

IN THE MATTER OF AN ARBITRATION UNDER
THE ARBITRATION RULES OF THE UNITED NATIONS
COMMISSION OF INTERNATIONAL TRADE LAW
and
THE KOREA-UNITED STATES FREE TRADE AGREEMENT

BETWEEN:

JIN HAE SEO

(Claimant)

THE GOVERNMENT OF THE REPUBLIC OF KOREA

(Respondent)

RESPONSE TO THE NOTICE OF ARBITRATION

August 13, 2018

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1. Introduction

- A. The Government of the Republic of Korea (hereinafter “**Respondent**”) submits this Response to the Notice of Arbitration (hereinafter the “**Response**”) in response to the Notice of Submission to Arbitration dated July 12, 2018 (hereinafter the “**Notice**”) which JIN HAE SEO (hereinafter “**Claimant**”) has served **Respondent** under the Korea-United States Free Trade Agreement (hereinafter the “**KORUS**”) and the United Nations Commission on International Trade Law Arbitration Rules as adopted in 2013 (the “**UNCITRAL Arbitration Rules**”)¹
- B. Unless expressly admitted, **Respondent** denies each paragraph of the **Notice**.

2. Respondent Information

- A. Respondent

The respondent in this arbitration is the Government of the Republic of Korea, and its contact point details are as follows:

- Address: Office of International Legal Affairs,
Ministry of Justice of the Republic of Korea,
Government Complex, Gwacheon,
Republic of Korea

¹ Claimant elected to arbitrate under the 2013 UNCITRAL Arbitration Rules. Respondent notes that certain provisions in Chapter 11 of the KORUS appear to contemplate the application of the 1976 version of the UNCITRAL Arbitration Rules, such as Article 11.20(6)(c) which mentions “the statement of claim referred to in Article 18 of the UNCITRAL Arbitration Rules” (the provision of the 2013 UNCITRAL Arbitration Rules that deals with the Statement of Claim is Article 20). The Respondent on this occasion does not object to the proposed application of the 2013 UNCITRAL Arbitration Rules except to the extent modified by the KORUS. However, for the avoidance of doubt, Respondent’s acceptance of the application of the 2013 UNCITRAL Arbitration Rules is for the purposes of the present arbitration only, and Respondent shall not be bound by such acceptance in any other proceedings. Respondent further notes that the 2013 UNCITRAL Arbitration Rules is identical to the 2010 UNCITRAL Arbitration Rules but for the inclusion of the UNCITRAL Arbitration Rules on Transparency in Treaty-based Investor-State Arbitration, which are not applicable to the present arbitration.

B. Legal counsel

Respondent's legal counsel is Yoon & Yang LLC of the Republic of Korea, and its contact point details are as follows, to which all correspondence, notices and other documents in relation to this arbitration should be addressed:

- Name: Sungbum LEE, Partner
- Address: 18th Fl., ASEM Tower 517 Yeongdong-daero, Gangnam-Gu, Seoul 06164, Republic of Korea
- Telephone: +82-2-6182-8527
- Fax: +82-2-6003-7031
- E-mail: sblee@yoonyang.com

3. Response regarding Procedural Matters

A. Number of arbitrators

Claimant proposes in its **Notice** a Hong Kong attorney Benny Lo as the sole arbitrator for this arbitration.

Respondent disagrees, and proposes that the tribunal be composed of three (3) arbitrators. **Respondent** wants a proper determination of this matter made by experienced practitioners with multiple investment case credentials as arbitrators.

Thus, **Claimant** and **Respondent** shall each appoint one (1) arbitrator, and agree on the third who shall act as the presiding arbitrator.

B. Appointing authority

Claimant proposes Hong Kong International Arbitration Centre (the "**HKIAC**") as the appointing authority.

Respondent disagrees. Article 11.19(2) of the **KORUS** clearly states that the Secretary-General of the International Center for Settlement of Investment Disputes (the “**ICSID**”) shall serve as the appointing authority for an arbitration under the **KORUS** Chapter 11, which shall be respected and followed in this arbitration.

C. The Administration of Arbitration

Claimant proposes **HKIAC** as the body for handling the administrative affairs of this arbitration.

Respondent disagrees, and proposes Permanent Court of Arbitration (the “**PCA**”) as the body for handling the administrative affairs of this arbitration.

D. The Place of Arbitration

Despite Article 3(3)(g) of the **UNCITRAL Arbitration Rules**, the **Claimant** has not proposed the place of arbitration in the **Notice**.

Respondent proposes Singapore as the legal place of arbitration. **Respondent** reserves all rights to agree on the choice of the physical venue for this arbitral proceeding.

E. The Language of Arbitration

Pursuant to Article 11.20(3) of the **KORUS**, official languages of this arbitration procedure are Korean and English. Nevertheless, **Claimant** failed to comply with the **KORUS** by serving her **Notice** only in English and omitting to serve in Korean. **Respondent** reserves the rights to argue the validity of the **Notice** that **Claimant** has served in violation of her obligation under the **KORUS**.

4. Facts of the Dispute

Claimant argues that **Respondent** has caused her damages by violating the **KORUS**. However, **Claimant's** arguments lack merits with no supporting evidences, and are based on a misunderstanding or misrepresentation of the facts. **Respondent** provides a brief summary of the facts and circumstances regarding this dispute.

- (1) On April 4th of 2001, **Claimant** signed a contract to purchase 76.14th of 87 share of interest in the land, the size of which was 187.8 square meter, located at **-*
*****_****, ****_**, Seoul, Republic of Korea (the “**Land**”). **Claimant** also signed a contract to purchase a three-story and a single-story residential property which existed above the **Land** (each residential property hereinafter referred to as the “**three-story building**” and “**single-story building**”; the **Land**, the **three-story building** and the **single-story building** hereinafter referred collectively as “**Properties**”).

Subsequently, **Claimant** fully obtained the ownership of **Properties** in this case by registering with the relevant government authority on June 8th of 2001. On August 17th of 2001, **Claimant** purchased the remaining 10.86th of 87 share of interest in the **Land** and obtained its full ownership on August 23rd of 2001 through official registration. On October 23rd of 2003, **Claimant** granted approximately 25 percent share of the **Land** ownership and the title of the **single-story building** to her husband, ****_** Park. Consequently, **Claimant** and ****_** Park shared interest in the ownership of the **Land**, **Claimant** owned the **three-story building**, and ****_** Park owned the **single-story building** at the time when **Properties** were expropriated.

- (2) **Claimant** obtained U.S. citizenship on May 23rd of 2013 and lost her Korean citizenship. ****_** Park maintained his Korean citizenship while exercising and after losing his ownership over **Properties**.
- (3) Seoul Metropolitan City, the local government of the Republic of Korea, designated 2nd District of Dae-heung, where **Properties** were located, as a redevelopment area on December 27th of 2007. Such action taken by the Seoul Metropolitan City provides residences of the designated area the right to pursue areal redevelopment.

- (4) The document agreeing to establish the Residence Redevelopment Association² (the “**Redevelopment Association**”) and all other relevant documents were submitted under the names of **Claimant** and ****-** Park on February 12th of 2008. Thereafter, the **Redevelopment Association** was established on May 16th of 2008, the redevelopment project was authorized on January 19th of 2012, and the management and disposal plan was authorized on March 12th of 2015, respectively.³
- (5) Upon the **Redevelopment Association’s** notification to the stakeholders of the opportunity to review the compensation plan for their properties on March 9th of 2015, the landlords of the designated area including **Claimant, Redevelopment Association**, and the local government of the Seoul Metropolitan City each appointed a certified appraisal company in accordance with the law, and three appointed companies conducted appraisals on the properties subject to the redevelopment plan including **Properties**.
- (6) Under the law, the average of the value determined by three appraisal companies was to be the value for each property. On the basis of the outcome of the appraisals, the **Redevelopment Association** offered approximately KRW 550 million to **Claimant** (KRW 520 million for the **Land** and KRW 29 million for the **three-story building**) and KRW 195 million to ****-** Park (KRW 175 million for the **Land** and KRW 20 million for the **single-story building**) in exchange for the title of **Properties**. **Claimant** and ****-** Park rejected this offer.
- (7) The **Redevelopment Association** filed an application for adjudication on the appropriate value of **Properties** with the Land Expropriation Committee of the Seoul Metropolitan City on October 28th of 2015, and the Committee issued its decision on January 29th of 2016. According to this decision, the appropriate compensation amount was approximately KRW 608 million (KRW 536 million for the **Land** and KRW 72 million for the **three-story building**) for **Claimant**, and KRW 201 million

² An association voluntarily composed of the residents of the designated redevelopment area. A redevelopment association is neither part of government nor public entity.

³ A lawsuit regarding the validity of the establishment of the **Redevelopment Association** was filed, and the Supreme Court affirmed its validity (Supreme Ct. Decision 2013Du21304 rendered on January 23, 2014).

(KRW 180 million for the **Land** and KRW 21 million for the **single-story building**) for ****-** Park. The **Redevelopment Association** offered **Claimant** and ****-** Park this amount, but **Claimant** and ****-** Park refused to accept such offer.

- (8) The **Redevelopment Association** placed the amount decided by the Land Expropriation Committee of the Seoul Metropolitan City for **Claimant** and ****-** Park in the court designated escrow account, and moved forward to expropriate **Properties** on March 18th of 2016.
- (9) Also, the **Redevelopment Association** filed for an injunction against the **Claimant** and ****-** Park in order to prohibit the transfer of occupancy of **Properties**. The Seoul Western District Court awarded the injunction ordering the **Claimant** and ****-** Park not to transfer the occupancy of **Properties** on January 8th of 2016. In order to execute this order, the Enforcement Officer (Mr. *-***** Lee) and his team visited the premise of **Properties** on January 18th of 2016, but could not enter and thus failed to execute the injunction order. However, the Enforcement Officer was able to execute the order on January 19th of 2016 after meeting **Claimant** at the premise of **Properties**. In accordance with the law, the Enforcement Officer duly presented the copy of the order and explained its main contents to **Claimant**. Two (2) witnesses and representatives of the **Redevelopment Association** were present at the time when the injunction was duly executed.
- (10) On May 18th of 2016, **Claimant** filed an appeal with the Central Land Expropriation Committee with regard to the Seoul Land Expropriation Committee's decision. On January 19th of 2017, the Central Land Expropriation Committee affirmed the legality of the Seoul Land Expropriation Committee's decision. In doing so, however, the Central Land Expropriation Committee conducted its own appraisals through two (2) certified appraisal companies, and decided to increase the compensation amount. The Central Land Expropriation Committee decided as a compensation amount approximately KRW 641 million (KRW 569 million for the **Land** and KRW 72 million for the **three-story building**) for **Claimant** and approximately KRW 212 million (KRW 191 million for the **Land** and KRW 21 million for the **single-story building**) for her husband ****-** Park.
- (11) Thereafter, the **Redevelopment Association** filed for an eviction with the Western

Seoul District Court against **Claimant**, her husband ****-** Park and others on December 9th of 2015. On January 11th of 2017, the Seoul Western District Court ruled for the **Redevelopment Association**, but **Claimant** appealed. However, on March 2nd of 2017, **Claimant** withdrew her appeal and the determination made by the Seoul Western District Court ordering **Claimant** and ****-** Park to move out from the premise of **Properties** and transfer its occupancy to the **Redevelopment Association** (Seoul Western District Court Decision 2015*Gadan*246301) became the final court ruling.

(12) As outlined above, the expropriation in this case has been conducted in accordance with the procedures established under the relevant Korean law.


5. Response to the Relief Sought

- A. **Respondent** rejects every claim that **Claimant** has made in the **Notice** and rejects the relief sought.
- B. **Respondent** respectfully requests the arbitral tribunal to:
 - (1) dismiss **Claimant's** claim on the grounds of an arbitral tribunal's lack of jurisdiction with respect to the dispute and/or **Claimant's** failure to state a legitimate cause of action;
 - (2) dismiss all causes of action made by the **Claimant**;
 - (3) order **Claimant** to pay **Respondent** any and all costs incurred in connection with this arbitration, including but not limited to, attorney fees, fees and expenses for arbitrators and for the body that has assisted administering this arbitration; and
 - (4) order any further or additional relief as the tribunal may deem appropriate.

6. Rights Reserved

Respondent expressly reserves its rights in full, including, without limitation, right to: (a) raise preliminary objections for determination on an expedited basis or otherwise; and (b) amend and supplement its arguments set out in this Response, including its request for relief, including, without limitation, with respect to matters of jurisdiction and the merits.

Respectfully Submitted,

/s/ 

Sungbum LEE

Partner, Yoon & Yang LLC

Counsel to the Government of the Republic of Korea