

124. Similarly, the *Mason* tribunal had no difficulty with the same causal chain, finding that there was proximity between the conduct of the President, Minister of Health and Welfare and/or the MHW and the losses suffered by SC&T shareholders like Mason and EALP, even after finding that the conduct of the NPS was not attributable to the ROK.[263] The ROK notably does not engage with this finding or any of the *Mason* tribunal's other holdings on the existence of legal causation in its Submission, despite its lengthy (and baseless) submissions on that award in the context of factual causation.[264]

125. The ROK has also failed to establish a break in the causal chain between the Blue House Measures and EALP's loss. At various junctures of its Submission, the ROK argues that the Investment Committee either could have come to, or in fact came to, an "independent" decision on the Merger, with the implication that this would have broken the causal chain between the ROK's unlawful conduct and EALP's loss.[265] The ROK is wrong both as a matter of law and fact.

a. *First*, it is irrelevant whether the NPS *could have* reached an independent decision in favor of the Merger in the but-for scenario.[266] The onus is on the ROK to prove that an *actual* event occurred that severed the causal

act, the immediate cause' of the claimed loss. The ILC Commentary does not say so, and, in the words of the German-Portuguese tribunal deciding the *Angola* case, 'it would not be equitable to let the injured part[y] bear those losses which the author of the initial illegal act has foreseen . . . for the sole reason that, in the chain of causation, there are some intermediate links'.").

263 *See Mason Capital L.P. (U.S.A.) and Mason Management LLC (U.S.A.) v. Republic of Korea*, PCA Case No. 2018-55, Final Award, 11 April 2024, **Exh CLA-219**, ¶¶ 909–927. *See also* id., ¶ 916 ("[T]he Tribunal's finding that the NPS' conduct is not attributable to Respondent does not mean that the NPS' conduct has become a superseding cause breaking the chain of cause. The undue interference of the Korean government was directed at influencing the NPS' vote. Under these circumstances, the NPS' conduct cannot be severed in causal terms from the conduct attributed to Respondent.").

264 *See* ROK's Submission, ¶¶ 140–169.

265 *See, e.g.*, ROK's Submission, ¶ 149.

266 *See* EALP's Submission, ¶¶ 76–77.

chain.[267] Indeed, the Tribunal considered and rejected this very argument from the ROK: in paragraph 822 of its Award, the Tribunal stated clearly that "[a] chain of causation is not interrupted by a potential event; it can only be interrupted by an event *that has actually taken place*."[268] While this paragraph of the Award was set aside on the basis that it may have been related to the Tribunal's findings on the status of the NPS,[269] EALP invites the Tribunal to confirm this holding, which is entirely consistent with international law[270] and in respect of which the ROK has presented no authority to the contrary.[271]

b. *Second*, the Tribunal has already found that the NPS *did not in fact* act independently. For example, in a portion of the Award that also has not been set aside, the Tribunal has found that:

> [W]hen voting on the Merger, the NPS *did not act independently and for commercial purposes*; as the Korean courts have determined, *the NPS did not take its decision independently, based on the commercial merits of the Merger*, but acted under the direction and instructions of the MHW and thus effectively as an instrument of the MHW in the implementation of a governmental policy.[272]

The English Court characterized this and other similar findings in the Award as a "*factual finding as to what NPS did and under whose direction*

267 *See, e.g.*, Commentary to the ILC Articles, **Exh CLA-38**, Article 31, comment 13 (citing to the *Zafiro* Case for the proposition that "the onus [is] on the responsible State to show what proportion of the damage was *not* attributable to its conduct." (emphasis in original)); *Ioan Micula et al. v. Romania,* ICSID Case No. ARB/05/20, Award, 11 December 2013, **Exh CLA-238**, ¶¶ 926–927.

268 Award, ¶ 822 (emphasis added).

269 *See* Ruling, ¶ 5(j).

270 *See Mason Capital L.P. (U.S.A.) and Mason Management LLC (U.S.A.) v. Republic of Korea*, PCA Case No. 2018-55, Final Award, 11 April 2024, **Exh CLA-219**, ¶¶ 813–819; *Joseph Charles Lemire v. Ukraine*, ICSID Case No. ARB/06/18, Decision on Jurisdiction and Liability, 14 January 2010, **Exh CLA-8**, ¶ 167.

271 *See* ROK's Submission, ¶¶ 171–183.

272 Award, ¶ 623 (emphasis added).

and instructions the NPS acted."[273] These are binding findings that preclude the ROK now from attempting to reopen a debate about whether the NPS voted in favor of the Merger irrespective of and independent from the ROK's unlawful intervention in the NPS's decision-making process.

c. *Third*, the Tribunal has also already found that the votes of other shareholders did not *in fact* break the causal chain between the NPS's vote on the Merger and EALP's loss. Specifically, the Tribunal concluded that it was entirely irrelevant that "even if the NPS had voted against the Merger, any of the shareholders that held more than 2.7% of the shares *could* have voted against the Merger" precisely because "[a] chain of causation is not interrupted by a potential event".[274] Again, while this paragraph was set aside because it contained findings relating to the status of the NPS under international law, the Tribunal is invited to reaffirm the principled finding that the chain of causation may be broken only by events that *in fact* occurred.

d. *Fourth*, the Tribunal has already considered the various "market movements" in determining "the difference between the fair market value . . . of [EALP's] shares in SC&T in the but-for scenario and the actual sales proceeds from [EALP's] sale of SC&T shares,"[275] following significant briefing by the Parties.[276] Ultimately, the Tribunal concluded that EALP's loss, in light of these various arguments and factors, was USD 48,490,438.00, which—as the Tribunal will recall—was a significant discount to EALP's claim.[277] Having already put forward expert evidence on "market movements" in the but-for scenario, it is not open to the ROK to relitigate this issue before the Tribunal in these proceedings.

e. *Finally*, even if there were in fact multiple reasons for the Investment Committee to vote in favor of the Merger, and/or other SC&T shareholders

273 Ruling, ¶ 5(c) (emphasis added).

274 Award, ¶ 822.

275 Award, ¶ 824.

276 *See* Award, ¶¶ 825–878 (summarizing the Parties' positions on quantum).

277 *See* Correction of Award, ¶ 65(a)(12).

that voted in favor of the Merger, and/or other market actors that affected the fair market value of EALP's shares in SC&T, a State's international responsibility for its delict is not reduced or attenuated by the presence of concurrent causes, whether they be third persons or natural events.[278] This is clear in the International Law Commission's Articles on State Responsibility,[279] and also has been affirmed in the jurisprudence of the International Court of Justice [280] and other international arbitral tribunals.[281] Thus, even if there were concurrent events that contributed to EALP's loss at each step of the causal chain, this would in no way detract from the ROK's responsibility as a matter of international law. The ROK entirely ignores this point in its Submission.

126. In summary, the Tribunal has already considered the ROK's various arguments as to alleged intervening causes and found that the ROK failed to discharge its burden of proof in respect of any of them. The causal chain between the conduct of the President, Minister Moon or the MHW, on the one hand, and EALP's losses, on the other, is thus both proximate and unbroken.

---

278 *See* EALP's Submission, ¶ 77. *See also* EALP's Post-Hearing Brief, ¶ 174; EALP's Reply, ¶¶ 517–520.

279 *See* Commentary to the ILC Articles, **Exh CLA-38**, Article 31, p. 93, comment 12 ("Often two separate factors combine to cause damage. . . . Although, in such cases, the injury in question was effectively caused by a combination of factors, only one of which is to be ascribed to the responsible State, international practice and the decisions of international tribunals do not support the reduction or attenuation of reparation for concurrent causes, except in cases of contributory fault.").

280 *See Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment (Reparations), ICJ Rep 2022, p. 13, **Exh CLA-215**, ¶ 97.

281 *See, e.g.*, *Mason Capital L.P. (U.S.A.) and Mason Management LLC (U.S.A.) v. Republic of Korea*, PCA Case No. 2018-55, Final Award, 11 April 2024, **Exh CLA-219**, ¶ 815 ("Turning to what Respondent has to prove to break the chain of causation, the Tribunal considers that proof of a concurrent cause is not sufficient … In the Tribunal's view, Respondent must therefore prove that this concurrent cause "ha[s] superseded the initial cause and therefore become the main cause of the ultimate harm" in order to establish that the chain of causation has been broken"); *Marco Gavazzi and Stefano Gavazzi v. Romania,* ICSID Case No. ARB/12/25, Award, 18 April 2017, **Exh CLA-241**, ¶¶ 269–270 ("[o]ther possible concurrent events that are not attributable to the State are irrelevant; such events do not diminish the State's responsibility, nor do they reduce the amount of compensation for damages due."); *CME Czech Republic B.V. v. Czech Republic*, UNCITRAL, Partial Award, 13 September 2001, **Exh CLA-101**, ¶ 580 ("[a] State may be held responsible for injury to an alien investor where it is not the sole cause of the injury; the State is not absolved because of the participation of other tortfeasors in the infliction of the injury.").

3. The Additional Judgments are irrelevant to legal causation

127. As EALP explained in its Response to the ROK's New Evidence Application, none of the Additional Judgments submitted by the ROK are relevant to the Tribunal's analysis of legal causation in these remitted proceedings.[282] As such, and to avoid wasting the Tribunal's time on evidence that is of no import to the remitted proceedings, EALP did not consider it necessary to oppose the ROK's application in respect of Additional Judgments.[283]

128. The irrelevance of these Additional Judgments has now been borne out. The ROK contends that these Additional Judgments "shed important light on the proper understanding" of the findings reached by the Korean courts in the Moon/Hong Judgments, with the insinuation that they should prompt the Tribunal to "second guess" those findings.[284] As demonstrated above in the context of factual causation, the Additional Judgments do no such thing.[285] The same is true in respect of legal causation:

a. *First*, as explained above, the Additional Judgments do not amount to new primary evidence.[286] Rather, they are additional judicial decisions made on the basis of different evidentiary showings, applying different tests for causation to different causes of action. The Additional Judgments cannot displace findings that the Tribunal reached on the basis of a full evidentiary record.[287] Nor do they in any way replace this Tribunal's right and responsibility to answer the narrow issue before it on the basis of the evidence that has been presented to it.

b. *Second*, the Additional Judgments do not address the overwhelming evidence before this Tribunal that confirms that EALP was in the ROK's crosshairs from the *inception* of its improper intervention. Indeed, as noted

282 *See* EALP's Response to the ROK's New Evidence Application, 22 May 2026. *See also* EALP's Submission, ¶¶ 79–81.

283 *See* EALP's Response to the ROK's New Evidence Application, 22 May 2026, ¶ 4.

284 ROK's Submission, ¶ 183.

285 *See above*, Section III.B.1(iv).

286 *See above,* ¶ 91.

287 *See above*, ¶¶ 91–93.

above, a Blue House memorandum considering the advantages and disadvantages of the Blue House "interven[ing] in the NPS's exercise of voting rights", specifically noted "Elliott['s]" opposition to the Merger and observes that "[o]ppos[ing] the merger" would be perceived as tantamount to "help[ing] a foreign hedge fund."[288] This evidence, which is directly pertinent to questions of legal causation in this case,[289] would have had no relevance to the proceedings at issue in the Additional Judgments.

c. *Third*, and once again,[290] they have not led to an overturning of the convictions of Minister Moon and CIO Hong in which, on largely the same evidentiary showing that is before this Tribunal, the Korean courts did find proximate cause and effect.[291] Accordingly, Minister Moon and CIO Hong *were* convicted of abuse of authority and breach of official duties, respectively.[292] Similarly, President Park's conviction for abuse of power, bribery, and coercion[293] and Mr. JY Lee's separate conviction for bribery and embezzlement in connection with the Samsung succession plan[294] have never been overturned.

d. *Fourth*, the legal test under Korean law for legal causation that was applied to the Korean law causes of action in the Additional Judgments is not the same as the test to be applied under international law. Indeed, this was

---

288 [Blue House], "Direction of the National Pension Service's Exercise of Voting Rights regarding the Samsung C&T Merger", undated, **Exh C-588**, p. 41.

289 *See above*, ¶ 113.

290 *See above,* ¶ 93.

291 *See* Seoul Central District Court Case No. 2017GoHap34, 183 (Consolidated), 8 June 2017, **Exh C-69**, pp. 63–65; Seoul High Court Case No. 2017No1886, 14 November 2017, **Exh C-79**, pp. 66–67, 71–72.

292 *See* Seoul Central District Court Case No. 2017GoHap34, 183 (Consolidated), 8 June 2017, **Exh C-69**, p. 65; Seoul High Court Case No. 2017No1886, 14 November 2017, **Exh C-79**, pp. 70–72.

293 *See* Seoul Central District Court Case No. 2017GoHap364–1, 6 April 2018, **Exh C-280** (sentencing President Park to 24 years in prison); Seoul High Court Case No. 2018No1087, 24 August 2018, **Exh C-286** (increasing the sentence to 25 years in prison); Supreme Court Case No. 2018Do14303, 29 August 2019, **Exh R-180** (reversing on a technical sentencing error only); Seoul High Court Case No. 2019No1962 (remand), 10 July 2020, **Exh R-314** (reimposing a total sentence of 20 years in prison). *See also* Award, ¶¶ 270–273.

294 Seoul High Court Case No. 2019No1937 (remand proceedings), 18 January 2021, **Exh C-712**, pp. 25–26. *See also* Award, ¶¶ 277–280.

explicitly noted by the Seoul High Court in the Shareholder Claims proceeding, when noting the different conclusions reached by it and the Seoul Central District Court on causation in respect of a joint tort claim under Korean law as compared to this Tribunal and the *Mason* tribunal:

> [T]hese arbitral awards appear to have merely recognised the causal relationship between the Defendant's measures and the damages suffered by the U.S. investor from an international law perspective in relation to the Korea-U.S.A. Free Trade Agreement. They did not determine whether, *on the premise that the [NPS]'s exercise of voting rights was an exercise of its inherent right as a shareholder, a proximate causal relationship existed under domestic law between the abuse of authority by the Defendant's public official and the damages suffered by other shareholders*."[295]

e. *Fifth*, the conclusions reached in the Shareholder Claims Judgments on causation are substantively identical to those in the October 2017 Merger Nullification proceedings that the Tribunal has already considered and dismissed.[296] In material respects, the wording from the allegedly "new" findings of the Shareholder Claims District Court Judgment is nearly identical to that of the Merger Nullification Decision.[297]

---

295 Shareholder Claims High Court Judgment, **Exh R-390**, pp. 6–7 (emphasis added).

296 *See* Award, ¶¶ 601–605. *Cf.* Seoul Central District Court, Case No. 2020GaHap600079, 25 November 2022 (Shareholder Claims District Court Judgment), **Exh R-389**, p. 13; Case No. 2016GaHap510827, Seoul Central District Court, 19 October 2017, **Exh R-20**, pp. 11–12, 38–39

297 For example, on the synergy effect, the Shareholder Claims District Court Judgment states: "[A]s to the synergy materials, the Investment Committee members, being experts, were all aware that synergy effects, which involve assessing *future value on a present-day basis, could not be accurately quantified*, and certain members in fact raised the issue, leading to *discussion within the Investment Committee*—such that *it cannot be said that the members believed the losses* that would be caused by the reduction of the number of shares as a result of the Merger *could be recovered on basis of the synergy analysis alone*" (Shareholder Claims District Court Judgment, **Exh R-389**, p. 13 (emphasis added)), while the Merger Nullification Decision states: "In relation to the alleged manipulation of the merger synergy analysis, expert Investment Committee members all knew that a *precise calculation was impossible for the merger synergy because it is a future value calculated based on the present value*. In fact, there were *discussions on this issue prompted by Investment Committee members* [redacted] and [redacted], and *it does not seem that Investment Committee members believed that loss could be prevented solely on the merger synergy analysis material alone*" (Case No. 2016GaHap510827, Seoul Central District Court, 19 October 2017, **Exh R-20**, p. 39 (emphasis added)).

f. *Sixth*, the courts in the Additional Judgments largely declined to interrogate the evidence of illegality against President Park and the Blue House. For instance, in reaching its conclusion in the JY Lee Unlawful Merger proceedings that "[i]t cannot be deemed that [the NPS]'s decision-making on the Merger voting was distorted as a result of the President's wrongful intervention,"[298] the Seoul Central District Court only referred to Mr. JY Lee's acquittal in respect of a claim of indirect solicitation in the bribery proceedings against him, while ignoring the other findings of illegality in that and other proceedings.

g. *Finally*, the Tribunal should be wary of adopting the findings of the Additional Judgments that post-date the Award. Particularly in the JY Lee Unlawful Merger proceedings, the Korean court reached its conclusion regarding the purported independence of the NPS's vote on the Merger by: (a) focusing on the fact that the prosecutor in the Moon/Hong proceedings only indicted Minister Moon and not the President or the Blue House staff[299] (a fact that is irrelevant to the analysis of causation in these proceedings); and (b) relying on the ROK's pleaded position in this very arbitration.[300] There is a notable circularity of reasoning revealed by the latter fact: the ROK's courts have relied on the ROK's own position in the original arbitral proceedings to find against the ROK's own prosecutors in domestic proceedings post-dating the Award, and the ROK is, in turn, then relying on the Korean courts' finding to support its rehearsed arguments in the current remitted proceedings.

129. Accordingly, any decisions that these courts reached on causation have no relevance to the issue that is before the Tribunal.

---

[298] JY Lee Unlawful Merger District Court Judgment, Case No. 2020GoHap718, 920 (Consolidated), 5 February 2024, **Exh R-391**, **p.** 748. *See also* ROK's Submission, ¶ 183(e).

[299] JY Lee Unlawful Merger District Court Judgment, Case No. 2020GoHap718, 920 (Consolidated), 5 February 2024, **Exh R-391**, p. 748.

[300] *See, e.g.*, JY Lee Unlawful Merger District Court Judgment, Case No. 2020GoHap718, 920 (Consolidated), 5 February 2024, **Exh R-391**, pp. 748–749 (referring to the ROK's Post-Hearing Brief, ¶ 92). *See also* Annex B, Section III.

4. The Tribunal has already rejected the ROK's loss-of-chance argument

130. The ROK's loss-of-chance argument is, once again, a repeated version of the same failed hypothetical-causation argument that it raised in the original arbitration proceedings[301]—as the English Court also highlighted in its Judgment.[302] In arriving at its quantification of EALP's loss (which was a fraction of the loss EALP claimed), the Tribunal chose not to proceed with a loss-of-chance methodology of calculating loss. There is no basis or reason for this Tribunal to revisit that decision now, because this methodology is—once again—unaffected by the Court's different conclusion as to the legal status of the NPS under international law.

131. As the primary evidence on the record of this arbitration, and as summarized again in ***Section III*** above, overwhelmingly confirmed, the NPS would not have approved the Merger but for the ROK's illegal intervention. In particular, and very simply:

   a. The evidence confirms that the NPS opposed the benchmark SK Merger by way of a decision of its EVC that was improperly circumvented for the SC&T-Cheil Merger;[303]

   b. The uncontested evidence confirms that, prior to the illegal government intervention, the NPS informed EALP directly that it would not support the Merger;[304] and

   c. The uncontested evidence also confirms that numerous Investment Committee members would have voted against the Merger but for the doctored and fabricated valuations that they were presented with in the

---

301 *See* ROK's Post-Hearing Brief, ¶¶ 174, 182; ROK's Reply Post-Hearing Brief, ¶ 68. *See also* EALP's Reply Post-Hearing Brief, ¶ 79; Annex A, rows 18–20.

302 *See* ROK's Submission, ¶ 187 (referring to the High Court's note that "a 'loss of a chance' analysis" was "one of the approaches to causation that the Parties had argued before the Tribunal"). *See also* Judgment, **Exh CLA-222**, ¶ 263(v).

303 *See above*, ¶¶ 41–45.

304 *See above*, ¶ 44.

implementation of the illegal government intervention, thereby rendering a vote in favor of the Merger impossible.[305]

132. In circumstances such as these, there is no basis to reopen the entire quantification debate in this arbitration, and a loss-of-chance methodology of calculating damages remains inappropriate in this case.

V. EALP IS ENTITLED TO ITS COSTS

133. In addition to setting aside those paragraphs of the Tribunal's Award that the English Court considered to be intertwined with its conclusion as to the legal status of the NPS, the Court also set aside paragraph 993 of the Award, concerning the Tribunal's holding on costs. In so doing, the Court recognized that the Tribunal's conclusions on the remitted issue may have implications for its determination as to the apportioning of costs between the Parties. Notably, the Court did not set aside any of the Tribunal's preceding findings on costs, including that "the Parties' legal costs are generally not unreasonable, in light of the importance and complexity of the case."[306]

134. Accordingly, in its Submission, EALP requested that the Tribunal:[307]

a. Order, once again, the ROK to pay EALP the legal costs incurred by EALP in relation to the original arbitration proceedings, in the amount of no less than USD 28,903,188.90, with interest at the rate of 5 percent, compounded yearly (i.e., an amount the Tribunal already determined was reasonable and that it already awarded to the Claimant in the Award);

b. Order the ROK to pay the legal costs incurred by EALP in relation to these remitted proceedings, in an amount to be quantified, with interest at the rate of 5 percent, compounded yearly; and

---

305 *See above*, ¶ 65.

306 Award, ¶ 992.

307 *See* EALP's Submission, ¶ 82(d)–(f).

c. Order the ROK to pay EALP's costs of the set-aside proceedings before the English courts.

135. In accordance with the Award, EALP also requested that the Tribunal order that the Parties are to bear their own costs of the original arbitration proceedings.[308]

136. The ROK objects to EALP's request for its costs in two respects. *First*, it contends that EALP is not entitled to its costs of the set-aside proceedings, allegedly on the basis that the costs of the set-aside proceedings fall outside the scope of the Tribunal's jurisdiction and are subject to *res judicata*.[309] *Second*, the ROK contends that the Tribunal should award EALP a lower amount for its costs in the original arbitration proceeding on the basis of ROK's alleged subsequent successes.[310]

137. Neither of these arguments has merit. As for the ROK's arguments regarding the costs of the set-aside proceedings:

a. EALP does not seek to overturn the Court's Ruling. Indeed, the parties are in the process of completing a detailed assessment further to the Court's costs order. Rather, consistent with the principle of full reparation under international law, which provides that "reparation must, as far as possible, wipe out all of the consequences of the illegal act,"[311] EALP is entitled to the costs arising out of the ROK's breach. This includes all those legal costs incurred in relation to the arbitration,[312] including costs of the set-aside proceedings, as EALP would not have had to incur these costs had the ROK not breached its obligations under the Treaty.

---

308 *See* Award, ¶ 990.

309 *See* ROK's Submission, ¶¶ 204–207.

310 *See* ROK's Submission, ¶ 211.

311 *Gemplus S.A., SLP S.A., Gemplus Industrial S.A. de C.V. v. United Mexican States*, ICSID Case No. ARB(AF)/04/3, Award, 16 June 2010, **Exh CLA-199**, ¶¶ 17–21. *See also* EALP's Submission on Costs, ¶ 10.

312 *See Gold Reserve Inc. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/09/1, Award, 22 September 2014, **Exh CLA-122**, ¶ 860 ("[c]ompensating Claimant for the cost of bringing this proceeding is required to wipe out the consequences of Respondent's breach of the BIT").

b. The Tribunal will also recall that EALP's position was always that the Tribunal's findings on attribution ultimately would make no difference in this case (as it did not in *Mason*[313]), as there was no dispute that the ROK was responsible for the conduct of the Blue House, Minister Moon and the MHW.[314] As such, it would have been open to the Tribunal to have made a confirmation to this effect in its Award, and the English Court noted that perhaps—with perfect hindsight—it would have been wise to have done so.[315] In any event, the ROK seized on the absence of that confirmation and the consequence is that EALP has had to endure the empty exercise of an ROK-set aside that will quite clearly not alter the final outcome of this arbitration. It thus would reward the infringing party—here the ROK—if it could avoid the cost of proceedings that ultimately establish breach and loss, simply because it is able to exploit opportunities for challenge that are not at all caused by the claimant and that ultimately result in the same findings of breach and loss.

c. As for the Tribunal's jurisdiction, EALP notes that the Tribunal has the authority under Article 40(e) of the UNCITRAL Rules to award "legal and other costs incurred by the parties *in relation to the arbitration* to the extent that the arbitral tribunal determines that the amount of such costs is reasonable."[316] As the costs of the set-aside proceedings are costs incurred by EALP in relation to the arbitration, specifically, in order to defend against the ROK's attempt to set aside the Tribunal's Award, it is within the Tribunal's power to award EALP these costs.

---

313 *See Mason Capital L.P. (U.S.A.) and Mason Management LLC (U.S.A.) v. Republic of Korea*, PCA Case No. 2018-55, Final Award, 11 April 2024, **Exh CLA-219**, ¶¶ 739–757.

314 *See* EALP's Post-Hearing Brief, ¶ 60.

315 *See* Judgment, **Exh CLA-222**, ¶ 269 ("With some diffidence, and with the inestimable advantage of hindsight, I would tentatively suggest that the present case illustrates the benefit, when alternative bases of establishing jurisdiction are argued and established, of reaching findings of breach, causation and loss which can clearly stand even if one of those bases is later successfully challenged before a supervisory or enforcement court.").

316 UNCITRAL Rules, Article 40(e) (emphasis added).

d. Finally, as for the ROK's *res judicata* argument, there is no triple identity here:[317] neither the relief sought nor the claims raised by the Parties are the same across the set-aside proceedings before the English courts and these arbitration proceedings. There is therefore no basis for the application of this principle to the Tribunal's consideration of costs.

138. Nor is there any basis for the Tribunal to revisit its prior quantification of EALP's legal costs. In accordance with Article 42 of the UNCITRAL Rules, the Tribunal considered which party had prevailed on which issues, and awarded legal costs accordingly, with EALP receiving 78% of its legal costs and the ROK 22% of its legal costs. While EALP accepts that the Tribunal's apportionment of legal costs may need to be revisited in light of its decision on the remitted issue, there is no reason why those percentages should change as a result of the Tribunal's correction of the Award, which, respectfully, was made to correct an error by the Tribunal. If anything, having defeated the ROK's arguments on causation for a second time, the percentages should be revised upwards in EALP's favor.

139. As for the ROK's alleged success in the set-aside proceedings, the ROK only succeeded on two of the five issues it raised in those proceedings, and the Court only remitted the narrow issue to the Tribunal "with reluctance".[318] That narrow issue should be determined in EALP's favor, for the reasons detailed above. Accordingly, as the ROK's success may well be short-lived, there is no basis for the ROK to contend now that the Tribunal's "existing costs award should be revised down."[319] Any decision on legal costs will need to take into account which Party prevailed in the end.

---

317 *See Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 Nautical Miles from the Nicaraguan Coast* (*Nicaragua v. Colombia*), Preliminary Objections [2016] ICJ Reports 100, **Exh CLA-240**, ¶ 59 ("it is not sufficient, for the application of *res judicata*, to identify the case at issue, characterized by the same parties, object and legal ground; it is also necessary to ascertain the content of the decision, the finality of which is to be guaranteed. The Court cannot be satisfied merely by an identity between requests successively submitted to it by the same parties; it must determine whether and to what extent the first claim has already been definitively settled").

318 Judgment, **Exh CLA-222**, ¶ 268.

319 ROK's Submission, ¶ 211.

VI. REQUEST FOR RELIEF

140. For the foregoing reasons, EALP hereby requests that the Tribunal determine as follows.

141. In relation to the calculation of interest in sub-paragraph (b), below, EALP recalls its Request for Correction of the Award dated 20 July 2023 and its submission on the proper determination of interest,[320] which, in its Decision on Requests for Correction and Interpretation, the Tribunal determined that it did not have the power under Article 38(1) of the UNCITRAL Rules to accede to.[321] As the Tribunal is now considering the consequences of the ROK's breaches again, it does have the power to consider and accept EALP's submission on the proper determination of interest.

a. The ROK is ordered to pay EALP compensation for the losses caused to EALP by the ROK's breaches in the amount of USD 48,490,438.00;

b. The ROK is ordered to pay EALP pre-award interest at a rate of 5 percent on KRW 771,026,741,100, compounded yearly from 16 July 2015 until the date of the additional Award, taking into consideration the sums recovered by EALP between 17 and 25 September 2015, on 18 March 2016 and on 12 May 2022;

c. The ROK is ordered to pay EALP post-award interest at a rate of 5 percent, compounded yearly, from the date of the additional Award until payment of the sum in sub-paragraphs (a) and (b) above in full;

d. The ROK is ordered to pay EALP the legal costs incurred by EALP in relation to the original arbitration proceedings, in the amount of no less than USD 28,903,188.90, with interest at the rate of 5 percent, compounded yearly;

---

320 EALP's Application for Correction of the Award, 20 July 2023, ¶¶ 17–20; Award, ¶ 961.

321 Decision on Requests for Correction and Interpretation of the Award, ¶ 64.

e. The ROK is ordered to pay EALP the legal costs incurred by EALP in relation to these remitted proceedings, in an amount to be quantified, with interest at the rate of 5 percent, compounded yearly;

f. The ROK is ordered to pay EALP its costs of the set-aside proceedings before the English courts;

g. The Parties are to bear their own costs of the original arbitration proceedings; and

h. The ROK is ordered to pay the costs of these remitted proceedings.

All other claims and requests for relief are dismissed.

Respectfully submitted,

Constantine Partasides KC
Georgios Petrochilos KC
Elizabeth Snodgrass
Simon Consedine
Nicola Peart
YiKang Zhang
Julia Sherman
Jyotsna Vilva
THREE CROWNS LLP

Michael S. Kim
Andrew Stafford KC
Robin J. Baik
Richard Clarke
Kunhee Cho
KOBRE & KIM LLP

30 June 2026