

**IN THE MATTER OF AN ARBITRATION
BEFORE A TRIBUNAL CONSTITUTED IN ACCORDANCE WITH
THE FREE TRADE AGREEMENT BETWEEN THE REPUBLIC OF KOREA AND THE
UNITED STATES OF AMERICA, DATED 30 JUNE 2007**

- and -

**THE ARBITRATION RULES OF THE UNITED NATIONS COMMISSION
ON INTERNATIONAL TRADE LAW, 2013**

PCA CASE NO. 2018-51

- between -

**ELLIOTT ASSOCIATES, L.P. (U.S.A.)
(the “Claimant”)**

- and -

**REPUBLIC OF KOREA
(the “Respondent,” and together with the Claimant, the “Parties”)**

PROCEDURAL ORDER NO. 23

The Arbitral Tribunal

Dr. Veijo Heiskanen (Presiding Arbitrator)

Mr. Oscar M. Garibaldi

Mr. J. Christopher Thomas KC

Registry

Permanent Court of Arbitration

25 May 2026

I. PROCEEDINGS

1. Pursuant to the order dated 18 March 2026 of the English High Court, the following issue has been remitted to the Tribunal:

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?¹

2. On 11 April 2026, following the case management conference held on 9 April 2026, the Tribunal issued directions for the conduct of these remitted proceedings. As to the admission of new evidence, the Tribunal noted the Respondent's stated intention to adduce further evidence and the Claimant's position that it did not, in principle, object to the Parties adducing evidence that had not been available to them prior to the Tribunal's Award of 20 June 2023. Considering that the rules governing the admission of new evidence must reflect the nature of these remitted proceedings, the Tribunal directed that

a Party seeking to adduce new evidence shall apply for leave, demonstrating that exceptional circumstances warrant admission, and that the opposing Party shall be afforded an opportunity to respond.

3. On 4 May 2026, taking into account the Tribunal's directions of 11 April 2026, the Parties submitted a draft Procedural Order No. 22, setting out the procedural framework for the remitted proceedings. The draft envisaged, *inter alia*, that the Respondent would request leave to admit new evidence, although the Parties disagreed as to the dates on which such application, and the ensuing procedural steps, should fall.
4. On 7 May 2026, pending finalization of the procedural calendar and with a view to ensuring that the proceedings continued to advance without delay, the Tribunal established the deadline for the Respondent's filing of its application for leave to admit new evidence as 13 May 2026, and for the Claimant's filing of its response as 20 May 2026.
5. On 13 May 2026, the Tribunal issued Procedural Order No. 22, which fixed, *inter alia*, the procedural calendar for the remitted proceedings, including the dates previously set for the Respondent's application for leave to admit new evidence.
6. On the same date, the Respondent requested that the Tribunal grant a one-day extension of the deadline for filing its application for leave to admit new evidence, indicating that it would be content to afford the Claimant a commensurate extension for its response. The Tribunal granted

¹ *Republic of Korea v. Elliott Associates, L.P.*, CL-2023-000395, Order of Lord Justice Foxton, 18 March 2026, para. 3 (CLA-226).

the Respondent's request, on the understanding that the Claimant would be entitled to a commensurate extension, at its request.

7. On 14 May 2026, the Respondent filed an application for leave to submit five additional Korean court judgments and an expert report in the remitted proceedings (the "**Application**").
8. On 22 May 2026, having requested and been granted a commensurate extension, the Claimant filed its response to the Application (the "**Response**").

II. THE RESPONDENT'S APPLICATION

9. In its Application, the Respondent seeks leave to submit into the record the following additional evidence (the "**Additional Evidence**"):
 - (a) in respect of the civil proceedings brought by certain SC&T shareholders against the Respondent seeking damages for losses allegedly suffered as a result of the Merger: (i) the judgment of the Seoul Central District Court of 25 November 2022 in Case No. 2020GaHap600079; and (ii) the judgment of the Seoul High Court of 12 February 2026 in Case No. 2023Na2000796 (together, the "**Shareholder Claims Judgments**");²
 - (b) in respect of the criminal proceedings brought against JY Lee and others on charges of violations of the Financial Investment Services and Capital Markets Act, including in connection with alleged manipulation of the share price of SC&T and the terms of the Merger: (i) the judgment of the Seoul Central District Court of 5 February 2024 in Case No. 2020GoHap718, 920 (Consolidated); (ii) the judgment of the Seoul High Court of 3 February 2025 in Case No. 2024No635; and (iii) the judgment of the Supreme Court of Korea of 17 July 2025 in Case No. 2025Do2805 (together, the "**JY Lee Judgments**," and collectively with the Shareholder Claims Judgments, the "**Additional Judgments**");³ and
 - (c) a legal expert report from Professor Jae Hyung Kim ("**Professor Kim's Report**"), a former Justice of the Supreme Court of Korea, offered as an "aid to the Tribunal in understanding the Additional Judgments."⁴
10. The Claimant does not object to the admission of the Additional Judgments, though it maintains that the Respondent has failed to demonstrate exceptional circumstances warranting their

² Application, para. 11.

³ Application, para. 15.

⁴ Application, para. 44.

introduction. The Claimant does, however, object to the admission of Professor Kim's Report.

III. POSITIONS OF THE PARTIES

1. The Respondent's Position

11. The Respondent submits that the Tribunal enjoys broad procedural discretion to admit the new evidence under both the 2013 UNCITRAL Arbitration Rules and the Arbitration Act 1996.⁵ In particular, the Respondent emphasizes that arbitral tribunals seated in London are not confined to the evidentiary record as it stood at the date of the original award, as confirmed by English case law.⁶
12. Against this backdrop, the Respondent contends the Additional Evidence (i) is relevant and material to the issues before the Tribunal; (ii) could not have been adduced at an earlier stage of the proceedings; and (iii) will cause no prejudice to the Claimant by its admission.⁷ According to the Respondent, these exceptional circumstances justify the admission of the Additional Evidence, which bears directly on matters falling squarely within the scope of the remitted issue, an issue that, contrary to the Claimant's position, "encompasses both legal and factual causation as well as the relief to be awarded for loss or damage found to have been caused by the Blue House measures, if any."⁸

A. The Additional Judgements

13. The Respondent argues that the Additional Judgments are relevant and material to the issues in dispute in the remitted proceedings, as they afford the Tribunal "the complete picture of the Korean courts' findings" in respect of the events at issue, including the more recent pronouncements of the same courts to which the Tribunal's Award referred.⁹ Specifically, the Respondent submits that the Additional Judgments address the very questions of factual and legal causation now before the Tribunal: (i) the Shareholder Claims Judgments, arising from claims by SC&T shareholders concerning the same conduct at issue, conclude that no causal connection had been established between the Blue House measures and the loss alleged by SC&T;¹⁰ and (ii) the JY Lee Judgments, which the Respondent characterizes as the most recent and complete domestic

⁵ Application, paras. 22-23.

⁶ Application, para. 24, referring to *Stockman Interhold SA v. Arricano Real Estate Plc* [2017] EWHC 2909 (Comm) [132] (**RLA-180**); *Van der Giessen-De Noord Shipbuilding Division BV v. Imtech Marine & Offshore BV* [2008] EWHC 2904 (Comm), paras. 113, 115 (**RLA-179**).

⁷ Application, paras. 26, 43.

⁸ Application, paras. 6-9.

⁹ Application, para. 27.

¹⁰ Application, para. 29.

judicial synthesis of the events at issue, conclude that the general aspects of the Merger could not be regarded as unlawful under Korean law.¹¹

14. While the Respondent acknowledges that the Additional Judgments were rendered under Korean civil and criminal law, in contrast to the international law governing these remitted proceedings, it contends that the underlying factual matrix is the same in both the Additional Judgments and these remitted proceedings.¹²
15. The Respondent further submits that four of the five Additional Judgments could not have been adduced in the earlier phase of the arbitration.¹³ The Respondent observes that the three JY Lee Judgments and the Seoul High Court judgment of 12 February 2026 were all rendered after the close of proceedings in the earlier phase of the arbitration on 13 March 2023 and could not, therefore, have been adduced at that time.¹⁴ As to the remaining Shareholder Claims Judgment—the Seoul Central District Court judgment of 25 November 2022—the Respondent clarifies that, although it predates the close of the arbitration, its submission in the earlier phase would have been significantly difficult, given that the judgment was issued well after the Parties’ final submissions in the pre-Award phase and that, at the time of its issuance, it was not yet final, remaining subject to further review by the Seoul High Court.¹⁵
16. According to the Respondent, the admission of the Additional Judgments would cause no prejudice to the Claimant.¹⁶ In this regard, the Respondent considers that the Claimant is “fully familiar” with the content of four of the Additional Judgements, which have been relied upon by both Parties in the English court proceedings, and have already been addressed by the Claimant in these remitted proceedings.¹⁷ Referring to Procedural Order No. 21, in which the Tribunal admitted documents on the basis that they were “not voluminous and are publicly available” and that “their admission into the record would not cause any prejudice to the Respondent,” the Respondent submits that the same reasoning should apply here notwithstanding the volume of the Additional Judgments.¹⁸

¹¹ Application, para. 32.

¹² Application, paras. 14, 17.

¹³ Application, paras. 34-39.

¹⁴ Application, para. 34.

¹⁵ Application, para. 35.

¹⁶ Application, para. 26.

¹⁷ Application, paras. 40, 42; Claimant’s 27 April 2026 Submission, para. 81; Transcript of the CMC, p. 47:17-20.

¹⁸ Application, para. 42, *citing* Procedural Order No. 21, 9 November 2021, para. 9.

B. Professor Kim's Report

17. The Respondent submits that Professor Kim's Report is relevant and material to the remitted issue, given that the Additional Judgments raise complex questions of Korean law that bear on the Tribunal's task.¹⁹ The Respondent characterizes the report as an "essential aid" to the Tribunal's understanding of the Additional Judgments and their interrelationship with other Korean court judgments on the record, noting that Professor Kim's background as a former Justice of the Supreme Court of Korea renders him uniquely qualified to assist in this regard.²⁰
18. The Respondent submits that Professor Kim's Report could not have been produced in the earlier phase of the arbitration, as it is offered to assist in the understanding of Additional Judgments that themselves could not have been adduced at that time.²¹ Furthermore, the Respondent maintains that its admission would cause no prejudice to the Claimant, who has at all times had access to the Additional Judgments, is fully familiar with their contents, and has already engaged with them on the merits.²²

2. The Claimant's Position

19. As a preliminary matter, the Claimant submits that the Respondent's Application proceeds from a mischaracterization of the Tribunal's mandate in these remitted proceedings.²³ In the Claimant's view, the Tribunal's task in these remitted proceedings is the narrow one of determining whether the English High Court's finding that the NPS may not be regarded as a State organ alters the Tribunal's earlier conclusion that the legal requirement of causation, namely foreseeability and proximity, is met.²⁴ In this connection, the Claimant emphasizes that the Tribunal has already made multiple causation findings in its Award on the basis of an extensive record of primary evidence, that those findings were not set aside by the English High Court, and that they accordingly remain binding on the Respondent and are not open to re-litigation.²⁵ The Claimant further highlights the High Court's own admonition that remittal "will not affect or allow [the Respondent] to revisit findings which have not been set aside" forecloses the broader scope for which the Respondent contends.²⁶

¹⁹ Application, para. 44.

²⁰ Application, para. 44.

²¹ Application, para. 45.

²² Application, para. 46.

²³ Response, para. 11.

²⁴ Response, paras. 10, 15, 46.

²⁵ Response, paras. 13, 15-17.

²⁶ Response, para. 17, *citing Republic of Korea v. Elliott Associates, L.P.*, CL-2023-000395, Ruling on Consequential Issues, 18 March 2026, para. 7 (CLA-227).

A. The Additional Judgements

20. While the Claimant agrees with the Respondent as to the applicable test for the admission of new evidence into these remitted proceedings, the Claimant submits that none of its requirements is met in respect of the Additional Judgments.²⁷
21. As to relevance and materiality, the Claimant argues that the Additional Judgments are irrelevant and immaterial to the remitted issue.²⁸ The Claimant contends that the Additional Judgments fall outside the scope of these remitted proceedings, relating as they do to merits findings already determined by the Tribunal and not set aside by the English High Court.²⁹ The Claimant further submits that the Additional Judgments do not disrupt the conclusions of the Moon/Hong Judgments, which the Respondent expressly accepted as binding upon it during the earlier phase of the arbitration, nor do they provide a basis to revisit the Tribunal's factual findings in its Award.³⁰ In this connection, the Claimant observes that the Additional Judgments themselves adopt the factual findings of the Moon/Hong proceedings and reach their conclusions on the basis of distinct legal questions arising under Korean civil and criminal law, such that, at most, they add to the collection of Korean court decisions opining on different legal consequences of the same underlying conduct.³¹
22. The Claimant further submits that other tribunals and courts have found the Additional Judgments to be of no consequence to the matters at issue: (i) the tribunal in *Mason v. Korea*, having considered an application by the Republic of Korea to admit the November 2022 Shareholder Claims Judgment and the February 2024 JY Lee Judgment, concluded that the Respondent had failed to establish exceptional circumstances;³² (ii) the Singapore International Commercial Court, on review of that decision, held that the judgments were “unlikely ... [t]o have materially affected the outcome of the Arbitration”;³³ and (iii) the English High Court, having had four of the Additional Judgments before it in the section 67 proceedings, observed only that the Seoul High Court judgment in the JY Lee criminal proceedings was of “limited assistance.”³⁴

²⁷ Response, para. 4.

²⁸ Response, para. 10.

²⁹ Response, paras. 10-17.

³⁰ Response, para. 18-21.

³¹ Response, paras. 22, 24.

³² Response, paras. 27-28, citing *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, paras. 102, 103, 108, 109 (CLA-219).

³³ Response, para. 28, citing *Republic of Korea v. Mason Capital and another* [2025] SGHC(I) 9, para. 146 (CLA-228).

³⁴ Response, para. 29, citing *Republic of Korea v. Elliott Associates, L.P.* [2026] EWHC 368 (Comm), para. 32 (CLA-222).

23. As to prior unavailability, the Claimant submits that the Respondent has failed to demonstrate that it could not have adduced the Additional Judgments at an earlier stage.³⁵ The Seoul Central District Court's Shareholder Claims Judgment, having been rendered in November 2022, was available some seven months before the Award was issued, and the Respondent's failure to seek leave to add it to the record at that time, the Claimant submits, confirms the immateriality of the judgment.³⁶ As to the Seoul High Court's Shareholder Claims Judgment and the three JY Lee Judgments, the Claimant acknowledges that these were rendered after the Award but observes that the Respondent nevertheless delayed by at least two months from the resumption of these proceedings before filing the Application.³⁷ In this respect, the Claimant recalls the *Mason* tribunal's holding that "the mere fact that a judgment was rendered after the final submissions in [the] arbitration" does not, of itself, constitute "exceptional circumstances".³⁸
24. Notwithstanding the foregoing, and given the "wholly immaterial" nature of the Additional Judgments to the outcome of these remitted proceedings and in order to avoid further procedural distraction, the Claimant does not object to their introduction into the record, on the condition that the Respondent file the Additional Judgments and their translations no later than Wednesday, 27 May 2026.³⁹

B. Professor Kim's Report

25. The Claimant submits that Professor Kim's Report fails to meet the requisite threshold for admission and that its admission would cause significant prejudice.⁴⁰
26. For the Claimant, Professor Kim's Report is irrelevant and immaterial to the remitted issue.⁴¹ While the Report is offered to assist the Tribunal in understanding the Additional Judgments, those judgments are, as the Claimant has already submitted above, themselves irrelevant and immaterial to these remitted proceedings, and the Report's relevance cannot rise above that of the judgments it addresses.⁴² The Claimant further contends that expert evidence on Korean law is misdirected, as the remitted issue presents a narrow question to be determined by the Tribunal as a matter of international law, not Korean law.⁴³ In this regard, the Claimant points out that the

³⁵ Response, paras. 31, 34.

³⁶ Response, paras. 32-33.

³⁷ Response, para. 34.

³⁸ Response, para. 34, citing *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, para. 109 (CLA-219).

³⁹ Response, para. 4.

⁴⁰ Response, para. 5.

⁴¹ Response, para. 45.

⁴² Response, para. 45.

⁴³ Response, para. 46.

English High Court, when faced with a similar application by the Respondent to adduce an earlier report by the same Professor Kim, held that such evidence was “not reasonably required to resolve the Arbitration Claim and will not be of material assistance to the Court”.⁴⁴

27. The Claimant adds that the Respondent has, in any event, failed to explain why the Tribunal requires expert assistance in interpreting the Additional Judgments, particularly given the Tribunal’s demonstrated capacity to read and rationalize Korean court decisions in the Award itself, as illustrated by its detailed analysis of the interrelationship between the Moon/Hong Judgments and the judgment of the Seoul Central District Court in the Merger Annulment proceedings.⁴⁵
28. Finally, the Claimant submits that the admission of Professor Kim’s Report at this stage would cause significant prejudice.⁴⁶ Although the Respondent has had the Report to hand since April 2024, when it was first prepared for the English High Court proceedings, and despite the multiple occasions on which the Parties and the Tribunal addressed the Respondent’s intended application to introduce new evidence, the Respondent at no point indicated its intention to file an expert report, with the result that the procedural calendar and the time afforded to the Claimant for hearing preparation were settled on the understanding that no expert evidence would be introduced.⁴⁷
29. The Claimant further takes issue with the Application’s vague description of the Report as addressing “certain Korean law aspects” of the Additional Judgments, which, in the Claimant’s view, renders it impracticable to identify and instruct a responsive expert.⁴⁸ The Claimant stresses that it would see the content of the Report for the first time on 5 June 2026 and would thereafter have only three weeks within which to prepare a responsive report, on which ground alone the Claimant submits that the Report should be rejected.⁴⁹

IV. THE TRIBUNAL’S ANALYSIS

30. The relevant rules governing the Respondent’s Application are set out in Article 27(4) of the 2013 UNCITRAL Rules and paragraph 5.2 of Procedural Order No. 22. According to Article 27(4) of the UNCITRAL Rules, “[t]he arbitral tribunal shall determine the admissibility, relevance,

⁴⁴ Response, para. 49, citing *Republic of Korea v. Elliott Associates, L.P.*, CL-2023-000395, Order of Butcher J, 14 October 2024, pp. 1-2 (CLA-235).

⁴⁵ Response, paras. 47-48.

⁴⁶ Response, paras. 36, 43.

⁴⁷ Response, paras. 36-38.

⁴⁸ Response, paras. 40-41.

⁴⁹ Response, paras. 42-43.

materiality and weight of the evidence offered.” The Tribunal thus has broad discretionary powers on these matters, including the admissibility of evidence.

31. Paragraph 5.2 of Procedural Order No. 22 further provides:

A Party seeking to adduce new evidence shall apply to the Tribunal for leave, demonstrating that exceptional circumstances warrant admission of such new evidence. Such an application shall be made by way of a reasoned written request and shall not annex the documents sought to be included in the record.

32. As summarized above, the Parties are in agreement that the requirement of “exceptional circumstances” is met if the Party seeking leave demonstrates that the new evidence:

- (a) is relevant and material to the issues before the Tribunal;
- (b) could not have been produced at an earlier stage of the proceedings; and
- (c) will cause no prejudice to the opposing Party.⁵⁰

33. The Tribunal notes that, while the Claimant contends that the Respondent has failed to demonstrate that the Additional Judgments are relevant and material to these remitted proceedings, it does not object to the Respondent’s Application in respect of the Additional Judgments. In the absence of an objection by the Claimant to the admission of the Additional Judgments, the Tribunal considers that in the circumstances it is not necessary for it to determine whether the Additional Judgments meet the requirement of “exceptional circumstances” within the meaning of paragraph 5.4 of Procedural Order No. 22. Accordingly, absent any compelling reasons to the contrary, the Additional Judgments are admitted into the record.

34. As summarized above, the Claimant objects to the admission of Professor Kim’s Report. Having considered the Parties’ submissions and the supporting legal authorities, the Tribunal determines that the Respondent’s request does not meet the requirement of “exceptional circumstances.” While Professor Kim’s Report might be of some assistance to the Tribunal, the Tribunal considers that the Parties’ counsel will be in an equal, if not a better, position than Professor Kim to explain the relevance and materiality of the Additional Judgments to the issues before the Tribunal. The Tribunal notes, in this connection, that both Parties have instructed able and experienced Korean counsel. The Tribunal further recalls that the Respondent did not consider it necessary to file a legal expert report of this nature in the original proceedings, even though a number of such judgments were produced into the record. The Respondent has neither explained nor demonstrated why such supporting evidence would be relevant and material in these

⁵⁰ Application, para. 26; Response, para. 3.

remitted proceedings. Accordingly, the Tribunal considers that there will be no prejudice to the Respondent if its request for leave to admit Professor Kim's Report is denied. By contrast, in view of the relatively short time period of three weeks between the time limit for the Respondent's Submission on the Remitted Issue, which will be due on 5 June 2026, and the limit for the Claimant's Reply Submission, which will be due on 26 June 2026, admission of Professor Kim's Report would likely cause prejudice to the Claimant.

35. The Tribunal recalls that pursuant to paragraph 5.4 of Procedural Order No. 22, "[s]hould leave be granted [for a Party to adduce new evidence], the opposing Party shall be afforded a reasonable opportunity to submit observations and, where appropriate, responsive documents." The Claimant may submit such observations on the Additional Judgments and, as appropriate, responsive documents in connection with its Reply Submission on the Remitted Issue.

V. THE TRIBUNAL'S DECISION

36. In light of the above, the Tribunal determines as follows:

- (a) The Respondent's request that the Tribunal admit the Additional Judgements into the record is granted;
- (b) The Respondent's request that the Tribunal admit Professor Kim's Report into the record is denied;
- (c) The Respondent is ordered to file the Additional Judgments for which an English translation is already available by 27 May 2026;
- (d) The Respondent is ordered to file the Additional Judgments for which an English translation is not yet available by 29 May 2026; and
- (e) The Tribunal reserves its decision concerning the costs of this Application.

Place of Arbitration: London, United Kingdom



Dr. Veijo Heiskanen
(Presiding Arbitrator)

On behalf of the Tribunal