

**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, 1976**

PCA CASE N° 2018-55

-between-

- 1. MASON CAPITAL, L.P. (U.S.A.)**
 - 2. MASON MANAGEMENT LLC (U.S.A.)**
- (the “Claimants”)**

-and-

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

PROCEDURAL ORDER NO. 10

The Arbitral Tribunal

Professor Dr. Klaus Sachs (Presiding Arbitrator)

The Rt. Hon. Dame Elizabeth Gloster

Professor Pierre Mayer

Registry

Permanent Court of Arbitration

9 March 2022

WHEREAS this Procedural Order records the agreement of the Parties on procedural matters set out herein, and where no agreement was reached, sets forth the Tribunal's directions, having heard the Parties and deliberated.

THE TRIBUNAL HEREBY ORDERS:

1. HEARING LOCATION AND PARTICIPANTS

- 1.1 Subject to paragraphs 1.2 and 1.3, the Hearing shall take place in-person at the New York International Arbitration Center (**NYIAC**), 620 8th Avenue, 34th Floor, New York, NY 10018, United States of America.
- 1.2 The Rt. Hon. Dame Elizabeth Gloster and Professor Pierre Mayer shall join the Hearing remotely.
- 1.3 The Parties shall make the necessary arrangements with FTI Trial Services (the **Hearing Facilitator**) to facilitate the co-arbitrators' remote participation, and to provide any support needed to conduct any portion of the Hearing remotely or in hybrid form, in the event that circumstances arise before or during the Hearing that require remote participation by other hearing participant(s).
- 1.4 As per paragraph 1 of Procedural Order No. 1, the place of arbitration (legal seat) remains Singapore.
- 1.5 By 7 March 2022, counsel for each Party shall communicate to the Tribunal, the other Parties, and the PCA the list of all participants who will attend the Hearing. If a Party wishes to supplement or amend its list of participants after that date, that Party shall promptly inform the PCA and the other Party.

2. HEARING SCHEDULE AND TIMING

- 2.1 The Tribunal will sit from 8:30 am to 3:30 pm New York time / 12:30 pm to 7:30 pm London time / 1:30 pm to 8:30 pm CET, with reasonable flexibility, per day, with a 45-minute lunch break and two 15-minute coffee breaks, and any other breaks granted or desired by the Tribunal. The Hearing shall proceed in accordance with Hearing Schedule at **Annex 1**, subject to any changes that the Tribunal deems necessary or appropriate for the efficient conduct of the Hearing.
- 2.2 Each Party shall be afforded, with reasonable flexibility, an equal amount of time in which to present its case.
- 2.3 The Tribunal Assistant shall keep an official record of the time elapsed and remaining.
- 2.4 Time spent by a Party on direct or redirect examination of its own witnesses (including a Party's expert presentations in lieu of direct examination per paragraph 7.3 of Procedural Order No. 1) and cross-examination of the other Party's witnesses will be counted against that Party's time to present its case. With reasonable flexibility, Tribunal questioning and responses to Tribunal questions during party submissions or witness examinations shall not be counted against that Party's time to present its case, and shall instead be counted against the Tribunal's hearing time.
- 2.5 The Hearing Schedule reserves 0.5 hours of hearing time per day for any Tribunal remarks, housekeeping matters, applications made by the parties, or any other procedural matters the Tribunal wishes to address, and the Tribunal make take any additional time necessary. Time spent on such matters during the Hearing will not count against either Party's time to present

its case.

- 2.6 The Parties shall seek to resolve between themselves any disputes as to the allocation of time. In the event such a dispute cannot be resolved by agreement between the Parties, the Tribunal shall resolve such dispute.

3. WITNESS AND EXPERT EXAMINATION

- 3.1 The procedure for the examination of witnesses is set out in paragraphs 6.10 and 7.3 of Procedural Order No. 1.
- 3.2 Further to paragraph 6.12 of Procedural Order No. 1, fact witnesses shall not be allowed in the hearing room (in-person or virtual) prior to their examination, nor shall they be given access to the transcripts or attend the live broadcast of the Hearing before they have given testimony. Fact witnesses are free to attend any portion of the proceedings following their examination.
- 3.3 As per paragraph 7.3 of Procedural Order No. 1, expert witnesses shall be allowed to be present in the hearing room at any time unless both Parties or the Tribunal decide otherwise.
- 3.4 If a fact or expert witness's examination is interrupted and must continue in the following hearing session, the fact or expert witness may not speak with or contact any of the Parties, their representatives, or counsel until the examination is completed. Subject to the Hearing Schedule set out in Annex 1, the Parties will use their best efforts to ensure that the examination of a given fact or expert witness is conducted in its entirety on the same day.
- 3.5 Witnesses called for cross-examination shall attend the Hearing in person, unless unable to do so by reason of a positive COVID-19 test or other extenuating circumstances, such as travel restrictions related to COVID-19. In the event that any witness needs to testify remotely (either in the event of a remote hearing or because exigent circumstances so require), the Parties shall ensure that they, and their witnesses, observe the remote participant protocol at **Annex 2**.

4. HEARING MATERIALS

- 4.1 A Party may use PowerPoint slides and demonstrative exhibits at the Hearing in accordance with paragraph 8.4 of Procedural Order No. 1.
- 4.2 Demonstrative exhibits need to be notified to the other Party pursuant to paragraph 8.4 of Procedural Order No. 1. PowerPoint slides need not be notified.
- 4.3 Electronic copies of demonstrative exhibits and PowerPoint slides shall be provided by email to each Tribunal member, the PCA, the Tribunal Assistant, the opposing Party's counsel, the Court reporter and the interpreters at the beginning of the respective Opening or Closing statement or the respective witness testimony. Except in the case of a fully remote hearing, hard copies shall also be provided to the Presiding arbitrator, the Tribunal Assistant, the opposing Party (four copies), the court reporter and the interpreters (assuming they are present in person).
- 4.4 As per paragraph 8.4 of Procedural Order No. 1, no new documentary evidence may be presented at the hearing except with leave of the Tribunal (following a request by the Party seeking to introduce new evidence, and an opportunity for the opposing Party to be heard on the request). In case a Party wishes to make an application for the admission of new evidence into the record, it shall do so in writing and may not annex the documents that it seeks to file to its request.

5. HEARING BUNDLE

- 5.1 The electronic hearing bundle shall comprise all of the documents on the record, which shall be accessible to the Parties and the Tribunal, and to witnesses under examination, through the hearing platform administered by the Hearing Facilitator.
- 5.2 The Tribunal shall retain access to the electronic bundle on the hearing platform administered by the Hearing Facilitator for a period of one year after the conclusion of the hearing.
- 5.3 A USB flash memory drive containing a copy of the electronic hearing bundle shall be sent to each member of the Tribunal and the PCA at the addresses set out at paragraphs 4 and 9.2 of the Terms of Appointment as soon as practicable.
- 5.4 The Parties shall provide hard copies of documents referred to during examination to witnesses and experts except that no hard copies need to be provided to the Parties' quantum experts.

6. CLOSING STATEMENTS, POST-HEARING BRIEFS, AND COST SUBMISSIONS

- 6.1 At the Hearing, the Tribunal will decide, after consultation with the Parties, whether the Parties shall present oral closing statements on Saturday, 26 March 2022 which shall remain reserved for that purpose.
- 6.2 Any further written submissions will be at the Tribunal's discretion, after consultation with the Parties at the end of the Hearing.
- 6.3 The date for the submission of statements of costs will be set at the conclusion of the Hearing.

7. AUDIO RECORDING AND TRANSCRIPTION

- 7.1 The Parties have agreed that David Kasdan will serve as the Court reporter for the Hearing. The PCA shall make the necessary arrangements with Mr. Kasdan.
- 7.2 As per paragraphs 8.2 and 8.3 of Procedural Order No. 1, the PCA shall arrange for hearings to be audio recorded, and make the recording available to the Parties. The PCA shall arrange transcription using LiveNote or a similar software so that the transcript is available on a real-time basis. At the end of each day of hearings, the Parties shall be provided with the transcript of that day (in draft or final form). The Parties shall provide by 11 March 2022: (i) how many real-time connections they require in the hearing room; and (ii) the details of any recipients they wish to add to the current e-mail distribution list for the end-of-day transcripts.
- 7.3 The Parties shall attempt to agree on any proposed corrections (including translations, if applicable) to the transcripts within 21 days of the conclusion of the hearing. The agreed upon corrections shall be entered by the court reporter in the transcripts (**Revised Transcripts**). In case of disagreement between the Parties, the Tribunal shall decide and any correction adopted by the Tribunal shall be entered by the court reporter in the Revised Transcripts.

8. INTERPRETATION

- 8.1 The PCA shall arrange for consecutive interpretation of the testimony of Professor Kim and Mr. Cho from Korean into English, and of any questions posed to these witnesses from English into Korean.
- 8.2 As per paragraph 8.9 of the Terms of Appointment, the Parties agree to dispense with interpretation into Korean.

9. TRANSPARENCY

- 9.1 As per paragraph 9.3 of Procedural Order No. 1, the PCA will arrange for a public viewing room at NYIAC. The PCA will arrange for a delayed broadcast of the Hearing to be shown in the public viewing room, which the PCA will suspend when any information designated as protected information (as defined in paragraph 9.4 of Procedural Order No. 1) is discussed, if either Party so requests of the PCA in a manner that does not interrupt or otherwise disrupt the proceedings in the main hearing room. The PCA will endeavour to suspend the broadcast of the Hearing without disruption to the proceedings in the main hearing room.
- 9.2 Following the Hearing, the PCA will publish the transcripts of the Hearing on the PCA's website. Prior to publication of the transcripts, the PCA will make the transcripts available to the Parties so that the Parties may propose redactions of protected information. The Parties may propose redactions of protected information even if such information was not designated as protected during the Hearing.

10. COVID-19 PRECAUTIONS

- 10.1 The Hearing participants shall observe the COVID-19 protocol at **Annex 3**.
- 10.2 As noted in paragraph 1.3 above, the Parties shall make the necessary arrangements with the Hearing Facilitator to ensure that any hearing participant who is unable to attend in-person because of a positive COVID-19 test or other extenuating circumstances is able to attend remotely via the Hearing Facilitator's hearing platform.

Place of arbitration (legal seat): Singapore



Professor Dr. Klaus Sachs
(Presiding Arbitrator)

On behalf of the Tribunal

Annex 1 – Hearing Schedule [NY Time]¹

Monday, 21 March 2022	
Opening Remarks and any Housekeeping Matters (Tribunal)	08:30 – 08:45
Opening Statement (Claimants)	08:45 – 10:15
Coffee break	10:15 – 10:30
Opening Statement (Claimants)	10:30 – 11:45
Lunch	11:45 – 12:30
Opening Statement (Respondent)	12:30 – 14:00
Coffee break	14:00 – 14:15
Opening Statement (Respondent)	14:15 – 15:30
Tuesday, 22 March 2022	
Examination of Mr. Ken Garschina	08:30 – 10:00
Coffee break	10:00 – 10:15
Examination of Mr. Ken Garschina	10:15 – 11:15
Lunch	11:15 – 12:00
Examination of Professor Kim	12:00 – 13:30
Coffee break	13:30 – 13:45
Examination of Professor Kim	13:45 – 15:15
Wednesday, 23 March 2022	
Examination of Mr. Young-gil Cho ²	08:30 – 10:30
Coffee break	10:30 – 10:45
Examination of Mr. Young-gil Cho	10:45 – 12:45
[BREAK BEFORE COMMENCEMENT OF EXPERT EVIDENCE]	
Thursday, 24 March 2022	
Dr. Duarte-Silva’s Presentation Examination of Dr. Duarte-Silva	8:30 – 10:15
Coffee break	10:15 – 10:30
Examination of Dr. Duarte-Silva	10:30 – 12:00

¹ The times set out in the Hearing Schedule are necessarily indicative and subject to adjustment as appropriate. To the extent the Tribunal has questions to the witnesses or counsel during the course of the day, the daily schedule will be extended as necessary to accommodate that.

² On 23 February 2022, the Respondent indicated that Mr. Cho would not be able to attend the Hearing in-person until Thursday, 24 March 2022 (later adjusted to Wednesday, 23 March 2022) due to an important commitment in Korea on 21 March 2022. The proposed schedule attempts to accommodate Mr. Cho’s schedule as best as possible while minimizing disruption to the remainder of the proceedings.

Lunch	12:00 – 12:45
Professor Dow’s Presentation Examination of Professor Dow	12:45 – 14:30
Coffee break	14:30 – 14:45
Examination of Professor Dow	14:45 – 16:15
Friday, 25 March 2022³	
Professor Wolfenzon’s Presentation Examination of Professor Wolfenzon	8:30 – 10:00
Coffee break	10:00 – 10:15
Examination of Professor Wolfenzon	10:15 – 11:45
Lunch	11:45 – 12:30
Presentation of Professor Bae Examination of Professor Bae	12:30 – 14:00
Coffee break	14:00 – 14:15
Examination of Professor Bae	14:15 – 15:45
Coffee break	15:45 – 16:00
Closing remarks (Tribunal)	16:00 – 16:15
Saturday, 26 March 2022	
[Held in reserve for closing statements]	

³ Claimants do not consider that the time allocated for Professors Wolfenzon and Bae is necessary given the limited scope of their evidence, but do not object to the timetable on that basis.

Annex 2 – Remote Participant Protocol

Preparations for Remote Participants

- 1.1 The Parties shall ensure that each remote participant in the proceeding tests the compatibility of that participant's equipment (e.g., laptop, desktop computer, webcam, headphones, internet capacity) with the Hearing Facilitator's platform.
- 1.2 The Parties should make best efforts to ensure that the remote location in which each remote participant is located has adequate internet bandwidth to support the use of the hearing platform without interruption, and should inform the Tribunal and other Parties in advance if it appears that bandwidth problems or other technical limitations may require adjustments to this Protocol.
- 1.3 Remote participants must locate their cameras so that the participant appears well lit against a neutral and not-distracting background, with only head and shoulders visible (where possible). Speaking remote participants (including fact and expert witnesses) shall not use a "virtual background," filter, or in any way prevent or limit the recording of them or the remote venue from which they are testifying. Backlighting, such as light from a bright window behind a participant, substantially reduces visibility and should be avoided. Participants shall endeavour to join from a location without material background noise.

Procedural Safeguards

- 1.4 The Parties shall declare and identify each remote participant present at the Hearing at the start of the Hearing.
- 1.5 The Parties and the Hearing Facilitator shall ensure that remote witnesses will only join the hearing room once the Tribunal and the Parties have confirmed that they are ready for them.
- 1.6 A remote witness (including expert witness) shall take all reasonable steps to ensure that no person other than the witness is present in the room from which the witness is providing testimony, or otherwise able to see or hear the proceedings. If such circumstance is not possible to avoid, that witness (or expert witness) shall disclose the presence of such person, the reason for their presence, and their identity.
- 1.7 The remote witness may not communicate, by any means, with any person, on the subject matter of the witness's testimony while the testimony is in progress (including during breaks).
- 1.8 During the remote witness's testimony, the witness may (but is not obliged to) have access to unmarked hard copies of the witness's statements or expert reports but may not otherwise have any documents (hard copy or electronic, of any sort) present in the room with them while giving testimony. To the extent the remote witness views any document during their testimony other than an exhibit displayed by examining counsel or the remote witness's own written statement or expert report, the witness shall identify such document and may be called upon by the Tribunal to display the document.
- 1.9 Each remote witness must ensure that their mobile telephone(s) are switched off and placed away from them while they are giving their evidence. Each remote witness must provide to the Hearing Facilitator contact details in order for communication to be established with them in advance of their testimony and in the event that the connection with them fails in the course of their testimony. If the connection fails, then the remote witness is permitted to switch on their mobile phone in order for communication to be re-established with them by the Hearing

Facilitator.

- 1.10 The Tribunal shall inquire of the remote witness about the adequacy of the remote witness's equipment and the remote witness's familiarity with it. In particular, the Tribunal may ask the remote witness to move their webcam in order to display to all participants (a) the remote witness' surroundings; and (b) the items on the desk or table at which the remote witness will give their evidence.
- 1.11 During the Hearing, if a Party's representative makes reference to an evidentiary document, demonstrative exhibit, or presentation, the document shall be made available by the Hearing Facilitator to the remote participants via appropriate screen-sharing or document display mechanisms as necessary.

Annex 3 – COVID-19 Protocol

1. COVID-19 VACCINATION AND TESTING

- 1.1 On the first day of the hearing, all hearing participants attending in person at NYIAC will be required to show to the PCA's satisfaction:
- (a) Proof of full vaccination with a course of vaccination approved by the European Medicines Agency (EMA) or on the Emergency Use Listing of the World Health Organization (WHO); or
 - (b) A negative PCR test taken within a maximum of 72 hours prior to the participant's first appearance at the Hearing.
- 1.2 No hearing participant shall attend the Hearing in person if they are experiencing any symptoms of COVID-19. On the morning of each hearing day, prior to the start of that day's session, all hearing participants attending in person are asked to confirm that they do not have any symptoms of COVID-19. A representative of the Claimants and the Respondent can give such confirmation on behalf of the Claimants' and the Respondent's entire delegation, respectively.

2. SOCIAL DISTANCING AND HEARING ROOM ETIQUETTE

- 2.1 Save for participants from the same delegation, each participant shall endeavour to observe a minimum distance of 1.5 meters from other participants while present at NYIAC.
- 2.2 Participants present in the hearing room or other common areas and not playing an active role shall wear face masks.

3. HEALTH SCREENING FORM

- 3.1 All hearing participants must fill out any health screening form each day of the hearing, to the extent required by New York law.