

**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”)**

AWARD ON THE REMITTED ISSUE

The Arbitral Tribunal

Dr. Veijo Heiskanen (Presiding Arbitrator)

Mr. Oscar M. Garibaldi

Mr. J. Christopher Thomas KC

Registry

Permanent Court of Arbitration

30 September 2026

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GLOSSARY OF DEFINED TERMS

Additional Judgments	JY Lee Unlawful Merger Judgments and the Shareholder Claims Judgments
Additional Judgments Annex	The Respondent's Annex filed with its Submission on the Remitted Issue, as subsequently revised and supplemented by both Parties
Arbitration Act	English Arbitration Act 1996
Blue House	Executive Office of former President Geun-hye Park
Blue House Measures	Intervention by the administration of President Park and the MHW in the Merger vote
Cheil	Cheil Industries Inc.
CIO Hong	Mr. Wan-Seon Hong, Chief Investment Officer of the NPS
Claimant or EALP	Elliott Associates, L.P.
Claimant's Rebuttal Submission on the Remitted Issue	Claimant's Rebuttal Submission dated 13 August 2026
Claimant's Statement of Costs	Claimant's Statement of Costs dated 26 April 2026
Claimant's Submission on the Remitted Issue	Claimant's Submission on the Remitted Issue dated 27 April 2026
Elliott	Elliott Management Corporation
Fund	National Pension Fund
ICJ	International Court of Justice
Investment Committee	Investment Committee of the NPS
JY Lee Unlawful Merger Judgments	Three judgments in respect of 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
KCGS	Korea Corporate Governance Service
KRW	Korean Won
Merger	Merger between Samsung C&T Corporation and Cheil Industries Inc.

Merger Annulment Decision	Decision of the Seoul Central District Court, rejecting the SC&T shareholders' claim seeking annulment of the Merger, dated 19 October 2017
Merger Injunction Decision	Decision of the Seoul Central District Court, rejecting the Claimant's attempt to enjoin the Merger, dated 1 July 2015
Merger Ratio	The merger ratio set at 1 SC&T share for every 0.3500885 Cheil share
MHW	Ministry of Health and Welfare of Republic of Korea
New SC&T	The renamed new SC&T corporation following the merger between SC&T and Cheil
NPS	National Pension Service
NPSIM	The National Pension Service Investment Management Division
Original Proceedings	All phases of this arbitration up until, and including, the issuance of the Tribunal's Award dated 20 June 2023
PCA	Permanent Court of Arbitration
Rejoinder on the Remitted Issue	Respondent's Rejoinder on the Remitted Issue dated 17 July 2026
Remittal Order	Order of the High Court of England and Wales, reflecting its findings in the Ruling on Consequential Issues, dated 18 March 2026
Remitted Issue	Issue remitted to the Tribunal by the High Court of England and Wales pursuant to the Remittal Order
Remitted Proceedings	Phase of this arbitration, following the reconstitution of the Tribunal to decide the Remitted Issue
Reply on the Remitted Issue	Claimant's Reply on the Remitted Issue dated 1 July 2026
Respondent <i>or</i> ROK	Republic of Korea
Respondent's Corrected Submission on the Remitted Issue	Respondent's Corrected Submission on the Remitted Issue dated 23 June 2026
Respondent's Rebuttal Submission on the Remitted Issue	Respondent's Rebuttal Submission on the Remitted Issue dated 13 August 2026
Respondent's Statement of Costs	Respondent's Statement of Costs dated 26 August 2026
SC&T	Samsung C&T Corporation

Set-Aside Judgment	Judgment of High Court of England and Wales, rendered in respect of the merits of the Respondent's challenge to the Award, dated 23 February 2026
Set-Aside Proceedings	Claimant's challenge to the Award before High Court and the Court of Appeal of England and Wales between 17 July 2023 and 23 February 2026
Shareholder Claims Judgments	Two judgments rendered in respect of civil proceedings brought by certain SC&T shareholders against the Respondent seeking damages for losses allegedly suffered as a result of the Merger
SK Merger	A merger proposed in June 2015 between two affiliate companies in the SK Group, SK C&C Holdings and SK Holdings
Treaty	The Free Trade Agreement between the Republic of Korea and the United States of America, signed on 30 June 2007, entered into force on 15 March 2012
UNCITRAL Rules	Arbitration Rules of the United Nations Commission on International Trade Law, 2013
United States or U.S.	United States of America
USD	United States Dollar
Voting Guidelines	Guidelines on the Exercise of the National Pension Fund Voting Rights

I. INTRODUCTION

A. THE PARTIES AND THE TRIBUNAL

1. The claimant in this arbitration is Elliott Associates, L.P. (the “**Claimant**” or “**EALP**”), a limited partnership organized under the laws of the State of Delaware, United States of America (the “**United States**” or the “**U.S.**”), with its registered office at 1209 Orange Street Wilmington, DE 10901.
2. The Claimant is represented in this remitted phase of the arbitration (the “**Remitted Proceedings**”) by:

Mr. Constantine Partasides KC
Ms. Julia Sherman
Three Crowns LLP
The JJ Mack Building
33 Charterhouse Street
London EC1M 6HA
United Kingdom

Dr. Georgios Petrochilos KC
Three Crowns LLP
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75008 Paris
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Ms. Liz Snodgrass
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Washington, DC 20007-5109
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Mr. Yikang Zhang
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Singapore 049909

Mr. Michael S. Kim
Mr. Andrew Stafford KC
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London EC2N 1HQ
United Kingdom

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Kobre & Kim LLP
Office 27-01, Level 27

ICD Brookfield DIFC
P.O. Box 506778
Dubai
United Arab Emirates

Mr. Robin Baik
Kobre & Kim LLP
9F, Tower B, The-K Twin Towers 50
Jong-ro 1-gil, Jongno-gu
Seoul 03142
Republic of Korea

3. The respondent is the Republic of Korea (the “**Respondent**” or the “**ROK**”).
4. The Respondent is represented in these Remitted Proceedings by:

Mr. Anton A. Ware
Ms. Grace Yang
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Plaza 66 Building 2, #4306-4313
1266 Nanjing Xi Road
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Ms. Charlotte Mallorie
Mr. Bart Wasiak
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Mr. Kap-You (Kevin) Kim
Mr. John P. Bang
Mr. Mino Han
Ms. Saemee Kim
Ms. Sophie Oh
Peter & Kim
#3805 Trade Tower
511 Yeongdong daero, Gangnam-gu
Seoul 06164
Republic of Korea

5. The Tribunal is composed of Mr. Oscar M. Garibaldi, appointed by the Claimant, Mr. J. Christopher Thomas KC, appointed by the Respondent, and Dr. Veijo Heiskanen, appointed by the Parties as presiding arbitrator.

B. OVERVIEW OF THE PRIOR PROCEEDINGS

6. On 20 June 2023, the Tribunal issued its Award on issues of jurisdiction and the merits.
7. On 17 July 2023, the Respondent challenged the Award before the High Court of Justice in England and Wales.
8. On 1 September 2023, the Tribunal issued its Decision on Requests for Correction and Interpretation of the Award.
9. On 1 August 2025, the High Court dismissed the challenge.
10. Following the Respondent's appeal, the Court of Appeal of England and Wales allowed the appeal on 17 July 2025 and referred the case back to the High Court.
11. On 23 February 2026, the High Court issued its judgment, partially setting aside the Award and remitting the following issue to the Tribunal (the "**Remitted Issue**"):

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
12. On 18 March 2026, Mr. Lord Justice Foxton of the High Court issued an order reflecting his findings in the judgment of 23 February 2023, identifying the parts of the Award that had been set aside and formally remitting the issue to the Tribunal for reconsideration.
13. In these Remitted Proceedings, the Tribunal was reconstituted to decide the Remitted Issue. The Tribunal's decision is set out in this Award on the Remitted Issue.

II. PROCEDURAL HISTORY

14. The Award recounts in detail the procedural history from the commencement of the arbitration until the date of issuance of the Award (the "**Original Proceedings**"). This Section summarizes only the key procedural phases of the Original Proceedings until the Award and sets out the subsequent developments.

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

A. COMMENCEMENT OF THE ARBITRATION AND INITIAL STEPS

15. On 13 April 2018, the Claimant served on the Government of the Republic of Korea a Notice of Intent to submit its claims to arbitration pursuant to Article 11.16(2) of the Free Trade Agreement between the Republic of Korea and the United States dated 30 June 2007 (the “**Treaty**”).
16. By a Notice of Arbitration and Statement of Claim dated 12 July 2018, the Claimant commenced arbitration proceedings against the Respondent pursuant to Article 11.16(3)(c) of the Treaty and Article 3(1) of the Arbitration Rules of the United Nations Commission on International Trade Law, 2013 (the “**UNCITRAL Rules**”).
17. In its Notice of Arbitration and Statement of Claim, the Claimant appointed Mr. Oscar M. Garibaldi, a national of the United States and the Argentine Republic, as arbitrator.
18. On 13 August 2018, the Respondent filed a Response to Notice of Arbitration and Statement of Claim, and appointed Mr. J. Christopher Thomas KC, a national of Canada, as arbitrator.
19. On 15 November 2018, pursuant to Article 11.19(1) of the Treaty, the Parties appointed Dr. Veijo Heiskanen, a national of Finland, to serve as the presiding arbitrator.
20. On 21 November 2018, following the Parties’ agreement, the Permanent Court of Arbitration (the “**PCA**”) confirmed that it would act as registry and administer these arbitral proceedings.
21. On 27 March 2019, the Parties and the Tribunal agreed on the Terms of Appointment, which *inter alia* specified that English and Korean would be the official languages of the arbitration. The Terms of the Appointment were executed by both Parties and the Tribunal on 25 July 2019.
22. On 1 April 2019, the Tribunal issued Procedural Order No. 1, which *inter alia* established London as the place of arbitration, the rules of procedure, and the transparency regime applicable to the proceedings.

B. ISSUANCE OF THE AWARD

23. Following the Parties’ written submissions, a hearing was held from 15 to 26 November 2021 in Geneva, Switzerland.
24. On 20 June 2023, the Tribunal issued its Award, the operative part of which reads as follows:

For the foregoing reasons, the Tribunal determines as follows:

- a. The Respondent has breached the Treaty;
- b. The Respondent is ordered to pay the Claimant compensation for the losses caused to

the Claimant by the Respondent's breach in the amount of USD [48,490,438.00];²

- c. The Respondent is ordered to pay the Claimant pre-award interest at a rate of 5 percent on the sum in sub-paragraph (b) above, compounded yearly from 16 July 2015 until the date of this Award;
- d. The Respondent is ordered to pay the Claimant post-award interest at a rate of 5 percent, compounded yearly, from the date of this Award until payment of the sum in subparagraph (b) above in full;
- e. The Parties are to bear their own costs of arbitration;
- f. The Claimant is ordered to pay the Respondent the legal costs incurred by the Respondent in relation to these proceedings in the amount of USD 3,457,479.87, with interest at the rate of 5 percent, compounded yearly, payable from 30 days of the date of this Award;
- g. The Respondent is ordered to pay the Claimant the legal costs incurred by the Claimant in relation to these proceedings in the amount of USD 28,903,188.90, with interest at the rate of 5 percent, compounded yearly, payable from 30 days of the date of this Award; and
- h. All other claims and requests for relief are dismissed.³

- 25. On 18 July 2023, the Respondent submitted its Request for Correction and Interpretation of the Award in accordance with Articles 37 and 38 of the UNCITRAL Rules.
- 26. On 20 July 2023, the Claimant submitted its Request for Correction of the Award in accordance with Article 38 of the UNCITRAL Rules.
- 27. On 1 September 2023, the Tribunal issued its Decision on Requests for Correction and Interpretation of the Award.

C. SET-ASIDE PROCEEDINGS IN THE ENGLISH COURTS

- 28. On 17 July 2023, the Respondent commenced Set-Aside Proceedings before the English High Court, challenging the Award on the grounds that the Tribunal lacked jurisdiction within the meaning of section 67 of the English Arbitration Act 1996 (the "**Arbitration Act**").⁴
- 29. On 1 August 2024, the High Court dismissed the Respondent's challenge, holding that it did not raise a question going to the Tribunal's substantive jurisdiction and declining to address the merits.⁵

² As corrected by the Decision on Requests for Correction and Interpretation, 1 September 2023, para. 65(a)(13).

³ Award, para. 995.

⁴ The Respondent also challenged the Award under section 68 of the Arbitration Act but subsequently withdrew those claims following the Tribunal's Decision on Requests for Correction and Interpretation of the Award. See *Republic of Korea v. Elliott Associates*, L.P. CL-2023-000395, Order of Foxton LJ, 18 March 2026, p. 1 (**CLA-226**).

⁵ *Republic of Korea v. Elliott Associates L.P.* [2024] EWHC 2037 (Comm), para. 69 (**CLA-220**).

30. On 17 July 2025, the Court of Appeal allowed the Respondent’s appeal, overturning the High Court’s decision, and referred the Respondent’s challenge back to the High Court to determine the jurisdictional objection on its merits.⁶
31. On 23 February 2026, the High Court rendered its judgment in respect of the merits of the Respondent’s challenge to the Award (the “**Set-Aside Judgment**”), and granted the following relief:
- i) the Award should be set aside in so far as it finds that the NPS was an organ of the State and finds that the conduct of the NPS constituted a breach of Article 11.5 of the Treaty on that basis; and
 - ii) the issue of causation of the breaches of the Treaty found to have been constituted by the Blue House Measures and the relief award be remitted to the Tribunal for reconsideration.⁷
32. On 18 March 2026, the High Court handed down its Ruling on Consequential Issues, setting out its reasons on the relief to be granted, and made an Order giving effect to its findings in the Set-Aside Judgment (the “**Remittal Order**”).⁸ The Remittal Order provided in relevant part as follows:
- 1. It is declared that:
 - (a) conduct of the National Pension Service of Korea does not constitute a “measure adopted or maintained by a Party”, within the meaning of Article 11.1 of the Treaty;
 - (b) the tribunal in the Arbitration has no substantive jurisdiction to make findings that conduct of the NPS constituted a measure adopted or maintained by Korea.
 - 2. The following parts of the Award are set-aside:
 - (a) [444]-[446].
 - (b) In [603] the words “and the Tribunal’s findings in Section V.B above that the conduct of the NPS, and thus also of CIO Hong, is attributable to the Respondent” (but not otherwise).
 - (c) The final sentence of [623].
 - (d) In [624] the words “The Seoul Central District Court similarly found that CIO Hong breached his ‘official duties’ and the words “and CIO Hong” (but not otherwise).
 - (e) [626].
 - (f) The final three sentences of [814].
 - (g) The first sentence of [821].
 - (h) [822]-[823].

⁶ *Republic of Korea v. Elliott Associates, L.P.* [2025] EWCA Civ 905, para. 65 (**CLA-221**).

⁷ *Republic of Korea v. Elliott Associates, L.P.* [2026] EWHC 368 (Comm), para. 266 (**CLA-222**).

⁸ *Republic of Korea v. Elliott Associates, L.P.*, CL-2023-000395, Ruling on Consequential Issues, 18 March 2026 (**CLA-227**); *Republic of Korea v. Elliott Associates, L.P.*, CL-2023-000395, Order of Foxton LJ, 18 March 2026 (**CLA-226**).

- (i) [993].
- (j) [995(b)]-[995(h)].

3. The following issue is 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?”⁹

D. ESTABLISHMENT OF THE PROCEDURAL FRAMEWORK FOR THE REMITTED PROCEEDINGS

33. On 18 March 2026, the Claimant requested that the Tribunal resume the arbitral proceedings to determine the issue remitted to the Tribunal pursuant to the Remittal Order. The Claimant proposed a three-month schedule to deal with the remitted issue pursuant to section 71(3) of the Arbitration Act, given its view that “the single issue remitted to the Tribunal is narrow in scope,” and that “the Tribunal’s existing findings of fact in parts of the Award that have not been set aside clearly address that single issue.”¹⁰
34. On 26 March 2026, at the Tribunal’s invitation, the Respondent submitted its comments on the Claimant’s request. The Respondent disputed the Claimant’s characterization of the conclusions in the Set-Aside Judgment and disagreed with the procedural schedule proposed by the Claimant. In particular, the Respondent considered that the proposed three-month timetable was “simply not achievable” in light of the time required to conduct a tender process for the appointment of counsel to act in the Remitted Proceedings and the need for a procedural timetable to accommodate an oral hearing following two rounds of written submissions, as well as admission of additional evidence into the record.
35. On 31 March 2026, the Claimant challenged the Respondent’s characterization of the scope of the Remitted Issue and objected to the Respondent’s suggestion that new evidence would be necessary for the determination of the Remitted Issue. The Claimant maintained that the three-month period contemplated in section 71(3) of the Arbitration Act should be observed.
36. On 1 April 2026, the Tribunal transmitted to the Parties a list of issues concerning the procedural framework of the Remitted Proceedings to be addressed at the case management conference scheduled for 9 April 2026. The Tribunal also invited the Parties to set out their preliminary

⁹ *Republic of Korea v. Elliott Associates, L.P.*, CL-2023-000395, Order of Foxton LJ, 18 March 2026 (**CLA-226**).

¹⁰ Section 71(3) of the Arbitration Act reads: “Where the award is remitted to the tribunal, in whole or in part, for reconsideration, the tribunal shall make a fresh award in respect of the matters remitted within three months of the date of the order for remission or such longer or shorter period as the court may direct.”

positions on any such issues in writing in advance of the conference. On 7 April 2026, the Parties submitted their respective comments on the issues identified by the Tribunal.

37. On 9 April 2026, the Tribunal held a case management conference to discuss the organization of the Remitted Proceedings, attended by counsel and representatives for the Parties, the members of the Tribunal, and the PCA.
38. On 11 April 2026, the Tribunal issued directions on the outstanding issues concerning the conduct of the Remitted Proceedings. Specifically, the Tribunal considered that an extension of the three-month deadline in section 71(3) of the Arbitration Act would be necessary and invited the Parties to make a joint application to the English High Court for an extension of the deadline until 30 September 2026. The Tribunal further established the procedure governing the admission of new evidence in the Remitted Proceedings and invited the Parties to agree on a draft Procedural Order addressing the organization of the Remitted Proceedings, including the procedural timetable, taking into account a one-day hearing in July 2026. As the Terms of Appointment could not be amended unilaterally by either Party or by the Tribunal, the Tribunal invited the Parties to confer regarding the provisions of the Terms of Appointment executed in the Original Proceedings, in particular those concerning the language of the arbitration.
39. Between 17 April 2026 and 6 May 2026, the Parties exchanged several rounds of correspondence on the procedural calendar, including the date and format of the hearing.
40. On 30 April 2026, the Claimant submitted to the Tribunal an Order of Mr. Justice Waksman of the High Court dated 27 April 2026, extending to 30 September 2026 the deadline for the Tribunal to render its award on the Remitted Issue.
41. On 1 May 2026, the Parties submitted to the Tribunal a jointly agreed addendum to the Terms of Appointment, in which the Parties *inter alia* agreed to amend the translation filing deadline for both exhibits and submissions and removed the requirement of hard copy service. The addendum was executed by the Parties and the Tribunal on 6 May 2026.
42. 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 13 May 2026 as the deadline for the Respondent's filing of its application for leave to admit new evidence and 20 May 2026 for the Claimant's filing of its response.
43. On 12 May 2026, the Parties jointly informed the Tribunal of their agreed proposals in respect of the procedural calendar and the hearing in the Remitted Proceedings. They proposed that the hearing take place in-person between 27-28 July 2026, with 29 July held in reserve, in

Washington D.C. and agreed that the Respondent's first written submission on the Remitted Issue would be filed on 5 June 2026.

44. On 13 May 2026, the Tribunal issued Procedural Order No. 22, in which the Tribunal endorsed the Parties' agreement on the procedural arrangements for the Remitted Proceedings and fixed the procedural calendar.

E. WRITTEN SUBMISSIONS ON THE REMITTED ISSUE AND ADMISSION OF NEW EVIDENCE

45. On 27 April 2026, the Claimant filed its Submission on the Remitted Issue (the "**Claimant's Submission on the Remitted Issue**"), together with legal authorities.
46. On 13 May 2026, the Respondent requested a one-day extension to file its application for leave to admit new evidence. The Tribunal granted this request on the understanding that the Claimant would be entitled to a commensurate extension to file its response, if required.
47. On 14 May 2026, the Respondent filed its Application for Leave to Admit New Evidence, in which the Respondent sought to admit five judgments issued by the Korean courts (the "**Additional Judgments**") and a legal expert report from Professor Jae Hyung Kim, a former Justice of the Supreme Court of Korea, offered as an aid to the Tribunal in understanding the Additional Judgments.
48. On 20 May 2026, the Claimant requested a commensurate one-day extension for the filing of its response to the Respondent's Application for Leave to Admit New Evidence. On the same date, the Tribunal confirmed the extension and extended the time limit for the Claimant's response to 22 May 2026.
49. On 22 May 2026, the Claimant filed its response to the Respondent's Application for Leave to Admit New Evidence, in which it did not object to the admission of the Additional Judgments but objected to the admission of the report by Professor Kim.
50. On 25 May 2026, the Tribunal issued Procedural Order No. 23, in which it granted the Respondent's request to admit the Additional Judgments into the record in the absence of objection by the Claimant, but denied the Respondent's request to admit the report by Professor Kim.
51. On 5 June 2026, the Respondent, having sought and obtained agreement from the Claimant, requested an extension of time to file its submission on the Remitted Issue to 7 June 2026. On the same date, the Tribunal confirmed the extension and in parallel extended the time limit for the Claimant's Reply to 30 June 2026.

52. On 7 June 2026, the Respondent filed its Submission on the Remitted Issue, together with an Annex providing an overview of the Additional Judgments (the “**Additional Judgments Annex**”).
53. On 23 June 2026, the Respondent sought leave from the Tribunal to submit into the record a corrected version of its Submission on the Remitted Issue in order to rectify a factual error (the “**Respondent’s Corrected Submission on the Remitted Issue**”). Having received no objection from the Claimant, the Tribunal granted the Respondent’s request on 25 June 2026.
54. On 30 June 2026, the Claimant filed its Reply Submission on the Remitted Issue (the “**Reply on the Remitted Issue**”), together with two Annexes, one of which contained the Claimant’s revisions to the Additional Judgments Annex.
55. On 17 July 2026, the Respondent filed its Rejoinder Submission on the Remitted Issue (the “**Rejoinder on the Remitted Issue**”), together with the Additional Judgments Annex containing its responses to the Claimant’s revisions.
56. Between 24 and 26 July 2026, the Claimant sought leave from the Tribunal to submit additional legal authorities into the record, while the Respondent sought leave to submit updated translations of three exhibits. In the absence of any objection from the opposing Party, the Tribunal granted both requests.

F. HEARING ON THE REMITTED ISSUE

57. On 1 July 2026, the Tribunal issued Procedural Order No. 24, in which it recorded the Parties agreement on the organization of the hearing, including the hearing schedule and an agreement to make the hearing public by means of a public viewing room.
58. On 25 July 2026, the Respondent informed the Tribunal that urgent health complications had rendered [REDACTED] unable to attend the hearing scheduled to commence on 27 July 2026. The Respondent therefore requested that the commencement of the hearing be postponed to 28 July 2026, subject to an improvement in [REDACTED]’s condition. Later that day, the Claimant indicated that it was prepared to proceed with the hearing on 28 and 29 July 2026. In the alternative, should either the Tribunal or the hearing facilities not be available on 29 July 2026, the Claimant proposed that the Parties present their respective opening submissions on 28 July 2026, with rebuttal submissions to follow in writing shortly thereafter.
59. On 27 July 2026, a case management conference was held to address the schedule for the hearing. During the conference, the Parties informed the Tribunal that they had agreed to present their respective oral opening submissions on 28 and 29 July 2026 and to file their rebuttal submissions

in writing, on a timetable to be determined by the Tribunal at the conclusion of the hearing. The Tribunal endorsed the Parties' agreement regarding the revised hearing schedule.

60. The hearing in these Remitted Proceedings (the "**Hearing**") was held on 28-29 July 2026 in Washington, D.C. The following individuals attended the Hearing:

Tribunal

Dr. Veijo Heiskanen (Presiding Arbitrator)
Mr. Oscar M. Garibaldi
Mr. J. Christopher Thomas KC

Claimant

Mr. Richard Zabel*
Elliott Associates, L.P.

Mr. Constantine Partasides KC
Mr. Georgios Petrochilos KC
Mr. Simon Consedine
Ms. Nicola Peart
Ms. Julia Sherman
Ms. Jyotsna Vilva
Mr. Gavin Cunningham
Ms. Shea Adams
Three Crowns LLP

Mr. Andrew Stafford KC*
Mr. Robin Baik
Mr. Richard Clarke
Mr. Kunhee Cho
Mr. Ethan Kim
Ms. Jinseul Jun*
Ms. Seungyun Lee*
Mr. Kyle H. Koo*
Kobre & Kim

Respondent

Dr. Junha Kang
Ms. Ara Cho
Mr. Kyongwon Min
Mr. Hoyoung Youm
Mr. Jeongwoo Kweon
Mr. Dongmin Yoon
Mr. Gangwoo Lim
Ministry of Justice of the Republic of Korea

Mr. Kyooyoung Song
Mr. Sangsun Park
Mr. Seungwon Jung
Mr. Heejoon Lee
Ms. Se Yeon Chung
Supreme Prosecutors' Office, Republic of Korea

Mr. Jun Hee Kim
Mr. Anton A. Ware
Ms. Charlotte Mallorie*
Mr. Bart Wasiak
Ms. Grace Yuhan Yang*
Ms. Lyuzhi Wang
Dr. Joel Dahlquist*
Ms. Jana Blahova*
Ms. Aimee Kneiss
Mr. Caleb Ruby
Ms. Alexia Morán
Mr. Eugenio Araujo*
Ms. Lara Iglesias Geller*
Mr. Jaideep Khanna*
Arnold & Porter Kaye Scholer LLP

Mr. Samuel Wordsworth KC*
Mr. Peter Webster
Essex Court Chambers

Mr. Kap-You Kevin Kim
Ms. Saemee Kim
Ms. Sophie Oh

Mr. Sungryul Park
Mr. Mino Han*
Ms. Do Eun (Grace) Park*
Ms. Hyelin Kang*
Ms. Gahyun Kim*
Peter & Kim

PCA

Ms. Jinyoung Seok
Ms. Valentina Botello León*
Mr. Conner McKillop*

Court Reporter

Ms. Rachel Bradbury

EPE Operator

Mr. John Lopez

** denotes remote attendees*

G. POST-HEARING PROCEEDINGS

61. On 30 July 2026, the Tribunal issued directions recording certain points agreed between the Parties and setting out its further directions concerning the post-hearing proceedings, including the deadlines for the filing of the rebuttal submissions, questions to be addressed by the Parties therein, and a direction to each Party to supplement the Respondent's Demonstrative D submitted at the Hearing.
62. On 4 August 2026, the Claimant requested permission to submit an updated version of the Respondent's Additional Judgments Annex, limited to comments responsive to the version of the Annex submitted by the Respondent with its Rejoinder on the Remitted Issue shortly before the Hearing.
63. On 6 August 2026, having considered the Respondent's objection to the Claimant's request, the Tribunal denied the request on the ground that it was untimely.
64. On the same date, the Respondent requested that the Tribunal inform the Parties if it considered additional time necessary for the proper disposition of the Remitted Issue, in which case the Parties would jointly seek a further extension for such period as the Tribunal considered appropriate. The Claimant opposed the Respondent's request, noting the time still remaining before the current deadline, but ultimately left the matter to the Tribunal's determination.
65. On 7 August 2026, the Tribunal informed the Parties that it considered it premature at that stage to determine whether a further extension of time would be required for the issuance of the Award

on the Remitted Issue in both English and Korean. The Tribunal indicated that it would keep the matter under review and inform the Parties towards the end of August should it conclude that such an extension was necessary.

66. On 10 August 2026, the Claimant sought the Tribunal's leave to submit updated translations of fourteen exhibits into the record, in connection with the updated version of the Respondent's Demonstrative D that it intended to file together with its Rebuttal Submission. The Tribunal granted the Claimant's request on 11 August 2026 and invited the Respondent to submit any revisions reflected in the Claimant's updated version of Demonstrative D with which it disagreed.
67. On 11 August 2026, the Respondent requested that (i) the deadline for the filing of both Parties' rebuttal submissions be extended by twelve hours, to allow it to review the Claimant's newly submitted translations and, if appropriate, incorporate them into its rebuttal submission; and (ii) two updated translations of its exhibits be admitted into the record. The Respondent further reserved its right to seek leave to submit additional translations of materials responsive to the Claimant's newly submitted translations. The Tribunal granted both requests later that day.
68. On 12 August 2026, the Respondent sought the Tribunal's leave to submit additional translations of seven exhibits into the record, which it stated were directly responsive to the Claimant's additional translations admitted by the Tribunal the previous day. The Respondent's request was granted on the same day.
69. On 13 August 2026, the Parties filed their rebuttal submissions (respectively, the "**Claimant's Rebuttal Submission on the Remitted Issue**" and the "**Respondent's Rebuttal Submission on the Remitted Issue**").
70. On 14 August 2026, the Tribunal requested that, in order to facilitate the Tribunal's review of the additional and corrected translations, the Parties resubmit the relevant exhibits, clearly identifying the portions added or amended in the course of these Remitted Proceedings.
71. On 18 August 2026, the Parties resubmitted the additional and corrected translations, identifying the portions that had been added or amended. The Claimant, however, indicated that it did not agree with the Respondent's corrections to the translations.
72. On 26 August 2026, the Parties filed their statements of costs (respectively, the "**Claimant's Statement of Costs**" and the "**Respondent's Statement of Costs**").
73. On 31 August 2026, the Tribunal informed the Parties that it expected to be able to meet the 30 September 2026 deadline for the issuance of the Award on the Remitted Issue in both the

English and the Korean versions.

III. BACKGROUND TO THE REMITTED ISSUE

74. This Section sets out the background to the Remitted Issue, including the Tribunal’s findings in the Original Proceedings (**A.**) and the Additional Judgments admitted into the record in these Remitted Proceedings (**B.**). The Parties’ respective positions on the disputed issues are addressed in the Sections that follow.

A. THE TRIBUNAL’S FINDINGS IN THE AWARD

1. The Measures at Issue

75. The Tribunal’s findings in the Award that are relevant to the Tribunal’s determinations on the Remitted Issue dealt, *inter alia*, with the conduct of the executive office of former President Geunhye Park (the “**Blue House**”), the Ministry of Health and Welfare (the “**MHW**”), and the National Pension Service (the “**NPS**”), in connection with the approval of the merger of Samsung C&T Corporation (“**SC&T**”) and Cheil Industries Inc. (“**Cheil**”) (the “**Merger**”).

76. Having reviewed evidence in the record and the factual findings of various relevant Korean court judgments, the Tribunal found that:

The factual findings of the Seoul Central District Court and the Seoul High Court, and the key supporting evidence relied upon by the Courts therefore establish that:

- (a) The 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.
- (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, 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.¹¹

77. As to the conduct of the Blue House and the MHW (the “**Blue House Measures**”), the Tribunal noted the Korean court’s findings that President Park “gave direction or approval during the process of deciding on the approval of the issue of the Merger,”¹² and concluded:

The Court’s findings establish that not only the MHW but also the administration of the former President Park intervened, by instructing the MHW to intervene, in the Merger vote, including, *inter alia*, to fend off the “unexpected emergence of [the Claimant].”¹³

¹¹ Award, para. 602.

¹² Award, para. 616.

¹³ Award, para. 618.

78. As regards the conduct of the NPS, the Tribunal first considered that “[i]n light of the wealth of evidence before it, linking the NPS to the State both functionally and financially ... the NPS is *de facto* a State organ and accordingly its conduct is attributable to the Korean State.”¹⁴
79. In connection with the NPS’s conduct in the exercise of its voting rights on the Merger, the Tribunal determined that:

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.¹⁵

2. The Tribunal’s Findings on Breach, Causation, and Quantum

80. Relying on the Korean courts’ findings as to the conduct of Minister Hyeong-pyo Moon of the MHW and Chief Information Officer, Mr. Wan-seon Hong (“**CIO Hong**”) of the NPS, the Tribunal held that the Respondent breached the minimum standard of treatment under Article 11.5 of the Treaty:

[T]he Respondent’s conduct in connection with the Merger was “unjust” and amounted to a “willful neglect of ... duties” and “a pronounced degree of improper action.” As such, it was incompatible with a rule of customary international law prohibiting such conduct that forms part of the minimum standard of treatment of aliens and therefore amounts, *prima facie*, to a breach of the Respondent’s MST obligation under Article 11.5 of the Treaty.¹⁶

81. As to the relevant standard for causation, the Tribunal stated:

The relevant standard under the Treaty for purposes of causation is Article 11.16(1)(a), which provides that, in the event an investment dispute cannot be resolved by negotiation, a claimant “on its own behalf, may submit to arbitration under this Section a claim (i) that the respondent has breached [an obligation under the Treaty] and (ii) that the claimant *has incurred loss or damage by reason of, or arising out of, that breach*.”

The provision thus makes clear that causation – whether a claimant “has incurred loss or damage by reason of, or arising out of, that breach” – is about the relationship between the alleged breach and the claimed loss or damage, and not about the relationship between the respondent and the alleged breach, which is a matter of attribution rather than causation. The Tribunal therefore cannot accept the Respondent’s argument that the Claimant must prove that the Respondent caused the NPS to breach the Treaty. Indeed, the Tribunal has already determined ... that the conduct of the NPS is attributable to the Republic of Korea. The Claimant therefore need not show that the Respondent caused the NPS to breach the Treaty; for the purposes of determining whether the Respondent breached the Treaty, the conduct of the NPS is attributable to the Respondent.¹⁷

82. The Tribunal further determined that:

¹⁴ Award, para. 445.

¹⁵ Award, para. 623.

¹⁶ Award, para. 603.

¹⁷ Award, paras. 813-14 (emphasis in original).

The two relevant aspects of causation that the Tribunal must consider are causation in fact and causation in law. The former involves the determination of whether the claimant would have suffered the claimed loss or damage in the absence of the alleged breach, whereas the latter is about whether the claimed loss or damage is sufficiently closely linked to the alleged breach. The required link 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[.]¹⁸

83. As to causation in fact, the Tribunal noted the Korean court’s findings 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.”¹⁹ The Tribunal further observed:

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. While the Respondent seeks to rely on the witness evidence of Mr. Cho, a member of the Experts Voting Committee, to argue that the evidence does not show that the members of the Experts Voting Committee would have voted against the Merger, it acknowledges that Mr. Cho did not state in his witness statements that he would have voted in favor of the Merger (or indeed against it, as he was undecided), had the matter been referred to the Experts Voting Committee.²⁰

84. As to causation in law, the Tribunal found that it was:

satisfied that, as the acts of the NPS are attributable to the Respondent, the loss and damage claimed by the Claimant is a direct result of the Respondent’s conduct and thus was proximately caused by the Respondent. 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.²¹

85. In rejecting the argument that the chain of causation was interrupted “because the Experts Voting Committee *could* also have rejected the Merger, or that even if the NPS voted against the Merger, any of the shareholders that held more than 2.7% of the shares *could* have voted against the Merger,” the Tribunal reasoned 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. Neither of the potential events relied upon by the Respondent has in fact taken place, and accordingly they could not have broken the chain of causation.²²

86. Accordingly, the Tribunal found that “the NPS’s vote on the Merger caused the harm claimed by the Claimant.”²³

¹⁸ Award, para. 815.

¹⁹ Award, para. 819.

²⁰ Award, para. 820.

²¹ Award, para. 821.

²² Award, para. 822 (emphasis in original).

²³ Award, para. 823.

87. On the quantum of the Claimant's loss, the Tribunal considered that "the proper method of valuation of the Claimant's loss is market value, which may be quantified as 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,"²⁴ 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."²⁵
88. On this basis, the Tribunal concluded that the loss in value of the Claimant's investment resulting from the Respondent's breach of the Treaty amounted to KRW 62,206,067,478.²⁶ The Tribunal accordingly ordered the Respondent to pay the Claimant compensation in the corresponding amount of USD 48,490,438.00, together with pre-award interest at 5 percent compounded yearly from 16 July 2015 and post-award interest at the same rate.²⁷
89. On costs, the Tribunal ordered that the Parties bear their own costs of arbitration, that the Claimant pay the Respondent USD 3,457,479.87 in legal costs, and that the Respondent pay the Claimant USD 28,903,188.90 in legal costs, in each case with interest at 5 percent, compounded yearly.²⁸

B. THE SET-ASIDE JUDGMENT AND THE REMITTED ISSUE

90. Following the Court of Appeal's referral of the jurisdictional challenge back for determination on the merits, the High Court handed down the Set-Aside Judgment on 23 February 2026, upholding the Respondent's challenge in part.²⁹ In the Set-Aside Judgment, the Court granted the following relief:
- i) the Award should be set aside in so far as it finds that the NPS was an organ of the State and finds that the conduct of the NPS constituted a breach of Article 11.5 of the Treaty on that basis; and
 - ii) the issue of causation of the breaches of the Treaty found to have been constituted by the Blue House Measures and the relief award be remitted to the Tribunal for reconsideration.³⁰

²⁴ Award, para. 932.

²⁵ Award, para. 933.

²⁶ Award, para. 948, as corrected by the Decision on Requests for Correction and Interpretation of the Award, 1 September 2023, para. 65(a)(11).

²⁷ Award, para. 995(b), (f), as corrected by the Decision on Requests for Correction and Interpretation of the Award, 1 September 2023, para. 65(a)(12).

²⁸ Award, para. 995(f), (g).

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

³⁰ *Republic of Korea v. Elliott Associates, L.P.* [2026] EWHC 368 (Comm), para. 266 (CLA-222).

91. In reaching this decision, the High Court reasoned as follows:

EALP referred me to a number of passages in the Award said to amount to a finding that the breach constituted by the Blue House Measures had caused the loss for which damages had been awarded, independently of the attribution of the NPS's acts to Korea. Reading the Award fairly, I have not been persuaded to the requisite degree of clarity that the Tribunal did make such a finding[.]

...

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. The nature of the argument before the Court did not necessarily require every paragraph in this section to be set aside.

...

For these reasons, Korea's s.67 challenge succeeds to the extent set out above. I have reached this conclusion with reluctance, not least because EALP advanced its case by reference to Article 11.1(3) of the Treaty in the arbitration on a basis which did not depend on the acts of the NPS themselves constituting measures adopted or maintained by a Party, and it may well be entitled to the same relief on the basis of its case concerning the Blue House Measures (over which I have found the Tribunal did have jurisdiction), just as the *Mason* claimants were.³¹

92. The High Court gave effect to this conclusion in its Remittal Order by declaring that:

- (a) conduct of the National Pension Service of Korea does not constitute a "measure adopted or maintained by a Party", within the meaning of Article 11.1 of the Treaty;
- (b) the tribunal in the Arbitration has no substantive jurisdiction to make findings that conduct of the NPS constituted a measure adopted or maintained by Korea.³²

93. In the Remittal Order, the High Court remitted the following issue 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?"³³

94. In its Ruling on Consequential Issues, where it set out its determinations of the issues which have arisen as a consequence of its judgment upholding Korea's challenge in part, the High Court stated that it "was satisfied that [it] should set aside those specific findings in the Award which [it] held to have been made without jurisdiction or which are consequential on such findings." According to the High Court, this "requir[ed] setting aside findings that the conduct of the NPS constituted 'a measure adopted or maintained by a Party' and findings necessarily premised on or inextricably

³¹ *Republic of Korea v. Elliott Associates, L.P.* [2026] EWHC 368 (Comm), paras. 264-65, 268 (CLA-222).

³² *Republic of Korea v. Elliott Associates, L.P.*, CL-2023-000395, Order of Foxton LJ, 18 March 2026, para. 1 (CLA-226).

³³ *Republic of Korea v. Elliott Associates, L.P.*, CL-2023-000395, Order of Foxton LJ, 18 March 2026, para. 3 (CLA-226).

linked with that conclusion.”³⁴ The High Court determined that it should specifically identify the paragraphs affected, which are listed, with reasons, at paragraph 5 of the Ruling on Consequential Issues. In this connection, the High Court stated, in respect of the paragraphs in the Award relating to causation:

I am not persuaded that all the paragraphs in the causation section need to be set aside. The Tribunal had jurisdiction to make findings as to what the causation test required (having jurisdiction to find breaches by the Blue House, MHW and Minister Moon). To the extent that those findings prove not to be apposite to the causation issue as remitted to the Tribunal, or not to address every issue which arises in that context, the Tribunal will not be precluded by those findings from determining those issues which they are persuaded do arise but have not been addressed appropriately.³⁵

95. When determining the issue to be remitted to the Tribunal, the High Court considered that the Remitted Issue was appropriately reflected in the formulation adopted in the Remittal Order, “but without presupposing issues which are for the Tribunal’s determination.”³⁶ The High Court stated, in this connection, that “[t]he scope of the remission will not affect or allow Korea to revisit findings which have not been set aside.”³⁷

C. THE ADDITIONAL JUDGMENTS

96. By Procedural Order No. 23, the Tribunal admitted into the record five Additional Judgments of the Korean courts. The Additional Judgments relate to two sets of proceedings:
- (a) 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 (**R-389**); and (ii) the judgment of the Seoul High Court of 12 February 2026 in Case No. 2023Na2000796 (**R-390**) (together, the “**Shareholder Claims Judgments**”)
 - (b) 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) (**R-391**); (ii) the judgment of the Seoul High Court of

³⁴ *Republic of Korea v. Elliott Associates, L.P.*, CL-2023-000395, Ruling on Consequential Issues, CL-2023-000395, 18 March 2026, para. 4 (**CLA-227**).

³⁵ *Republic of Korea v. Elliott Associates, L.P.*, CL-2023-000395, Ruling on Consequential Issues, CL-2023-000395, 18 March 2026, para. 5(l) (**CLA-227**).

³⁶ *Republic of Korea v. Elliott Associates, L.P.*, CL-2023-000395, Ruling on Consequential Issues, CL-2023-000395, 18 March 2026, para. 6 (**CLA-227**).

³⁷ *Republic of Korea v. Elliott Associates, L.P.*, CL-2023-000395, Ruling on Consequential Issues, CL-2023-000395, 18 March 2026, para. 7 (**CLA-227**).

3 February 2025 in Case No. 2024No635 (**R-392**); and (iii) the judgment of the Supreme Court of Korea of 17 July 2025 in Case No. 2025Do2805 (**R-393**) (together, the “**JY Lee Unlawful Merger Judgments**”).

97. The Parties disagree on (i) what the Additional Judgments decided; and (ii) the weight, if any, to be accorded to them. These differences are addressed below in the appropriate context, as relevant.

1. The Shareholder Claims Judgments

98. The Shareholder Claims proceedings involved civil claims for damages brought against the ROK by 72 former shareholders of SC&T as it existed before the Merger. The plaintiffs alleged that an abuse of authority by a public official, Minister Moon, caused the NPS to approve the Merger to the shareholders’ detriment. The NPS intervened in support of the defendant at both instances by way of auxiliary intervention under Article 71 of the Korean Civil Procedure Act.³⁸
99. The first-instance court dismissed the plaintiffs’ principal and alternative claims, holding that the requisite proximate causal relationship between the public official’s abuse of authority and the plaintiffs’ damage was not established. In particular, the court found that it could not be concluded that the acts of Minister Moon and CIO Hong “determined” the decision of the Investment Committee of the NPS (the “**Investment Committee**”).³⁹ Fourteen of the first-instance co-plaintiffs appealed. The Seoul High Court dismissed the appeals on 12 February 2026. No further appeal was taken and the judgment became final.⁴⁰

2. The JY Lee Unlawful Merger Judgments

100. The JY Lee Unlawful Merger proceedings were criminal proceedings addressing 24 charges against fourteen defendants and concerning violation of (i) the Financial Investment Services and Capital Markets Act, breach of occupational trust; (ii) the Act on External Audit of Stock Companies; and (iii) perjury. The defendants comprised JY Lee, individuals connected with the Samsung Group’s Future Strategy Office, SC&T, Samsung Biologics, and Samsung Bioepis, together with an accounting firm and two of its employees. None of the defendants was an official of the ROK.

³⁸ Additional Judgments Annex, Section II (Shareholder Claims Judgments); Seoul Central District Court, Case No. 2020GaHap600079, 25 November 2022 (**R-389**).

³⁹ Seoul Central District Court, Case No. 2020GaHap600079, 25 November 2022 (**R-389**).

⁴⁰ Seoul High Court, Case No. 2023Na2000796, 12 February 2026 (**R-390**).

101. The first-instance court acquitted the defendants of all charges. The Prosecution appealed against the acquittals and the Seoul High Court dismissed the appeal in its entirety. The Prosecution appealed further to the Supreme Court of Korea, which dismissed the appeal in its entirety, rendering the acquittals of the defendants final.⁴¹

IV. REQUESTS FOR RELIEF

102. In its Submission on the Remitted Issue, the Claimant requests the following relief:

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

- 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 the sum in sub-paragraph (a) above, compounded yearly from 16 July 2015 until the date of this 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 this Award until payment of the sum in sub-paragraph (a) 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;
- 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.⁴²

103. In its Reply and Rebuttal Submission on the Remitted Issue, the Claimant requests the following relief:

- 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;

⁴¹ Seoul High Court, Case No. 2024No635, 3 February 2025 (**R-392**); Supreme Court of Korea, Case No. 2025Do2805, 17 July 2025 (**R-393**).

⁴² Claimant's Submission on the Remitted Issue, para. 82.

- d. 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;
- 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.⁴³

104. In its Submission on the Remitted Issue, as well as in its Rejoinder and Rebuttal Submission on the Remitted Issue, the Respondent requests the following relief:

For the reasons set forth in this Submission, the ROK respectfully requests that the Tribunal:

- a. declare that Claimant has failed to meet the burden to prove causation and is not entitled to any compensation;
- b. in the event that the Tribunal were to find that Claimant is entitled to compensation, determine the relevant compensation using the “loss of chance” framework;
- c. order Claimant to pay the ROK’s legal costs corresponding to the ROK’s relative success in the Arbitration, with interest at the rate of 5 percent, compounded yearly, payable from 30 days of the date of the Award on the Remitted Issue;
- d. deny Claimant all of the relief requested at paragraph 82 of Claimant’s Submission; and
- e. award the ROK any additional relief that the Tribunal may consider just and appropriate.⁴⁴

V. OUTSTANDING PROCEDURAL ISSUES

105. As summarized above in Section II, the Parties have produced during the course of these Remitted Proceedings a number of additional translations of exhibits already in the record. At the Tribunal’s request, these exhibits were resubmitted on 18 August 2026, identifying the additional or amended portions of each exhibit. As noted above, while the additional translations have been agreed between the Parties, the Claimant disagrees with the five amended translations produced by the Respondent, relating to exhibits C-69, C-79, C-286, C-781 and R-20.

106. The Tribunal recalls that section 2 of Procedural Order No. 1, which remains applicable in these Remitted Proceedings, sets out specific rules governing translations. In particular, paragraph 2.1 provides as follows:

⁴³ Reply on the Remitted Issue, para. 141; Claimant’s Rebuttal Submission on the Remitted Issue, para. 87.

⁴⁴ Respondent’s Corrected Submission on the Remitted Issue, para. 213; Rejoinder on the Remitted Issue, para. 134; Respondent’s Rebuttal Submission on the Remitted Issue, para. 80.

To the extent that a Party is required to file documents with a translation into English and/or Korean pursuant to paragraph 8 of the Terms of Appointment, informal translations shall be accepted as accurate unless contested by the other Party. In the event that a Party contests the accuracy of a translation, the Parties shall attempt to reach agreement on the translation (including, if needed, through the introduction of certified translations). If no agreement is reached, the Tribunal shall take a decision, for which it may appoint a certified translator.

107. The Tribunal notes that the Parties have not reached agreement on the Respondent's amended translations, and that the Respondent has not produced certified translations. The Tribunal further recalls that the relevant exhibits – exhibits C-69, C-79, C-286, C-781 and R-20 – were all filed in the course of the Original Proceedings and that neither Party contested the translations at the time. In the circumstances, the Tribunal is unable to rely on the amended (and contested) translations in these Remitted Proceedings.
108. In any event, the Tribunal has carefully examined the amended translations (and the Parties' submissions relating to them) and finds that they do not have any impact on the findings reached by the Tribunal in this Award on the Remitted Issue. The Tribunal has identified below, in footnote 372, the one instance where the Tribunal relies in this Award on the Remitted Issue on a passage of an exhibit the translation of which the Respondent has proposed to amend.

VI. SCOPE OF THE REMITTED ISSUE

A. THE PARTIES' POSITIONS

1. The Claimant's Position

109. The Claimant submits that the High Court remitted to the Tribunal a single, narrow issue of causation: whether the breaches of the Treaty committed by the Blue House and the MHW caused the Claimant's loss.⁴⁵ It further submits that, as a matter of the law of the seat, the extent of a remission "has to be interpreted by reference to the [court's] order in the light of the background to that order."⁴⁶ According to the Claimant, read against this background, the remittal requires that the Tribunal only "consider and clarify what it has already determined in the Award."⁴⁷
110. According to the Claimant, given that only specifically identified paragraphs and sentences of the Award were set aside, the following key factual findings on causation survive intact and, as a matter of English law, remain binding on the Respondent: (i) the Respondent intervened in the

⁴⁵ Claimant's Submission on the Remitted Issue, paras. 13, 55, 62; Reply on the Remitted Issue, para. 25.

⁴⁶ Claimant's Submission on the Remitted Issue, para. 17, citing *Glencore International AG v. Beogradska Plovidba* [1996] 2 Lloyd's Rep 311, p. 316 (CLA-217). See also *Sans Souci Ltd v. VRL Services Ltd* [2012] UKPC 6, paras. 12-13, 15 (CLA-229).

⁴⁷ Claimant's Submission on the Remitted Issue, para. 2.

NPS's vote;⁴⁸ (ii) the NPS took steps to ensure that the vote would be conducted by the Investment Committee;⁴⁹ (iii) the NPS did not act independently when casting its vote on the Merger;⁵⁰ (iv) the NPS had the *de facto* casting vote over the Merger;⁵¹ and (v) as a matter of fact, the Respondent foresaw that the Claimant's investment would be adversely impacted by its intervention.⁵² It is these surviving findings forming the "relevant background" to the Remittal Order, the Claimant asserts, that define the Remitted Issue as a narrow question of law.⁵³

111. It follows, in the Claimant's submission, that the Remitted Issue concerns legal causation alone.⁵⁴ The sole issue before the Tribunal is "narrow, straightforward and largely one of confirmation:" "[d]oes 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, i.e., foreseeability/proximity, is met?"⁵⁵
112. The Claimant argues that the Tribunal's factual findings continue to apply and that the High Court rejected the Respondent's attempts to set aside both the entire Award and the entirety of the causation section.⁵⁶ According to the Claimant, although the High Court found that attribution could not be established in respect of the NPS, it did not accept the Respondent's argument that the Award had to be set aside because attribution was inextricably interwoven with other aspects of the Award.⁵⁷ The finding on attribution did not disturb any of the Tribunal's findings on the breaches of the Treaty by the Blue House and the MHW, nor its finding on the degree of control and coercion the MHW exercised over the NPS.⁵⁸

⁴⁸ Claimant's Submission on the Remitted Issue, para. 3(a); Reply on the Remitted Issue, para. 23, *referring to* Award, para. 602.

⁴⁹ Claimant's Submission on the Remitted Issue, para. 3(b), *referring to* Award, para. 602(b).

⁵⁰ Claimant's Submission on the Remitted Issue, para. 3(c), *referring to* Award, para. 623.

⁵¹ Claimant's Submission on the Remitted Issue, para. 3(d), *referring to* Award, para. 817.

⁵² Claimant's Submission on the Remitted Issue, para. 3(e), *referring to* Award, para. 360.

⁵³ Claimant's Submission on the Remitted Issue, paras. 62-63; Reply on the Remitted Issue, para. 25; Hearing Transcript, Day 1, pp. 23:24-24:5.

⁵⁴ Claimant's Submission on the Remitted Issue, para. 11.

⁵⁵ Claimant's Submission on the Remitted Issue, paras. 10, 63; Reply on the Remitted Issue, para. 15.

⁵⁶ Claimant's Submission on the Remitted Issue, para. 49; Claimant's Rebuttal Submission on the Remitted Issue, para. 16.

⁵⁷ Claimant's Submission on the Remitted Issue, para. 49, *referring to* *Republic of Korea v. Elliott Associates, L.P.* [2026] EWHC 368 (Comm), para. 152 (**CLA-222**).

⁵⁸ Claimant's Submission on the Remitted Issue, para. 50; Claimant's Rebuttal Submission on the Remitted Issue, para. 16.

113. Turning to the nature of the Tribunal’s task, the Claimant argues that in clarifying its findings the Tribunal does not need to make a separate, independent finding on causation.⁵⁹ According to the Claimant, the High Court, in the face of the Respondent’s objections, did not hold that the Tribunal had failed to make “any” finding on the Remitted Issue; on the contrary, the court found that “there are passages in the Award which provide support for EALP’s characterisation of the Tribunal’s assessment” and that the breaches constituted by the Blue House Measures and the MHW did cause the Claimant’s loss.⁶⁰ The Claimant states that the High Court ultimately remitted the issue only because the Tribunal’s findings were not articulated with sufficient clarity.⁶¹ The Claimant characterizes the Remittal Order as largely corrective, directed at having the Tribunal state its existing findings with complete clarity.⁶²
114. In this connection, the Claimant maintains that the High Court recognized that the Tribunal’s findings on the test for causation survived the partial set-aside, and that while additional findings on the causation test may be needed, any such supplementary findings cannot replace the Tribunal’s earlier findings on this test, unless those findings have been set aside.⁶³ Since the High Court left intact the Tribunal’s findings on the applicable legal tests for factual and legal causation, as well as its factual findings on the chain of causation, the Claimant asserts that the Tribunal cannot now revisit those binding findings.⁶⁴ The Claimant rejects any suggestion that the High Court was indicating that the Tribunal had not previously considered a but-for analysis or a loss-of-chance framework.⁶⁵ The Claimant submits that the effect of the Government’s intervention was argued and evidenced from the outset of the arbitration, and the Tribunal addressed and rejected the suggestion that causation requires a claimant to exclude the uncertainties of “what might have been.”⁶⁶
115. The Claimant adds that the High Court reached that decision “with reluctance” and observed that the Claimant “may well be entitled to the same relief on the basis of its case concerning the Blue

⁵⁹ Claimant’s Submission on the Remitted Issue, para. 55.

⁶⁰ Claimant’s Submission on the Remitted Issue, para. 56.

⁶¹ Claimant’s Submission on the Remitted Issue, para. 55.

⁶² Claimant’s Submission on the Remitted Issue, para. 57; Claimant’s Rebuttal Submission on the Remitted Issue, paras. 18-19.

⁶³ Claimant’s Rebuttal Submission on the Remitted Issue, para. 17, *referring to Republic of Korea v. Elliott Associates, L.P.*, CL-2023-000395, Ruling on Consequential Issues, 18 March 2026, para. 5(l) (CLA-227).

⁶⁴ Claimant’s Submission on the Remitted Issue, paras. 51-52, *referring to Republic of Korea v. Elliott Associates, L.P.*, CL-2023-000395, Ruling on Consequential Issues, 18 March 2026, para. 5(1)(ii) (CLA-227). *See also* Claimant’s Rebuttal Submission on the Remitted Issue, paras. 3, 16, 21.

⁶⁵ Claimant’s Rebuttal Submission on the Remitted Issue, para. 18.

⁶⁶ Claimant’s Rebuttal Submission on the Remitted Issue, para. 19. *See* Award, paras. 724-823, 822.

House Measures.”⁶⁷ According to the Claimant, this reflects the Court’s “appreciation of the likelihood that the Tribunal will ultimately find EALP entitled to precisely the same damages that it requested in the underlying arbitration.”⁶⁸ Consistent with English law, the Tribunal is required to determine the Remitted Issue “in the light of the evidence before the arbitrators” in the Original Proceedings and “against the background of an arbitration which has already been defined by pleadings and argument,” as an opportunity to “re-determine the cases that were advanced before it, rather than to present a new case that may have emerged during the appellate process.”⁶⁹

116. The Claimant disputes the Respondent’s contention that paragraph 265 of the Set-Aside Judgment entitles the Tribunal to consider causation “afresh.”⁷⁰ According to the Claimant, paragraph 265 concerns only the court’s discretion under section 67 of the Arbitration Act not to set aside an award despite reaching a different view on jurisdiction, a discretion confined to cases where it is “beyond doubt that its own different finding on jurisdiction would not have affected the outcome.”⁷¹ In support of its position, the Claimant refers to *Integral Petroleum SA v. Melars Group Ltd*, which confirmed that the discretion reaches only such clear-cut cases.⁷² According to the Claimant, the threshold was not met here because although there were indications that a different attribution finding would not have altered the Tribunal’s causation analysis, the Tribunal had itself stated, at paragraph 814 of the Award, that it was not required to find the Blue House Measures and the MHW the sole cause of the loss, given that the NPS’s conduct was attributable to the Respondent.⁷³ The Court therefore left it to the Tribunal to decide whether its existing causation findings remained unchanged.⁷⁴
117. The Claimant emphasizes that the Tribunal’s finding that the NPS acted effectively as an instrument of the MHW did not depend on its separate finding as to the NPS’s legal status as a *de*

⁶⁷ Claimant’s Submission on the Remitted Issue, paras. 58.

⁶⁸ Claimant’s Submission on the Remitted Issue, paras. 5, 58, citing *Republic of Korea v. Elliott Associates, L.P.* [2026] EWHC 368 (Comm), para. 268 (CLA-222).

⁶⁹ Claimant’s Submission on the Remitted Issue, paras. 64-65. See also *Husmann (Europe) Limited v. Ahmed Pharaon* [2003] 1 All ER (Comm) 879, paras. 79-83 (CLA-218); *Alegrow S.A. v. Yayla Agro Gida San Ve Nak A.S.* [2020] EWHC 1845 (Comm), para. 76 (CLA-214); *Van Der Giessen-De-Noord Shipbuilding Division B.V. v. Imtech Marine & Offshore B.V.* [2008] EWHC 2904 (Comm), para. 113 (CLA-230).

⁷⁰ Reply on the Remitted Issue, para. 16, referring to *Republic of Korea v. Elliott Associates, L.P.* [2026] EWHC 368 (Comm), para. 265 (CLA-222). See also Hearing Transcript, Day 1, pp. 16:21-17:6, 55:5-11.

⁷¹ Reply on the Remitted Issue, para. 19.

⁷² Reply on the Remitted Issue, paras. 18-19, referring to *Integral Petroleum SA v. Melars Group Ltd* [2015] EWHC 1893 (Comm), paras. 26-27 (CLA-239).

⁷³ Reply on the Remitted Issue, para. 19, referring to *Integral Petroleum SA v. Melars Group Ltd* [2015] EWHC 1893 (Comm), paras. 26-27 (CLA-239).

⁷⁴ Reply on the Remitted Issue, para. 21; Hearing Transcript, Day 2, pp. 23:24-24:5; Claimant’s Rebuttal Submission on the Remitted Issue, para. 24(iii).

facto State organ.⁷⁵ The finding therefore survives the set-aside ruling and remains conclusively determined.⁷⁶ In the Claimant's view, the Respondent is seeking impermissibly to expand the Remitted Issue beyond the Remittal Order, which the High Court expressly stated "will not affect or allow Korea to revisit findings which have not been set aside."⁷⁷

118. Finally, the Claimant disputes the Respondent's contention that it is "not open" to the Claimant to rely on paragraphs 602 and 623 of the Award.⁷⁸ According to the Claimant, paragraph 264 of the Set-Aside Judgment holds only that those paragraphs do not "on their face" allocate and apply the burden arising in a counterfactual inquiry, while paragraph 265 accepts that they support the Claimant's characterization of the Tribunal's assessment.⁷⁹ The causal significance of those findings is therefore, in the Claimant's submission, for the Tribunal to explain, and not for the court exercising jurisdiction under section 67 of the Arbitration Act.⁸⁰

2. The Respondent's Position

119. The Respondent submits that the Claimant's position is "fundamentally incorrect" and "inconsistent" with the Set-Aside Judgment, the Remittal Order and the accompanying Ruling on Consequential Issues.⁸¹ In particular, the Respondent disputes the Claimant's contentions that (i) the Remitted Issue excludes factual causation; (ii) the issue of legal causation is confined to the question as formulated by the Claimant; and (iii) no issues concerning loss, damage or relief arise in these Remitted Proceedings.⁸²
120. The Respondent contends that the Claimant's position is inconsistent with paragraphs 265 and 266 of the Set-Aside Judgment.⁸³ In paragraph 265, the Court found that it was not persuaded that it was open to it to "conclude on a fair reading of the Award that the Tribunal has found that,

⁷⁵ Reply on the Remitted Issue, paras. 23-24.

⁷⁶ Claimant's Submission on the Remitted Issue, para. 11; Reply on the Remitted Issue, para. 22.

⁷⁷ Reply on the Remitted Issue, para. 14, *citing Republic of Korea v. Elliott Associates, L.P.*, CL-2023-000395, Ruling on Consequential Issues, 18 March 2026, para. 7 (**CLA-227**).

⁷⁸ Claimant's Rebuttal Submission on the Remitted Issue, para. 24.

⁷⁹ Claimant's Rebuttal Submission on the Remitted Issue, para. 24, *citing Republic of Korea v. Elliott Associates, L.P.* [2026] EWHC 368 (Comm), paras. 264-65 (**CLA-222**).

⁸⁰ Claimant's Rebuttal Submission on the Remitted Issue, para. 24. *See Republic of Korea v. Elliott Associates, L.P.*, CL-2023-000395, Ruling on Consequential Issues, 18 March 2026, para. 5(c) (**CLA-227**).

⁸¹ Respondent's Corrected Submission on the Remitted Issue, para. 21; Respondent's Rebuttal Submission on the Remitted Issue, para. 6.

⁸² Respondent's Corrected Submission on the Remitted Issue, para. 22.

⁸³ Respondent's Corrected Submission on the Remitted Issue, paras. 24-25, *referring to Republic of Korea v. Elliott Associates, L.P.* [2026] EWHC 368 (Comm), paras. 265-66 (**CLA-222**).

even if the acts of NPS are not attributable to Korea, legal and factual causation are established.”⁸⁴ The Court then directed, in paragraph 266, that “the issue of causation of the breaches of the Treaty found to have been constituted by the Blue House Measures and the relief awarded be remitted to the Tribunal for reconsideration.”⁸⁵ The Respondent submits that, read together, these passages demonstrate that the Court understood the remission to encompass both legal and factual causation and provide no support for the Claimant’s contention that a different determination on NPS attribution would not have affected the Tribunal’s findings.⁸⁶

121. The Respondent also rejects any suggestion that its position turns on a particular reading of paragraph 265:

- (a) The Respondent’s case does not depend on that paragraph, but on the plain text of the Remittal Order read together with the Set-Aside Judgment;⁸⁷
- (b) The High Court did not center its analysis on *Integral Petroleum*. The Court mentioned the case only in passing, after determining that it would apply a “severance test,” and after considering whether the Tribunal’s findings of causation and loss were “tainted” and therefore not severable from the finding that the NPS’s acts were in excess of jurisdiction;⁸⁸ and
- (c) In any event, even if paragraph 265 turned on *Integral Petroleum*, it is unclear how that would assist the Claimant.⁸⁹

122. The Respondent’s position focuses on what the Tribunal, in its view, did and did not decide. Having found that the NPS was a *de facto* State organ, such that its acts were attributable to the ROK, the Tribunal did not determine (as it considered it did not need to) whether the conduct of the President, the Minister or the MHW caused the NPS vote; instead it treated the NPS vote as itself an act of the ROK and asked whether that vote had caused the Merger and thereby caused

⁸⁴ Respondent’s Corrected Submission on the Remitted Issue, paras. 24, 26, citing *Republic of Korea v. Elliott Associates, L.P.* [2026] EWHC 368 (Comm), para. 265 (CLA-222). See also Rejoinder on the Remitted Issue, para. 19.

⁸⁵ Respondent’s Corrected Submission on the Remitted Issue, paras. 25-26, citing *Republic of Korea v. Elliott Associates, L.P.* [2026] EWHC 368 (Comm), para. 266 (CLA-222).

⁸⁶ Rejoinder on the Remitted Issue, paras. 20-21, 26.

⁸⁷ Rejoinder on the Remitted Issue, para. 19(a).

⁸⁸ Rejoinder on the Remitted Issue, para. 19(b); Hearing Transcript, Day 2, pp. 19:11-16, 20:8-10.

⁸⁹ Rejoinder on the Remitted Issue, para. 19(c); Hearing Transcript, Day 2, pp. 23:14-24:25.

loss to the Claimant.⁹⁰ Following the successful set-aside challenge, the conduct of the NPS is no longer attributable to the ROK so “the issue of causation plainly arises afresh.”⁹¹

123. The Respondent maintains that the Claimant’s contention that “[t]he sole issue before the Tribunal ... is narrow, straightforward and largely one of confirmation” is rebutted by the language of the Court itself.⁹² According to the Respondent, the Court’s use of a broad language – “[d]id the breaches ... cause loss or damage to the Claimant” – shows that causation was intended to reach beyond legal causation and cannot be reconciled with the Claimant’s assertion that the Remitted Issue is very narrow and excludes factual causation.⁹³
124. The Respondent asserts that it is irrelevant that the High Court rejected its attempt to set aside the Award, stating that its request to set aside the causation section in its entirety stemmed from a concern that setting aside individual parts of the Award would create textual incoherence and complicate the Tribunal’s task.⁹⁴ According to the Respondent, the Court’s denial of that request neither bears on nor supports the Claimant’s narrow reading of the Remitted Issue.⁹⁵ It is similarly irrelevant that the Court rejected the Respondent’s argument that, “once it was appreciated that the NPS was not a State organ, the Tribunal’s findings of breach were affected,” since that concerned the presently undisputed question of the level at which the Treaty was breached, rather than the relevant question of “whether that breach caused any compensable loss to Claimant.”⁹⁶
125. The Respondent further argues that the function of paragraph 5(l) of the Ruling on Consequential Issues is to clarify the status of the Tribunal’s findings that have not been set aside.⁹⁷ It asserts that the High Court recognized that, with the focus of the causation inquiry having changed, it is possible that either (i) the Tribunal’s existing findings will not be apposite to the remitted causation issue, or (ii) the Tribunal’s findings will not address every issue that arises in relation

⁹⁰ Respondent’s Corrected Submission on the Remitted Issue, para. 28.

⁹¹ Respondent’s Corrected Submission on the Remitted Issue, para. 28.

⁹² Rejoinder on the Remitted Issue, para. 16; Respondent’s Rebuttal Submission on the Remitted Issue, para. 6.

⁹³ Rejoinder on the Remitted Issue, paras. 16-17, citing *Republic of Korea v. Elliott Associates, L.P.*, CL-2023-000395, Order of Foxton LJ, 18 March 2026, para. 3 (**CLA-226**).

⁹⁴ Respondent’s Corrected Submission on the Remitted Issue, para. 37(a).

⁹⁵ Respondent’s Corrected Submission on the Remitted Issue, para. 37(b); Hearing Transcript, Day 2, p. 14:13-16.

⁹⁶ Respondent’s Corrected Submission on the Remitted Issue, para. 37(a), citing *Republic of Korea v. Elliott Associates, L.P.* [2026] EWHC 368 (Comm), para. 260 (**CLA-222**).

⁹⁷ Respondent’s Rebuttal Submission on the Remitted Issue, para. 7(c), referring to *Republic of Korea v. Elliott Associates, L.P.*, CL-2023-000395, Ruling on Consequential Issues, 18 March 2026, para. 5(l) (**CLA-227**).

to the remitted causation issue.⁹⁸ Neither of these scenarios, the Respondent submits, prevents the Tribunal from determining relevant issues which have not been adequately addressed.⁹⁹ By way of illustration, the Respondent notes that the Tribunal did not address the potential applicability of a loss-of-chance framework at paragraphs 814 and 815 of the Award, and would not be precluded from applying it.¹⁰⁰ Accordingly, paragraph 5(l) tells against the Claimant's reading of the Remitted Issue as a narrow one and that the Tribunal need only confirm its existing findings.¹⁰¹

126. The Respondent notes that the Claimant's attempt to categorize paragraphs 602 and 623 of the Award as containing causation findings was rejected by the English High Court, which found that those paragraphs do not address how the NPS would have voted in a hypothetical Treaty-compliant "but for" scenario.¹⁰² The Respondent submits that in considering paragraphs 816 to 821 of the Award, which concern "whether there was, as a matter of factual causation, a causal link between the NPS Vote and the Merger," the High Court described the Award as containing "relevant arguments on a potential causal pathway leading from the breaches found to be constituted by the conduct of the Blue House, MHW and the Minister."¹⁰³ The Respondent submits that the High Court would not have used this language had it considered that the Tribunal had already made a binding decision on factual causation.¹⁰⁴ The Respondent adds that, the High Court having expressly rejected the Claimant's argument that those paragraphs contain a finding of but-for causation, and having held that they "simply involve[] a factual finding as to what the NPS did and under whose direction it acted," it is not open to the Claimant to advance the same, already-rejected argument again before the Tribunal.¹⁰⁵

⁹⁸ Respondent's Rebuttal Submission on the Remitted Issue, para. 7(c).

⁹⁹ Respondent's Rebuttal Submission on the Remitted Issue, para. 7(c).

¹⁰⁰ Respondent's Rebuttal Submission on the Remitted Issue, para. 8.

¹⁰¹ Respondent's Rebuttal Submission on the Remitted Issue, para. 9.

¹⁰² Respondent's Corrected Submission on the Remitted Issue, para. 40; Hearing Transcript, Day 2, pp. 22:22-23:1.

¹⁰³ Respondent's Corrected Submission on the Remitted Issue, para. 39(d), *citing*; *Republic of Korea v. Elliott Associates, L.P.*, CL-2023-000395, Ruling on Consequential Issues, 18 March 2026, para. 5(1)(ii) (CLA-227).

¹⁰⁴ Respondent's Corrected Submission on the Remitted Issue, para. 39(d).

¹⁰⁵ Respondent's Rebuttal Submission on the Remitted Issue, para. 6 and fn. 1, *citing* *Republic of Korea v. Elliott Associates, L.P.* [2026] EWHC 368 (Comm), para. 264 (CLA-222); *Republic of Korea v. Elliott Associates, L.P.*, Ruling on Consequential Issues, para. 5(c) (CLA-227). *See also* Hearing Transcript, Day 2, pp. 22:6-23:10.

127. Finally, the Respondent argues that the Tribunal’s role extends beyond merely clarifying that the Claimant suffered a loss.¹⁰⁶ According to the Respondent, the Claimant cannot identify a single finding by the Tribunal that the Blue House Measures were a factual or legal cause of the NPS’s vote, and that nothing in the Set-Aside Judgment suggests that the purpose of the Remitted Proceedings is simply to “clarify” existing views.¹⁰⁷ The Respondent contends that the High Court’s statements that it remitted the issue “with reluctance” and that the Claimant “may well be” entitled to the same relief do not amount to an assessment of the likely outcome.¹⁰⁸
128. In conclusion, the Respondent submits that the Tribunal must determine the issue of causation and damages afresh, and that there being no finding on whether the Blue House Measures were a factual or legal cause of the NPS vote, it now falls to the Tribunal to decide those matters.¹⁰⁹

B. THE TRIBUNAL’S DETERMINATION

129. As summarized above in Section III.B, in its Ruling on Consequential Issues and Remittal Order, the High Court remitted the following issue 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?¹¹⁰
130. The High Court added that “[t]he scope of the remission will not affect or allow Korea to revisit findings which have not been set aside.”¹¹¹
131. In its Ruling on Consequential Issues, the High Court stated that it “should specifically identify the paragraphs affected rather than include a more general formulation which may lead to disputes in the future as to the scope of the application.”¹¹² The affected paragraphs are identified in paragraph 5 of the Ruling on Consequential Issues. In the chapeau of paragraph 5(l), the High Court further stated:

¹⁰⁶ Respondent’s Corrected Submission on the Remitted Issue, para. 41.

¹⁰⁷ Respondent’s Corrected Submission on the Remitted Issue, para. 41.

¹⁰⁸ Respondent’s Corrected Submission on the Remitted Issue, para. 41.

¹⁰⁹ Respondent’s Corrected Submission on the Remitted Issue, paras. 28, 41(c)-(d).

¹¹⁰ *Republic of Korea v. Elliott Associates, L.P.*, CL-2023-000395, Order of Foxton LJ, 18 March 2026, para. 3 (**CLA-226**); *Republic of Korea v. Elliott Associates, L.P.*, CL-2023-000395, Ruling on Consequential Issues, 18 March 2026, para. 6 (**CLA-227**).

¹¹¹ *Republic of Korea v. Elliott Associates, L.P.*, CL-2023-000395, Ruling on Consequential Issues, 18 March 2026, para. 7 (**CLA-227**).

¹¹² *Republic of Korea v. Elliott Associates, L.P.*, CL-2023-000395, Ruling on Consequential Issues, 18 March 2026, para. 4 (**CLA-227**).

I am not persuaded that all the paragraphs in the causation section need to be set aside. The Tribunal had jurisdiction to make findings as to what the causation test required (having jurisdiction to find breaches by the Blue House, MHW and Minister Moon). To the extent that those findings prove not to be apposite to the causation issue as remitted to the Tribunal, or not to address every issue which arises in that context, the Tribunal will not be precluded by those findings from determining those issues which they are persuaded do arise but have not been addressed appropriately. The nature of the argument before the Court did not necessarily require every paragraph in this section to be set aside.¹¹³

132. The Tribunal notes that the Parties disagree on whether the Remitted Issue covers both causation in fact and causation in law, the Claimant contending that only the determination of legal causation is remitted, whereas the Respondent claims that the Remitted Issue covers both factual and legal causation.
133. Having considered the Parties' positions in light of the High Court's rulings, the Tribunal is not persuaded by the Claimant's argument that the Remitted Issue covers legal causation only. First, the wording of the Remitted Issue, as quoted above, makes no distinction between the two forms of causation. Moreover, in paragraph 265 of the Set-Aside Judgment, the High Court specifically noted that, while it "accept[ed] 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]," the Court was not "persuaded that it [was] open to [it] 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*."¹¹⁴
134. Accordingly, the Tribunal determines that the Remitted Issue covers both factual and legal causation. The Tribunal notes that this determination does not affect the passages in the causation section of the Award that have not been set aside. The Tribunal therefore will not consider such passages or any findings in such passages "afresh," however, as stated by the High Court, "[t]o the extent that those findings [*i.e.* findings as to what the causation test required] prove not to be apposite to the causation issue as remitted to the Tribunal, or not to address every issue which arises in that context, the Tribunal will not be precluded by those findings from determining those issues which they are persuaded do arise but have not been addressed appropriately."¹¹⁵ Thus, the Tribunal may amend and expand its analysis and findings on causation to the extent necessary

¹¹³ *Republic of Korea v. Elliott Associates, L.P.*, CL-2023-000395, Ruling on Consequential Issues, 18 March 2026, para. 5(l) (CLA-227).

¹¹⁴ Respondent's Corrected Submission on the Remitted Issue, para. 24, *citing Republic of Korea v. Elliott Associates, L.P.* [2026] EWHC 368 (Comm), para. 265 (CLA-222) (emphasis added). *See also* Rejoinder on the Remitted Issue, para. 19.

¹¹⁵ *Republic of Korea v. Elliott Associates, L.P.*, CL-2023-000395, Ruling on Consequential Issues, 18 March 2026, para. 5(l) (CLA-227).

to determine any additional causation issues that may arise in connection with the Remitted Issue.¹¹⁶

VII. FACTUAL CAUSATION

A. THE PARTIES' POSITIONS

1. The Claimant's Position

a) Applicable Standard of Proof

135. The Claimant submits that the applicable evidentiary standard, for both counterfactual scenarios and affirmative findings of fact, is the “balance of probabilities.”¹¹⁷ According to the Claimant, the Respondent’s attempt to impose a higher standard is a “recycled” argument inconsistent with the Tribunal’s prior finding that the test for factual causation “involves the determination of whether the claimant would have suffered the claimed loss or damages in the absence of the alleged breach.”¹¹⁸ The Claimant contends that the Tribunal in the Award did not accept the Respondent’s argument that the “in all probability” language used in *Bilcon v. Canada* imposed a standard higher than that ordinarily applied in international arbitration.¹¹⁹ Nowhere in the Award did the Tribunal articulate a separate, higher standard of proof.¹²⁰
136. While accepting that it bears the initial burden of proving factual causation, the Claimant submits that the Respondent is wrong to suggest that it bears no burden in relation to causation.¹²¹ In particular, the Claimant asserts that the burden of proving that an act severed the causal chain falls on the Respondent, and shifts to it once factual causation is established.¹²²
137. The Claimant submits that the Tribunal must reject the Respondent’s attempt to revive the argument that the Claimant must demonstrate that in no other factual scenario in which the NPS had acted independently would it have suffered the same harm, the applicable test not requiring

¹¹⁶ The Tribunal recalls that, after the Hearing, it put a question to the Parties on their understanding of the relevant passage of the English High Court’s ruling. The Parties essentially agree on the position set out in the text; see Claimant’s Rebuttal Submission on the Remitted Issue, para. 17; Respondent’s Rebuttal Submission on the Remitted Issue, para. 7.

¹¹⁷ Claimant’s Rebuttal Submission on the Remitted Issue, para. 33.

¹¹⁸ Reply on the Remitted Issue, paras. 26, 29, *citing* Award, para. 815. See also Hearing Transcript, Day 1, pp. 68:10-71:25; Claimant’s Rebuttal Submission on the Remitted Issue, paras. 25, 34.

¹¹⁹ Reply on the Remitted Issue, para. 30, *referring to Bilcon of Delaware, Inc. and others v. The Government of Canada*, PCA Case No. 2009-04, Award on Damages, 10 January 2019 (**RLA-90**). See also Hearing Transcript, Day 1, pp. 69:17-70:1.

¹²⁰ Reply on the Remitted Issue, para. 32.

¹²¹ Claimant’s Rebuttal Submission on the Remitted Issue, para. 32.

¹²² Claimant’s Rebuttal Submission on the Remitted Issue, para. 32.

the Claimant to posit and rule out all possible scenarios.¹²³ The Claimant argues that the factual findings from the “actual world” are directly relevant to the counterfactual, and that 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 intervention, but to interrogate the evidence that the member did in fact support it because of the intervention.¹²⁴ On this footing, the Claimant’s position is that the NPS vote was not the product of an independent commercial assessment but a product of the Respondent’s intervention.¹²⁵

138. Relying on *Amco Asia Corporation v. Republic of Indonesia (II)*, the Claimant submits that, where a State has itself “subverted a decision-making process,” it is not open to it to resist causation by positing that an “honest” or “fair” decision-maker would have reached the same outcome, nor to take the benefit of any evidentiary uncertainty created by its own subversion.¹²⁶ The but-for inquiry does not call for the construction of a hypothetical counterfactual of how an untainted NPS would have voted, but asks whether the intervention did in fact cause the NPS to vote as it did.¹²⁷ It follows, in the Claimant’s submission, that the Respondent’s attempt to introduce an “imagined ‘untainted’ valuation” into the but-for inquiry cannot succeed, since a but-for analysis is subtractive and does “not allow thought experiments as to what might have been.”¹²⁸
139. In support of the subtractive character of the inquiry, the Claimant relies on the *Louisiana Barge* case and on *Chevron v. Ecuador*, in each of which the counterfactual was built on what actually existed rather than on what might have been.¹²⁹ In the present case, however, the Claimant submits that there was neither an actual untainted NPS valuation supportive of the Merger nor an actual untainted synergy calculation.¹³⁰ According to the Claimant, the valuation preceding the doctoring revealed a larger loss to the NPS than the doctored figures put to the Investment

¹²³ Reply on the Remitted Issue, paras. 33, 91; Claimant’s Rebuttal Submission on the Remitted Issue, para. 19.

¹²⁴ Reply on the Remitted Issue, para. 34; Hearing Transcript, Day 1, pp. 72:13-20; Claimant’s Rebuttal Submission on the Remitted Issue, para. 36.

¹²⁵ Reply on the Remitted Issue, para. 34.

¹²⁶ Reply on the Remitted Issue, para. 6, citing *Amco Asia Corporation and others v. Republic of Indonesia*, ICSID Case No. ARB/81/1, Award in Resubmitted Proceedings, 31 March 1990, para. 174 (**CLA-237**). See also Hearing Transcript, Day 1, pp. 75:11-76:2, 78:22-79:14; Claimant’s Rebuttal Submission on the Remitted Issue, para. 29.

¹²⁷ Reply on the Remitted Issue, para. 6; Claimant’s Rebuttal Submission on the Remitted Issue, para. 27.

¹²⁸ Claimant’s Rebuttal Submission on the Remitted Issue, para. 26, referring to the Respondent’s Opening Presentation in the Remitted Proceedings, slides 129-32.

¹²⁹ Claimant’s Rebuttal Submission on the Remitted Issue, para. 27, referring to Hart & Honoré, Causation in the Law (2nd ed. 1985) (**RLA-143**); *Chevron Corporation and Texaco Petroleum Company v. Republic of Ecuador (II)*, PCA Case No. 2009-23, Fourth Partial Award on Track III, 17 November 2025, para. 389 (**RLA-221**). See also Hearing Transcript, Day 1, pp. 73:7-78:9.

¹³⁰ Claimant’s Rebuttal Submission on the Remitted Issue, para. 28.

Committee, and a fabricated synergy effect would have been unnecessary had a genuine calculation sufficient to offset the loss been available.¹³¹ In the Claimant's view, it is therefore not open to the Respondent to invent a synergy effect *ex post* and speculate as to how the Investment Committee would have received it.¹³² The Claimant also distinguishes *Bilcon v. Canada*, on which the Respondent relies, where the Joint Review Panel's decision rested on no single decisive factor and its decision-making had been misdirected rather than subverted by the State, so that the but-for question could not there be answered with the confidence it can here.¹³³

140. The Claimant submits that factual causation under Article 11.16(1) of the Treaty requires the Tribunal to "ask whether, with the Blue House Measures removed but all other historical facts held constant, the NPS, through the [Experts Voting Committee] or an untainted [Investment Committee], would have voted against the Merger."¹³⁴ In this connection, the Claimant contends that the Tribunal has already answered, in findings that were not set aside, whether the NPS's affirmative vote was necessary for the Merger to pass, leaving only whether it would have voted against the Merger absent those Measures.¹³⁵

b) Whether the Blue House Measures Caused the NPS Vote

141. The Claimant argues that the Blue House Measures caused the NPS to vote in favor of the Merger.¹³⁶ In support of its position, the Claimant relies on the NPS's contemporaneous handling of the parallel merger between SK C&C Holdings and SK Holdings (the "**SK Merger**"), which the Claimant contends was closely analogous in raising succession-of-control issues for a chaebol and carrying a merger ratio capable of transferring value to the acquirer at the expense of minority shareholders.¹³⁷ According to the Claimant, precisely because the SK Merger threatened to advantage the larger shareholder, the vote was assigned to the Experts Voting Committee, which rejected it on the grounds that its synergies were uncertain and that it threatened "shareholder

¹³¹ Claimant's Rebuttal Submission on the Remitted Issue, para. 28.

¹³² Claimant's Rebuttal Submission on the Remitted Issue, para. 28; Hearing Transcript, Day 2, pp. 74:7-75:4.

¹³³ Claimant's Rebuttal Submission on the Remitted Issue, para. 30, *referring to Bilcon of Delaware, Inc. and others v. The Government of Canada*, PCA Case No. 2009-04, Award on Jurisdiction and Liability, 17 March 2015, paras. 450-52, 502-87 (**CLA-3**), and Award on Damages, 10 January 2019, paras. 168-75 (**RLA-90**).

¹³⁴ Claimant's Rebuttal Submission on the Remitted Issue, para. 31.

¹³⁵ Claimant's Rebuttal Submission on the Remitted Issue, para. 25, *referring to Award*, paras. 815, 817-20.

¹³⁶ Reply on the Remitted Issue, para. 26; Claimant's Rebuttal Submission on the Remitted Issue, para. 13.

¹³⁷ Reply on the Remitted Issue, paras. 41-42; Claimant's Rebuttal Submission on the Remitted Issue, para. 45.

value.”¹³⁸ The Claimant maintains that these parallels indicate how the NPS would likely have voted on the Merger but for the intervention.¹³⁹

142. For the Claimant, the proper starting point for constructing the counterfactual is the evidence of what actually happened, with the Blue House Measures removed.¹⁴⁰ What remains unchanged includes (i) the NPS’s duty to vote in a way that avoided loss to the National Pension Fund (the “**Fund**”); (ii) the NPS’s indication to the Claimant in March 2015 that it would not support the Merger, given its destruction of SC&T shareholder value; (iii) the merger ratio of 1 Cheil share for every 0.3500885 SC&T share announced on 26 May 2015 (the “**Merger Ratio**”); (iv) the decision of 24 June 2015 to vote against the SK Merger; (v) the late June 2015 Blue House assessment that, absent intervention, the NPS was expected to vote against the Merger; (vi) the NPS’s untainted valuation of 30 June 2015; and (vii) the absence of any synergy or other factor that offset that value loss.¹⁴¹
143. The Claimant refers to indicators of the NPS’s voting intentions before the Merger vote, submitting that this evidence makes “perfectly clear what the NPS’s direction of travel was” prior to the Respondent’s intervention.¹⁴² In particular, the Claimant states that at a meeting on 18 March 2015 between the NPS and Elliott, the NPS acknowledged that the Merger at then-current share prices would be “highly detrimental to SC&T shareholders.”¹⁴³ According to the Claimant, this evidence was not contested by the Respondent in cross-examination of Mr. Smith, the Claimant’s witness who attended the meeting.¹⁴⁴
144. The Claimant further contends that the NPS Research Team’s initial merger valuation of 1 Cheil share for every 0.64 SC&T’s share demonstrates that the NPS knew that the Merger would harm SC&T shareholders.¹⁴⁵ The Claimant notes that this valuation was produced on 30 June 2015, prior to the Respondent’s intervention, and that, measured against the Merger Ratio, it reflected

¹³⁸ Reply on the Remitted Issue, para. 42; Claimant’s Rebuttal Submission on the Remitted Issue, paras. 47, 49.

¹³⁹ Reply on the Remitted Issue, para. 43; Claimant’s Rebuttal Submission on the Remitted Issue, para. 48.

¹⁴⁰ Claimant’s Rebuttal Submission on the Remitted Issue, para. 36.

¹⁴¹ Claimant’s Rebuttal Submission on the Remitted Issue, para. 36.

¹⁴² Claimant’s Rebuttal Submission on the Remitted Issue, para. 13.

¹⁴³ Reply on the Remitted Issue, para. 44, *citing* Letter from Elliott to NPS, 3 June 2015, p. 3 (**C-187**). *See also* Hearing Transcript, Day 1, pp. 27:2-28:12; Claimant’s Rebuttal Submission on the Remitted Issue, paras. 36, 40.

¹⁴⁴ Reply on the Remitted Issue, para. 46; Claimant’s Rebuttal Submission on the Remitted Issue, para. 40.

¹⁴⁵ Claimant’s Rebuttal Submission on the Remitted Issue, para. 53.

a loss to the NPS of approximately KRW 552 to 617 billion.¹⁴⁶ The Claimant adds that, in an undated internal memorandum understood to predate the MHW's first intervention, the Blue House recorded the NPS's own pre-intervention position as being that "the [Merger] decision will be made from the perspective of maximization of shareholder profit."¹⁴⁷ The Claimant emphasizes that the memorandum goes on to consider whether and how to "intervene in the NPS's exercise of voting rights," observing that if the Government were to "set" the direction of the vote in favor of the Merger, this would be "at the expense of shareholder value and [SC&T]."¹⁴⁸ Read alongside the damaging initial valuation, such record, in the Claimant's submission, evidences the NPS's pre-intervention position against the Merger.¹⁴⁹

145. The Claimant submits that, just one day after the Experts Voting Committee's rejection of the SK Merger, President Park issued instructions, which were communicated through the Blue House and the MHW to the NPS on 30 June 2015.¹⁵⁰ The instructions were meant to ensure that the NPS would vote in favor of the Merger, including by way of ensuring that the Investment Committee rather than the Experts Voting Committee would vote on the Merger, as the Investment Committee would be more likely to approve it.¹⁵¹ This was, according the Claimant, the first known instance where the MHW engaged with the NPS for the purpose of influencing the NPS's vote.¹⁵² As to the Blue House's own dealings with the NPS, the Claimant submits that it engaged directly, but at different times and to different extents: Senior Presidential Secretary An discussed the Merger vote and the risk of an investor-State dispute directly with CIO Hong in late June and early July 2015, and on 10 July 2015 CIO Hong reported the Investment Committee's decision to Senior Presidential Secretary An.¹⁵³

¹⁴⁶ Claimant's Rebuttal Submission on the Remitted Issue, para. 54, *citing* Second Boulton Report, para. 8.3.5, Figure 24 (CER-5).

¹⁴⁷ Claimant's Rebuttal Submission on the Remitted Issue, para. 52, *citing* Blue House, "Direction of the National Pension Service's Exercise of Voting Rights Regarding the Samsung C&T Merger," undated, p. 41 (C-588).

¹⁴⁸ Claimant's Rebuttal Submission on the Remitted Issue, para. 52, *citing* Blue House, "Direction of the National Pension Service's Exercise of Voting Rights Regarding the Samsung C&T Merger," undated, p. 41 (C-588).

¹⁴⁹ Claimant's Rebuttal Submission on the Remitted Issue, para. 52.

¹⁵⁰ Reply on the Remitted Issue, paras. 47-48; Hearing Transcript, Day 1, p. 33:4-25; Claimant's Rebuttal Submission on the Remitted Issue, para. 37.

¹⁵¹ Reply on the Remitted Issue, para. 49; Claimant's Rebuttal Submission on the Remitted Issue, para. 6.

¹⁵² Claimant's Rebuttal Submission on the Remitted Issue, para. 37.

¹⁵³ Claimant's Rebuttal Submission on the Remitted Issue, para. 37, *referring to* Seoul Central District Court, Moon/Hong, p. 7 (C-69); Seoul High Court, Moon/Hong Decision, pp. 14-15, 29, 37-41 (C-79); Award, para. 588.

146. The Claimant argues that the Experts Voting Committee, not the Investment Committee, was the body properly responsible for the vote, and that this was widely understood at the time.¹⁵⁴ The Claimant asserts that, when officials were instructed to route the Merger to the Investment Committee, NPS officials pushed back, explaining that the Experts Voting Committee had been “created for this reason.”¹⁵⁵ The Claimant notes that the Chairman of the Experts Voting Committee condemned the failure to refer the matter as “extremely inappropriate” and a “defiance of the purpose of existence of the Experts Voting Committee.”¹⁵⁶ In this connection, the Claimant also recalls Mr. Cho’s testimony, which described the Experts Voting Committee not as a mere advisory body but as an “independent,” “deliberative and decision-making body.”¹⁵⁷ According to the Claimant, the Blue House, the MHW, and NPS officials recognized the stakes, voicing concern that a failure to refer the decision to the Experts Voting Committee would breach the ROK’s international-law obligations and precipitate an investor-State dispute.¹⁵⁸
147. The Claimant submits that the NPS’s Research Team recognized that the proposed Merger Ratio would be gravely damaging to the NPS.¹⁵⁹ On the Claimant’s account, the head of the Research Team, Mr. [REDACTED], warned 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.”¹⁶⁰ The Claimant contends that the Research Team was directed to reverse-engineer and fabricate a merger synergy effect to offset an anticipated KRW 138.8 billion in losses.¹⁶¹ According to the Claimant, the fabrication reflected a prevailing belief that, were the Merger Ratio put to the Investment Committee without more, the NPS “will refuse” to support the Merger.¹⁶²
148. The Claimant further submits that the Merger Ratio was a matter of mandatory law prescribed by a statutory formula that was susceptible to manipulation.¹⁶³ In the present case, the Merger Ratio

¹⁵⁴ Reply on the Remitted Issue, para. 97.

¹⁵⁵ Reply on the Remitted Issue, para. 52.

¹⁵⁶ Reply on the Remitted Issue, para. 52, *citing* Letter from [REDACTED] to the EVC, 11 July 2015, pp. 2-3 (C-429).

¹⁵⁷ Reply on the Remitted Issue, para. 52, *citing* Statement Report of Young-gil Cho to the Public Prosecutor’s Office, 28 November 2016 (C-459). *See also* Hearing Transcript, Day 1, p. 96:16-25.

¹⁵⁸ Reply on the Remitted Issue, para. 53; Hearing Transcript, Day 1, p. 106:3-12; Claimant’s Rebuttal Submission on the Remitted Issue, para. 6.

¹⁵⁹ Reply on the Remitted Issue, para. 55.

¹⁶⁰ Reply on the Remitted Issue, para. 55, *citing* [REDACTED], “Strategies to Overcome Controversy Surrounding the Undervaluation of SC&T,” 26 May 2015, p. 1939 (C-378).

¹⁶¹ Reply on the Remitted Issue, para. 59; Hearing Transcript, Day 1, p. 45:4-25.

¹⁶² Reply on the Remitted Issue, para. 58; Claimant’s Rebuttal Submission on the Remitted Issue, para. 7.

¹⁶³ Claimant’s Rebuttal Submission on the Remitted Issue, para. 44.

resulted from the Merger being announced at a time when the market price of SC&T was almost half of its fair value, and that of Cheil was more than double its fair value.¹⁶⁴ The Claimant accepts that the Samsung Group could instead have withdrawn the Merger proposal and reintroduced it at a later date, but argues that it would not in fact have done so.¹⁶⁵ In support of its position, the Claimant asserts that CIO Hong and the NPS's Head of Research, Mr. [REDACTED], tried to convince the Samsung Group to take such steps, but JY Lee refused, stating that "there is no Plan B" and that the Merger "must go through at all costs."¹⁶⁶ The Claimant adds that changes to the terms of the Merger were in any event limited to a statutory discretionary adjustment, which has almost never been used.¹⁶⁷

149. The Claimant contends that the fabricated synergy projection misled the Investment Committee, whose members repeatedly raised concerns about the potential losses flowing from the Merger Ratio during the vote.¹⁶⁸ The Claimant submits that the members were assured that they could be confident in the Merger because the synergy effect would overcome those losses.¹⁶⁹ On that footing, the Claimant highlights that several members confirmed they had relied on the fabricated projection in voting for the Merger, and would not have done so had they known it was fabricated.¹⁷⁰ The Claimant also disputes the Respondent's suggestion that the prosecutorial reports adduced in these proceedings are unreliable, reasoning that the Investment Committee members gave direct answers to direct questions that they were under no obligation to answer, and that they were afterwards given the opportunity to confirm the accuracy of the notes of their meetings with the prosecutor.¹⁷¹ The Claimant maintains that it is unsustainable for the Respondent now to cast doubt on the accuracy of its own prosecutor's statement reports, and that permitting it to do so at a stage after the evidentiary phase has closed would raise profound due process concerns.¹⁷²

¹⁶⁴ Claimant's Rebuttal Submission on the Remitted Issue, para. 44.

¹⁶⁵ Claimant's Rebuttal Submission on the Remitted Issue, para. 44.

¹⁶⁶ Claimant's Rebuttal Submission on the Remitted Issue, para. 44, citing [REDACTED], NPS CEO Meeting Notes, 7 July 2015, p. 1 (C-413).

¹⁶⁷ Claimant's Rebuttal Submission on the Remitted Issue, para. 44, referring to SH Lee Expert Report, paras. 25-28 (CER-2); Reply on the Remitted Issue, paras. 53-55.

¹⁶⁸ Reply on the Remitted Issue, paras. 61-62.

¹⁶⁹ Reply on the Remitted Issue, para. 62; Claimant's Rebuttal Submission on the Remitted Issue, para. 68.

¹⁷⁰ Reply on the Remitted Issue, para. 65. See Statement Report of [REDACTED] to the Special Prosecutor, 28 December 2016, pp. 10-11 (C-472). See also Claimant's Rebuttal Submission on the Remitted Issue, para. 67.

¹⁷¹ Claimant's Rebuttal Submission on the Remitted Issue, para. 67.

¹⁷² Claimant's Rebuttal Submission on the Remitted Issue, paras. 9-11.

150. According to the Claimant, of the twelve Investment Committee members who voted, at least seven had to support the Merger for an affirmative vote to be achieved.¹⁷³ Of the eight who voted in favor, at least five have since confirmed that they would not have done so but for the fabricated synergy effect calculation.¹⁷⁴ On this basis, the Claimant submits that the necessary majority within the Investment Committee could not have been obtained.¹⁷⁵ The Claimant also dismisses as “futile” the Respondent’s attempt to reinterpret the prior statements of the Investment Committee members, none of whom has been called as a witness.¹⁷⁶
151. As to the Respondent’s submission that other factors weighed in favor of the Merger, the Claimant asserts that this argument already failed in the Original Proceedings and that, to the extent any such factors existed, none addressed the fact that the NPS stood to lose “an enormous amount of value from the Merger.”¹⁷⁷ In any event, according to the Claimant, the minutes record that the Investment Committee decided to support the Merger “in view of its synergy effect” and not on the basis of the various other factors the Respondent invokes.¹⁷⁸ The Claimant adds that the NPS’s own internal audit of these events, published in June 2018, likewise records no trace of the other reasons the Respondent now says existed for voting in favor.¹⁷⁹
152. The Claimant objects that the NPS Research Team assessment shown in the Respondent’s Demonstrative E is not the unadulterated version of 30 June 2015 and should be excluded from the counterfactual.¹⁸⁰ As to the other two assessments shown, the Claimant submits that the Deloitte Anjin and KPMG reports were commissioned by the Samsung Group, Deloitte’s lead

¹⁷³ Claimant’s Rebuttal Submission on the Remitted Issue, para. 15.

¹⁷⁴ Claimant’s Rebuttal Submission on the Remitted Issue, para. 15. *See* Statement Report of ██████████ to the Special Prosecutor, 28 December 2016, pp. 10-11 (C-472); Second Statement Report of ██████████ to the Special Prosecutor, 27 December 2016, pp. 7-8, 14 (C-467); Transcript of Court Testimony of ██████████, pp. 14-16, 38 (C-502); Transcript of Court Testimony of ██████████, pp. 8, 12, 48, 50 (C-500); Transcript of Court Testimony of Won-yeong Choe and ██████████, 20 June 2017, pp. 6, 25-26 (C-515); Second Statement Report of ██████████ to the Special Prosecutor, 28 December 2016, p. 7 (C-471); Transcript of Court Testimony of ██████████, p. 55 (R-291); Statement Report of ██████████ to the Special Prosecutor, 28 December 2016, p. 17 (C-474).

¹⁷⁵ Claimant’s Rebuttal Submission on the Remitted Issue, para. 15.

¹⁷⁶ Claimant’s Rebuttal Submission on the Remitted Issue, para. 15.

¹⁷⁷ Reply on the Remitted Issue, paras. 83-84; Claimant’s Rebuttal Submission on the Remitted Issue, para. 55-56.

¹⁷⁸ Reply on the Remitted Issue, para. 85.

¹⁷⁹ Claimant’s Rebuttal Submission on the Remitted Issue, para. 68, *referring to* NPS Internal Audit Results related to the Samsung C&T/Cheil Industries Merger, 21 June 2018, pp. 2-8 (C-84).

¹⁸⁰ Claimant’s Rebuttal Submission on the Remitted Issue, para. 58, *referring to* Respondent’s Demonstrative E submitted at the Hearing.

partner having accepted that its valuation of SC&T was revised some seventeen times and that figures were “made up” to match the Merger Ratio.¹⁸¹

153. According to the Claimant, the Respondent’s position that the vote would have passed in a counterfactual world cannot be sustained.¹⁸² In a statement made by the NPS to the MHW in July 2015, it acknowledged that it was compelled to vote “against” the Merger if it would “cause a decrease in shareholder value.”¹⁸³ Since the Merger was understood to entail a significant loss of value to the Fund, the members of the Investment Committee were, in the Claimant’s submission, statutorily bound to not vote in favor of the Merger.¹⁸⁴ This obligation, the Claimant further underscores, was acknowledged by Mr. Cho, who noted that the “primary mandate” was profit and that social and political considerations may only be considered insofar as they are expected to increase the Fund’s returns.¹⁸⁵
154. In the Claimant’s view, the gravity of the illegal conduct in which the ROK officials engaged cannot be reconciled with the Respondent’s position that these actions were taken simply to “leave nothing to chance.”¹⁸⁶ The Claimant argues that the officials would not have willingly attracted significant personal and criminal risk had they already believed that the Merger was likely to be approved.¹⁸⁷ In this connection, the Claimant relies on the NPS’s own internal audit of June 2018, which found that the 1:0.64 valuation was distorted to 1:0.39 in a single day and that the KRW 2.1 trillion synergy figure had been reverse-engineered to supply the required offset.¹⁸⁸

c) Whether the Tribunal’s Surviving Findings Already Establish Causation

155. The Claimant’s primary case is that the Tribunal has already made findings that are binding, and which were not set aside, establishing the causal chain.¹⁸⁹ The sole question on remission is

¹⁸¹ Claimant’s Rebuttal Submission on the Remitted Issue, para. 59, *citing* Second Statement Report of ██████████ to the Public Prosecutor’s Office, 20 March 2019, pp. 10, 17-18 (C-779); Email from ██████████ (Deloitte) to Deloitte team members, 19 May 2015 (C-776); Deloitte Report, 21 May 2015, pp. 2, 10 (C-775).

¹⁸² Claimant’s Rebuttal Submission on the Remitted Issue, para. 61.

¹⁸³ Claimant’s Rebuttal Submission on the Remitted Issue, para. 15, *citing* ██████████, “Issues in Case the Investment Committee Votes on the SC&T Merger,” 7 or 8 July 2015, p. 1 (C-420).

¹⁸⁴ Claimant’s Rebuttal Submission on the Remitted Issue, paras. 15, 36, 38-39.

¹⁸⁵ Claimant’s Rebuttal Submission on the Remitted Issue, para. 39, *citing* Second Cho Witness Statement, para. 7 (RWS-2)

¹⁸⁶ Hearing Transcript, Day 1, p. 52:15-18; Claimant’s Rebuttal Submission on the Remitted Issue, para. 14.

¹⁸⁷ Claimant’s Rebuttal Submission on the Remitted Issue, paras. 14, 62, 68.

¹⁸⁸ Claimant’s Rebuttal Submission on the Remitted Issue, para. 68, *citing* NPS Internal Audit Results related to the Samsung C&T/Cheil Industries Merger, 21 June 2018, pp. 2-8 (C-84).

¹⁸⁹ Reply on the Remitted Issue, para. 15.

whether the English High Court's conclusion regarding the NPS's legal status affects those findings; according to the Claimant, it does not, because the findings are independent of the issue of status.¹⁹⁰

156. The Claimant asserts that the Tribunal has already found that, “[a]ccording to policies set by the NPS for the Merger, the voting rights were to be exercised by the Experts Voting Committee” and that, once it became evident a referral would not guarantee approval, the matter was steered to the Investment Committee.¹⁹¹ The Claimant rejects the Respondent's argument that these were not the Tribunal's own findings but mere summaries of the Seoul District Court's findings in the Moon/Hong proceedings.¹⁹² In this connection, the Claimant stresses that the Tribunal treated the essential underlying facts as “not in dispute between the Parties,” examined the supporting evidence, and held that the NPS acted “under the direction and instruction of the MHW” and that “[t]here is no evidence before the Tribunal ... that would cause the Tribunal to second-guess the findings of the Korean courts,” thereby endorsing those findings “as its own.”¹⁹³ The Claimant further asserts that in the Original Proceedings the Respondent stipulated that it was “stuck with” the factual findings of the Moon/Hong proceedings and that it is therefore estopped from resiling from that prior stipulation.¹⁹⁴
157. The Claimant submits that the Tribunal also held, on the evidence, that the MHW issued an order for measures to be taken to ensure the Investment Committee voted in favor of the Merger, which resulted in the creation of the fabricated synergy projection and in the briefing of Committee members upon it.¹⁹⁵ The Tribunal also noted the finding in the Moon/Hong proceedings that “[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,” and that CIO Hong told one member that “[i]f the merger falls apart the hedge fund will denounce me [as someone who] sold out on the national wealth.”¹⁹⁶ From these findings, the Claimant submits the Tribunal concluded that “[t]he Respondent, through the MHW, intervened in the NPS's vote on the Merger and

¹⁹⁰ Reply on the Remitted Issue, para. 25.

¹⁹¹ Reply on the Remitted Issue, paras. 69, *citing* Award, paras. 587, 598.

¹⁹² Reply on the Remitted Issue, para. 70.

¹⁹³ Reply on the Remitted Issue, para. 70, *citing* Award, paras. 581, 602, 820. *See also* Claimant's Rebuttal Submission on the Remitted Issue, para. 69.

¹⁹⁴ Claimant's Rebuttal Submission on the Remitted Issue, paras. 9-10, 69, 78-79, *citing* Award, para. 266; Hearing Transcript in the Original Proceedings, Day 2, p. 17:10-12.

¹⁹⁵ Reply on the Remitted Issue, para. 71, *referring to* Award, paras. 588-89.

¹⁹⁶ Reply on the Remitted Issue, para. 76, *citing* Award, para. 598.

instructed the NPS to ensure that the vote would be in favor of the Merger.”¹⁹⁷ Since those findings remain binding, the Claimant asserts that they would “look absurd” sitting side-by-side with a further reading that the Respondent’s intervention did not affect the NPS vote.¹⁹⁸

158. The Claimant maintains that the Respondent’s attempt to “brush aside these findings” as concerning only the “actual world,” rather than a counterfactual in which the ROK had acted lawfully, is unsustainable and misconstrues the test for factual causation.¹⁹⁹ These findings, it submits, remain unaffected by the Remittal Order, having neither been set aside nor been contingent on the NPS’s status, and are not open to relitigation.²⁰⁰ In any event, even if relitigation were open, the Claimant takes the view that the Respondent’s arguments would fail, having already been considered and rejected.²⁰¹
159. The Claimant further submits that the Tribunal has already rejected the Respondent’s argument that some proxy advisers recommended supporting the Merger and that the market reaction was “mixed.”²⁰² According to the Claimant, those views were derived from SC&T’s own press release issued after the major proxy advisers had advised against the Merger.²⁰³ The Claimant contends that the Samsung Group pressured Korean analysts and brokerages, and that the Respondent conceded in the Original Proceedings that all major proxy advisers “criticized the Merger Ratio and recommended that shareholders of [SC&T] vote against the Merger.”²⁰⁴ Indeed, the NPS’s own proxy adviser, Korea Corporate Governance Service (“KCGS”), recommended a vote against it.²⁰⁵
160. The Claimant contends that the Respondent’s reliance on the voting behavior of other SC&T shareholders is also without merit, since those shareholders likely followed the lead of the NPS.²⁰⁶

¹⁹⁷ Reply on the Remitted Issue, para. 76, *citing* Award, para. 602(a).

¹⁹⁸ Claimant’s Rebuttal Submission on the Remitted Issue, paras. 4-5, 69-70.

¹⁹⁹ Reply on the Remitted Issue, para. 77; Claimant’s Rebuttal Submission on the Remitted Issue, para. 77.

²⁰⁰ Reply on the Remitted Issue, para. 78.

²⁰¹ Reply on the Remitted Issue, para. 79.

²⁰² Reply on the Remitted Issue, para. 86.

²⁰³ Reply on the Remitted Issue, para. 86; Claimant’s Rebuttal Submission on the Remitted Issue, para. 47; Hearing Transcript, Day 1, p. 26:15-23.

²⁰⁴ Reply on the Remitted Issue, para. 86(c).

²⁰⁵ Reply on the Remitted Issue, para. 86; Claimant’s Rebuttal Submission on the Remitted Issue, paras. 13, 60.

²⁰⁶ Reply on the Remitted Issue, para. 87.

In any event, in the Claimant's view, the relevant question is not how other shareholders voted, but how the NPS, which held the casting vote, voted.²⁰⁷

161. The Claimant recalls the Tribunal's conclusion that, "considering the ownership of SC&T's shares ... [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."²⁰⁸ It follows that, but for the NPS's vote, the Merger would not have been approved, a finding unaltered by the Remittal Order.²⁰⁹ The Claimant also submits that the Tribunal has already held that the Merger caused its loss, finding "a direct causal link between the NPS's vote on the Merger and the loss suffered by ... the Claimant."²¹⁰ The Claimant observes that the Respondent does not contest that the Merger caused a quantified loss, but contends only that this "is not the same question as what loss (if any) was caused by the Blue House Measures," a position the Claimant says is unclear and does not displace the Tribunal's binding findings.²¹¹ The Claimant maintains that, even if the Tribunal were to consider factual causation "afresh," nothing has been adduced to overcome the fact that a determinative number of Investment Committee members confirmed that they would not have supported the Merger but for the fabricated synergy projection.²¹²

d) Additional Judgments and the Mason Award

162. The Claimant submits that the Tribunal's factual findings should not be displaced by the five Additional Judgments, which it characterizes as "judicial decisions of other fora addressing different causes of action, different legal standards applied to different evidentiary records."²¹³ The fact that one decision-making body took a particular approach does not mean that its decision was correct.²¹⁴ The Claimant submits that the Tribunal's findings were not based exclusively on the criminal convictions of Minister Moon and CIO Hong, but on the primary evidentiary record underlying those judgments, which the Tribunal independently reviewed and found no reason to doubt.²¹⁵ The Claimant further argues that the conflict cannot be resolved by labelling the Award

²⁰⁷ Reply on the Remitted Issue, para. 87.

²⁰⁸ Reply on the Remitted Issue, para. 98, *citing* Award, para. 818.

²⁰⁹ Reply on the Remitted Issue, para. 99.

²¹⁰ Reply on the Remitted Issue, paras. 100-01, *citing* Award, paras. 819-20.

²¹¹ Reply on the Remitted Issue, para. 102.

²¹² Reply on the Remitted Issue, para. 88.

²¹³ Reply on the Remitted Issue, para. 91; Hearing Transcript, Day 1, pp. 100:23-101:3; Claimant's Rebuttal Submission on the Remitted Issue, paras. 71, 74-76.

²¹⁴ Reply on the Remitted Issue, para. 91.

²¹⁵ Reply on the Remitted Issue, para. 92.

the “actual world” and the Additional Judgments the “counterfactual,” since those Judgments deny that the intervention affected the vote in the actual world.²¹⁶ The Claimant adds that the judicial landscape continues to develop, and includes the NPS’s own 2024 proceedings against the Samsung Group and the NPS personnel.²¹⁷

163. The Claimant contends that the Additional Judgments did not, in substance, materially depart from the earlier judgments, the Shareholder Claims Judgments having expressly adopted the findings in the Moon/Hong proceedings and dismissed the claim only by applying a domestic-law joint-tort test bearing no relation to the international-law standard applicable before the Tribunal.²¹⁸ On the Claimant’s reading, the Seoul Central District Court did not find that the NPS voted independently of the MHW’s intervention. The Seoul High Court also recognized the distinction in tests, stating that “the absence of the [NPS]’s liability under Korean law does not extinguish [the Respondent’s] liability under international law.”²¹⁹ As to the JY Lee Unlawful Merger Judgments, the Claimant asserts that they left undisturbed both the Moon/Hong ruling and JY Lee’s conviction for bribery and embezzlement.²²⁰ The Claimant contends that the Respondent’s reliance on a single passage overlooks the findings that Minister Moon and CIO Hong exerted influence over the Investment Committee and that CIO Hong was subjected to “repeated external pressure” from the ROK officials.²²¹
164. The Claimant submits that its causation case is consistent with the independent findings of the tribunal in *Mason v. Korea*, which on materially the same facts found that the Respondent’s interference caused the NPS to vote for the Merger, that the NPS’s vote secured the Merger’s approval, and that the interference caused Mason’s loss on a similar claim.²²² That tribunal found the loss to be a foreseeable and proximate consequence of the breach, with the causal chain unbroken by the NPS or any other actor, concluding that the breach was “a more recent and direct cause” and that the NPS’s conduct, being the object of the government’s interference, “cannot be

²¹⁶ Claimant’s Rebuttal Submission on the Remitted Issue, para. 77, referring to Award, paras. 602(b), 623.

²¹⁷ Claimant’s Rebuttal Submission on the Remitted Issue, para. 79.

²¹⁸ Reply on the Remitted Issue, para. 94, referring to Seoul Central District Court, Case No. 2020GaHap600079 (**R-389**). See also Claimant’s Rebuttal Submission on the Remitted Issue, paras. 72, 74.

²¹⁹ Reply on the Remitted Issue, para. 94, citing Seoul High Court, Case No. 2023Na2000796, 12 February 2026, p. 7 (**R-390**). See also Claimant’s Rebuttal Submission on the Remitted Issue, para. 74.

²²⁰ Reply on the Remitted Issue, para. 94; Claimant’s Rebuttal Submission on the Remitted Issue, para. 73.

²²¹ Reply on the Remitted Issue, para. 94, citing Seoul Central District Court, Case No. 2020GoHap718, 920 (Consolidated), 5 February 2024, pp. 440, 748 (**R-391**).

²²² Claimant’s Submission on the Remitted Issue, paras. 42-44, referring to *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 (**CLA-219**).

severed in causal terms from the conduct attributed to Respondent.”²²³ The Claimant argues that these findings should carry particular weight as they rest on materially the same evidence now before the Tribunal.²²⁴

2. The Respondent’s Position

a) The Applicable Standard of Proof

165. The Respondent submits that, the Claimant, as the investor under the Treaty, bears the burden of proving factual causation, and that the applicable standard is “in all probability,” a standard endorsed in seminal international-law decisions and reflected in paragraph 931 of the Award.²²⁵ According to the Respondent, paragraphs 266 and 581 of the Award do not reject a standard higher than the balance of probabilities, but merely recite the Parties’ agreement on the standard for findings of historical fact and of breach, not the counterfactual causation inquiry.²²⁶
166. The Respondent submits that the “in all probability” standard is equivalent to the “sufficient degree of certainty” standard and “does require a showing of probability that is significantly higher than a pure balance of probabilities.”²²⁷ According to the Respondent, the standard is grounded in the *Chorzów Factory* case, which established the principle that reparation must “wipe out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed.”²²⁸ The phrase “in all probability” therefore denotes “something that is very likely to happen” rather than merely “probably.”²²⁹ The *Bosnian Genocide* case sharpens the threshold by requiring that it be established “with a sufficient degree of certainty” that the loss “would in fact have been averted” had the respondent complied

²²³ Claimant’s Submission on the Remitted Issue, para. 47, 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. 914-17 (**CLA-219**).

²²⁴ Claimant’s Submission on the Remitted Issue, para. 48.

²²⁵ Respondent’s Corrected Submission on the Remitted Issue, paras. 66-67; Hearing Transcript, Day 2, pp. 7:9-11, 60:23-61:2, referring to U.S. Submission, para. 9. See also Respondent’s Rebuttal Submission on the Remitted Issue, paras. 10-11.

²²⁶ Respondent’s Corrected Submission on the Remitted Issue, para. 126.

²²⁷ Respondent’s Corrected Submission on the Remitted Issue, paras. 67-68; Respondent’s Rebuttal Submission on the Remitted Issue, para. 23. See Hearing Transcript, Day 2, p. 7:16-20.

²²⁸ Respondent’s Corrected Submission on the Remitted Issue, paras. 70-71, citing *Case Concerning the Factory at Chorzów (Germany v. Poland)*, PCIJ Rep., Series A – No. 17, 13 September 1928, p. 47 (**CLA-97**). See also Hearing Transcript, Day 2, p. 5:7-11; Respondent’s Rebuttal Submission on the Remitted Issue, para. 25.

²²⁹ Respondent’s Corrected Submission on the Remitted Issue, paras. 70-71; Hearing Transcript, Day 2, p. 5:7-11.

with its obligations.²³⁰ The Respondent submits that this “high standard of factual certainty” was summarized in *Bilcon v. Canada* and taken further still in *Nordzucker*, which asked whether the State’s conduct “necessarily” harmed the investor.²³¹

167. The Respondent submits that a higher threshold for causation is justified because the full reparation obligation may expose States to very large awards for injury they did not cause.²³² In support of its position, it points to paragraph 931 of the Award, where the Tribunal applied the “in all probability” standard to the Claimant’s but-for financial position, in contrast to paragraphs 266 and 581, where it applied the balance of probabilities to questions of historical fact and breach.²³³
168. The Respondent further submits that the above tests for factual causation “apply equally under the Treaty and customary international law.”²³⁴ It contends that, on the ordinary meaning of Article 11.16(1) of the Treaty, the Claimant must establish a causal nexus between the breach and the loss, and that, as *Bilcon v. Canada* confirms, this is a threshold question that requires the Tribunal to consider “whether a causal link between the Respondent’s breach of international law and any injury of the Investors has been established at all.”²³⁵ Since the Treaty does not itself define the content of the necessary causal nexus, the content is supplied by customary international law which, in the Respondent’s view, and consistently with *Bilcon v. Canada*, leads to the application of the tests set out above.²³⁶
169. The Respondent submits that, based on this standard, the Claimant must establish that, absent the Blue House Measures, the NPS would in all probability have voted against the Merger or

²³⁰ Respondent’s Corrected Submission on the Remitted Issue, para. 72, citing *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007, p. 43 (**CLA-24**). See also Respondent’s Rebuttal Submission on the Remitted Issue, paras. 11, 26.

²³¹ Respondent’s Corrected Submission on the Remitted Issue, paras. 73-74, citing *Bilcon of Delaware, Inc. and others v. The Government of Canada*, PCA Case No. 2009-04, Award on Damages, 10 January 2019, paras. 110-11 (**RLA-90**); *Nordzucker AG v. Poland*, Third Partial and Final Award, 23 November 2009, para. 51 (**RLA-126**). See also Hearing Transcript, Day 2, p. 5:14-20; Respondent’s Rebuttal Submission on the Remitted Issue, para. 25.

²³² Respondent’s Rebuttal Submission on the Remitted Issue, para. 26.

²³³ Respondent’s Rebuttal Submission on the Remitted Issue, para. 27, referring to Award, paras. 266, 581, 931. See also Rejoinder on the Remitted Issue, paras. 42-45.

²³⁴ Respondent’s Rebuttal Submission on the Remitted Issue, para. 14.

²³⁵ Respondent’s Rebuttal Submission on the Remitted Issue, para. 14, citing *Bilcon of Delaware, Inc. and others v. The Government of Canada*, PCA Case No. 2009-04, Award on Damages, 10 January 2019, para. 114 (**RLA-90**).

²³⁶ Respondent’s Rebuttal Submission on the Remitted Issue, para. 14.

abstained, such that the Merger would have failed to secure the required two-thirds majority.²³⁷ The Respondent contends that the Claimant cannot do so and that, even on the balance of probabilities, the evidence shows that an independent NPS “likely would have voted for the Merger.”²³⁸ The Respondent emphasizes that it bears no burden of disproving factual causation, its analysis being directed to showing that the Claimant has not met its own burden to the requisite degree of probability.²³⁹ The Respondent also clarifies that it has never argued that the NPS’s conduct constitutes an intervening cause breaking the chain of causation, *causa interveniens* being a concept specific to legal causation, and submits that the *Lemire* and *Mason* authorities invoked by the Claimant on burden shifting are for that reason inapposite.²⁴⁰

170. The Respondent refutes the Claimant’s contention that factual causation requires no counterfactual analysis, submitting that it is contrary to the Claimant’s own case in the Original Proceedings and to paragraph 815 of the Award, which frames causation as “whether the claimant would have suffered the claimed loss or damage in the absence of the alleged breach.”²⁴¹ It observes that the Claimant itself accepted at the Hearing that the but-for inquiry asks whether the NPS would have voted in favor once the direction and instructions are removed.²⁴² The Respondent maintains that international law demands such a counterfactual inquiry, which, as in the *Bosnian Genocide* case, may lead a tribunal to decline compensation where it cannot conclude to a “sufficient degree of certainty” that the outcome would have differed absent the breach.²⁴³ The Respondent adds that the counterfactual requirement reflects a causation principle common to many legal systems, distinguishing an actually-occurring “additional” cause from a hypothetical “alternative” one.²⁴⁴
171. In this context, the Respondent considers *Amco II* to be inapposite, since it concerned a single-step causal chain with no intervening non-State actor, and does not reflect international law as it

²³⁷ Respondent’s Corrected Submission on the Remitted Issue, para. 78; Respondent’s Rebuttal Submission on the Remitted Issue, paras. 10-11, 15, 18. See Hearing Transcript, Day 2, p. 7:12-16.

²³⁸ Respondent’s Corrected Submission on the Remitted Issue, para. 80.

²³⁹ Hearing Transcript, Day 2, pp. 51:20-52:20, 54:1-18; Respondent’s Rebuttal Submission on the Remitted Issue, para. 11.

²⁴⁰ Respondent’s Rebuttal Submission on the Remitted Issue, para. 11, fn. 3, referring to *Joseph Charles Lemire v. Ukraine*, ICSID Case No. ARB/06/18, Award, 28 March 2011 (**RLA-56**); *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 (**CLA-219**). See also Hearing Transcript, Day 1, pp. 84:24-86:15.

²⁴¹ Rejoinder on the Remitted Issue, paras. 23-24, citing Award, para. 815.

²⁴² Respondent’s Rebuttal Submission on the Remitted Issue, para. 13; Hearing Transcript, Day 1, pp. 65:7-11, 66:8-12, 66:24-67:7.

²⁴³ Respondent’s Rebuttal Submission on the Remitted Issue, para. 22; Hearing Transcript, Day 1, p. 77:5-9.

²⁴⁴ Respondent’s Rebuttal Submission on the Remitted Issue, para. 22; Hearing Transcript, Day 1, p. 77:5-9.

now stands, having been criticized by international legal scholars for skipping the antecedent question of factual causation.²⁴⁵ The Respondent submits that, unlike the respondent in *Amco II*, it does not contend that it might conceivably have achieved the same outcome by acting in some alternative, lawful way.²⁴⁶

172. The Respondent further rejects the Claimant's argument that it is impermissibly introducing hypothetical considerations into its but-for analysis.²⁴⁷ The Respondent asserts that all of the factors it relies upon existed in the "actual world" and demonstrate that the NPS would likely have reached the same decision absent the Blue House Measures.²⁴⁸ Using the Claimant's own analogy, the Respondent submits that it does not invite the Tribunal to conjure "imaginary bridges," but points to the nine real-world factors set out in its Opening Presentation and Demonstrative D.²⁴⁹
173. The Respondent also denies requiring the Claimant to prove a negative.²⁵⁰ Its position is not that the Claimant must posit and disprove every hypothetical possibility of approval through an honest process, but that the Claimant must show to the requisite standard that the NPS would have voted against the Merger or abstained.²⁵¹

b) Whether The Blue House Measures Caused the NPS Vote

174. The Respondent contends that the balance of relevant factors weighed in favor of approving the Merger.²⁵² According to the Respondent, the analysis must begin with the Guidelines on the Exercise of the National Pension Fund Voting Rights (the "**Voting Guidelines**"), which require the Fund to exercise its voting rights in good faith and so as to "increase shareholder value in the long term" and, under the principle of "responsible investment," to vote against any proposal that

²⁴⁵ Rejoinder on the Remitted Issue, paras. 36-38, *referring to* Z. Douglas, *The International Law of Investment Claims* (2009), pp. 102-03 (**RLA-223**); J. Paulsson, *Denial of Justice in International Law* (2005), pp. 222, 225 (**RLA-224**). *See also* Rejoinder on the Remitted Issue, paras. 21-22; Hearing Transcript, Day 2, pp. 55:18-20, 57:13-58:1.

²⁴⁶ Respondent's Rebuttal Submission on the Remitted Issue, para. 22; Hearing Transcript, Day 1, pp. 77:3-7, 78:16-20.

²⁴⁷ Respondent's Rebuttal Submission on the Remitted Issue, paras. 17, 19.

²⁴⁸ Respondent's Rebuttal Submission on the Remitted Issue, para. 19.

²⁴⁹ Respondent's Rebuttal Submission on the Remitted Issue, para. 20, *referring to* Respondent's Opening Presentation in the Remitted Proceedings, p. 85; Hearing Transcript, Day 1, pp. 12:25-13:17.

²⁵⁰ Respondent's Rebuttal Submission on the Remitted Issue, paras. 17-18; Hearing Transcript, Day 1, pp. 62:18-22.

²⁵¹ Respondent's Rebuttal Submission on the Remitted Issue, para. 18.

²⁵² Respondent's Corrected Submission on the Remitted Issue, para. 81.

lowers shareholder value or “go[es] against the interests of the fund.”²⁵³ The Respondent rejects the Claimant’s reading of these requirements, under which valuation and synergy would outweigh all other considerations by reason of the principle of profitability.²⁵⁴ In the Respondent’s submission, the Voting Guidelines direct the NPS to long-term profitability alongside stability and the public interest, so that a value gap would not by itself have dictated a vote against the Merger.²⁵⁵ Applying these requirements, the Respondent submits there is no basis to assume the NPS would have taken a different view in a Treaty-compliant counterfactual.²⁵⁶

175. First, the Respondent argues that the NPS viewed the Merger as a step toward reforming the Samsung Group’s governance and expected that reform to enhance long-term shareholder value.²⁵⁷ The Respondent observes that, a year before the Merger, the NPS’s own analysis found that a shift from a cross-shareholding to a holding-company structure had “consistently resulted in ... an enhancement of shareholder value” and expressly modelled a reform of the Samsung Group through a merger of SC&T and Cheil as it was expected to “have a positive impact on the result of Korean equities investment.”²⁵⁸
176. Second, the Respondent submits that the Investment Committee understood that a failed Merger would harm the Samsung Group’s valuation and cause medium- to long-term volatility in its stock price, given the Group’s importance to the Korean economy.²⁵⁹ The Respondent relies on a confidential report, commissioned by the Claimant, assessing that “Samsung and the Lee family cannot afford to fail or the effect on the Group would be far-reaching, unpredictable and possibly destructive to the economy as a whole.”²⁶⁰ The Respondent also relies on modelling by ISS, proxy advisor, that SC&T’s share price could fall by as much as 22.6% in the short term if the

²⁵³ Respondent’s Corrected Submission on the Remitted Issue, paras. 84-85, *citing* Guidelines on the Exercise of the National Pension Fund Voting Rights, 28 February 2014, Arts. 3-7 (**R-57**). *See also* Hearing Transcript, Day 2, p. 82:4-17; Respondent’s Rebuttal Submission on the Remitted Issue, para. 45.

²⁵⁴ Respondent’s Rebuttal Submission on the Remitted Issue, para. 45.

²⁵⁵ Respondent’s Rebuttal Submission on the Remitted Issue, para. 45, *referring to* Guidelines on the Exercise of the National Pension Fund Voting Rights, Arts. 4, 4-2, 6 (**R-57**); Respondent’s Corrected Submission on the Remitted Issue, paras. 82-87, 111.

²⁵⁶ Respondent’s Corrected Submission on the Remitted Issue, para. 88.

²⁵⁷ Respondent’s Corrected Submission on the Remitted Issue, para. 90; Hearing Transcript, Day 2, p. 86:8-17.

²⁵⁸ Respondent’s Corrected Submission on the Remitted Issue, para. 89, *citing* Domestic Equity Division of Investment Management, “Review of the Possibility of Corporate Governance Reform of Major Groups,” 15 May 2014, pp. 1, 6 (**R-061**). *See also* Hearing Transcript, Day 2, pp. 96:21-97:5.

²⁵⁹ Respondent’s Corrected Submission on the Remitted Issue, para. 94; Hearing Transcript, Day 2, p. 89:3-11.

²⁶⁰ Respondent’s Corrected Submission on the Remitted Issue, para. 93, *citing* Spectrum Asia Report on Samsung C&T and Cheil Industries, 19 March 2015, pp. 24-25 (**R-255**).

Merger failed, and on the Seoul Central District Court’s finding in the Shareholder Claims case that the Investment Committee gave “overall consideration” to the Merger, including “the impact on fund management in the event the Merger fell through.”²⁶¹

177. Third, the Respondent submits that the strategic rationales for the Merger included enhancing the competitiveness of the construction business, capturing overseas fashion and food opportunities, developing biotechnology through New SC&T’s control of Samsung BioLogics, and diversifying the business portfolio.²⁶² The Respondent argues that the NPS regarded these strategic benefits as credibly attainable, considering that SC&T’s stagnant profitability made the Merger an opportunity to change course, that biotechnology was a key growth driver, and that New SC&T would enjoy stronger financial standing and brand royalties as the Samsung Group’s *de facto* holding company.²⁶³ According to the Respondent, the market, too, believed the Merger capable of delivering “some or all of the strategic benefits,” at least 21 Korean securities analysts having viewed it positively and the SC&T and Cheil share prices having risen by nearly 15% around the announcement.²⁶⁴
178. Fourth, the Respondent submits that hindsight has borne out the Merger’s envisaged benefits, Samsung BioLogics having grown to account for “around 40% of New SC&T’s total operating profit in 2022,” offsetting the decline in the construction and trading segments.²⁶⁵ The Respondent adds that SC&T’s debt ratio was significantly reduced, the Samsung Group’s shareholding structure was simplified with SC&T as “the *de facto* holding company of the Samsung Group,” and SC&T’s credit rating improved from AA- to AA+, a rating maintained even after absorbing KRW 2.6 trillion in losses.²⁶⁶ Taken together, these factors show that the NPS had every commercial reason to support the Merger and none to reject it, in a Treaty-compliant counterfactual.²⁶⁷

²⁶¹ Respondent’s Corrected Submission on the Remitted Issue, para. 94, *citing* ISS Special Situations Research, 3 July 2015, p. 2 (**C-30**); Seoul Central District Court, Case No. 2020GaHap600079, p. 13 (**R-389**). *See also* Hearing Transcript, Day 2, p. 85:2-12.

²⁶² Respondent’s Corrected Submission on the Remitted Issue, para. 95; Hearing Transcript, Day 2, pp. 95:19-96:1.

²⁶³ Respondent’s Corrected Submission on the Remitted Issue, para. 98; NPSIM, “Analysis Regarding the Merger of Cheil Industries and Samsung C&T,” 10 July 2015 (**R-127**). *See also* Hearing Transcript, Day 2, p. 94:13-18.

²⁶⁴ Respondent’s Corrected Submission on the Remitted Issue, paras. 96-97.

²⁶⁵ Respondent’s Corrected Submission on the Remitted Issue, para. 99, *citing* Seoul Central District Court, Case No. 2020GoHap718, 920 (Consolidated), 5 February 2024, pp. 373-74 (**R-391**).

²⁶⁶ Respondent’s Corrected Submission on the Remitted Issue, paras. 143-44, *citing* Seoul Central District Court, Case No. 2020GoHap718, 920 (Consolidated), 5 February 2024, pp. 375-77 (**R-391**). *See also* Hearing Transcript, Day 2, p. 93:19-25.

²⁶⁷ Respondent’s Corrected Submission on the Remitted Issue, para. 145.

179. The Respondent then addresses the two factors said to weigh against approval: whether the Merger Ratio adequately reflected SC&T's fair value, and whether unlawful market manipulation had occurred.²⁶⁸ As to the Merger Ratio, the Respondent emphasizes the subjective and imprecise nature of valuation, noting that the Deloitte Anjin and KPMG assessments yielded little to no net "loss," whereas the NPS Research Team's valuation implied a net "loss" of KRW 138.8 billion and ISS's a net "loss" of KRW 508.8 billion.²⁶⁹ The criticism is not that reasonable minds may differ on valuation but that the Research Team went on to construct a flawed comparison, reverse-engineering a synergy projection of roughly KRW 2.1 trillion to offset the KRW 138.8 billion net "loss."²⁷⁰
180. The Respondent disputes the Claimant's reading of the phrase "will refuse," explaining that it comes from a call between Mr. [REDACTED] and Mr. Jin-ju Baek in which the concern was that the Investment Committee might, without due consideration, refer the matter to the Experts Voting Committee – a referral the MHW would refuse.²⁷¹ In the Respondent's view, the phrase does not evidence any likelihood that the NPS vote would fail, but rather the MHW's wish for the Investment Committee to deliberate properly on the Merger before any referral.²⁷² In response to the Claimant's question as to why the Government would have run such risks if the NPS was likely to approve the Merger in any event, the Respondent contends that it intervened not because the NPS was likely to vote against, but to eliminate even a small possibility that it might not approve.²⁷³ The Respondent highlights that Minister Moon's instruction was to ensure ("100% guarantee") approval, so the fact of intervention does not show that it changed the outcome.²⁷⁴
181. The Respondent argues that the mere existence of the fabricated projection does not show the Merger Ratio was ill-weighted, and that in a counterfactual without such a projection the NPS would reasonably have taken a different quantitative approach or commissioned a

²⁶⁸ Respondent's Corrected Submission on the Remitted Issue, para. 100.

²⁶⁹ Respondent's Corrected Submission on the Remitted Issue, para. 102, *referring to* Deloitte, "Review Report of Merger Ratio," 25 May 2015, p. 12 (**R-386**); NPSIM, "Analysis Regarding the Merger," 10 July 2015, p. 18 (**R-127**). *See also* Hearing Transcript, Day 2, pp. 99:25-100:24; Respondent's Demonstrative E, "Benchmark merger ratio calculations (based on subjective valuations) available to NPS at time of decision."

²⁷⁰ Respondent's Corrected Submission on the Remitted Issue, para. 104.

²⁷¹ Rejoinder on the Remitted Issue, para. 74.

²⁷² Rejoinder on the Remitted Issue, para. 74.

²⁷³ Respondent's Rebuttal Submission on the Remitted Issue, paras. 3, 16.

²⁷⁴ Respondent's Rebuttal Submission on the Remitted Issue, para. 16, *citing* Transcript of Court Testimony of Wan-seon Hong, p. 124 (**C-511**); Seoul Central District Court, Moon/Hong, p. 8 (**C-69**). *See also* Respondent's Rebuttal Submission on the Remitted Issue, para. 58.

methodologically sound projection of its own.²⁷⁵ Other assessments were in any event available, including one projecting KRW 6 trillion in synergies (three times the fabricated figure), which the Seoul Central District Court in the JY Lee Unlawful Merger case found not to be fraudulent, the court also finding that the Merger enhanced rather than diminished shareholder value.²⁷⁶

182. The Respondent recalls that a proxy report prepared for the NPS raised as reasons to vote against the Merger its alleged true purpose of consolidating Lee-family control, possible breaches of management duties and an unreasonable Merger Ratio.²⁷⁷ According to the Respondent, these “conspiracies” and “controversies” were unsubstantiated, and the NPS proceeded with the Merger fully aware of them, its vote following the Seoul Central District Court’s rejection of the Claimant’s attempt to enjoin the Merger (the “**Merger Injunction Decision**”).²⁷⁸ In the Merger Injunction Decision, the court found that SC&T’s listed price reflected its objective market value, that the Merger Ratio timing was not especially disadvantageous, that the post-announcement price rise reflected a positive market reaction, and that SC&T had “sufficient motive to offset its decline in ... the construction and trading business with [Cheil’s] strength or potential.”²⁷⁹ The Respondent relies on four decisions handed down after the vote – a Seoul High Court decision affirming the Injunction Decision, a civil judgment on the attempt to annul the Merger, and the JY Lee Unlawful Merger Judgments of the Seoul Central District Court and Seoul High Court – as decisively rejecting the allegations of illegality, the first JY Lee judgment finding that the Deloitte Anjin report could not be characterized as manipulated or fabricated.²⁸⁰ Taken together with the Korean courts’ findings that the Merger had a reasonable business purpose and that its timing was not unfair, these decisions, in the Respondent’s submission, demonstrate that there is no causal link between its measures and the Claimant’s loss.²⁸¹

²⁷⁵ Respondent’s Corrected Submission on the Remitted Issue, paras. 104-05.

²⁷⁶ Respondent’s Corrected Submission on the Remitted Issue, para. 105, *citing* Seoul Central District Court, Case No. 2020GoHap718, 920 (Consolidated), 5 February 2024, pp. 599-602 (**R-391**). *See also* Hearing Transcript, Day 2, p. 39:21-24.

²⁷⁷ Respondent’s Corrected Submission on the Remitted Issue, para. 106, *referring to* KCGS, “Report on Analysis of Agenda Items of Domestic Listed Companies (2015) – Samsung C&T,” 3 July 2015 (**C-402**).

²⁷⁸ Respondent’s Corrected Submission on the Remitted Issue, paras. 106-07, *referring to* Case No. 2015KaHab80582, Seoul Central District Court, 1 July 2015 (**R-9**).

²⁷⁹ Respondent’s Corrected Submission on the Remitted Issue, para. 107, *citing* Case No. 2015KaHab80582, Seoul Central District Court, 1 July 2015, p. 14 (**R-9**).

²⁸⁰ Respondent’s Corrected Submission on the Remitted Issue, paras. 108, 110, 112, *referring to* Seoul Central District Court, Case No. 2020GoHap718, 920 (Consolidated), 5 February 2024, p. 602 (**R-391**).

²⁸¹ Hearing Transcript, Day 2, pp. 12:23-13:2, 41:16-17, 42:3-15; Respondent’s Rebuttal Submission on the Remitted Issue, para. 63.

183. The Respondent likewise submits that the Merger Ratio was a matter of mandatory law prescribed by a statutory formula.²⁸² According to the Respondent, a discretionary adjustment to the reference market price is permitted only in exceptional circumstances and, between affiliated companies such as SC&T and Cheil, is limited to $\pm 10\%$, and had never been used since its introduction in 2013.²⁸³ It notes that the Korean courts have explained that applying it outside a sudden price fluctuation would risk litigation and possible breach of trust.²⁸⁴
184. According to the Respondent, neither SC&T nor Cheil applied such an adjustment when the Merger Ratio was fixed on 26 May 2015, so that after that date the only way to replace the ratio was through a new or amended agreement.²⁸⁵ Had that course been taken, the Respondent asserts, the new ratio would have had to be calculated under the mandatory formula by reference to share prices affected by the heightened volatility that the announcement of the Merger, and its subsequent abandonment, would have caused.²⁸⁶ The Respondent submits that an attempt to change the Merger Ratio could equally have produced a ratio less favorable to SC&T's shareholders.²⁸⁷
185. As to the meeting of 7 July 2015 on which the Claimant relies, the Respondent notes that CIO Hong and JY Lee also discussed a discretionary adjustment.²⁸⁸ On the Respondent's account, JY Lee explained that the Samsung Group had considered such an adjustment but had concluded, on legal advice, that no exceptional circumstances existed, and the court in the JY Lee Unlawful Merger case found his statements at that meeting not to have been deceptive.²⁸⁹
186. The Respondent submits that, on balance, the relevant factors in a Treaty-compliant counterfactual favor a decision to vote for the Merger since its expected long-term benefits

²⁸² Respondent's Rebuttal Submission on the Remitted Issue, para. 36.

²⁸³ Respondent's Rebuttal Submission on the Remitted Issue, para. 38, *referring to* Case No. 2016GaHap510827, Seoul Central District Court, fn. 1, pp. 3-4 (**R-20**) (permissible range of $\pm 30\%$, reduced to $\pm 10\%$ for mergers between affiliated companies); Seoul Central District Court, Case No. 2020GoHap718, 920 (Consolidated), 5 February 2024, pp. 883-84, 895-96 (**R-391**).

²⁸⁴ Respondent's Rebuttal Submission on the Remitted Issue, para. 38.

²⁸⁵ Respondent's Rebuttal Submission on the Remitted Issue, paras. 38-40.

²⁸⁶ Respondent's Rebuttal Submission on the Remitted Issue, para. 40. *See* Transcript of Court Testimony of Wan-seon Hong, pp. 79, 110 (**C-511**).

²⁸⁷ Respondent's Rebuttal Submission on the Remitted Issue, para. 40.

²⁸⁸ Respondent's Rebuttal Submission on the Remitted Issue, para. 42. *See* [REDACTED], NPS CEO Meeting Notes, 7 July 2015, p. 19671 (**C-413**); Transcript of Court Testimony of Wan-seon Hong, pp. 31-33 (**C-511**).

²⁸⁹ Respondent's Rebuttal Submission on the Remitted Issue, para. 42, *referring to* Seoul Central District Court, Case No. 2020GoHap718, 920 (Consolidated), 5 February 2024, pp. 605, 632, 743-44 (**R-391**).

justified pursuing it.²⁹⁰ Moreover, the findings of the Korean courts do not support the contention that the net effect of the Merger on the NPS's portfolio would have been negative, or that it stood to lose "an enormous amount of value from the Merger."²⁹¹

187. The Respondent submits that it is uncertain whether in the counterfactual scenario the Experts Voting Committee or the Investment Committee would have decided the Merger, the Investment Committee being empowered under Article 8(2) of the Voting Guidelines to request a decision from the Experts Voting Committee when it finds a matter "difficult to choose."²⁹² According to the Respondent, had the matter been referred to the Experts Voting Committee, there is no evidence it would have voted against the Merger, the contrary view resting on a prediction that Mr. Cho would have opposed it.²⁹³ That prediction, it argues, is irreconcilable with Mr. Cho's own testimony that he had not made up his mind and "definitely did not have plans to vote against the Merger," and that he considered the Experts Voting Committee bound to respect the Merger Injunction Decision's finding of no illegality.²⁹⁴ Nor would the Experts Voting Committee necessarily have followed the SK Merger precedent, since the treasury-stock issue that drove that rejection was absent here and, unlike the SK Merger, the Merger had the benefit of the Merger Injunction Decision.²⁹⁵
188. The Respondent further submits that Mr. Cho's acknowledgment in cross-examination that the SK Merger resembled the Merger in involving the founding family's control drew only a limited comparison, the risks of a failed merger being far greater for the Merger than for the SK Merger.²⁹⁶
189. In the Respondent's view, Mr. [REDACTED]'s interview record, which the Claimant introduced in translation immediately before the Hearing, says nothing as to how the Experts Voting Committee would have voted.²⁹⁷ Although it purportedly records his statement that four professor-members of that committee would have voted against the Merger, that statement did

²⁹⁰ Respondent's Corrected Submission on the Remitted Issue, paras. 111-12; Respondent's Rebuttal Submission on the Remitted Issue, para. 45; Hearing Transcript, Day 2, pp. 105:19-107:6.

²⁹¹ Rejoinder on the Remitted Issue, para. 72.

²⁹² Respondent's Corrected Submission on the Remitted Issue, para. 114, *citing* Award, para. 223.

²⁹³ Respondent's Corrected Submission on the Remitted Issue, para. 118.

²⁹⁴ Respondent's Corrected Submission on the Remitted Issue, paras. 124, 126, *citing* First Cho Witness Statement, paras. 21, 30 (**RWS-1**).

²⁹⁵ Respondent's Corrected Submission on the Remitted Issue, paras. 129-30; Hearing Transcript, Day 2, p. 108:10-24.

²⁹⁶ Respondent's Corrected Submission on the Remitted Issue, para. 131; Second Cho Witness Statement, para. 6 (**RWS-2**); Respondent's Rebuttal Submission on the Remitted Issue, para. 59.

²⁹⁷ Respondent's Rebuttal Submission on the Remitted Issue, para. 60.

not survive his testimony, Mr. [REDACTED] having confirmed that he had not asked any of the four their position and had afterwards had only “casual” conversations with two of them.²⁹⁸

190. As for the Investment Committee, the Respondent contends that, even absent the MHW’s pressure, objectively derived synergy figures placed before it would likely still have produced a vote in favor of the Merger.²⁹⁹
191. Turning to the specific evidence relied on by the Claimant, the Respondent rejects as “unproven and inaccurate” the Claimant’s assertion that, at a meeting on 18 March 2015, NPS representatives indicated that the NPS did not support the Merger.³⁰⁰ The two NPS officials who attended that meeting, it submits, neither communicated nor had authority to communicate an institutional NPS position, neither of them being a member of the Investment Committee.³⁰¹ The Respondent recalls that, in its letter of 15 June 2015, the NPS made clear that it had expressed no position on the Merger to the Claimant in any form.³⁰² It adds that the Claimant omits text messages exchanged among Samsung Group employees on the day of the SK Merger vote, in which one wrote that “NPS is against the SK merger but the SC&T merger case is different, and I was told from a reliable source that the internal consensus is to vote for the merger.”³⁰³ In any event, the Respondent notes that the alleged statements pre-dated the vote by four months, before the NPS had reviewed the Merger’s impact on shareholder value and before the Merger Injunction Decision was issued.³⁰⁴ On this footing, the Respondent submits that there is no basis, on any standard of proof, for holding that the NPS had formed a position against the Merger at the time of the first intervention on 30 June 2015.³⁰⁵
192. The Respondent asserts that the NPS could have had no institutional position before its decision-making body began deliberating, and that its information-gathering in fact continued until the eve

²⁹⁸ Respondent’s Rebuttal Submission on the Remitted Issue, para. 60, *referring to* Statement Report of [REDACTED] to the Public Prosecutor’s Office, p. 21 (C-456). *See also* Respondent’s Opening Presentation in the Remitted Proceedings, pp. 139, 141.

²⁹⁹ Respondent’s Corrected Submission on the Remitted Issue, para. 139.

³⁰⁰ Rejoinder on the Remitted Issue, para. 60; Respondent’s Rebuttal Submission on the Remitted Issue, paras. 32-33.

³⁰¹ Rejoinder on the Remitted Issue, para. 60, *citing* Letter from NPS to Elliott, 15 June 2015, p. 1 (C-201).

³⁰² Rejoinder on the Remitted Issue, para. 60, *citing* Letter from NPS to Elliott, 15 June 2015, p. 1 (C-201).

³⁰³ Rejoinder on the Remitted Issue, para. 64, *citing* Record of text messages between [REDACTED] and various recipients, 24 June 2015, p. 13231 (C-421). *See also* Respondent’s Rebuttal Submission on the Remitted Issue, para. 31.

³⁰⁴ Rejoinder on the Remitted Issue, para. 61; Respondent’s Rebuttal Submission on the Remitted Issue, para. 30.

³⁰⁵ Respondent’s Rebuttal Submission on the Remitted Issue, paras. 28-29.

of the Investment Committee meeting of 10 July 2015.³⁰⁶ It further notes that, as at 30 June 2015, the Merger Injunction Decision had not yet been issued, and that the Claimant itself had written on 23 June 2015 that the NPS was “still considering its position.”³⁰⁷ In the Respondent’s submission, to the extent any preliminary views had been formed within the NPS by 30 June 2015, they favored the Merger.³⁰⁸ It points to the Seoul High Court’s finding in the Moon/Hong proceedings that CIO Hong “had the preconceived will to approve the Merger even before he was instructed by the [MHW],” together with Mr. [REDACTED]’s testimony that the NPS Research Team’s assessment of the Merger had been positive from the time it was announced.³⁰⁹

193. The Respondent disputes the Claimant’s proposition that the NPS Research Team’s initial merger valuation demonstrates that the NPS had already concluded that the Merger “was destructive of value.”³¹⁰ It asserts that this was a benchmark ratio, prepared by individuals who lacked valuation experience and who did not have important information relevant to the valuation.³¹¹ The 30 June 2015 analysis presented a range of benchmark ratios of which 1:0.64 was the midpoint, and was a first draft prepared when the NPS had “almost no materials” for valuing Samsung Biologics.³¹² The Research Team went on to produce three iterations, much of the decline in the second being reversed in the third, which for the Respondent reflects an iterative process, rather than a settled pre-intervention position.³¹³
194. The Respondent also rejects the Claimant’s assertion that six Investment Committee members stated they would not have voted for the Merger but for the fabricated projection.³¹⁴ On a faithful reading, it submits, those members were reacting to being told that the projection had been “arbitrarily manipulated,” several saying only that they “would have had difficulty” voting in

³⁰⁶ Respondent’s Rebuttal Submission on the Remitted Issue, para. 30, *citing* Seoul Central District Court, Case No. 2020GoHap718, 920 (Consolidated), 5 February 2024, pp. 85, 724-33 (**R-391**); NPSIM, “Analysis Regarding the Merger,” 10 July 2015, p. 48 (**R-127**); NPSIM Management Strategy Office, “2015-30th Investment Committee Meeting Minutes,” 10 July 2015, p. 4 (**R-128**).

³⁰⁷ Respondent’s Rebuttal Submission on the Remitted Issue, para. 30, *citing* Letter from Elliott to NPS, 23 June 2015, p. 1 (**C-202**).

³⁰⁸ Respondent’s Rebuttal Submission on the Remitted Issue, para. 31.

³⁰⁹ Respondent’s Rebuttal Submission on the Remitted Issue, para. 31, *citing* Seoul High Court Case No. 2017No1886, p. 66 (**R-153**); Transcript of Court Testimony of [REDACTED] (Moon/Hong Seoul Central District Court), p. 66 (**C-508**).

³¹⁰ Respondent’s Rebuttal Submission on the Remitted Issue, para. 34.

³¹¹ Respondent’s Rebuttal Submission on the Remitted Issue, para. 34.

³¹² Respondent’s Rebuttal Submission on the Remitted Issue, para. 35.

³¹³ Respondent’s Rebuttal Submission on the Remitted Issue, para. 35.

³¹⁴ Respondent’s Corrected Submission on the Remitted Issue, para. 136.

favor had they learned of the deception.³¹⁵ According to the Respondent, to say that one would not have voted in favor knowing the figure was manipulated is not to say that one would have voted differently on an accurate figure, the question being whether reliable grounds existed, independent of the projection, to believe the Merger would enhance long-term shareholder value.³¹⁶

195. The Respondent further contends that the members' statements derive from prosecutorial reports of limited reliability, noting that several members subsequently corrected their accounts in court.³¹⁷ The Respondent rejects the suggestion that, in challenging the reliability of those reports, it resiles from any stipulation, maintaining that its agreement in the Original Proceedings extended only to the Korean courts' "affirmative factual findings," and not to the reliability of the underlying reports.³¹⁸ The Respondent also recalls that it challenged the reliability of those reports at the time, a point that the Tribunal left unresolved in paragraph 621 of the Award.³¹⁹
196. The Respondent further highlights that the Investment Committee members testified that they considered other factors in addition to the projection, so that the figure itself was not decisive and its replacement with an objectively derived number would not necessarily have changed the outcome.³²⁰ The Respondent points out that the Korean courts found in two separate cases that the acts of Minister Moon and CIO Hong did not decisively influence the Investment Committee's decision, reasoning that the fairness of the Merger Ratio turned on subjective valuations, that the referral decision lay with the Committee, that the open voting method did not steer the outcome, and that the experienced members understood the synergy figures to be projections only.³²¹
197. Finally, the Respondent submits that the votes of other SC&T shareholders not subject to any interference – a range of large and small investors, including sovereign wealth funds, who

³¹⁵ Respondent's Corrected Submission on the Remitted Issue, para. 136, *citing* Transcript of Court Testimony of [REDACTED] (Moon/Hong Seoul Central District Court), p. 15 (C-502).

³¹⁶ Respondent's Corrected Submission on the Remitted Issue, para. 137; Hearing Transcript, Day 2, pp. 112:7-113:9; Respondent's Rebuttal Submission on the Remitted Issue, para. 46.

³¹⁷ Respondent's Rebuttal Submission on the Remitted Issue, para. 53. The Respondent also notes that prosecutorial reports are condensed accounts in the prosecutor's own words, taken in conditions controlled by the prosecution and behind closed doors, without any right for defense counsel to attend. Respondent's Rebuttal Submission on the Remitted Issue, paras. 51-52.

³¹⁸ Respondent's Rebuttal Submission on the Remitted Issue, paras. 54-55.

³¹⁹ Respondent's Rebuttal Submission on the Remitted Issue, para. 55.

³²⁰ Respondent's Corrected Submission on the Remitted Issue, para. 137; Rejoinder on the Remitted Issue, para. 83(c); Respondent's Rebuttal Submission on the Remitted Issue, paras. 44, 46. *See* Hearing Transcript, Day 2, p. 112:15-20.

³²¹ Respondent's Corrected Submission on the Remitted Issue, para. 138; Rejoinder on the Remitted Issue, paras. 54, 83(c); Respondent's Rebuttal Submission on the Remitted Issue, para. 47.

exercised independent judgment in favor of the Merger – offer another measure of the likely counterfactual outcome and undermine the Claimant’s contention that a rational, uncoerced NPS would have voted against it.³²²

c) Whether the Tribunal’s Surviving Findings Already Establish Causation

198. The Respondent rejects the Claimant’s assertion that the Tribunal has already decided matters it never in fact decided.³²³

199. According to the Respondent, nowhere in the Award did the Tribunal find that the Experts Voting Committee “would have rejected the Merger,” rendering baseless the Claimant’s assertion that the Tribunal treated the Blue House Measures as taken “because the [Experts Voting Committee] would have rejected the Merger, given the recent precedent of the SK Merger.”³²⁴ Nor does the Claimant’s assertion that the Tribunal “rejected[] the failed argument that various factors purportedly ‘weighed in favor of approving the Merger’” find support in the text of the Award.³²⁵

d) Additional Judgments and the Mason Award

200. The Respondent clarifies that it does not seek, through the Additional Judgments, to reopen findings not set aside, but relies on them because they guide the counterfactual question now before the Tribunal.³²⁶ In this context, the Respondent maintains that, in the Additional Judgments, the Korean courts made findings that bear on the likely analysis and decision-making of the NPS in a Treaty-compliant scenario, and that the Claimant has “sparsely engaged” with them.³²⁷ The Respondent contends that the Claimant’s argument that the Korean courts in the Shareholder Claims Judgments did not find the NPS to have voted independently is incorrect and misleading. According to the Respondent, the Seoul Central District Court found it “difficult to find that the acts of [Minister Moon] and [CIO Hong] actually affected the exercise of voting rights by the [NPS]’s Investment Committee,” and that it was not established that the NPS “served as an instrument for the Defendant’s unlawful acts” or that deceit or coercion overcame its “free

³²² Respondent’s Corrected Submission on the Remitted Issue, paras. 140-41; Hearing Transcript, Day 2, pp. 40:11-18, 62:22-63:1.

³²³ Rejoinder on the Remitted Issue, para. 50.

³²⁴ Rejoinder on the Remitted Issue, para. 51(a); Respondent’s Rebuttal Submission on the Remitted Issue, para. 58.

³²⁵ Rejoinder on the Remitted Issue, para. 51(c).

³²⁶ Rejoinder on the Remitted Issue, para. 55.

³²⁷ Rejoinder on the Remitted Issue, paras. 51(c), 54.

will.”³²⁸ To reach this factual finding, the Seoul Central District Court had to be satisfied to a “high degree of probability (likelihood)” that an ordinary, reasonable person would not entertain any doubt about the existence of the fact.³²⁹

201. The Respondent acknowledges that certain findings in the Additional Judgments may, at first sight, appear in tension with the Tribunal’s findings in paragraphs 602 and 623 of the Award that the NPS acted “under the direction and instructions of the MHW.”³³⁰ In its view, those passages concern what happened in the “actual world” and were made for the purpose of liability, not causation, whereas the Shareholder Claims Judgment specifically engaged in a counterfactual analysis, so that the Tribunal may consider the courts’ findings without revisiting paragraphs 602 and 623.³³¹ As for the Merger Annulment Decision, the Respondent submits that paragraph 614 of the Award does not address its findings on whether the tainted projections were decisive, and that none of the grounds on which the Tribunal there distinguished that judgment applies to the Additional Judgments.³³²
202. As to the *Mason* award, the Respondent contends that the *Mason* tribunal’s ruling is contrary to the evidence before this Tribunal and unpersuasive on its own terms.³³³ In the Respondent’s view, the *Mason* tribunal’s inference that the Experts Voting Committee would probably have opposed the Merger – drawn from the premise that the MHW would not have interfered had it been confident of the Expert Voting Committee’s approval – is an “unsustainable leap of logic,” since the MHW acted only because approval was “not 100% guaranteed,” and because it wanted to “leave nothing to chance,” a standard well below “in all probability.”³³⁴ The tribunal’s reliance on the SK Merger fares no better, the decision-makers on the Merger having had the benefit of the Merger Injunction Decision and having had to weigh the financial risks of a failed Merger, so that it is “simply not tenable to infer from the [Experts Voting Committee]’s vote on the SK

³²⁸ Rejoinder on the Remitted Issue, para. 54(a), *citing* Seoul Central District Court, Case No. 2020GaHap600079, pp. 12-13 (**R-389**). *See also* Hearing Transcript, Day 2, pp. 28:22-30:19; Respondent’s Rebuttal Submission on the Remitted Issue, para. 47.

³²⁹ Hearing Transcript, Day 2, pp. 30:20-31:5, 42:20-25. *See also* Reply on the Remitted Issue, Annex B, para. 11(c); Respondent’s Rebuttal Submission on the Remitted Issue, para. 71.

³³⁰ Rejoinder on the Remitted Issue, para. 56, *citing* Award, paras. 602, 623.

³³¹ Rejoinder on the Remitted Issue, paras. 56-57.

³³² Respondent’s Rebuttal Submission on the Remitted Issue, paras. 48-49.

³³³ Respondent’s Corrected Submission on the Remitted Issue, para. 142, *referring to* *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. 865 (**CLA-219**).

³³⁴ Respondent’s Corrected Submission on the Remitted Issue, para. 149, *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. 868 (**CLA-219**). *See also* Hearing Transcript, Day 2, pp. 8:5-15, 107:20-24; Respondent’s Rebuttal Submission on the Remitted Issue, paras. 3, 16, 58.

Merger that [it] would likely have opposed the Merger.”³³⁵ The Respondent further submits that the Mason tribunal, when finding that it was “not convinced that there were sound economic reasons ... for the NPS to vote in favor of the Merger,” failed to weigh all relevant factors, ignored how a failed Merger would depress share prices, relied only on reports unfavorable to SC&T while disregarding contrary reports, and was dismissive of synergies the JY Lee Unlawful Merger Judgments recognized as “bona fide and reasonable.”³³⁶

B. THE TRIBUNAL’S DETERMINATION

1. Applicable Standard of Proof

203. As summarized above, the Parties disagree on the standard of proof applicable to factual causation. The Claimant argues that the applicable standard is “balance of probabilities,” as determined by the Tribunal in paragraph 266 of the Award, and that the counterfactual scenario does not allow the Tribunal to speculate as to whether the NPS would have voted in favor of the Merger in any event, regardless of the intervention. According to the Claimant, the events in the “actual world” remain directly relevant to the counterfactual scenario. The Respondent argues, in response, that the applicable standard is “in all probability,” as adopted by the Permanent Court of International Justice in *Chorzów Factory* and endorsed by the Tribunal in paragraph 931 of the Award. In the Respondent’s view, the “in all probability” standard is equivalent to the “sufficient degree of certainty” standard adopted by the ICJ in the *Bosnian Genocide* case and by the *Bilcon* tribunal and, as such, is “significantly higher” than a mere balance of probabilities.
204. The Tribunal recalls that in the Original Proceedings it took note of the Parties’ agreement that the standard applicable “in this arbitration” to affirmative findings of fact is the balance of probabilities.³³⁷ In connection with quantum, the Tribunal stated that “for ... potential loss to be compensable under international law, the Claimant would have had to demonstrate, under the principle of full compensation set forth in the *Chorzów Factory* case, that the claimed increase in value would have occurred in ‘all probability.’”³³⁸ The Tribunal did not make any further or separate determination on the standard of proof specifically applicable to causation. It must therefore clarify the position in this Award on the Remitted Issue.

³³⁵ Respondent’s Corrected Submission on the Remitted Issue, paras. 152-54; Hearing Transcript, Day 2, p. 108:10-24.

³³⁶ Respondent’s Corrected Submission on the Remitted Issue, paras. 155-69, 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. 877 (**CLA-219**).

³³⁷ Award, paras. 266, 581.

³³⁸ Award, para. 931, referring to *Case Concerning the Factory at Chorzów (Germany v. Poland)*, Decision on the Merits, PCIJ Rep., Series A – No. 17, 13 September 1928, p. 47 (**CLA-97**).

205. The Tribunal notes that, while paragraph 581 (holding that the applicable standard of proof is balance of probabilities) is part of the Award dealing with the standard applicable to establishing a breach of the Treaty, there is no basis in the Award to infer that this standard is not applicable to all affirmative findings of fact, including those relating to causation. Indeed, as noted above, the Tribunal held in paragraph 581 that the evidentiary standard applicable “in this arbitration” is balance of probabilities, which implies that it is applicable to all affirmative findings of fact, including those relating to causation. Moreover, while the Award also referred to the “in all probability” standard adopted in *Chorzów Factory*, this was in the context of quantum, not causation, and the Award did not comment specifically on whether the “in all probability” standard is the same as, or higher than, the balance of probabilities – although the Award did cite with approval arbitral jurisprudence adopting the position that there is no difference between the two standards.³³⁹
206. Thus, the issue that was not specifically determined in the Award – and remains in dispute between the Parties – is whether a standard of proof other (and more exacting) than the balance of probabilities standard applies to establishing factual causation. As noted above, according to the Claimant, the applicable standard is the same as that applicable to affirmative findings of fact, *i.e.* balance of probabilities, and that the “in all probability” standard is not higher than balance of probabilities, whereas the Respondent argues that the applicable standard is “in all probability,” which requires “sufficient degree of certainty” – an evidentiary standard that in the Respondent’s view is more exacting than balance of probabilities. In support of its position, the Respondent relies in this Remitted Proceedings (as it did in the Original Proceedings) on *Bilcon v. Canada* and the *Bosnian Genocide* case.
207. In *Bilcon v. Canada*, the tribunal determined that the applicable test in establishing causation in a but-for scenario is “sufficient degree of certainty” or, alternatively, “in all probability.”³⁴⁰ In support of its primary test, *i.e.* that the applicable standard is “sufficient degree of certainty,” the tribunal relied on *Bosnian Genocide*.³⁴¹ In *Bosnian Genocide*, the ICJ addressed the applicable

³³⁹ See footnote 337 above. See also Award, para. 581 referring to *Glencore International A.G. and C.I. Prodeco S.A. v. Republic of Colombia*, ICSID Case No. ARB/16/6, Award, 27 August 2019, para. 669 (CLA-121); *Bear Creek Mining Corporation v. Republic of Peru*, ICSID Case No. ARB/14/21, Award, 30 November 2017, para. 674 (CLA-89); *Gold Reserve Inc. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/09/1, Award, 22 September 2014, para. 685 (CLA-122); *Ioannis Kardassopoulos and Ron Fuchs v. Republic of Georgia*, ICSID Case Nos. ARB/05/18 and ARB/07/15, Award, 3 March 2010, para. 229 (CLA-133).

³⁴⁰ *Bilcon of Delaware, Inc. and others v. The Government of Canada*, PCA Case No. 2009-04, Award on Damages, 10 January 2019, para. 114 (RLA-90).

³⁴¹ See *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007, para. 462 (CLA-24).

standard of proof extensively, noting that the case involved “charges of exceptional gravity.”³⁴² The Court recalled that it “ha[d] long recognized that claims against a State involving charges of exceptional gravity must be proved by evidence that is fully conclusive,” and required that it “be fully convinced that allegations made in the proceedings, that the crime of genocide ... have been committed, have been clearly established.”³⁴³ Having found that the respondent had breached its obligations under the Genocide Convention, the ICJ went on to deal with the applicant’s claim for reparations and the causal link that is required to exist between the respondent’s wrongful conduct and the injury asserted by the applicant in respect of the counterfactual scenario where the respondent would have complied with its obligation to prevent genocide. The ICJ noted that the applicable standard was a “sufficiently direct and certain causal nexus,” and that “[s]uch a nexus could be considered established only if the Court were able to conclude from the case as a whole and with sufficient degree of certainty” that the wrongful conduct “would in fact have been averted if the Respondent had acted in compliance with its legal obligations.”³⁴⁴

208. The Respondent asserts that the ICJ has applied the same evidentiary standard in its subsequent jurisprudence, including in *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)* and *Case Concerning Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*.³⁴⁵ Both *Diallo* (decided in 2012) and the *Certain Activities* case (decided in 2018) confirmed the causation test adopted in the *Bosnian Genocide* – a sufficiently direct and certain causal nexus.³⁴⁶ In the most recent case, *Armed Activities in the Congo* (decided in 2022), the ICJ reiterated, referring to its earlier jurisprudence, including *Certain Activities* and *Diallo*, that the applicable standard is whether there is a “sufficiently direct and certain causal nexus” between the wrongful act and the resulting damage, while noting that “the causal nexus required may vary depending on the primary rule violated and the nature and extent of the injury.”³⁴⁷ The ICJ specifically rejected the respondent’s argument, based on an

³⁴² *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007, para. 209 (CLA-24).

³⁴³ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007, para. 209 (CLA-24).

³⁴⁴ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007, para. 462 (CLA-24).

³⁴⁵ Rejoinder on the Remitted Issue, para. 92.

³⁴⁶ *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, Judgment on Compensation, I.C.J. Reports 2012, para. 14 (RLA-226); *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, Judgment on Compensation, I.C.J. Reports 2018, para. 32 (RLA-225).

³⁴⁷ *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Reparations Judgment, I.C.J. Reports 2022, paras. 93-94 (CLA-215).

analogy with *Bosnian Genocide*, that “even if it had taken the necessary measures, the damage caused by third parties ... would still have occurred,” recalling that, in *Bosnian Genocide*, the Court “did not ‘purport to establish a general jurisprudence applicable to cases where a treaty instrument, or other binding legal norm, includes an obligation for States to prevent certain acts.’”³⁴⁸

209. Therefore, the standard of proof adopted by the ICJ in these cases as applicable to causation is “sufficiently direct and certain causal nexus.” However, as the ICJ stressed in *Armed Activities in the Congo*, “the causal nexus required may vary depending on the primary rule violated and the nature and extent of the injury,”³⁴⁹ and cautioned against drawing analogies with cases such as *Bosnian Genocide*, as its decision in that case did not purport to establish a “general jurisprudence.”³⁵⁰ Moreover, while the ICJ has not clearly distinguished in its jurisprudence between causation in fact and causation in law, it is apparent in the jurisprudence cited above that the standard of “sufficiently direct and certain causal nexus” covers both forms of causation: causation in fact is established if the causal nexus between the breach and the loss is “sufficiently ... certain,” whereas causation in law exists if the causal nexus between the breach and the loss is “sufficiently direct.”³⁵¹
210. There is no indication in the ICJ’s jurisprudence that there is any appreciable difference between the standard of proof adopted by the ICJ as applicable to factual causation – sufficient certainty – and the balance of probabilities (or the “balance of evidence” or “preponderance of evidence”), which is the standard of proof generally adopted in investment treaty arbitration, and which the Tribunal also adopted in the Original Proceedings as the applicable standard in determining whether the Respondent had breached the Treaty. On the contrary, the ICJ appears to consider that the question of whether a sufficient causal link has been established between the claimed breach and the alleged loss is a matter of weighing the evidence; as the ICJ observed in *Certain Activities*, “[u]ltimately, it is for the Court to decide whether there is a sufficient causal nexus

³⁴⁸ *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Reparations Judgment, I.C.J. Reports 2022, paras. 92, 96 (CLA-215).

³⁴⁹ *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Reparations Judgment, I.C.J. Reports 2022, para. 93 (CLA-215).

³⁵⁰ *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Reparations Judgment, I.C.J. Reports 2022, para. 96 (CLA-215), citing *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007, para. 429 (CLA-24).

³⁵¹ While the qualifier “sufficient” does not specify the degree of certainty and directness required, it appears to reflect the Court’s view that the determination of whether the causal nexus is “sufficiently certain” or “sufficiently direct” is a matter of weighing the evidence and thus ultimately left to the adjudicator’s appreciation. See *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, Judgment on Compensation, I.C.J. Reports 2018, para. 34 (RLA-225).

between the wrongful act and the injury suffered.”³⁵² Apart from cases involving charges of exceptional gravity, such as *Bosnian Genocide*, there is no legal basis to argue that the standard of proof applicable to establishing a causal link between a breach of an international obligation by a respondent and the loss or damage sustained by a claimant should be more exacting than sufficient certainty.

2. Whether the factual causation of the Claimant’s loss has been established to the applicable standard

211. The Tribunal recalls that its findings in the Award on causation, to the extent that they were based on the finding that the conduct of the NPS was attributable to the ROK (and which has now been set aside), did not require the Tribunal to consider a but-for (*sine qua non*) scenario. The Tribunal merely established, based on the evidence before it, that the NPS held a casting vote, and that there was therefore a causal link between the NPS’s vote on the Merger and the loss suffered by the Claimant.³⁵³ In circumstances where the NPS was considered to be *de facto* a State organ and held a casting vote, the outcome of the Merger depended exclusively on the NPS’s vote, as there was no third party involved in the chain of causation between the vote cast by the State itself (the NPS being its organ) and the effect of the vote – approval of the Merger – which caused a loss to the Claimant. Accordingly, it was not necessary for the Tribunal to consider any counterfactual scenarios.
212. However, in circumstances where the NPS is not considered a State organ but a third party, the question arises as to how this different legal and factual setting affects (i) the causation analysis in the counterfactual scenario; and (ii) the allocation of the burden of proof between the Parties. The Parties have presented extensive argument on these issues in the course of these Remitted Proceedings, and while the Parties’ respective positions on these issues appear to have converged somewhat during the course of the proceedings, the Tribunal considers it appropriate to address them specifically.
213. The Claimant argues that, in *Amco II*, the tribunal faced a but-for scenario similar to that in the present case, and that the Tribunal should adopt the same approach. To summarize, in *Amco II*, the respondent argued that, even if the process in which Amco’s license was revoked was tainted by a denial of justice (as the tribunal found), the respondent could have taken the same decision in a compliant process, and there was therefore no compensable harm to Amco. The tribunal rejected the respondent’s position as it “misaddress[ed] causality”:

³⁵² *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, Judgment on Compensation, I.C.J. Reports 2018, para. 34 (**RLA-225**).

³⁵³ Award, para. 819.

The Tribunal has found that the general background to the BKPM decision constituted a denial of justice, and led to a decision which was indeed the cause of harm to Amco. To argue, as did Indonesia, that although there had been procedural irregularities, a ‘fair BKPM’ would still have revoked the license, because of Amco’s own shortcomings, is to misaddress causality. The Tribunal cannot pronounce upon what a ‘fair BKPM’ would have done. This is both speculative, and not the issue before it. Rather, it is required to characterise the acts that BKPM did engage in and to see if those acts, if unlawful, caused damage to Amco. It is not required to see if, had it acted fairly, harm might then have rather been attributed to Amco’s own fault.³⁵⁴

214. The Tribunal considers that, since its finding that the NPS is a State organ has been set aside, *Amco II* is not instructive in this case. While in *Amco II* the entity that revoked the license, the Capital Investment Coordinating Board (BKPM), was a State organ (a regulatory agency), in the present case (as determined by the High Court), the NPS is not a State organ but a legal entity separate from the State and, as such, a third party whose conduct is not, as a matter of law, generally attributable to the State. It is therefore a relevant question, in the abstract, whether the NPS would have decided in favor of the Merger even in the absence of the intervention by the Korean State. The Tribunal therefore must consider this issue in the present Award on the Remitted Issue even if it was not addressed in the Award (as it did not arise). Indeed, as anticipated by the High Court, the Tribunal is not precluded by the findings in the Award from determining new issues that arise in these Remitted Proceedings but have not been addressed appropriately in the Award.³⁵⁵
215. The Tribunal recalls that, while the Claimant argued in the Original Proceedings as its primary case that the NPS was a State organ, it also argued, alternatively, that but for the intervention, the NPS would not have voted in favor of the Merger.³⁵⁶ In the present Remitted Proceedings, the Claimant contends that the Tribunal has already found that the ROK’s breaches caused the NPS to vote in favor of the Merger, and maintains the position that, but for the intervention, the NPS would have voted against the Merger. While the Claimant accepts that it bears the burden of proving that the NPS would have voted against the Merger but for the intervention, it stresses that the starting point for constructing the counterfactual is the evidence of what actually happened, with the Blue House Measures removed, and that it is not required to prove a hypothetical negative (*i.e.* that the NPS would not have voted in favor of the Merger).³⁵⁷

³⁵⁴ *Amco Asia Corporation and others v. Republic of Indonesia*, ICSID Case No. ARB/81/1, Award in Resubmitted Proceedings, 31 March 1990, para. 174 (CLA-237).

³⁵⁵ See paragraph 94 above, citing *Republic of Korea v. Elliott Associates, L.P.*, CL-2023-000395, Ruling on Consequential Issues, 18 March 2026, para. 5(l) (CLA-227).

³⁵⁶ Award, para. 724. See Reply in the Original Proceedings, para. 1 (“This arbitration arises from the Republic of Korea’s illegal intervention in a Merger that would not have occurred but for that intervention, and that has damaged the Claimant by occurring.”). See also Reply in the Original Proceedings, paras. 4, 7, 13, 16.

³⁵⁷ Claimant’s Submission on the Remitted Issue, Section II.B; Claimant’s Rebuttal Submission, Section III.C.

216. The Respondent's case has remained largely the same, in both the Original Proceedings and these Remitted Proceedings. While the Respondent argued in the Original Proceedings that, even if one were to assume that the Respondent had intervened in the NPS's decision-making process, there would be no Treaty breach if either the NPS *could* have voted the same way absent the Respondent's intervention in the Merger or the Merger *could* still have been approved absent the NPS's affirmative vote.³⁵⁸ In the present Remitted Proceedings, the Respondent argues that (i) the Claimant has not proven its counterfactual case; and that (ii) even in the absence of the Respondent's intervention, the NPS *could reasonably* have voted in favor of the Merger and *would* have done so in any event.³⁵⁹ However, the Respondent does not accept that it bears any burden of proof in making out these points and claims that it has produced evidence merely to rebut the Claimant's case.³⁶⁰
217. On the allocation of the burden of proof, the Tribunal considers that the Claimant bears the burden of proving that (i) the Blue House and the MHW intervened in the NPS's decision-making and caused the NPS to vote in favor of the Merger; and that (ii) the NPS would have voted against the Merger but for the intervention. As set out more fully in the remainder of this Section, the Tribunal has ruled on the first issue in the Award, in a passage of the Award that has not been set aside, finding sufficient evidence that the Blue House and the MHW intervened in NPS's decision-making, in breach of the Treaty, "to the effect that the Investment Committee voted in favor of the Merger."³⁶¹ The second issue – whether the NPS would have voted against the Merger but for the intervention – has arisen only after the setting-aside of the Tribunal's finding that the NPS is a State organ, as explained above, and must be determined in this Award on the Remitted Issue. The Tribunal will also address this second issue later in this Section, while keeping in mind that the evidence that led the Tribunal's finding on the first issue may also bear on the counterfactual scenario to be considered in connection with the second issue. The Tribunal also accepts the Respondent's position that it bears no burden of proof insofar as it merely argues that the Claimant's evidence (in support of its argument that the NPS would have voted against the Merger in the absence of any intervention by the Blue House and the MHW) is insufficient to discharge the Claimant's own burden of proof. However, insofar as the Respondent claims, as it does, that the evidence in fact shows that the NPS would have voted in favor of the Merger in any event (or *could reasonably* have done so), even in the absence of any intervention, it bears the

³⁵⁸ Award, para. 754.

³⁵⁹ Respondent's Corrected Submission on the Remitted Issue, para. 10; Rejoinder on the Remitted Issue, paras. 8(d), 81.

³⁶⁰ Hearing Transcript, Day 2, p. 54:1-12; Rebuttal Submission on Remitted Issue, para. 11.

³⁶¹ Award, paras. 602-03.

burden of proving its allegation. As the ICJ stated in the cases relied upon by the Respondent, “it is well established” that “a party asserting a fact must establish it.”³⁶² This principle applies equally to assertions relating to counterfactual events.

218. The Tribunal has addressed causation in the Award in several passages that have not been set aside. While these passages do not specifically deal with the counterfactual scenario as to whether the NPS would have voted against the Merger but for the intervention (as this was not necessary in the circumstances), they are also relevant to the counterfactual scenario. The passages of the Award that are relevant to the counterfactual scenario are analyzed below.

219. Thus, the Tribunal determined, on the basis of the factual findings of the Seoul Central District Court and the Seoul High Court in the Moon/Hong proceedings, which were not in dispute between the Parties and indeed had been specifically stipulated as being accepted by the Respondent, that:

- (a) The 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; and
- (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, 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 would vote in favor of the Merger.³⁶³

220. The Tribunal’s finding that the ROK 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” implies that there was a certain degree of probability (which the Tribunal did not need to determine) that, absent the intervention, the NPS would have voted against the Merger.

221. The Tribunal also relied on the findings of the Seoul High Court in connection with the criminal proceedings against former President Park and JY Lee, addressing the reasons for the Blue House’s intervention. The passage quoted in part in the Award reads, in relevant part:

³⁶² *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007, para. 204 (CLA-24); *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Reparations Judgment, I.C.J. Reports 2022, paras. 115-16 (CLA-215).

³⁶³ Award, para. 602.

Around late June 2015, the Defendant instructed [Mr. Jong-beom An], Senior Secretary [for Economic Affairs], to “keep a close eye on the NPS’s exercise of voting rights on the Merger.” ... At the time, the Expert Voting Committee had just voted against the [SK] merger, so it became more likely that the Expert Voting Committee would also vote against the Merger. Also, this was when the [Samsung] group was facing an emergency situation with aggravating difficulties as [Elliott] came on the scene. The Defendant’s instruction was not just a general instruction to keep a close eye on the “Merger” but a specific instruction to keep a close eye on the “exercise of voting rights.” ... [I]t was inevitable to reach the conclusion that the Defendant gave direction or approval during the process of deciding on the approval issue of the Merger.³⁶⁴

222. The Seoul High Court’s finding implies that, as a result of the rejection of the SK Merger by the NPS’s Experts Voting Committee and the “emergence” of Elliott, which had created an “emergency situation” for the Samsung Group, “it became more likely that the Experts Voting Committee would also vote against the Merger.”³⁶⁵ This implies that the reason for the Blue House’s intervention was the increasing probability, in the course of June 2015, that the NPS would vote against the Merger.

223. The Tribunal also referred in the Award to the Seoul High Court’s finding, in the same judgment, that the Blue House had instructed the MHW to “unduly intervene” in the NPS’s vote on the Merger and had given “decisive assistance” to the Merger.³⁶⁶ The passage from the Seoul High Court judgment, as quoted in the Award, reads in its entirety as follows:

The meeting was held immediately after the Merger which was considered as one of the most crucial succession processes when issues such as stricter separation of industrial and financial capital and promotion of economic democratization policies were increasingly brought up for discussion ... with the status of [Geon-hui Lee]. In order to accelerate the succession to consolidate his control of the group under the succession-friendly [Park] Administration that assisted the Merger, it was necessary for [JY Lee] to show his gratitude to the Defendant with regard to the Merger and ask for continued assistance in connection with the succession.

Around the one-to-one talks on 25 July 2015, the Defendant thought that she could give assistance to [JY Lee’s] succession, and her thought was shared by the presidential staff in the Blue House. [The Samsung Group] faced a situation where the success of the Merger hinged on a showdown vote at the general shareholders’ meeting with the unexpected emergence of [the Claimant] in the course of the Merger and went all out to seal the Merger in a group-wide effort. By having the Ministry of Health and Welfare unduly intervene in the process of the NPS’ exercise of its voting rights, the Defendant and her presidential staff in the Blue House had caused the NPS to vote in favor of the Merger at the general shareholders’ meeting of [SC&T], which had a decisive influence on sealing the Merger.

Under the circumstances, the office of [Blue House] prepared a talking points memo dated July 25, 2015 to provide the Defendant with reference materials to the Defendant for her one-on-one meeting with [JY Lee]. ... [T]he talking points memo contained the following in connection with the succession: “The corporate governance of [the Samsung Group] is vulnerable to threats from foreign hedge funds, etc. A crisis of [the Samsung Group] is the crisis of the Republic of Korea, so I hope [the Samsung Group’s] corporate governance

³⁶⁴ Award, para. 616, *citing* Seoul High Court Case No. 2018No1087, 24 August 2018, pp. 86-87, 90 (C-286/R-169).

³⁶⁵ Seoul High Court Case No. 2018No1087, 24 August 2018, pp. 86, 102 (C-286/R-169).

³⁶⁶ Award, para. 617.

becomes quickly stabilized so that the group can be committed to future affairs in the face of fierce international competition.”

...

There was decisive assistance from [the Park] Administration to the Merger immediately prior to the meeting, and such friendly stance of [the Park] Administration towards the succession was sustained afterwards.³⁶⁷

224. On the basis of the evidence before it, the Tribunal concluded that:

The Court’s findings establish that not only the MHW but also the administration of the former President Park intervened, by instructing the MHW to intervene, in the Merger vote, including, *inter alia*, to fend off the ‘unexpected emergence of [the Claimant].’³⁶⁸

225. These findings imply that the ROK’s intervention in the NPS’s decision-making process was motivated by the recognition of an increased risk that the Claimant’s public opposition to the Merger would cause the NPS to vote against the Merger. While the Award did not comment on the remainder of the Seoul High Court’s findings, as quoted above, they remain relevant to the counterfactual scenario, including the Court’s finding that the Blue House’s intervention had “a decisive influence on sealing the Merger,” and that the Blue House provided “decisive assistance.”³⁶⁹ These findings imply that the intervention caused a change in the probable outcome of the NPS’s vote.

226. The Tribunal also addressed in the Award the extent and depth of the intervention, based on the Korean courts’ findings in the Moon/Hong proceedings, including that it resulted in (i) disregarding the guidelines governing the exercise of NPS’s voting rights; (ii) the NPS’s voting rights being exercised by the Investment Committee, and not the Experts Voting Committee; (iii) calculation of a fabricated synergy effect to ensure a favorable vote; and (iv) CIO Hong speaking with a number of members of the Investment Committee before and during its meeting.³⁷⁰ The Tribunal summarized its findings as follows:

As established above, when 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.³⁷¹

³⁶⁷ Award, para. 617, *citing* Seoul High Court Case No. 2018No1087, 24 August 2018, pp. 101-03 (C-286/R-169)). *See also* Seoul High Court Case No. 2019No1962, 10 July 2020, pp. 44-45 (R-314) (finding that “[t]here was a decisive assistance from the [Park] Administration to the Merger”).

³⁶⁸ Award, para. 617, *citing* Seoul High Court Case No. 2018No1087, 24 August 2018, p. 86 (C-286/R-169).

³⁶⁹ Award, para. 617, *citing* Seoul High Court Case No. 2018No1087, 24 August 2018, pp. 102-03 (C-286/R-169).

³⁷⁰ Award, para. 598.

³⁷¹ Award, para. 623.

227. The Seoul High Court's findings in connection with the criminal proceedings against former President Park and JY Lee, also cited in the Award, summarize the extent and depth of the intervention in the following terms:

[D]uring the process whereby NPS exercised their voting rights on the Merger, [the Investment Management Division] ended up making the decision at the Investment Committee, not the Experts' Voting Committee, under MHW's unjust instructions that infringed upon the principle of independence with respect to fund management. The Court also finds that [the Investment Management Division] induced the Investment Committee to approve the Merger by way of the unreasonably computed fair merger ratio, improvised analysis results on merger synergy and CIO on [the Investment Management Division], [CIO Hong]'s pressure on members of the Investment Committee. As a result, favorable measure for [JY Lee] was taken in relation to the Merger, which is considered to be the most essential piece of the succession plan.³⁷²

228. The extent and depth of the ROK's intervention in the NPS's decision-making process, as described in the above findings, implies that the Blue House and the MHW believed at the time that, but for the intervention, the NPS would vote against the Merger. It is not credible that the officials of the Blue House and the MHW, including former President Park and Minister Moon, were prepared to engage in what was not only potentially criminal conduct but what, in the event was found by the courts to be *actual* criminal conduct, merely to make sure that the NPS would vote in the way it was already inclined to vote anyway – in favor of the Merger. Their conduct evidences the conviction that, absent intervention, the NPS would vote against the Merger.
229. The Tribunal recalls that the Claimant further relies on the evidence of the members of the Investment Committee (given in court or to the Prosecutor) as to how they would have voted on the Merger, but for the fabricated synergy effect, indicating that of the twelve members, ten would have voted either against or “likely” against the Merger had they been aware that the synergy effect was fabricated.³⁷³

³⁷² Award, para. 615, *citing* Seoul High Court Case No. 2018No1087, 24 August 2018, p. 86 (C-286/R-169)). The Tribunal notes that the Respondent proposes to replace “induced” (at the beginning of the fifth line of the quotation) with “encouraged.” As noted in paragraph 107 above, the Tribunal cannot rely on the amended translations, however, even if accepted, the Respondent's proposed translations would not affect the Tribunal's findings because the corrected translations do not materially change or qualify the central findings made by those courts.

³⁷³ Claimant's Demonstrative 3, presented in the Claimant's oral closing statement in the Original Proceedings, *referring to* Transcript of Court Testimony of Nam-kwon Jo (Moon/Hong Seoul Central District Court), 22 March 2017, pp. 32-33 (C-497); Transcript of Court Testimony of [REDACTED] (Moon/Hong Seoul Central District Court), 22 March 2017, p. 12 (C-500); Evidence of [REDACTED] to Korea's Prosecutor, 28 December 2016, p. 7 (C-471); Evidence of [REDACTED] to Korea's Prosecutor, 28 December 2016, p. 10 (C-472); Evidence of [REDACTED] to Korea's Prosecutor, 28 December 2016, p. 17 (C-474); Evidence of [REDACTED] to Korea's Prosecutor, 28 December 2016, p. 10 (C-472); Evidence of [REDACTED] to Korea's Prosecutor, 28 December 2016, p. 22 (C-473); Evidence of [REDACTED] to Korea's Prosecutor, 27 December 2016, pp. 7-8 (C-467); NPSIM Management Strategy Office, “2015-30th Investment Committee Meeting Minutes,” 10 July 2015, pp. 10-11 (R-128).

230. While the Respondent accepts the essential facts underlying the decisions of the Korean courts dealing with the criminal proceedings arising out of the NPS's approval of the Merger, it (i) challenges the Claimant's argument regarding the impact of the fabricated synergy effect on the vote of the members of the Investment Committee, and (ii) argues, more generally, that the evidence relating to the vote does not show that the NPS would have voted against the Merger, but for the intervention.
231. As to the former issue, the Respondent contends that the evidence relating to the answers of the members of the Investment Committee is not reliable because the question was wrongly put. The members were asked whether they would have voted in favor of the Merger if they had known that the synergy effect was fabricated, but in the Respondent's view they should have been asked whether they would have voted differently if there had been another, more accurate synergy calculation.³⁷⁴ The Tribunal is not persuaded by the Respondent's argument, which is speculative. Indeed, it was open for the Respondent to produce the members of the Investment Committee as witnesses in the Original Proceedings and to put the reformulated question to them, but it did not. The minutes of the Investment Committee meeting, which is the primary contemporaneous evidence on the issue, also recorded that the Committee decided to support the Merger "in view of its synergy effect, etc."³⁷⁵ While the "etc" implies that other factors were also relevant, the fact that the synergy effect was specifically mentioned implies that it was the most notable consideration. For the same reason, while the Respondent's argument that the answers given by the Investment Committee members to the Prosecutor are not as reliable evidence as oral evidence given in court is plausible, this is argument, not evidence. In any event, although the evidence given by the members of the Investment Committee in court appears to have been in many instances more detailed and extensive than the evidence they gave to the Prosecutor, there does not appear to be any substantial contradictions between the two sources of evidence, and the Korean courts did not identify any that would have affected their findings, as summarized above.³⁷⁶
232. As to the latter issue, the Respondent contends that the evidence relating to the intervention only shows that the MHW pressed for the Merger vote to be decided by the Investment Committee because it could not be "guaranteed" that the Experts Voting Committee would vote in favor of the Merger.³⁷⁷ According to the Respondent, this shows that there was no "sufficient degree

³⁷⁴ Respondent's Corrected Submission on the Remitted Issue, paras. 136-37.

³⁷⁵ NPSIM Management Strategy Office, "2015-30th Investment Committee Meeting Minutes," 10 July 2015, p. 16 (**R-128**).

³⁷⁶ Respondent's Rebuttal Submission on the Remitted Issue, paras. 50-55.

³⁷⁷ Respondent's Corrected Submission on the Remitted Issue, paras. 53(d), 118-25.

of certainty” that the members of the Experts Voting Committee would have voted to oppose the Merger or to abstain.³⁷⁸ The Tribunal notes that the term “guarantee” was used by the Seoul Central District Court in the Moon/Hong proceedings when referring to the evidence of Mr. Nam-kwon Jo, the MHW’s Director of Pension Policy (“[Mr. Moon] felt that such analysis [*i.e.* an analysis of the attitudes of each voting member of the Experts Voting Committee prepared by an NPS ‘Task Force Team on Voting Right’] was not enough to 100% guarantee the approval of the Merger”).³⁷⁹ However, the term “guarantee” was not used by Mr. Jo himself during his examination; it was a term used by the lawyer examining him, and Mr. Jo merely answered “Yes.”³⁸⁰ Mr. Jo also testified, when specifically asked whether “you effectively said that if [the Merger vote] referred to the Experts Voting Committee, it was expected to be voted down, so the Investment Committee should decide the merger,” Mr. Jo answered “Yes.”³⁸¹

233. The Tribunal is satisfied, based on the totality of the evidence before it, that the Claimant has shown that, on the balance of probabilities, the NPS would have voted against the Merger in the absence of the ROK’s intervention.
234. In view of the above finding, it is not necessary for the Tribunal to consider the Respondent’s allegation that, but for the intervention of the Blue House and the MHW, the NPS would have voted in favor of the Merger in any event or could have reasonably done so. As determined above, the evidence in the record shows the contrary. However, for the sake of completeness, the Tribunal considers it appropriate to consider the Respondent’s evidence since, in the Respondent’s view, this evidence was produced to rebut the Claimant’s case. As determined above, insofar as the Respondent alleges that the NPS would have voted in favor of the Merger in any event, it bears the burden of proof.

³⁷⁸ Respondent’s Corrected Submission on the Remitted Issue, para. 123.

³⁷⁹ Respondent’s Corrected Submission on the Remitted Issue, para. 119, *citing* the Award, para. 587; Seoul District Court Case No. 2017GoHap34, 183 (Consolidated), 8 June 2017, p. 8 (**C-69**).

³⁸⁰ Transcript of Court Testimony of Nam-kwon Jo (Moon/Hong Seoul Central District Court), 22 March 2017, p. 28 (**C-497**) (“Q: At the instruction of the Defendant, between July 6 and July 7, 2015, you identified the disposition of each member of the Experts Voting Committee and prepared detailed measures, assuming that the Samsung C&T merger would be referred to the Experts Voting Committee, but the situation was that the passage of the merger plan was not 100% guaranteed if it was referred to the Experts Voting Committee, correct? ... A: Yes.”).

³⁸¹ Transcript of Court Testimony of Nam-kwon Jo (Moon/Hong Seoul Central District Court), 22 March 2017, p. 33 (**C-497**). Mr. Jo also testified that towards the end of June 2015, the SC&T merger had become “a major issue” because of Elliott’s opposition, and answered “Yes” to the question of whether he “decided that the Investment Committee should decide directly without referring it to the Experts Voting Committee in order for the vote to be passed as instructed by the Defendant.” See Transcript of Court Testimony of Nam-kwon Jo (Moon/Hong Seoul Central District Court), 22 March 2017, p. 12 (**C-497**).

235. The Tribunal recalls that, in support of its allegation, the Respondent relies in particular on the NPS's obligations under the Fund Operational Guidelines and the Voting Guidelines, as well as the Additional Judgments produced in these Remitted Proceedings. As to the former, the Tribunal accepts that, as alleged by the Respondent, the NPS Voting Guidelines at the relevant time required that the NPS exercise its voting rights in good faith and so as to increase shareholder value in the long-term, and that the Merger was viewed by many market participants as a step towards reforming the Samsung Group's governance structure. However, while the meeting minutes of the Investment Committee (which is the primary contemporaneous evidence) show that the long-term effects were indeed considered at the meeting, the critical long-term factor in determining the outcome of the NPS's vote was the fabricated synergy effect, which was considered to offset the NPS's overall net loss, which was significant, in view of the difference in the valuations of the NPS's shareholdings in SC&T and Cheil.³⁸² The conclusion can only be that, in a counterfactual scenario without the synergy effect, the NPS's net loss would not have been offset and, on a balance of probabilities, it would have caused the Investment Committee to vote against the Merger.
236. The Additional Judgments similarly do not assist the Respondent, for a number of reasons.
237. First, unlike the essential facts underlying the judgments of the Korean courts in the criminal proceedings involving Minister Moon, CIO Hong and former President Park (which the Respondent specifically confirmed in the Original Proceedings it did not contest), the evidentiary value of the Additional Judgments is in dispute between the Parties. Notably, the Claimant argues that the Additional Judgments do not constitute primary evidence; they are "judicial decisions of other fora addressing different causes of action, different legal standards applied to different evidentiary records."³⁸³
238. The Tribunal agrees that the Additional Judgments do not constitute primary evidence; they are findings of Korean courts based on the evidence before them at the time of the Judgments. Indeed, it is not entirely clear on what evidence the courts relied upon when reaching their conclusions, and it is also unclear whether all of the primary evidence that was before the Tribunal in the Original Proceedings was before the Korean courts when rendering the Additional Judgments. The Korean courts also specifically acknowledged that the rules governing jurisdiction, procedure and applicable law before the Korean courts and in investment treaty arbitration are not the same

³⁸² NPSIM Management Strategy Office, "2015-30th Investment Committee Meeting Minutes," 10 July 2015, pp. 11-12 (**R-128**).

³⁸³ Reply on the Remitted Issue, para. 91. *See also* Claimant's Rebuttal Submission on the Remitted Issue, para. 71.

and, accordingly, an investment treaty tribunal operating under different evidentiary standards and rules of law could reach different conclusions.³⁸⁴ Moreover, while the Korean courts found it “difficult” to recognize that there was a causal link between the conduct of the defendant (the ROK) and the NPS, the criminal convictions against former President Park, Minister Moon and CIO Hong were not overturned; in fact, the courts adopted them.³⁸⁵ Finally, and importantly, the Tribunal must reach its factual findings independently, based on the totality of the evidence before it, which includes the evidence produced in the Original Proceedings. The Tribunal recalls that, as noted above, it was the Respondent’s choice that the members of the Investment Committee were not introduced as witnesses in the Original Proceedings (although several of them appear to have given evidence before the Korean courts).³⁸⁶

239. The evidence that was introduced in the Original Proceedings includes evidence originating from the period between 26 May 2015, when SC&T and Cheil announced that their boards had approved the proposed Merger, and 30 June 2015, when the MHW first engaged with NPS to influence the Merger vote.³⁸⁷ This evidence, which is untainted by the intervention, is the evidence that should be considered in assessing the Respondent’s argument that, in the absence of the intervention, the NPS would have voted in favor of the Merger. Any subsequent evidence is tainted by the intervention, and the Respondent’s case can only be established by untainted evidence, as otherwise the Respondent would be allowed to benefit from the intervention, which the Tribunal has determined was in breach of the Treaty. Furthermore, as a practical matter, the depth and extent of the intervention make it in any event unfeasible to disentangle untainted from tainted evidence.
240. The untainted evidence in the record includes, notably, the following (in reverse chronological order):

³⁸⁴ Seoul High Court, Case No. 2023Na2000796, 12 February 2026, p. 7 (**R-390**).

³⁸⁵ Seoul High Court, Case No. 2023Na2000796, 12 February 2026, pp. 6-7 (**R-390**).

³⁸⁶ The Tribunal notes that the Respondent relies in these Remitted Proceedings on the evidence of the members of the Investment Committee given before the Korean courts in the Moon/Hong and JY Lee proceedings. See Demonstrative D: Evidence of the Investment Committee Members’ Reasons for their Vote. While the members of the Investment Committee did not give evidence in the Original Proceedings, the evidence they gave before Korean courts is reflected in the Korean courts’ judgments in the Moon/Hong proceedings, which the Tribunal relied in support of its findings in the Original Proceedings, and continues to rely in these Remitted Proceedings. As noted above, the Respondent could have produced witness evidence from the members of the Investment Committee in the Original Proceedings to ensure that this evidence was available to the Tribunal as primary evidence, however, it failed to do so.

³⁸⁷ The date of 30 June 2015 is common ground; see Claimant’s Rebuttal Submission on the Remitted Issue, para. 37, Respondent’s Rebuttal Submission on the Remitted Issue, para. 28.

- (a) Elliott press release, “Elliott publishes its further views and additional information on the proposed takeover of Samsung C&T by Cheil Industries,” 26 June 2015 (**C-189**) (stating that Elliott had published a presentation setting out further information and its views on the proposed takeover);
- (b) “NPS rejects SK merger while ignoring investment gains,” The Bell, 26 June 2015 (**R-270**) (reporting that NPS rejected the proposed merger between SK Holdings and SK C&C “because it appears that there would be greater losses for SK Holdings shareholders”);
- (c) NPS press release, 24 June 2015 (**C-204**) (stating that the Experts Voting Committee rejected the SK Holding and SK C&C merger “considering the merger ratio, the timing of retirement of treasury stock, and other such factors”);
- (d) Ministry of Health and Welfare, National Pension Service, Items deliberated by the 2nd National Pension Fund’s special committee on the exercise of voting rights in 2015: Direction of voting rights exercise as to the items submitted to the Extraordinary General Shareholders’ Meeting of SK C&C and SK Holdings (proposal), 24 June 2015 (**R-108**) (proposing that the matter be referred to the Experts Voting Committee);
- (e) “NPS decides to oppose SK M&A,” Hankyoreh, 24 June 2015 (**C-26**) (stating that the “[t]he merger ratio was criticized as being excessively favorable to C&C,” that the “Experts Voting Committee’s decision captured attention, as it might give some hint as to the NPS position on another M&A – the M&A between Samsung C&T and Cheil Industries, which is currently under attack by Elliott” and quoting an analysis “with some insight into NPS” commenting that “[t]he M&A between Samsung C&T and Cheil Industries has some similarity to the SK M&A, so NPS is highly likely to call the Experts Voting Committee to make a decision”);
- (f) Record of text messages between [REDACTED] and various recipients, 24 June 2015 (**C-421**) (stating that “NPS is against the SK merger but the SC&T case is different, and I was told from a reliable source that the internal consensus is to vote for the merger”);³⁸⁸
- (g) Letter from Elliott to NPS, 23 June 2015 (**C-202**) (noting that “NPS is still considering its position with regard to the proposed merger between Samsung C&T and Cheil Industries,” and proposing a meeting);

³⁸⁸ Rejoinder on the Remitted Issue, para. 64, *citing* Record of text messages between [REDACTED] and various recipients, 24 June 2015, p. 13231 (**C-421**). *See also* Respondent’s Rebuttal Submission on the Remitted Issue, para. 31.

- (h) Elliott press release, “Elliott publishes further information and its views on the proposed takeover of Samsung C&T by Cheil Industries,” 18 June 2015 (**C-189**) (stating that Elliott had published a presentation setting out further information and its views on the proposed takeover);
- (i) Letter from NPS to Elliott, 15 June 2015 (**C-201**) (stating that “NPS has not expressed its intent or position regarding the Proposed Merger to you in any way shape or form,” and that “NPS is entitled to take its own position in a timely and appropriate manner upon conclusion of its internal process”);
- (j) Letter from Elliott to NPS, 12 June 2015 (**C-200**) (proposing a meeting to provide information on Elliott’s background and activities, including in the Korean market);
- (k) Elliott press release, “Elliott seeks to injunct unlawful sale of treasury shares in Samsung C&T to KCC,” 11 June 2015 (**C-189**) (objecting to the proposed sale as an attempt to “shore up voting support for the unlawful proposal for a takeover of Samsung C&T by Cheil Industries”);
- (l) Elliott press release, “Elliot commences legal proceedings for an injunction against Samsung C&T and its directors,” 9 June 2015 (**C-193**) (stating that Elliott has taken of commencing legal proceedings for an injunction against Samsung C&T and its directors);
- (m) Elliott press release, “Elliott confirms 7% stake in Samsung C&T,” 4 June 2015 (**C-189**) (stating that Elliott believed that the proposed Merger “significantly undervalues Samsung C&T and that the terms are neither fair to nor in the best interests of Samsung C&T’s shareholders”);
- (n) Letter from Elliott to NPS, 3 June 2015 (**C-187**) (proposing a meeting and explaining reasons for opposition to the Merger); and
- (o) Blue House memorandum, “Direction of the National Pension Service’s Exercise of Voting Rights regarding the Samsung C&T Merger” (stating that “[c]urrently, the NPS is only reiterating the basic principle that ‘the decision will be made from the perspective of maximization of shareholder profit’”), undated but apparently prepared, based on its content, between 9 June 2015 and 30 June 2015 (**C-588**).³⁸⁹

³⁸⁹ See also Claimant’s Rebuttal Submission on the Remitted Issue, para. 52.

241. The evidence listed above – or indeed the remaining evidence in the record originating from this period, which is largely composed of press reports and third-party analyses of the pros and cons of the Merger – does not establish, on a balance of probabilities, the Respondent’s allegation that the NPS would have voted in favor of the Merger even in the absence of the intervention.³⁹⁰ On the contrary, while it does not provide direct insight into the NPS’s internal deliberations, it does suggest that Elliott’s extensive campaign against the Merger during the period from the Merger announcement to the end of June 2015, and the rejection by the NPS’s Experts Voting Committee of the SK Merger only some three weeks prior to SC&T’s and Cheil’s shareholders’ scheduled vote on the Merger, made it more rather than less likely that the NPS would have voted against the Merger, but for the intervention. As analyzed above, the evidence in the record shows that this is precisely why the Blue House and the MHW intervened in the NPS’s decision-making process.
242. The Tribunal notes, in this connection, that in preparation for a potential rejection of the Merger “following the disclosure by Elliott,” the NPS had started in June 2015 to reduce its shareholding in Cheil and increased its shareholding in SC&T.³⁹¹ This implies that the NPS also considered at the time that Elliott’s campaign against the Merger had increased the probability that the Merger would not proceed.
243. The Tribunal therefore rejects for lack of evidence the Respondent’s allegation that the NPS would have voted in favor of the Merger in the absence of the intervention of the Blue House and the MHW.³⁹²
244. In conclusion, the Tribunal finds, on the preponderance of the evidence, that there is a sufficiently certain causal link between the Respondent’s breach of the Treaty, as determined in the Award, and the loss suffered by the Claimant. Specifically, the Claimant has discharged its burden of proving that the NPS would have voted against the Merger absent the Respondent’s breach. While this finding is sufficient to dispose of the Remitted Issue, the Tribunal has also determined,

³⁹⁰ This appears to be undisputed; see the Respondent’s Rebuttal Submission on the Remitted Issue, para. 30 (“[T]he NPS cannot be said to have formed any ‘position’ as of 30 June 2015.”).

³⁹¹ NPSIM Management Strategy Office, “2015-30th Investment Committee Meeting Minutes,” 10 July 2015, p. 6 (R-128).

³⁹² As for the Respondent’s allegation that the NPS *could* reasonably have voted in favor of the Merger in the counterfactual scenario, the Tribunal recalls that it has determined above that, in the absence of the Respondent’s breach, the NPS would have voted *against* the Merger; as noted above, the Tribunal has considered the Respondent’s counterfactual scenario merely for the sake of completeness and not because it was necessary for the Tribunal’s determination on causation in fact. In any event, a mere showing that the NPS *could* have voted in favor of the Merger would not have been sufficient; in order to discharge its burden of proof *on a balance of probabilities*, the Respondent would have to show that the NPS *would* have voted in favor of the Merger but for the intervention. As determined above, the Respondent has failed to do so.

for the sake of completeness, that the Respondent has not discharged its burden of proving its allegation that the NPS would have voted in favor of the Merger even in the absence of the Respondent's intervention.

VIII. LEGAL CAUSATION

A. THE PARTIES' POSITIONS

1. The Claimant's Position

245. The Claimant submits that the Tribunal has confirmed that the applicable test for legal causation is "directness" or "proximity," and that legal causation is "inextricably tied to the question of the foreseeability of the harm."³⁹³ According to the Claimant, foreseeability is a means of assessing proximity rather than a freestanding requirement.³⁹⁴ Legal causation may in any event be established by "the mere fact that the respondent state 'deliberately caused the harm in question,'" and here, on the Claimant's case, the harm was not merely foreseeable but foreseen.³⁹⁵
246. The Claimant rejects the Respondent's assertion that the Tribunal excluded foreseeability from its causation analysis, an assertion resting only on the Tribunal's not having used the word "foreseeability" in paragraph 815 of the Award.³⁹⁶ The Claimant argues that numerous tribunals have treated "proximity and foreseeability [as] related concepts," and had the Tribunal meant to exclude foreseeability it would have said so plainly, having repeatedly addressed the foreseeability of the harm elsewhere in the Award.³⁹⁷ In any event, the Claimant maintains that its case on legal causation does not rest on foreseeability alone, since its loss was suffered as a proximate and unbroken consequence of the Respondent's breaches.³⁹⁸
247. The Claimant submits that the Tribunal has already made numerous findings that a sufficient causal link exists between the Respondent's breaches and the loss, there having been a "direct and uninterrupted" chain of causation of which the Respondent foresaw the consequences.³⁹⁹ Because those findings of proximity and foreseeability are unaffected by the English High Court's

³⁹³ Claimant's Submission on the Remitted Issue, para. 67, *citing* Award, para. 815.

³⁹⁴ Claimant's Rebuttal Submission on the Remitted Issue, para. 81.

³⁹⁵ Claimant's Submission on the Remitted Issue, para. 67, *citing* Award, paras. 751, 815. *See also* Hearing Transcript, Day 1, pp. 96:17-97:2.

³⁹⁶ Reply on the Remitted Issue, para. 106; Hearing Transcript, Day 1, pp. 78:1-10.

³⁹⁷ Reply on the Remitted Issue, para. 107, *citing* *Joseph C. Lemire v. Ukraine*, ICSID Case No. ARB/06/18, Award, 28 March 2011, para. 170 (**RLA-56**).

³⁹⁸ Reply on the Remitted Issue, para. 111; Claimant's Rebuttal Submission on the Remitted Issue, para. 81.

³⁹⁹ Claimant's Submission on the Remitted Issue, para. 68.

conclusion on the NPS's status, the Claimant contends that they remain applicable and are not open to relitigation.⁴⁰⁰

248. According to the Claimant, the Merger was approved as the direct causal consequence of the NPS's vote, and by reason of the Merger, the Claimant was permanently deprived of a material increment in the value of its SC&T investment and of the ability to realize that value, which foreseeably would have been released by a "skyrocketing" share price had the Merger been defeated.⁴⁰¹ The Claimant maintains that this is the rare case in which "the State actually foresaw the harm that its conduct would cause," pointing to a Blue House memorandum recording the Claimant's opposition alongside the view that "[o]ppos[ing] the merger" would be seen as "help[ing] a foreign hedge fund."⁴⁰² President Park nevertheless decided to "actively intervene" in the NPS's vote in full knowledge of the investor-State dispute risk, the Tribunal having found the harm "reasonably foreseeable" and in fact "foreseen."⁴⁰³ In any event, the Claimant submits, the Respondent need not have foreseen the amount of the loss, only the kind of injury that occurred.⁴⁰⁴
249. As for the Respondent's multi-step account of the causal chain, the Claimant argues that it does no more than magnify the internal mechanics of three links, two of which the Award has already resolved, and does not affect the directness of the chain.⁴⁰⁵
250. The Claimant submits that the Tribunal's findings on legal causation remain binding, having survived set-aside precisely because they were made independently of the NPS's status, whereas findings premised on an incorrect application of the law on attribution would have been set aside by the High Court.⁴⁰⁶ As to directness, the Claimant argues that the "chain of causation ... is not especially long, and its length did not prevent the Tribunal from finding that causation had clearly been established."⁴⁰⁷ The Claimant relies on *Lemire v. Ukraine* and the 1923 U.S.-German Mixed Commission decision to argue that "[i]t matters not how many links there may be ... provided

⁴⁰⁰ Claimant's Submission on the Remitted Issue, para. 69.

⁴⁰¹ Claimant's Submission on the Remitted Issue, para. 70.

⁴⁰² Reply on the Remitted Issue, para. 113; Claimant's Rebuttal Submission on the Remitted Issue, para. 84, *citing* Blue House, "Direction of the National Pension Service's Exercise of Voting Rights Regarding the Samsung C&T Merger," undated, p. 41 (C-588).

⁴⁰³ Reply on the Remitted Issue, paras. 113-14, *citing* Award, para. 360. *See also* Claimant's Rebuttal Submission on the Remitted Issue, paras. 37, 81.

⁴⁰⁴ Claimant's Rebuttal Submission on the Remitted Issue, para. 84.

⁴⁰⁵ Claimant's Rebuttal Submission on the Remitted Issue, para. 85.

⁴⁰⁶ Reply on the Remitted Issue, para. 119.

⁴⁰⁷ Reply on the Remitted Issue, para. 122.

there is no breach in the chain and the loss can be clearly, unmistakably and definitely traced, link by link,” to the wrongful act.⁴⁰⁸ The Claimant submits that the three links in the chain, namely the conduct causing the NPS vote, the casting vote causing the Merger, and the Merger causing the loss, presented the Tribunal with no difficulty, and that the *Mason* tribunal likewise found proximity even after holding the NPS’s conduct not attributable.⁴⁰⁹ The Claimant adds that a non-State actor’s conduct may be the intended and foreseeable consequence of State wrongdoing, so that the non-attribution of the NPS’s conduct does not sever the established chain.⁴¹⁰

251. The Claimant asserts that once it has proven the facts supporting legal causation on the balance of probabilities, the burden shifts to the Respondent to prove its affirmative case.⁴¹¹ In this context, the Claimant argues that the Respondent has failed to establish any break in the causal chain, and that its contention that the Investment Committee could have reached, or that it in fact reached, an “independent” decision is wrong in law and in fact.⁴¹² The Claimant submits that it is irrelevant that the NPS “could have” reached an independent decision, the onus being on the Respondent to prove that an actual event severed the chain, as the Tribunal held in stating 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.”⁴¹³ Although that paragraph was set aside, the Claimant invites the Tribunal to reconfirm it as consistent with international law.⁴¹⁴
252. The Claimant further observes that, in a part of the Award not set aside, the Tribunal found the NPS did not in fact act independently, a “factual finding as to what NPS did and under whose direction and instructions the NPS acted,” which precludes the Respondent from reopening the question.⁴¹⁵ The Claimant submits that the votes of other shareholders did not break the chain, the possibility that “even if the NPS had voted against the Merger, any of the shareholders that

⁴⁰⁸ Reply on the Remitted Issue, para. 122, *citing Joseph C. Lemire v. Ukraine*, ICSID Case No. ARB/06/18, Award, 28 March 2011, para. 166 (**RLA-56**).

⁴⁰⁹ Reply on the Remitted Issue, paras. 123-24, *referring to 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. 909-27 (**CLA-219**). *See also* Claimant’s Rebuttal Submission on the Remitted Issue, para. 83.

⁴¹⁰ Claimant’s Rebuttal Submission on the Remitted Issue, para. 83.

⁴¹¹ Claimant’s Rebuttal Submission on the Remitted Issue, para. 82.

⁴¹² Reply on the Remitted Issue, para. 125; Claimant’s Rebuttal Submission on the Remitted Issue, paras. 82, 85.

⁴¹³ Reply on the Remitted Issue, para. 125(a), *citing* Award, para. 822. *See also* Claimant’s Rebuttal Submission on the Remitted Issue, para. 85.

⁴¹⁴ Reply on the Remitted Issue, para. 125(a).

⁴¹⁵ Reply on the Remitted Issue, para. 125(b); Claimant’s Rebuttal Submission on the Remitted Issue, paras. 22, 69, 76(i).

held more than 2.7% of the shares could have voted against the Merger” being, again, only a potential event.⁴¹⁶

253. Having already presented expert evidence on “market movements” in the but-for scenario, on which the Tribunal fixed the loss at USD 48,490,438.00, the Claimant submits it is not open to the Respondent to relitigate that issue.⁴¹⁷ In any event, according to the Claimant, even multiple contributing reasons would not assist the Respondent, since “a State’s international responsibility for its delicts is not reduced or attenuated by the presence of concurrent causes,” still less where the final step involved acts of a third party it “specifically directed and controlled.”⁴¹⁸
254. The Claimant maintains that the Additional Judgments are equally irrelevant to legal causation, as they do not displace the Tribunal’s findings on a full evidentiary record and do not address the Respondent’s prior knowledge of harm to the Claimant.⁴¹⁹ The Claimant adds that the Additional Judgments did not overturn the Moon/Hong convictions, applied a domestic-law rather than the international-law test, and reached conclusions “substantively identical” to the Merger Annulment Decision the Tribunal has already dismissed.⁴²⁰ The Claimant further submits that the Tribunal should be wary of judgments post-dating the Award, the JY Lee Unlawful Merger Judgment having reasoned in part from the ROK’s own pleaded position in this arbitration, producing a “circularity.”⁴²¹

2. The Respondent’s Position

255. The Respondent submits that the Claimant bears the burden of proving legal causation and, consistent with the Award, must establish that the loss is a “direct” result of, or “proximately caused by,” the breach.⁴²² In the Respondent’s view, the claimed loss is “too remote” from the Blue House Measures to be compensable.⁴²³ The Respondent submits that the Tribunal did not hold that legal causation may be satisfied by foreseeability alone, and that the Claimant concedes

⁴¹⁶ Reply on the Remitted Issue, para. 125(c), *citing* Award, para. 822.

⁴¹⁷ Reply on the Remitted Issue, para. 125(d).

⁴¹⁸ Reply on the Remitted Issue, para. 125(e), *citing* ILC Articles (with commentaries) (2001), Commentary to Art. 31, comment 12 (**CLA-38**).

⁴¹⁹ Reply on the Remitted Issue, paras. 127-28.

⁴²⁰ Reply on the Remitted Issue, para. 128.

⁴²¹ Reply on the Remitted Issue, para. 128.

⁴²² Respondent’s Corrected Submission on the Remitted Issue, para. 172, *citing* Award, para. 815. *See also* Respondent’s Rebuttal Submission on the Remitted Issue, para. 74.

⁴²³ Respondent’s Corrected Submission on the Remitted Issue, para. 172.

as much in accepting that its case has never rested on foreseeability alone.⁴²⁴ In the Respondent's view, both Parties therefore agree that proximity or directness is a separate requirement, the Claimant itself advancing a three-part cumulative test requiring foreseeability, proximity or directness, and that the injury be "the natural consequence of the breach."⁴²⁵ The Respondent adds that the Tribunal's approach accords with the ICJ's requirement of a "sufficiently direct and certain causal nexus."⁴²⁶

256. Applying this standard, the Respondent argues that the Claimant has not established a direct and proximate connection between the Blue House Measures and its loss, wrongly treating the NPS vote and the Merger's approval as simple binary events when each "involves considerable factual complexity, multiple independent actors, and genuine uncertainty of outcome."⁴²⁷ The shareholder meeting, in particular, saw a large number of shareholders vote independently, adding a further layer of multi-party decision-making relevant to remoteness, so that the involvement of numerous third parties means the Blue House Measures cannot be the proximate cause of the loss.⁴²⁸ The Respondent concedes that the Tribunal set out a test for legal causation and that its findings on the connection between the NPS vote and the loss were not set aside, but contends that the question is whether the Blue House Measures, not the NPS vote, were the proximate cause, proximity having to be established across the entire chain from breach to loss.⁴²⁹ The Respondent submits that its knowledge of the Claimant's opposition goes to the existence of the breach, not to the character of the chain, and rejects the Claimant's assertion that the ROK "breached its Treaty obligations intentionally," there being no finding of targeting or of intent to cause the specific loss.⁴³⁰
257. In particular, the Respondent identifies three events of complexity in the chain: the Investment Committee's deliberation, the vote of thousands of SC&T shareholders, and the stock transactions of thousands of buyers and sellers.⁴³¹ It stresses that it advances no *causa interveniens* defense,

⁴²⁴ Rejoinder on the Remitted Issue, paras. 92, 97.

⁴²⁵ Rejoinder on the Remitted Issue, para. 97.

⁴²⁶ Rejoinder on the Remitted Issue, para. 98, citing *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007, para. 462 (CLA-24).

⁴²⁷ Respondent's Corrected Submission on the Remitted Issue, para. 176; Respondent's Rebuttal Submission on the Remitted Issue, para. 74.

⁴²⁸ Rejoinder on the Remitted Issue, para. 108.

⁴²⁹ Rejoinder on the Remitted Issue, para. 102. See Award, para. 815.

⁴³⁰ Respondent's Corrected Submission on the Remitted Issue, paras. 177-79.

⁴³¹ Respondent's Rebuttal Submission on the Remitted Issue, para. 74. See Respondent's Opening Presentation in the Remitted Proceedings, p. 7.

and that its case is rather that the chain is too indirect and the loss too remote.⁴³² The Respondent further submits that the Tribunal has made no finding of targeting or of intent to harm the Claimant.⁴³³ In its submission, awareness of the Claimant's opposition does not establish an intention to cause it loss, and there is no evidence that the Government shared the Claimant's view of the Merger's effect on shareholders.⁴³⁴

258. The Respondent emphasizes that the NPS's changed status is decisive for the analysis, the Tribunal's original finding of legal causation having rested on attribution and having been set aside, so that the NPS's own conduct can no longer be relied upon to connect the chain to the loss.⁴³⁵ The Respondent further argues that the loss falls outside the scope of the rule breached, causation having to be established in relation to the specific breach.⁴³⁶ The obligation that was breached concerned only the "process" by which the decision was reached, not its outcome, so that "a loss based on predictions as to the outcome of that meeting" is not "proximately linked to the breach found."⁴³⁷
259. Rejecting the Claimant's claim that the Additional Judgments are irrelevant to legal causation, the Respondent submits that the Judgments clarify factual findings of the Korean courts bearing on it and deserve no less weight than the findings in the Moon/Hong proceedings on which the Claimant relies.⁴³⁸ The Respondent explains that the Shareholder Claims Judgments addressed the operative question whether Minister Moon's abuse of authority could pass through the chain to become a "direct and proximate" cause of the shareholders' loss and dismissed the claim on the principle that an independent third-party act – the Investment Committee's resolution – ordinarily breaks the chain.⁴³⁹ The Respondent further states that the court could not conclude that the acts of Minister Moon and CIO Hong "determined" the Committee's decision, given that the voting method was unaffected by them, that the members appreciated the synergy projections

⁴³² Respondent's Rebuttal Submission on the Remitted Issue, para. 76.

⁴³³ Respondent's Rebuttal Submission on the Remitted Issue, para. 77.

⁴³⁴ Respondent's Rebuttal Submission on the Remitted Issue, para. 77; Rejoinder on the Remitted Issue, para. 101(b).

⁴³⁵ Respondent's Corrected Submission on the Remitted Issue, para. 181.

⁴³⁶ Respondent's Corrected Submission on the Remitted Issue, para. 185; Respondent's Rebuttal Submission on the Remitted Issue, para. 74.

⁴³⁷ Respondent's Corrected Submission on the Remitted Issue, para. 186.

⁴³⁸ Rejoinder on the Remitted Issue, paras. 109-10.

⁴³⁹ Respondent's Corrected Submission on the Remitted Issue, para. 183.

could be inaccurate, and that the Committee weighed a range of factors beyond those projections.⁴⁴⁰

260. According to the Respondent, the JY Lee Unlawful Merger Judgments went further, finding 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.”⁴⁴¹ The Respondent submits that the reasons for which the Tribunal distinguished the Merger Annulment Decision do not apply to the Shareholder Claims Judgments, which post-date the other cases and applied neither a strict merger-invalidity standard nor a technical approach to intent.⁴⁴²
261. As for the *Mason* award, the Respondent maintains that its reasoning on legal causation is “brief ... and unpersuasive,” resting in part on foreseeability as being sufficient. According to the Respondent, the award also did not consider the Shareholder Claims analysis and therefore should not be followed on the record before this Tribunal.⁴⁴³

B. THE TRIBUNAL’S DETERMINATION

262. The Tribunal determined in the Award, in a paragraph that has not been set aside, that legal causation “is about whether the claimed loss or damage is sufficiently closely linked to the alleged breach.”⁴⁴⁴ The relevant passage in the Award reads in its entirety as follows:

The two relevant aspects of causation that the Tribunal must consider are causation in fact and causation in law. The former involves the determination of whether the claimant would have suffered the claimed loss or damage in the absence of the alleged breach, whereas the latter is about whether the claimed loss or damage is sufficiently closely linked to the alleged breach. The required link 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; and the Parties in this case have argued the issue of causation in these terms, without clearly distinguishing between the two. The two formulations are indeed technically distinguishable but in substance equivalent ways of stating the applicable test for determining whether the required causal link between the alleged breach and the claimed loss or damage has been established – the former formulation states the applicable test by starting the analysis from the *cause* of the alleged loss or damage (*i.e.* the alleged breach), whereas the latter starts the analysis from the *effect* of the alleged breach (*i.e.* the claimed loss or damage). Both approaches also accept that there may be an intervening cause that breaks the chain of

⁴⁴⁰ Respondent’s Corrected Submission on the Remitted Issue, para. 183, *citing* Seoul Central District Court, Case No. 2020GaHap600079, pp. 12-13 (**R-389**). *See also* Respondent’s Rebuttal Submission on the Remitted Issue, para. 62.

⁴⁴¹ Respondent’s Corrected Submission on the Remitted Issue, para. 183, *citing* Seoul Central District Court, Case No. 2020GoHap718, 920 (Consolidated), 5 February 2024, p. 748 (**R-391**).

⁴⁴² Rejoinder on the Remitted Issue, para. 117.

⁴⁴³ Rejoinder on the Remitted Issue, para. 107, *referring to* *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. 909-17 (**CLA-219**).

⁴⁴⁴ Award, para. 815.

causation, rendering the alleged loss or damage ‘indirect’ or too ‘remote’ to be compensated.⁴⁴⁵

263. The Tribunal further held that “[t]here [was] 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.”⁴⁴⁶

264. The Tribunal recalls that the High Court set aside paragraph 822 of the Award, which dealt with and rejected the Respondent’s allegation that a causal link could also be interrupted by a potential event. However, the High Court explained that its decision to set aside paragraph 822 was taken on the basis that the Tribunal’s findings were “inextricably linked” with the findings of causation which the Tribunal did make in respect of breaches constituted by the acts of the NPS (which the Tribunal had found to be a State organ) and “to that extent fall to be revisited in circumstances in which the issue of causation is remitted.”⁴⁴⁷ To quote the High Court in full:

I am satisfied that the Tribunal’s findings as to the absence of an intervening cause by reason of events internal to the NPS are inextricably linked with the findings of causation which it did make in respect of breaches said to be constituted by acts of the NPS as measures adopted or maintained by Korea, and to that extent fall to be revisited in circumstances in which the issue of causation is remitted.⁴⁴⁸

265. The Tribunal may therefore revisit its findings in paragraph 822, in light of its findings on causation in these Remitted Proceedings. Paragraph 822 of the Award reads as follows:

The Tribunal is also unable to agree with the Respondent’s argument that there was no causal link or that any such link was interrupted because the Experts Voting Committee *could* also have rejected the Merger, or 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, which would have prevented the approval of the Merger. A chain of causation is not interrupted by a potential event; it can only be interrupted by an event that has actually taken place. Neither of the potential events relied upon by the Respondent has in fact taken place, and accordingly they could have not broken the chain of causation.⁴⁴⁹

266. The Tribunal has determined above that, in circumstances where the NPS is not considered a State organ, the Claimant bears the burden of proving that the NPS would have voted against the Merger but for the intervention. The Tribunal has concluded that the Claimant has discharged its burden and shown that, on a balance of probabilities, the NPS would have voted against the Merger in the absence of the intervention. In that connection, the Tribunal has also held that the Respondent has failed to rebut the Claimant’s case and thus has necessarily failed to discharge its burden to

⁴⁴⁵ Award, para. 815 (emphasis in original; footnote omitted).

⁴⁴⁶ Award, para. 821.

⁴⁴⁷ *Republic of Korea v. Elliott Associates, L.P.*, CL-2023-000395, Ruling on Consequential Issues, 18 March 2026, para. 5(j) (**CLA-227**).

⁴⁴⁸ *Republic of Korea v. Elliott Associates, L.P.*, CL-2023-000395, Ruling on Consequential Issues, 18 March 2026, para. 5(j) (**CLA-227**).

⁴⁴⁹ Award, para. 822 (emphasis in original).

prove its allegation that the NPS would have voted in favor of the Merger in any event, even in the absence of the intervention. In the circumstances, the chain of factual causation between the measures of the Blue House and the MHW, on the one hand, and the Claimant's loss, on the other, has been established. This finding is independent of the status of the NPS, the NPS's vote on the Merger being a link in the chain of factual causation between the ROK's measures and the Claimant's loss. Such a causal link cannot be interrupted under international law by a potential event, such as the NPS's possible (but less probable than not) vote in favor of the Merger but for the intervention; it can only be interrupted by an actual event that is established by evidence with sufficient certainty. Accordingly, in light of its determinations on factual causation, the Tribunal confirms its finding in paragraph 822 of the Award.

267. In view of its findings on factual causation and the standard applicable to legal causation, the Tribunal considers that the burden is on the Respondent to show that the chain of causation between the Respondent's breach of the Treaty, on the one hand, and the Claimant's loss, on the other, was interrupted or is otherwise too indirect or too remote, such that there is no direct or proximate causal link between the Respondent's breach and the Claimant's loss. The burden of proof must be on the Respondent not only because it is the party alleging a positive fact – the Claimant's loss allegedly being too indirect or too remote – but also because the Claimant cannot be required to establish what is plainly inconsistent with its case and which it does not even allege occurred – an interruption in the chain of causation.
268. While the Respondent indeed contends that it is the Claimant that bears the burden of proving legal causation and has failed to discharge its burden, it does allege, and seeks to establish, that legal causation has not been established. As summarized above, while the Respondent does not allege that there has been an intervening event, it does allege that the claimed loss is too indirect or too remote from the Blue House Measures to be compensable, including because of the length and complexity of the chain of causation, which renders it “too indirect and insufficiently proximate.”⁴⁵⁰ In the Respondent's view, this is the case because (i) the NPS's decisions “turn on the judgments of numerous individuals, each exercising, in the but-for world, independent assessment of a complex, multi-factorial question”; (ii) the Merger required approval at the shareholders meetings of SC&T and Cheil and involved a large number of shareholders exercising their votes independently; and (iii) the Claimant's loss was calculated in the Award by reference to market movements and not by reference to the Merger outcome itself.⁴⁵¹

⁴⁵⁰ Respondent's Corrected Submission on the Remitted Issue, para. 176. *See also* Respondent's Rebuttal Submission on the Remitted Issue, para. 76.

⁴⁵¹ Respondent's Corrected Submission on the Remitted Issue, para. 175.

269. As noted above, the Tribunal recalls that it has determined in the Award, in a passage that has not been set aside, that the NPS held a casting vote in the Merger. The Tribunal further noted in the Award that the Seoul High Court in its judgment in the Moon/Hong proceedings acknowledged the finding of the Seoul Central District Court to the effect that, “in view of Elliott’s opposition to the Merger, the NPS held a *de facto* casting vote,”⁴⁵² and concluded, after quoting the Seoul High Court’s judgment:

The Korean Courts have thus 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. While the Respondent seeks to rely on the witness evidence of Mr. Cho, a member of the Experts Voting Committee, to argue that the evidence does not show that the members of the Experts Voting Committee would have voted against the Merger, it acknowledges that Mr. Cho did not state in his witness statements that he would have voted against the Merger, it acknowledges that Mr. Cho did not state in his witness statement that he would have voted in favor of the Merger (or indeed against it, as he was undecided), had the matter been referred to the Experts Voting Committee. His evidence is therefore inconclusive and, in any event, the Respondent does not challenge the findings of the Korean courts but indeed specifically accepts them, as noted above.⁴⁵³

270. Accordingly, even assuming the Tribunal were required to consider potential events that in fact did not take place (which is not the case, in view of its determination above regarding paragraph 822 of the Award), the potential conduct of SC&T’s and Cheil’s other shareholders is irrelevant in circumstances where the outcome of the vote on the Merger depends on the position to be adopted by the NPS. Moreover, while the NPS’s vote in turn depended on the judgment of numerous individuals, the Tribunal has determined above that, but for the intervention, a majority of the members of the Investment Committee would have voted against the Merger had they been aware that the synergy effect was fabricated. Finally, to the extent that the Respondent argues that the Claimant’s loss was calculated in the Award by reference to market movements rather than by reference to the Merger outcome itself, the argument is misplaced. The Tribunal relied in the Award on the relevant market developments after the Merger for the purpose of quantifying the Claimant’s loss, not for purposes of determining whether the Claimant’s loss was caused by the Respondent’s measures. The chain of causation between the cause (the measures of the Blue House and the MHW) and the effect (the Claimant’s loss) cannot be interrupted by events that occurred after the loss had already been suffered.

⁴⁵² Award, para. 818.

⁴⁵³ Award, paras. 819-20 (emphasis added; footnote omitted).

271. In light of the above, the Tribunal rejects the Respondent's allegation that the chain of causation between the measures of the Blue House and the MHW, on the one hand, and the Claimant's loss, on the other, was too indirect or too remote for legal causation to be established.

IX. QUANTUM

A. THE PARTIES' POSITIONS

1. The Claimant's Position

272. The Claimant submits that the Respondent's loss of chance argument is a "repeated version of the same failed hypothetical-causation argument that it raised in the original arbitration proceedings."⁴⁵⁴ In support of its contention, the Claimant points out that the Tribunal chose not to proceed with a loss-of-chance methodology in its prior quantification of the Claimant's loss.⁴⁵⁵ According to the Claimant, since the Tribunal's earlier employed methodology is not affected by the legal status of the NPS, there is no basis or reason for the Tribunal to revisit its decision and reopen the quantification debate.⁴⁵⁶
273. As to interest, the Claimant maintains its request for pre-award interest at a rate of 5 percent, compounded yearly from 16 July 2015.⁴⁵⁷ The Claimant requests that the applicable interest be calculated on KRW 771,026,741,100, on the basis that the claimed principal "tak[es] into consideration the sums recovered by EALP between 17 and 25 September 2015, on 18 March 2016 and on 12 May 2022."⁴⁵⁸

2. The Respondent's Position

274. The Respondent submits that, although the High Court did not set aside the paragraphs of the Award quantifying the Claimant's loss, the amount can still be reduced.⁴⁵⁹ According to the Respondent, the quantum established in the Award serves as a ceiling (a "maximum recoverable loss") that may be lowered to reflect the Tribunal's revised findings.⁴⁶⁰

⁴⁵⁴ Reply on the Remitted Issue, para. 130; Claimant's Rebuttal Submission on the Remitted Issue, para. 86. See Respondent's Post-Hearing Brief in the Original Proceedings, 13 April 2022, paras. 174, 182; Respondent's Reply Post-Hearing Brief in the Original Proceedings, 18 May 2022, para. 68. See also Claimant's Reply Post-Hearing Brief in the Original Proceedings, 18 May 2022, para. 79; Reply on the Remitted Issue, Annex A, rows 18-20.

⁴⁵⁵ Reply on the Remitted Issue, para. 130; Claimant's Rebuttal Submission on the Remitted Issue, para. 86.

⁴⁵⁶ Reply on the Remitted Issue, paras. 130, 132.

⁴⁵⁷ Reply on the Remitted Issue, para. 134(a).

⁴⁵⁸ Reply on the Remitted Issue, para. 141(b); Claimant's Rebuttal Submission on the Remitted Issue, para. 20.

⁴⁵⁹ Respondent's Corrected Submission on the Remitted Issue, para. 30.

⁴⁶⁰ Respondent's Corrected Submission on the Remitted Issue, para. 30(b).

275. The Respondent addresses the alternative scenario, in which due to some exogenous factor, the Claimant is not able to prove, to the “sufficient degree of certainty” standard, a causal link between the breach and its claimed loss, but nevertheless is able to demonstrate, to a lower standard of proof, that the breach deprived it of a valuable “opportunity” to potentially make a profit or avoid a loss.⁴⁶¹
276. The Respondent argues, relying on *Bilcon v. Canada*, that a loss of chance framework may be applied in cases where the investor did not have a right to a particular outcome, but had a right to a fair opportunity to achieve such outcome, or where the counterfactual scenario is inherently difficult to prove, including because it involves the conduct of third parties.⁴⁶² The Respondent maintains that even under this lower threshold, speculative claims are still not permitted and therefore, in order to succeed, the investor must demonstrate at least a “reasonable possibility” that, but for the disputed measure, the desired outcome would have been achieved.⁴⁶³ As a trade-off for a lower evidentiary standard, a claimant is “entitled to a lower level of compensation, corresponding to only a loss of the opportunity to make profits (or avoid losses).”⁴⁶⁴
277. The Respondent argues that the loss of chance framework is factually applicable in this case in two respects. First, what the Claimant lost, at most, “was a chance to succeed in its persuasion campaign against the Merger” and the “opportunity to try to persuade the other shareholders in SC&T to vote together with Claimant to defeat the Merger, free from unlawful interference by the Government.”⁴⁶⁵ The Respondent distinguishes this from a right to any particular outcome, as such a right, in its view, does not exist under the Treaty.⁴⁶⁶ Second, the Respondent asserts that the “Claimant’s alleged loss was interrupted by an exogenous factor, namely the conduct of individuals within the NPS” and, as a result, it is “inherently difficult to prove to the requisite degree of certainty” what the outcome would have been in the absence of the Blue House Measures.⁴⁶⁷

⁴⁶¹ Respondent’s Corrected Submission on the Remitted Issue, para. 190.

⁴⁶² Respondent’s Corrected Submission on the Remitted Issue, para. 192, referring to *Bilcon of Delaware, Inc. and others v. The Government of Canada*, PCA Case No. 2009-04, Award on Damages, 10 January 2019, paras. 277, 280 (**RLA-90**). See also Rejoinder on the Remitted Issue, para. 122(b).

⁴⁶³ Respondent’s Corrected Submission on the Remitted Issue, para. 193, referring to *Akgun Insaat Makina Sanayii ve Dis Ticaret Ltd. Sti. v. Federal Democratic Republic of Ethiopia*, PCA Case No. 2020-08, Final Award (Save as to Costs), 29 August 2025, paras. 1111, 1115, 1117-18, 1127 (**RLA-205**).

⁴⁶⁴ Respondent’s Corrected Submission on the Remitted Issue, para. 195.

⁴⁶⁵ Respondent’s Corrected Submission on the Remitted Issue, para. 196(a); Rejoinder on the Remitted Issue, para. 122(c).

⁴⁶⁶ Respondent’s Corrected Submission on the Remitted Issue, para. 196(a).

⁴⁶⁷ Respondent’s Corrected Submission on the Remitted Issue, para. 196(b).

278. The Respondent maintains that the proper standard for the Tribunal to apply is the “sufficient degree of certainty” standard, but claims that the Claimant has not been able to demonstrate to the sufficient degree of certainty that the NPS would have voted against the Merger or abstained in the absence of the Blue House Measures.⁴⁶⁸ In the alternative, the Respondent argues that if the Tribunal is nevertheless inclined to award some compensation to the Claimant, it could apply the loss of chance framework and compensate the Claimant for the loss of a fair opportunity to have its campaign against the Merger decided without government interference.⁴⁶⁹ The Respondent states that if the Tribunal were to apply a loss of chance framework, damages could be assessed by “multiplying (i) the Full Loss Amount by (ii) a suitable percentage figure corresponding to the likelihood that, absent the Blue House Measures, the NPS would have voted against the Merger or abstained, and the Merger consequently would not have been approved.”⁴⁷⁰
279. The Respondent contends that the Claimant offers no real response to its position on loss of chance and merely asserts that “[t]he Tribunal has already rejected the ROK’s loss-of-chance argument.”⁴⁷¹ The Respondent submits that the Claimant’s position is incorrect as the Tribunal in the Award did not rule on the Respondent’s loss of chance argument and, following the set-aside of the attribution finding, the applicability of the loss of chance framework now warrants revisiting.⁴⁷² It also highlights that the Claimant has failed to substantively engage with the Respondent’s position on loss of chance and has instead chosen to “pursue an all-or-nothing approach.”⁴⁷³
280. Finally, the Respondent rejects the Claimant’s attempt to revive its failed request to revise the Award’s basis of calculation of pre-award interest.⁴⁷⁴ The Respondent notes that the Claimant’s request was already rejected during the correction phase of the arbitration where the Tribunal concluded that the Claimant was seeking a revision of the Award rather than a correction of a computational error.⁴⁷⁵ The Respondent asserts that the English Court did not set aside the Tribunal’s determination that pre-award interest should be computed on the amount of

⁴⁶⁸ Rejoinder on the Remitted Issue, para. 123; Hearing Transcript, Day 2, p. 46:5-8.

⁴⁶⁹ Rejoinder on the Remitted Issue, para. 123.

⁴⁷⁰ Respondent’s Corrected Submission on the Remitted Issue, para. 202.

⁴⁷¹ Rejoinder on the Remitted Issue, para. 120.

⁴⁷² Rejoinder on the Remitted Issue, para. 120.

⁴⁷³ Rejoinder on the Remitted Issue, para. 122; Respondent’s Rebuttal Submission on the Remitted Issue, para. 78.

⁴⁷⁴ Rejoinder on the Remitted Issue, para. 130.

⁴⁷⁵ Rejoinder on the Remitted Issue, paras. 130-31.

compensation only and that those determinations therefore remain binding and the Claimant's request to revisit the Award's basis for calculating pre-award interest is barred.⁴⁷⁶

B. THE TRIBUNAL'S DETERMINATION

281. The Tribunal having established that the Claimant's claims satisfy the requirements of factual and legal causation, there is no basis for the Tribunal to revisit its findings on the quantum of the Claimant's loss, as determined in the Award.

282. This also applies to the Claimant's claim for revision of the amount on which it seeks interest. As noted above, the Claimant seeks interest on the amount of KRW 771,026,641,100, instead of the USD 48,490,438.00 awarded by the Tribunal, on the basis that the claimed principal "tak[es] into consideration the sums recovered by EALP between 17 and 25 September 2015, on 18 March 2016 and on 12 May 2022."⁴⁷⁷

283. The Tribunal recalls that the Claimant made the same claim for interest in connection with its Request for Correction of the Award. The Tribunal dismissed the Claimant's request on the basis that it did not qualify as a correction of an "error in computation" within the meaning of Article 38(1) of the UNCITRAL Rules. In the context of the present Remitted Proceedings, the Claimant's claim is effectively a new substantive claim that falls outside the scope of the Remitted Issue. It therefore must be rejected.

X. COSTS

A. THE PARTIES' POSITIONS

1. The Claimant's Position

a) Costs of the Set-Aside Proceedings

284. The Claimant requests that the Respondent be ordered to pay the costs of the Set-Aside Proceedings on the basis that those costs would not have been incurred but for the Respondent's breach of the Treaty.⁴⁷⁸ The Claimant states that it is not seeking to overturn the Set-Aside Judgment, but rather to satisfy 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."⁴⁷⁹ The Claimant contends that this amount includes the costs of the Set-Aside Proceedings,

⁴⁷⁶ Rejoinder on the Remitted Issue, para. 132.

⁴⁷⁷ Reply on the Remitted Issue, para. 141(b).

⁴⁷⁸ Reply on the Remitted Issue, para. 137(a)-(b).

⁴⁷⁹ Reply on the Remitted Issue, para. 137(a).

which ultimately proved to be “empty” and did not “quite clearly alter the final outcome.”⁴⁸⁰ In its view, declining to require the Respondent to bear those costs would effectively reward it for having pursued superfluous proceedings.⁴⁸¹

285. As to the Tribunal’s authority to award such costs, the Claimant contends that the costs of the Set-Aside Proceedings fall within the scope of Article 40(e) of the UNCITRAL Rules, which permits the Tribunal 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.”⁴⁸²

286. The Claimant rejects the Respondent’s contention that its request is barred by *res judicata*, arguing that neither the relief sought nor the claims advanced by the Parties are the same in the Set-Aside Proceedings and these Remitted Proceedings.⁴⁸³

287. On this basis, the Claimant submits that it is entitled to the following costs incurred in the Set-Aside Proceedings:⁴⁸⁴

Category	Incurred amount (US\$ / GBP£)
Legal fees	
Three Crowns LLP	\$4,172,903.20
Kobre & Kim LLP	\$3,288,864.00
Total legal fees	\$7,461,767.20
Disbursements and other charges	
Three Crowns LLP	\$84,027.14
Kobre & Kim LLP	\$65,360.30
Total disbursements and other charges	\$149,387.44
Payments on account to the ROK	
Court of Appeal proceedings	£380,000.00
High Court proceedings	£945,804.00
Total payments on account to the ROK	£1,325,804.00
Total costs and expenses incurred	\$7,611,154.64 £1,325,804.00

⁴⁸⁰ Reply on the Remitted Issue, para. 137(b).

⁴⁸¹ Reply on the Remitted Issue, para. 137(b).

⁴⁸² Reply on the Remitted Issue, para. 137(c).

⁴⁸³ Reply on the Remitted Issue, para. 137(d).

⁴⁸⁴ Claimant’s Statement of Costs, Table 3.

b) Costs of the Original and Remitted Proceedings

288. The Claimant requests that the Respondent be ordered to pay the legal fees and expenses incurred by the Claimant in the Original Proceedings, in an amount of USD 28,903,188.90, as ordered by the Tribunal in paragraph 993 of the Award, together with interest at a rate of 5 percent, compounded yearly.⁴⁸⁵
289. The Claimant submits that, contrary to the Respondent's position, there is no basis for the Tribunal to depart from its earlier approach to legal costs, under which it considered "which party had prevailed on which issues."⁴⁸⁶ Although the Claimant accepts that the resulting apportionment may need to be revisited in light of the Tribunal's decision on the Remitted Issue, it maintains that the correction of the Award provides no basis for reducing the percentages previously awarded in its favor.⁴⁸⁷ Having defeated the ROK's causation arguments for a second time, the Claimant contends that any adjustment should instead increase those percentages.⁴⁸⁸
290. The Claimant also requests that the Respondent be ordered to pay USD 3,968,201.29, comprising the costs of the arbitration, as well as the legal fees and expenses incurred by the Claimant in the Remitted Proceedings, with interest at the rate of 5 percent, compounded yearly.⁴⁸⁹

Category	Incurred amount (US\$ / GBP£)
Payments to the PCA	
Claimant's portion of advance on costs	\$325,000.00
Legal fees	
Three Crowns LLP	\$1,767,030.10
Kobre & Kim LLP	\$1,795,202.00
Total legal fees	\$3,562,232.10
Disbursements and other charges⁴⁹⁰	
Three Crowns LLP	\$37,149.79
Kobre & Kim LLP	\$43,819.40
Total disbursements and other charges	\$80,969.19
Total costs and expenses incurred	\$3,968,201.29

⁴⁸⁵ Reply on the Remitted Issue, paras. 134(a), 141(d); Claimant's Statement of Costs, para. 2 and Table 1.

⁴⁸⁶ Reply on the Remitted Issue, para. 138.

⁴⁸⁷ Reply on the Remitted Issue, para. 138. *See also* Claimant's Statement of Costs, footnote 6 (noting the Tribunal's decision to award the Claimant 78% of its legal fees and expenses).

⁴⁸⁸ Reply on the Remitted Issue, para. 138.

⁴⁸⁹ Reply on the Remitted Issue, paras. 134(b), 141(e); Claimant's Statement of Costs, Table 2.

⁴⁹⁰ The charges include printing/copying services, couriers, travel, accommodation, and other expenses incurred by counsel during the Remitted Proceedings. Claimant's Statement of Costs, footnote 10.

2. The Respondent's Position

a) *Costs of the Set-Aside Proceedings*

291. The Respondent submits that it was entitled to initiate the Set-Aside Proceedings, which led to the High Court setting aside an important finding in the Award that the NPS is a *de facto* organ of the State.⁴⁹¹ The Respondent therefore rejects the Claimant's characterization that the Set-Aside Proceedings were an "empty exercise" that would not alter the final outcome of this arbitration.⁴⁹²
292. The Respondent asserts that the Claimant's request that the Respondent be ordered to pay the Claimant's costs of the Set-Aside Proceedings falls outside of the Tribunal's jurisdiction and is *res judicata*.⁴⁹³ Specifically, the Respondent argues that the costs of the Set-Aside Proceedings, which were initiated following the conclusion of the Original Proceedings, do not constitute costs of the arbitration within the meaning of Article 40(2) of the UNCITRAL Rules and, in any event, are governed by English statutory provisions and fall within the jurisdiction of the relevant court to determine.⁴⁹⁴
293. The Respondent contends that the Claimant's claim is *res judicata*, given that the High Court has already finally determined the allocation of costs arising from the Set-Aside Proceedings by ordering the Claimant to pay 70% of the Respondent's costs.⁴⁹⁵ Therefore, the Claimant cannot re-litigate this issue as it has already been determined by a court of competent jurisdiction.⁴⁹⁶ As to the Claimant's position that there is no triple identity for applying *res judicata*, the Respondent submits that the triple identity is satisfied in relation to the specific claim at issue, namely, the Claimant's claim for its costs of the Set-Aside Proceedings.⁴⁹⁷

⁴⁹¹ Rejoinder on the Remitted Issue, para. 129(b).

⁴⁹² Rejoinder on the Remitted Issue, para. 129(b).

⁴⁹³ Respondent's Corrected Submission on the Remitted Issue, para. 203.

⁴⁹⁴ Respondent's Corrected Submission on the Remitted Issue, para. 207. *See also* Senior Courts Act 1981, section 51 (**RLA-208**); English Civil Procedure Rules, 1998, rule 44.2 (**RLA-209**). The Respondent also notes that, under the Arbitration Act, a tribunal's power concerning costs are confined to the "costs of the arbitration." Respondent's Corrected Submission on the Remitted Issue, para. 205, *referring to* English Arbitration Act 1996, section 61(1) (**CLA-210**).

⁴⁹⁵ Respondent's Corrected Submission on the Remitted Issue, para. 206, *referring to* *Republic of Korea v. Elliott Associates, L.P.* CL-2023-000395, Order of Foxton LJ, 18 March 2026, para. 5 (**CLA-226**).

⁴⁹⁶ Respondent's Corrected Submission on the Remitted Issue, para. 207, *referring to* *Apotex Holdings Inc. and Apotex Inc. v. United States of America*, ICSID Case No. ARB(AF)/12/1, Award, 25 August 2014, paras. 7.10-7.36 (**CLA-1**); *Virgin Atlantic Airways Ltd v Zodiac Seats UK Ltd* [2013] UKSC 46, paras. 17-18 (**RLA-212**).

⁴⁹⁷ Rejoinder on the Remitted Issue, para. 129(d).

b) Costs of the Original and Remitted Proceedings

294. The Respondent submits that the Tribunal should award it its legal costs in proportion to its relative success in these arbitral proceedings.⁴⁹⁸ According to the Respondent, this approach would be consistent with the methodology adopted by the Tribunal in calculating damages in the Award, before “important part[s]” of the Award were set aside.⁴⁹⁹
295. Addressing the costs in the Original Proceedings, the Respondent observes that, in the Award, the Tribunal allocated costs on the basis that the Claimant had prevailed in three of the four main categories of issues.⁵⁰⁰ The Respondent submits that, because the Tribunal must now determine the costs of the Original Proceedings afresh, it should take into account the Respondent’s subsequent success in the correction phase and on certain jurisdictional issues in the Set-Aside Proceedings, and accordingly reduce the costs previously awarded to the Claimant.⁵⁰¹ The Respondent further submits that, if it prevails on any aspect of causation in the Remitted Proceedings or if the damages awarded to the Claimant are further reduced, the Tribunal should correspondingly adjust the allocation of legal costs in the Respondent’s favor.⁵⁰²
296. The Respondent states that, contrary to what the Claimant alleges, it does not seek an allocation of the legal costs of the arbitration by reference to the Parties’ relative success in the Set-Aside Proceedings.⁵⁰³ Rather, it submits that its success in setting aside an important aspect of the Award changed the outcome of the Original Proceedings and, in turn, the basis on which the Tribunal had originally assessed the Parties’ relative success in the arbitration..⁵⁰⁴ Accordingly, the Respondent argues that its success in the Set-Aside Proceedings is relevant to the Tribunal’s reassessment of the allocation of legal costs..⁵⁰⁵
297. As to the costs of the Remitted Proceedings, the Respondent requests that the Tribunal order the Claimant to bear those costs in their entirety, including “(i) reasonable fees and expenses of

⁴⁹⁸ Respondent’s Corrected Submission on the Remitted Issue, para. 208.

⁴⁹⁹ Respondent’s Corrected Submission on the Remitted Issue, para. 208.

⁵⁰⁰ Respondent’s Corrected Submission on the Remitted Issue, para. 211. *See also* Award, para. 993.

⁵⁰¹ Respondent’s Corrected Submission on the Remitted Issue, para. 211. The Respondent notes that it is not asking the Tribunal to revisit the quantification of the Parties’ legal costs incurred in the Original Proceedings. Rejoinder on the Remitted Issue, para. 127.

⁵⁰² Respondent’s Corrected Submission on the Remitted Issue, para. 211.

⁵⁰³ Rejoinder on the Remitted Issue, para. 127(d).

⁵⁰⁴ Rejoinder on the Remitted Issue, para. 127(d).

⁵⁰⁵ Rejoinder on the Remitted Issue, para. 127(d).

counsel; (ii) other reasonable costs associated with this Arbitration”; and (iii) fees and expenses of this Tribunal and of the PCA as the [registry],” together with post-award interest thereon.⁵⁰⁶

298. The Respondent sets out the fees and expenses incurred by it in the Remitted Proceedings as follows:⁵⁰⁷

Description	Amount
Legal fees	USD 1,050,909.00 KRW 733,997,377.00
Disbursements	USD 61,467.07 KRW 141,392,515.00
Other expenses	USD 325,000.00 KRW 67,011,570.00
Fees and expenses grand total exclusive of VAT	USD 1,437,376.07 KRW 942,401,462.00
Fees and expenses grand total inclusive of 10% VAT⁵⁰⁸	USD 1,581,113.68 KRW 1,029,940,451.00

299. The Respondent further breaks down its costs as follows:

(a) Legal fees:⁵⁰⁹

Counsel	Amount
Arnold & Porter Kaye Scholer LLP	USD 821,943.69
Peter & Kim	KRW 733,997,377.00
Essex Court Chambers	USD 228,965.31
Fees total exclusive of VAT	USD 1,050,909.00 KRW 733,997,377.00
Fees total inclusive of 10% VAT	USD 1,155,999.90 KRW 807,397,115.00

⁵⁰⁶ Respondent’s Statement of Costs, para. 2.

⁵⁰⁷ Respondent’s Statement of Costs, para. 1.

⁵⁰⁸ The Respondent states that the ROK incurs VAT at a rate of 10% on all fees and expenses, except for expenses incurred by the ROK’s representatives. Respondent’s Statement of Costs, footnote 2.

⁵⁰⁹ The Respondent submits that they were significantly reduced by the application of a pre-agreed fee ceiling, resulting in a substantial write-off. Respondent’s Statement of Costs, paras. 5-6.

(b) Disbursements incurred by counsel:⁵¹⁰

Counsel	Amount
Arnold & Porter Kaye Scholer LLP	USD 49,540.92
Peter & Kim	KRW 141,392,515.00
Essex Court Chambers	USD 11,926.15
Disbursements total exclusive of VAT	USD 61,467.07 KRW 141,392,515.00
Disbursements total inclusive of 10% VAT	USD 67,613.78 KRW 155,531,767.00

(c) Other expenses related to this arbitration, including travel and other expenses incurred by the ROK's representatives, in addition to costs advances paid to the PCA:⁵¹¹

Disbursement	Amount
Travel and other expenses for representatives of the ROK	KRW 67,011,570.00
Cost advances paid to the PCA	USD 325,000.00
Disbursements total exclusive of VAT	USD 325,000.00 KRW 67,011,570.00
Disbursements total inclusive of 10% VAT	USD 357,500.00 KRW 67,011,570.00

B. THE TRIBUNAL'S DETERMINATION

300. The Tribunal will deal with the three cost claims raised by the Parties – the costs of the Original Proceedings, the costs of the Set-Aside Proceedings and the costs of these Remitted Proceedings – in this order below.

1. Costs of the Original Proceedings

301. As summarized in Section II.C above, the High Court set aside paragraph 993 of the Award and corresponding paragraph 995(h) of the operative part of the Award, dealing with the allocation of the Parties' legal and other costs, on the basis that the Court was satisfied that the

⁵¹⁰ Respondent's Statement of Costs, para. 7. Disbursements include courier, travel and hearing-related costs, duplicating and litigation support services, and miscellaneous costs (such as translation costs). Respondent's Statement of Costs, para. 8.

⁵¹¹ Respondent's Statement of Costs, paras. 9-10.

paragraph 995(h) “is premised on the finding that the conduct of NPS constituted measure adopted or maintained by Korea.”⁵¹²

302. Having determined in this Award on the Remitted Issue that the Claimant’s loss was caused by the Respondent, which corresponds to the Tribunal’s determination in the Original Proceedings, the Tribunal considers that both paragraph 993 and paragraph 995(h) must be reinstated. Accordingly, the Tribunal confirms that (i) the Respondent is ordered to pay the Claimant the legal costs incurred by the Claimant in the amount of USD 28,903,188.90, with interest at the rate of 5 percent, compounded yearly, and payable from 30 days of the date of this Award on the Remitted Issue, and (ii) the Claimant is ordered to pay the Respondent the legal costs incurred by the Respondent in the amount of USD 3,457,479.87, with interest at the rate of 5 percent, compounded yearly, and payable from 30 days of the date of this Award on the Remitted Issue.

2. Costs of the Set-Aside Proceedings

303. As summarized above, the Claimant requests that the Respondent be ordered to pay the Claimant its costs of the Set-Aside Proceedings before the English courts. The Claimant submits that, “[a]s 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.”⁵¹³
304. The Respondent submits that the Claimant’s request that the Claimant’s claim falls outside the Tribunal’s jurisdiction and, as it has already been determined by the English courts, is also *res judicata*.⁵¹⁴ According to the Respondent, the Tribunal’s power is limited to awarding the “costs of the arbitration” pursuant to the categories laid out in Article 40(2) of the UNCITRAL Rules.⁵¹⁵ This does not include the costs of court proceedings, which are subject to English statutory provisions.⁵¹⁶
305. The Tribunal agrees with the Respondent’s position. The Claimant’s claim is neither a claim for costs incurred in the Original Proceedings, nor a claim for costs incurred in these Remitted

⁵¹² *Republic of Korea v. Elliott Associates, L.P.*, CL-2023-000395, Ruling on Consequential Issues, 18 March 2026, para. 5(p) (**CLA-227**).

⁵¹³ Reply on the Remitted Issue, para. 137(c).

⁵¹⁴ Respondent’s Corrected Submission on the Remitted Issue, para. 203.

⁵¹⁵ Respondent’s Corrected Submission on the Remitted Issue, para. 205. *See also* English Arbitration Act 1996, section 61(1) (**CLA-210**).

⁵¹⁶ Respondent’s Corrected Submission on the Remitted Issue, para. 207. *See* Senior Courts Act 1981, section 51 (**RLA-208**); English Civil Procedure Rules, 1998, rule 44.2 (**RLA-209**).

Proceedings; it is a new substantive claim for costs incurred by the Claimant outside the arbitration proceedings.

306. Accordingly, the Claimant's claim for the costs of the Set-Aside Proceedings is denied.

3. Costs of the Remitted Proceedings

307. The relevant rules governing the award of costs in these Remitted Proceedings are set out in Article 11.26.2 of the Treaty and Article 40 and 42 of the UNCITRAL Rules, as quoted in paragraphs 984 and 985 of the Award.

308. During the Remitted Proceedings, each Party made advance payments of USD 325,000.00 to cover the costs of the arbitration, amounting to USD 650,000.00 in total. The fees of the members of the Tribunal amount to USD 118,500.00 for Mr. Oscar M. Garibaldi, USD 99,300.00 for Mr. J. Christopher Thomas KC, and USD 197,093.95 for Dr. Veijo Heiskanen. The travel and other expenses of the members of the Tribunal amount to USD 18,820.35. The PCA's fees and expenses for its services, which were paid in accordance with the PCA's schedule of fees, amount to USD 95,933.78. Other costs, including court reporter, hearing facilities, IT support, translation, bank charges, courier expenses, and currency translation variances amount to USD 105,855.96.

309. Based on the above figures, the total costs of the arbitration in the Remitted Proceedings amount to USD 604,285.29. The PCA will provide the Parties with a statement of account after the issuance of this Award on the Remitted Issue and will return any unused balance to the Parties in equal shares.

310. As summarized above, the Claimant's costs of these Remitted Proceedings amount to USD 302,142.65 and its legal and other costs amount to USD 3,643,201.29, whereas the Respondent's costs of the Remitted Proceedings amount to USD 302,142.65 and its legal and other costs (including VATs) amount to USD 1,581,113.68 and KRW 1,029,940,451.00.

311. In the Original Proceedings the Tribunal considered it appropriate that each Party bear its arbitration costs on the basis that such costs "arise directly out of the Parties' arbitration agreement and thus constitute costs that the Parties have agreed to bear, before any arbitration proceedings and thus regardless of the outcome of this case."⁵¹⁷ As to the Parties' legal and other costs, the Tribunal awarded such costs to the extent that they were considered reasonable, pursuant to Article 40.2(e) of the UNCITRAL Rules, and apportioned them to reflect the Parties' relative success in the Original Proceedings.

⁵¹⁷ Award, para. 990.

312. The Tribunal considers it appropriate to apply the same principles in the present Remitted Proceedings, except that the Tribunal does not consider it appropriate to order that each Party bear its Remitted Proceedings costs. While it may be considered, as the Tribunal did in the Original Proceedings, that the Parties have agreed to bear such costs on the basis that they arise directly out of the arbitration agreement and thus constitute costs that the Parties agreed to bear, before any arbitration and thus regardless of the outcome of the case, this assumption cannot be extended to these Remitted Proceedings. Accordingly, the Tribunal considers it appropriate that the Parties' Remitted Proceedings costs should follow the event and that the Claimant be awarded its Remitted Proceedings costs, in the amount of USD 302,142.65.
313. As to the Parties' legal and other costs, as noted above, the Tribunal considers it appropriate to apply the same principles in these Remitted Proceedings as in the Original Proceedings. The Tribunal having found that the Respondent has caused the Claimant's loss, the Tribunal awards the legal and other costs claimed by the Claimant, which it considers reasonable, in the amount of USD 3,643,201.29.

XI. AWARD ON THE REMITTED ISSUE

315. For the foregoing reasons, the Tribunal determines as follows:

- a. The Respondent is ordered to pay the Claimant compensation for the losses caused to the Claimant by the Respondent's breach of the Treaty in the amount of USD 48,490,438.00;
- b. The Respondent is ordered to pay the Claimant pre-award interest at a rate of 5 percent on the sum in sub-paragraph (a) above, compounded yearly from 16 July 2015 until the date of this Award on the Remitted Issue;
- c. The Respondent is ordered to pay the Claimant post-award interest at a rate of 5 percent, compounded yearly, from the date of this Award on the Remitted Issue until payment of the sum in sub-paragraph (a) above in full;
- d. The Claimant is ordered to pay the Respondent the legal costs incurred by the Respondent in relation to the Original Proceedings in the amount of USD 3,457,479.87, with interest at the rate of 5 percent, compounded yearly, payable from 30 days of the date of the Award on the Remitted Issue;
- e. The Respondent is ordered to pay the Claimant the legal costs incurred by the Claimant in relation to the Original Proceedings, in the amount of USD 28,903,188.90, with interest at the rate of 5 percent, compounded yearly;
- f. The Respondent is ordered to pay the Claimant the costs of the arbitration incurred by the Claimant in these Remitted Proceedings, in the amount of USD 302,142.65, with interest at the rate of 5 percent, compounded yearly;
- g. The Respondent is ordered to pay the Claimant the legal costs incurred by the Claimant in these Remitted Proceedings, in the amount of USD 3,643,201.29, with interest at the rate of 5 percent, compounded yearly;
- h. The Claimant's request that the Respondent be ordered to pay the Claimant the costs of the Set-Aside Proceedings before the English courts is denied; and
- i. All other claims, defenses and requests for relief are denied.

Place of Arbitration: London, United Kingdom

Date: 30 September 2026

The Arbitral Tribunal



Mr. Oscar M. Garibaldi



Mr. J. Christopher Thomas KC



Dr. Veijo Heiskanen
(Presiding Arbitrator)