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CERTIFICATE

FENGZHEN MIN

v.

REPUBLIC OF KOREA

(ICSID CASE NO. ARB/20/26)

ANNULMENT PROCEEDING

I hereby certify that the attached document is a true copy of the *ad hoc* Committee's Decision on Annulment, dated 11 September 2026.

Natalí Sequeira
Acting Secretary-General

Washington, D.C., 11 September 2026

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

FENGZHEN MIN

Applicant

and

REPUBLIC OF KOREA

Respondent on Annulment

ICSID Case No ARB/20/26
Annulment Proceeding

DECISION ON ANNULMENT

Members of the *ad hoc* Committee
Mr Cavinder Bull, *S.C.*, President
Ms Mairée Uran Bidegain, Member
Mr David A. Pawlak, Member

Secretary of the *ad hoc* Committee
Ms Geraldine R. Fischer

Assistant to the President of the *ad hoc* Committee
Ms Clarissa Wong

Date of dispatch to the Parties: 11 September 2026

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Applicant, Claimant or Mr Min	Mr Fengzhen Min, the applicant on annulment
Applicant's Opening Presentation	Applicant's opening presentation slides dated 25 February 2026 (CA-DE-1).
Application or Annulment Application	Application for Annulment filed on 27 September 2024
Arbitration	The arbitration proceedings between Fengzhen Min and the Republic of Korea (ICSID Case No ARB/20/26)
Award	Award rendered on 30 May 2024 in the arbitration proceedings between Fengzhen Min and the Republic of Korea (ICSID Case No ARB/20/26), which is CA-1 in the present annulment proceedings
BIT or Treaty	Agreement between the Government of the People's Republic of China and the Government of the Republic of Korea on the Promotion and Protection of Investments, which entered into force on 1 December 2007
Building	The Grand Central Plaza in Beijing, China
CA-[#]	Applicant's Exhibit
CA-LA-[#]	Applicant's Legal Authority
CA-DE-[#]	Applicant's Demonstrative Exhibit
Counter-Memorial	Respondent's Counter-Memorial on Annulment dated 2 July 2025
Committee	*Ad hoc* Committee composed of Mr Cavinder Bull *S.C.* (President), Ms Mairée Urán Bidegain and Mr David A. Pawlak
Decision	This decision on annulment
ECA or Economic Crimes Act	Korean Act on the Aggravated Punishment, etc., of Specific Economic Crimes, 2009
Hearing	Hearing on Annulment held on 25 to 26 February 2026
Hearing Tr Day [#] [page:line]	Transcript of the hearing on Annulment held on 25 - 26 February 2026

ICSID Arbitration Rules	ICSID Rules of Procedure for Arbitration Proceedings 2006
ICSID or the Centre	International Centre for Settlement of Investment Disputes
ICSID Convention	Convention on the Settlement of Investment Disputes Between States and Nationals of Other States dated 18 March 1965
Korean Loans	The two loans obtained by Pi Korea from the Korean financial institutions Korea Life and Kookmin Bank, as arranged by Woori Bank.
Legality Objection	The Respondent's jurisdictional objection that the Pi Korea shares were not "*used as investment*" by the Claimant "*in accordance with the applicable laws and regulations*" of Korea as host State at the time of the investment, as required by Article 1(1) of the Treaty.
Memorial	Applicant's Memorial on Annulment dated 26 March 2025
Mr [redacted]	Mr [redacted]
Mr [redacted]	Mr [redacted]
Mr [redacted]	Mr [redacted]
Parties	The Applicant and the Respondent
Pi Korea	The Korean company Pi Investment Korea Co., Ltd
PM Agreement	The Project Management Agreement between Pi Korea and Mr [redacted]'s company, Wealth Care, dated 27 March 2008
Proposed Reports	The proposed legal expert reports of Professor Christoph Schreuer and Ms Lucinda Low
RA-[#]	Respondent's Exhibit
RA-LA-[#]	Respondent's Legal Authority
RA-DE-[#]	Respondent's Demonstrative Exhibit
Rejoinder	Respondent's Rejoinder on Annulment dated 5 November 2025
Reply	Applicant's Reply Memorial on Annulment dated 4 September 2025

Request	Applicant's Request for Leave to Admit Legal Expert Reports dated 4 February 2025
Respondent, Respondent on Annulment or Korea	Republic of Korea
Respondent's Opening Presentation	Applicant's opening presentation slides dated 25 February 2026 (RA-DE-1).
September 2011 Judgment	The judgment of the Seoul High Court dated 6 September 2011 in criminal proceedings against Mr [redacted]
SID	The Special Investigations Division of the Korean National Police Agency
SOFR	Secured Overnight Financing Rate
Tribunal	ICSID arbitral tribunal that rendered the Award
VCLT	Vienna Convention on the Law of Treaties
Woori Bank or Bank	The Korean state-owned bank, Woori Bank

I. INTRODUCTION AND PARTIES

1. These annulment proceedings concern an application for annulment (the "**Application**") of the award rendered on 30 May 2024 in the arbitration proceedings (the "**Arbitration**") between Fengzhen Min and the Republic of Korea (ICSID Case No ARB/20/26) (the "**Award**"). The Award[1] was rendered by a Tribunal composed of Mr Ian Glick *KC*, Mr Stephen L Drymer and Professor Donald M McRae. This decision ("**Decision**") will use the "**Claimant**", the "**Applicant**" or "**Mr Min**" to refer to Mr Fengzhen Min and the "**Respondent**", the "**Respondent on Annulment**" or "**Korea**" for the Republic of Korea. The Claimant and the Respondent are collectively referred to as the "**Parties**". The Parties' representatives and their addresses are listed above on page (i).

2. The Award determined a dispute submitted to the International Centre for Settlement of Investment Disputes ("**ICSID**" or the "**Centre**") on the basis of the Agreement between the Government of the People's Republic of China and the Government of the Republic of Korea on the Promotion and Protection of Investments, which entered into force on 1 December 2007 (the "**BIT**" or "**Treaty**") and the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, which entered into force on 14 October 1966 (the "**ICSID Convention**").

3. The dispute in the original proceedings related to allegations by the Claimant that the Respondent, through a Korean state-owned bank, Woori Bank ("**Woori Bank**" or the "**Bank**"), and as a result of unfair and unjust legal processes, had illegally expropriated the shares that the Claimant formerly held in Pi Investment Korea Co., Ltd ("**Pi Korea**"), a Korean company which indirectly owned valuable commercial property in China, the Grand Central Plaza in Beijing (the "**Building**"), and had further subjected the Claimant and his investment to treatment in breach of various Treaty protections.

4. In the Award, the Tribunal dismissed the Claimant's claims for lack of jurisdiction. As regards costs, the Tribunal ordered the Claimant to pay the Respondent its costs in the sum

[1] CA-1, *Fengzhen Min v Republic of Korea*, ICSID Case No ARB/26/10, Award, 30 May 2024 ("Award").

of KRW 4,912,601,421.53, plus interest accruing at the Secured Overnight Financing Rate ("**SOFR**") on any sum unpaid 45 days after the date of the Award until payment thereof.

5. The Claimant applied for annulment of the Award on the basis of Article 52(1) of the ICSID Convention, alleging three grounds for annulment: (i) the Tribunal manifestly exceeded its powers (Article 52(1)(b)); (ii) there was a serious departure from a fundamental rule of procedure (Article 52(1)(d)); and (iii) the Award failed to state the reasons on which it is based (Article 52(1)(e)).[2]

II. THE UNDERLYING DISPUTE AND THE AWARD

6. The Committee sets out below a summary of the underlying dispute and the Tribunal's findings as recorded in the Award, to provide context for this Decision. The Committee does not undertake an independent assessment of the facts of the case.

7. The dispute in the original proceedings related to allegations that the Respondent, through Woori Bank, and as a result of unfair and unjust civil and criminal legal processes, had illegally expropriated the shares that the Claimant held in Pi Korea.[3]

8. The acquisition of the Building was the result of a project by the Claimant and Mr [redacted] ("**Mr [redacted]**"), a Korean national, who had been introduced to the Claimant by Mr [redacted] ("**Mr [redacted]**"), then the Head of the Real Estate Finance Team of the Trust Business Department of Woori Bank.[4]

9. The necessary funds to acquire the Building were borrowed from two financial institutions by way of loans, arranged by Woori Bank. The Bank's Real State Committee originally declined to support the Building project, but subsequently reversed its decision. Mr [redacted] was not present at the first meeting, but he chaired the second one. The Bank approved the project on 30 November 2007.[5]

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2 Annulment Application, para 2.
3 Award, para 6.
4 Award, paras 50, 68.
5 Award, para 78.

10. In or around September 2007, prior to the Bank's approval and the incorporation of Pi Korea in October 2007, there was a meeting in Seoul between the Claimant, Mr [redacted] and Mr [redacted]. During that meeting, Mr [redacted] offered 30% of the Pi Korea shares to Mr [redacted].[6]

11. On 27 December 2007, after the Bank arranged one of the two loan agreements with Korean financial institutions (the "**Korean Loans**"), the Claimant transferred 30% of Pi Korea's share capital to Mr [redacted] ("**Mr [redacted]**").[7] The Tribunal found that the shares transferred to Mr [redacted] were in fact intended for Mr [redacted]. The Tribunal also found that Mr [redacted] did not receive the shares, as the arrangements were subsequently changed, and Mr [redacted] was instead paid off under a Project Management Agreement dated 27 March 2008 signed by the Claimant, on behalf of Pi Korea, and Mr [redacted]'s company, Wealth Care ("**PM Agreement**").[8] Under the terms of this agreement, Mr [redacted] was unconditionally promised a fee "*in respect of services that might or might not ever be rendered*".[9]

12. The loans were subsequently assigned to Woori Bank itself,[10] and the "*Claimant and Mr [redacted] executed an agreement pledging all the Pi Korea Shares to secure the loans*".[11] The Bank eventually commenced the process of enforcing its security, and the Claimant lost his shares in Pi Korea in 2011, which constituted the entire share capital of Pi Korea.[12] The Claimant then initiated civil proceedings in the Korean courts to regain ownership of his Pi Korea shares. Korea also initiated criminal proceedings against the Applicant, which resulted in the Applicant being convicted of bribery and embezzlement.[13]

13. During the criminal proceedings, Mr Min was subjected to interrogations by the Special Investigations Division of the Korean National Police Agency (the "**SID**"). The results of the interrogations formed an important part of the evidence before the Tribunal,[14] and were

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6 Award, para 76.
7 Award, paras 79, 81, 180.
8 Award, paras 184, 180.
9 Award, para 180 (h).
10 Award, para 50.
11 Award, para 52.
12 Award, paras 53, 84.
13 Award, para 54.
14 Award, paras 86-92 (noting that the Claimant was cross-examined extensively about his interviews with the SID and including a summary of the findings during cross examination).

reproduced at pages 25-34 (paras 86-88) of the Award. The Award likewise addresses the content and meaning of the judgments of the Korean courts in the criminal proceedings, including, in particular, the judgment of the Seoul High Court dated 6 September 2011 in criminal proceedings against Mr [redacted] ("**September 2011 Judgment**"), which has itself been the subject of debate between the Parties during these annulment proceedings.[15]

14. In the Arbitration, the Claimant alleged that he and his investments had been subjected to treatment in breach of various Treaty protections during and in connection with those legal proceedings.[16] The Respondent raised several jurisdictional objections, including that the Pi Korea shares were not "*used as investment*" by the Claimant "*in accordance with the applicable laws and regulations*" of Korea as host State at the time of the investment, as required by Article 1(1) of the Treaty ("**Legality Objection**").[17] In particular, the Respondent contended that the Claimant breached Articles 5 and 6 of the "*Act on the Aggravated Punishment, etc. [sic], of Specific Economic Crimes, 2009*" (the "**Economic Crimes Act**" or "**ECA**").[18]

15. The pertinent part of Article 1(1) of the Treaty provides as follows:

> "*[t]he term 'investments' means every kind of asset, used as investment by investors of one Contracting Party within the territory of the other Contracting Party, in accordance with the applicable laws and regulations of that other Contracting Party at the time of investment and shall include, in particular, though not exclusively…*
>
> *(b) shares, stocks, bonds and debentures or any other forms of participation in a company, business enterprise or joint venture*".[19]

16. The Respondent alleged, among other points, that this provision barred the Tribunal from asserting jurisdiction when the "*illegality is committed in connection with the 'use' of the*

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15 CA-3, Judgment of the Seoul High Court in relation to Mr [redacted] (Korean with English translation), 6 September 2011, and CA-10, Certified translation of CA-3, Judgment of the Seoul High Court in relation to Mr [redacted] (Korean with English translation), 6 September 2011, p 17 (relevant paragraph).

16 Award, paras 54-59.

17 Award, para 61.

18 Award, para 65.

19 CA-2, Agreement Between the Government of the People's Republic of China and the Government of the Republic of Korea on the Promotion and Protection of Investments, 7 September 2007, Article 1(1).

investment".[20] The Claimant, on the contrary, submitted that the "*legality requirement is temporally limited in scope to the establishment of the investment*".[21]

17. After considering the Parties' respective positions, the Tribunal initiated its analysis by providing a short summary of the principal case law relied on by the Parties in relation to the meaning and effect of treaty provisions which contain a legality requirement.[22] It derived from these cases that there is an overarching principle that "*States do not expect to extend, and do not expect their nationals to receive, protection for investments that have not been made lawfully*".[23] The Tribunal then turned to the "*language of the treaty in question*" and stated that the language used in the BIT to define "*investments*" was "*subtly different*" from the cases that the Tribunal had canvassed earlier in the Award.[24] The Tribunal subsequently proceeded to discuss the text of Article 1(1) of the Treaty and its meaning[25] and concluded that:

> "*[T]o fulfil the requirements of Article 1(1), the asset must be 'used' in accordance with the applicable laws of the host State at the time of investment. In the case of an asset created at the time of investment (for example, the issue of the initial share capital of a newly incorporated company), that must mean that the company and the shares are required to be brought into existence for use in accordance with such laws*".[26]

> "*[T]his Treaty clearly provides that an investment must not be made for illicit use. In line, however, with the decisions referred to above, the intention to use the asset contrary to the laws of the host State must be present at the outset for protection to be denied. If an investor makes an investment and then only later decides to use it contrary to the laws of the host State, the investment will still be covered by the Treaty*".[27]

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20 Award, para 103.
21 Award, para 106.
22 Award, paras 134-159.
23 Award, para 158.
24 Award, paras 158, 160.
25 Award, paras 160 *et seq*.
26 Award, para 162.
27 Award, para 164.

18. After recording that the Claimant had been convicted by the Korean courts of promising a bribe to Mr [redacted], the Tribunal described the undisputed facts of the case (some of which have been recorded above), provided its appreciation of some of the evidence submitted by the Parties, and applied Articles 5 and 6 of the ECA[28] to decide for itself whether there were instances of bribery which breached Articles 5 and 6 of the ECA.[29]

19. The Tribunal then found that:

> "*[…] Pi Korea was a company formed for the purposes of being used to obtain loans from Korean financial institutions by bribery. To echo the tribunal in Fraport, bribing Mr [redacted] was central to the success of the project. It is unreal to regard Pi Korea as a company with a legitimate purpose or use (investment in real estate) to which any taint of corruption was only collateral. At the time of incorporation, it was intended that 30 per cent of the Pi Korea shares would form, or would form part of, the bribe to Mr [redacted]. The fact that the plan may have later changed and, instead of shares, Mr [redacted] was given a contract under which he was to be paid the equivalent of over USD 5 million for, in effect, doing nothing, does not retrospectively remove the taint from the formation and use of the company and the issue of its share capital. Pi Korea was created as part of, and in order to further, a criminal enterprise: procuring loans from Korean financial institutions by bribery*".[30]

20. The Tribunal further concluded that:

> "*[…] the Pi Korea Shares were issued, and the Claimant's investment was made, for use in a scheme that was criminal under Korean law and, accordingly, they do not fulfil the requirements set out in Article 1 to constitute investments protected by the Treaty. Therefore, the Tribunal has no jurisdiction in this case, which must be dismissed*".[31]

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28 Award, para 65, citing Articles 5 and 6 of ECA: "***Article 5 (Crime of Acceptance of Property):*** *(1) If any officer or employee of a financial institution accepts, demands or promises any money or other benefit, in connection with his duties, he shall be punished by imprisonment for not more than five years, or a suspension of qualification for not more than ten years.* […]
Article 6 (Crime of Giving of Property, etc.): *(1) Any person who promises, gives or expresses his intention to give, the money or other profits as prescribed in Article 5, shall be punished by imprisonment for not more than five years, or by a fine not exceeding thirty million won*".

29 Award, paras 175-184.

30 Award, para 187.

31 Award, para 194.

III. PROCEDURAL HISTORY

21. On 27 September 2024, ICSID received the Application from the Applicant, together with Exhibits CA-1 to CA-3.

22. On 2 October 2024, pursuant to Rule 50(2) of the ICSID Rules of Procedure for Arbitration Proceedings (the "**ICSID Arbitration Rules**"), the Secretary-General of ICSID registered the Application.

23. By letter dated 8 November 2024, in accordance with Rules 6 and 53 of the ICSID Arbitration Rules, the Parties were notified of the constitution of an *ad hoc* Committee composed of Mr Cavinder Bull, *S.C.*, a national of Singapore, appointed to the Panel by the Chairman of the Administrative Council, and designated as President of the Committee, Ms Mairée Urán Bidegain, a Colombian, French and Uruguayan national, appointed to the Panel by the Republic of Colombia, and Mr David A. Pawlak, a national of the United States of America and Ireland, appointed to the Panel by the Slovak Republic (the "**Committee**"). On the same date, the Parties were notified that Ms Geraldine R. Fischer, Senior Legal Counsel, ICSID, would serve as Secretary of the Committee.

24. On 24 November 2024, the Secretary of the Committee, acting on the Committee's instructions, sent the Parties a draft Procedural Order No 1, containing proposed rules to govern the proceeding, and requested that the Parties consult with each other and either agree on the proposed procedural matters or submit their respective positions on any points of disagreement.

25. On 8 January 2025, pursuant to the Committee's instructions, the Applicant sent an amended draft Procedural Order No 1 containing the Parties' joint proposals and respective areas of disagreement. The draft Procedural Order No 1 included the Applicant's proposal that each party should have the right to accompany its submissions with legal opinions supporting the grounds for annulment, a proposal which the Respondent opposed.

26. In accordance with ICSID Arbitration Rules 53 and 13(1), the Committee held a first session with the Parties on 15 January 2025 by video conference.

27. On 21 January 2025, the Secretary of the Committee circulated to the Parties the procedural timetable for the proceedings by email. Having carefully considered the Parties' submissions during the first session, the same email set out the Committee's decision not to refer to legal opinions in paragraphs 13.2, 15.5 and 15.6 of Procedural Order No 1. The Committee also directed the Applicant to submit his request for leave to file legal opinions within two weeks, if the Applicant remained interested in pursuing the matter.

28. On 3 February 2025, the Committee issued **Procedural Order No 1** recording the Parties' agreement on procedural matters. Procedural Order No 1 provides, *inter alia*, that the applicable Arbitration Rules are those in effect from 10 April 2006, the procedural language is English, the place of the proceedings is Washington, D.C., United States of America. Procedural Order No 1 also sets out the agreed procedural calendar for the proceedings.

29. On 4 February 2025, pursuant to the Committee's instructions, the Applicant filed his Request for Leave to Admit Legal Expert Reports ("**Request**"). In the Request, the Applicant sought leave to admit the legal expert reports of Professor Christoph Schreuer and Ms Lucinda Low ("**Proposed Reports**") together with the Memorial on Annulment.

30. On 6 February 2025, the Committee instructed the Respondent to file its response to the Request by 18 February 2025. By a second email of the same date, ICSID transmitted a supplemental disclosure of Committee Member Pawlak to the Parties.

31. On 18 February 2025, further to the Committee's instructions, the Respondent filed its response, objecting to the Applicant's Request.

32. On 6 March 2025, the Committee issued **Procedural Order No 2**, rejecting the Applicant's Request. In PO2, the Committee also noted:

> "*…the Applicant has not shown that he would suffer from any real prejudice if the Proposed Reports were not admitted. It is open to the Applicant to make legal submissions on the issues which he has identified as requiring expert opinion. The Applicant may also hire the same experts as co-counsel to its present lawyers and have them make the relevant arguments before the Committee in writing and/or orally*".

33. In accordance with Procedural Order No 1, the Applicant filed his **Memorial on Annulment** on 26 March 2025, together with Exhibits CA-4 to CA-7 and Legal Authorities CA-LA-6 to CA-LA-72.

34. On 15 April 2025, the Parties informed the Committee of their agreement to modify the procedural calendar, which the Committee accepted and confirmed on 18 April 2025.

35. On 3 July 2025, the Respondent filed its **Counter-Memorial on Annulment**, together with Exhibits RA-1 to RA-16 and Legal Authorities RA-LA-1 to RA-LA-56, and informed the Committee of Mr Hodgson's new affiliation with Linklaters.

36. On 6 August 2025, ICSID transmitted Committee Member Pawlak's further supplemental disclosure to the Parties.

37. On 4 September 2025, the Applicant filed his **Reply Memorial on Annulment**, together with Exhibits CA-8 and CA-9, and Legal Authorities CA-LA-73 to CA-LA-79.

38. On 25 September 2025, the Applicant filed a corrected certified translation of CA-3 (now CA-10), with no objection from the Respondent, upon leave of the Committee.

39. On 5 November 2025, the Respondent filed its **Rejoinder on Annulment**, together with Legal Authorities RA-LA-57 to RA-LA-59.

40. On 22 December 2025, the Applicant informed the Committee that Professor Schreuer and Ms Low would represent the Applicant as co-counsel.

41. On 5 January 2026, ICSID transmitted Committee Member Pawlak's further supplemental disclosure to the Parties.

42. Pursuant to Section 17.1 of Procedural Order No 1, the Committee held a pre-hearing organizational meeting with the Parties on 8 January 2026 by video conference.

43. On 9 January 2026, the Committee issued **Procedural Order No 3** on hearing organization.

44. In accordance with Sections 11 and 18 of Procedural Order No 1, a hearing on annulment was held in Singapore at Maxwell Chambers from 25 to 26 February 2026 ("**Hearing**"). The following persons were present at the Hearing:

Committee:	
Mr Cavinder Bull, S.C.	President
Ms Mairée Urán Bidegain	Member of the Committee
Mr David A. Pawlak	Member of the Committee
ICSID Secretariat:	
Ms Geraldine R. Fischer	Secretary of the Committee
Assistant to the President of the Committee:	
Ms Clarissa Wong	Assistant to the President
For the Applicant:	
Counsel	
Mr Wade Coriell	King & Spalding
Mr Aloysius Llamzon	King & Spalding
Ms Lucinda Low	Low & Kinnear Dispute Resolution
Ms Xueyu Yang	Hui Zhong Law Firm
Mr Shutao Zhang	Hui Zhong Law Firm
For the Respondent on Annulment:	
Party Representatives	
Ms Ara Cho	Director, International Dispute Settlement Division, Ministry of Justice
Mr Junyeul (Alex) Yang	Prosecutor, International Dispute Settlement Division, Ministry of Justice
Ms Soyeon Park	Deputy Director, International Dispute Settlement Division, Ministry of Justice
Ms Hyeyeon Kim	Deputy Director, International Dispute Settlement Division, Ministry of Justice
Mr Hongsuk Song	Deputy Director, International Dispute Settlement Division, Ministry of Justice
Counsel	
Mr Matthew Hodgson	Linklaters LLP
Ms Jae Hee Suh	Allen Overy Shearman Sterling
Mr Fares Nowak	Allen Overy Shearman Sterling
Mr Curtis Fung	Allen Overy Shearman Sterling
Mr Wooseok Shin	Allen Overy Shearman Sterling
Ms Nadya Mulya	Allen Overy Shearman Sterling
Ms Joyce Choo	Allen Overy Shearman Sterling

Mr Yun Jae Baek	Yulchon LLC
Mr Jae Hyong Woo	Yulchon LLC
Ms Young Geon Clarie Kim	Yulchon LLC

45. The Parties filed their submission on costs on 10 April 2026.

46. The proceedings were closed on 10 August 2026.

IV. THE PARTIES' REQUESTS FOR RELIEF

47. The Applicant requests that (a) the Award be annulled in its entirety; and (b) the Respondent be ordered to pay all legal costs incurred by the Applicant in the present annulment proceedings, including all costs incurred by ICSID.[32]

48. The Respondent requests that the Committee (a) dismiss the Annulment Application in its entirety; and (b) order the Applicant to pay all the costs of these proceedings, including, without limitation, ICSID administrative expenses, the Committee's fees and expenses, and Korea's legal fees and costs, plus interest at commercial rate.[33]

V. SCOPE OF ANNULMENT MECHANISM

49. Article 52 of the ICSID Convention provides:

> "*(1) Either party may request annulment of the award by an application in writing addressed to the Secretary-General on one or more of the following grounds:*
>
> *(a) that the Tribunal was not properly constituted;*
>
> *(b) that the Tribunal has manifestly exceeded its powers;*
>
> *(c) that there was corruption on the part of a member of the Tribunal;*

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32 Memorial, para 207.
33 Counter-Memorial, para 245.

(d) that there has been a serious departure from a fundamental rule of procedure; or

(e) that the award has failed to state the reasons on which it is based".

50. Both Parties agree that annulment is an exceptional remedy concerned with the "*legitimacy of the process of decision*", and that annulment proceedings are distinct from an appeal against the substantive correctness of the tribunal's award.[34]

51. Furthermore, the Parties agree that annulment committees cannot review a "*matter de novo and substitute the Tribunal's finding with its own, nor should [annulment committees] allow Parties to relitigate matters with the benefit of hindsight in order to secure a better outcome*".[35]

52. According to the Applicant, while annulment is a limited remedy, the Committee has full powers to conduct a legal assessment of the Tribunal's actions, as well as legal and factual findings, to verify whether the Tribunal acted within the scope of its mandate as set forth by the ICSID Convention, by applicable norms, and by matters submitted by the Parties in this case.[36]

53. The Respondent considers that annulment must be construed strictly, and that the burden is on the Applicant to show that one of the grounds for annulment is made out. The high

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34 Hearing Tr Day 1, 3:18-20; 4:1-15, citing CA-LA-64, *SolEs Badajoz GmbH v Kingdom of Spain*, ICSID Case No ARB/15/38, Decision on Annulment, 16 March 2022, paras 56, 253; Counter-Memorial, paras 55-56, citing RA-LA-10, *CDC Group plc v Republic of Seychelles*, ICSID Case No ARB/02/14, Decision on Annulment, 29 June 2005, para 34; Rejoinder, paras 17(a) and 17(b).

35 Applicant's Opening Presentation, Slide 4, citing CA-LA-64, *SolEs Badajoz GmbH v Kingdom of Spain*, ICSID Case No ARB/15/38, Decision on Annulment, 16 March 2022, para 253; *see also* Counter-Memorial, paras 56-62.

36 Hearing Tr Day 1, 55:6-20; Applicant's Opening Presentation, Slides 52-53, citing RA-LA-35, *Fábrica de Vidrios Los Andes, CA and Owens Illinois de Venezuela, CA v Bolivarian Republic of Venezuela* (I), ICSID Case No ARB/12/21, Decision on Annulment, 22 November 2019, paras 94-97; CA-LA-10, *Hussein Nauman Soufraki v United Arab Emirate*s, ICSID Case No ARB/02/7, Decision of the *ad hoc* Committee on the Application for Annulment of Mr Soufraki, 5 June 2007, para 37; and CA-LA-64, *SolEs Badajoz GmbH v Kingdom of Spain*, Decision on Annulment, 16 March 2022, para 64.

threshold means that errors of law do not warrant annulment unless they meet the specific Article 52(1) requirements and are material to the outcome of the case.[37]

54. The Respondent, moreover, asserts that applicants on annulment should not reargue the case on the merits, or raise "*new arguments or evidence relating to the underlying arbitration* […] *that could have been raised in the arbitration*"[38] as the Applicant is attempting to do in this case.[39] The Respondent adds that an *ad hoc* committee should not re-evaluate the factual evidence adduced by the parties in the Arbitration.[40]

55. The Committee recognizes that, pursuant to the text of Article 52(1) and in light of Article 53(1), the annulment mechanism does not provide for an appeal, but rather is an exceptional remedy for specified deficiencies of an award.[41] The annulment mechanism is limited to ensuring the legitimacy and procedural integrity of the decision-making process as reflected in the award, not to confirm substantive correctness.

56. The Committee agrees with the Respondent, as confirmed by prior *ad hoc* committees, that new arguments or evidence regarding the underlying dispute are inadmissible in annulment proceedings.[42] Consistent with the principle that an annulment is not an appeal, parties should not attempt to relitigate their case by relying on new factual and legal submissions not advanced before the underlying tribunal. Moreover, *ad hoc* committees may not assess the probative value of evidence that was not before the tribunal.

57. Finally, the Committee considers that the grounds for annulment should not be construed either expansively or restrictively, but rather interpreted and applied based on the text of Article 52, without importing an interpretive presumption in either direction.

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37 Counter-Memorial, paras 47-66; Rejoinder, paras 10-19; Hearing Tr Day 1, 177:9-11.

38 Counter-Memorial, paras 61(c), 123.

39 Hearing Tr Day 1, 134:23-135:1.

40 Counter-Memorial, para 61; Hearing Tr Day 1, 176:2-15.

41 CA-LA-3, ICSID, *Updated Background Paper on Annulment*, March 2024, paras 79-80. Article 53(1) of the ICSID Convention provides that the "*award shall be binding on the parties and shall not be subject to any appeal or to any other remedy except those provided for in this Convention*".

42 RA-LA-3, *Bernhard von Pezold and others v Republic of Zimbabwe*, ICSID Case No ARB/10/15, Decision on Annulment, 21 November 2018, para 251.

58. The Committee will further address, and incorporate its views on, the scope of the annulment mechanism in the course of presenting its analysis on the individual annulment grounds as set forth in the relevant Sections below.

VI. GROUNDS FOR ANNULMENT

59. As noted above, the Applicant raised three grounds for annulment of the Award: (a) the Tribunal manifestly exceeded its powers (Article 52(1)(b)); (b) there was a serious departure from a fundamental rule of procedure (Article 52(1)(d)); and (c) the Award failed to state the reasons on which it is based (Article 52(1)(e)).[43] During the annulment hearing, the Applicant stated that while the grounds are discussed separately, the "*problems with this award makes these grounds mutually reinforcing* […] *and there is a lot of overlap*".[44]

60. The burden is on the Applicant to establish one or more grounds for annulment.

61. Below, the Committee summarizes the Parties' arguments as to each of the three grounds for annulment that are invoked in this case, before making its determination with respect to each ground.

A. GROUND 1: MANIFEST EXCESS OF POWERS

62. According to the Applicant, there are two "*recognized manifestations of excess of powers*"[45]: (1) excess of powers relating to the tribunal's jurisdiction, which includes a tribunal's refusal to exercise jurisdiction when jurisdiction exists, and (2) excess of powers relating to the application of law.[46] The Applicant submits that the two grounds must be analysed separately because they apply to different situations.[47]

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43 Annulment Application, para 2.
44 Hearing Tr Day 2, 2:4-14.
45 Reply, para 25.
46 Memorial, paras 52, 54, citing CA-LA-3, ICSID, *Updated Background Paper on Annulment*, March 2024, para 87.
47 Reply, paras 25 to 26.

GROUND 1A: MANIFEST EXCESS OF POWERS RELATING TO JURISDICTION

63. The Applicant challenges the Tribunal's jurisdictional determination on the grounds that it exceeded its powers by misinterpreting the Treaty's legality requirement.

(1) Legal Standard

a. The Applicant's position

64. The Applicant submits that an error that leads a tribunal to make a wrong decision on jurisdiction is itself an excess of powers for the purposes of Article 52(1)(b) of the ICSID Convention.[48]

65. The Applicant argues that the general principle that an *ad hoc* committee cannot verify the correctness of a tribunal's interpretation applies only to a tribunal's decision on the merits.[49] The Applicant further submits that when evaluating a decision on jurisdiction, the committee can verify the correctness of a tribunal's treaty interpretation and that "*it is just a question of what is the standard you have to meet* […] *to assail that correctness*".[50] The Applicant further posits that "[c]*ommittees have to check a tribunal's legal and factual findings to verify the existence of an annullable error*"[51] and "*go through* [the] *methodology that the tribunal went through in order to make* [its] *determination*".[52]

66. With regards to the "*manifest*" standard, the Applicant submits that (i) "*[i]n accordance with its dictionary meaning, 'manifest' may mean 'plain', 'clear', 'obvious', 'evident' and easily understood or recognized by the mind. Therefore, the manifest nature of an excess of powers is not necessarily an indication of its gravity. Rather, it relates to the ease with which it is perceived*"[53]; and (ii) an excess of powers is manifest if it can be discerned with little effort and without deeper analysis.[54]

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48 Memorial, para 54; Reply, para 28; Hearing Tr Day 1, 50:12-22.
49 Reply, para 28.
50 Hearing Tr Day 1, 52:1-7.
51 Hearing Tr Day 1, 56:16-17.
52 Hearing Tr Day 1, 57:8-11.
53 Memorial, para 65, citing CA-LA-3, ICSID, *Updated Background Paper on Annulment*, March 2024, para 89.
54 Hearing Tr Day 1, 51:9-12.

67. The Applicant acknowledges that previous annulment committees have applied the "*manifest excess of power*" ground by asking whether the tribunal's decision was "*tenable*".[55] The Applicant's contention is that while the word "*tenable*" may be used to explain "*manifest*", applying the "*tenable*" standard should not be permitted to "*subtly raise the bar*" for the Applicant or lead to deviations from the standard articulated in the Convention itself.[56] The Applicant states that annulment committees should analyse the award on its terms to determine whether there is a manifest incoherence or contradiction in the tribunal's analysis that is plain and obvious on an initial reading of the award.[57]

68. The Applicant summarizes his position on this ground as follows:

> "*[A]n ad hoc committee may review a tribunal's legal and factual findings to assess whether it has committed an excess of powers. Annulment is warranted where an error is manifest and leads to a wrong jurisdictional decision. In the absence of manifest errors and if the tribunal's disposition is tenable and non-arbitrary, the committee should not annul* an *award, even if it considers the tribunal's legal reasoning to be incorrect. The criterion for this annulment is the manifest nature of the error*".[58]

b. <u>The Respondent's position</u>

69. The Respondent submits that the applicant on annulment is required to show that there has been an "*excess of powers*" and that the excess was "*manifest*", which is a high threshold. The Respondent accepts that an excess of powers may exist when a tribunal refuses to exercise jurisdiction when jurisdiction exists.[59]

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55 Hearing Tr Day 1, 60:2-9.

56 Hearing Tr Day 1, 59:4-60:9.

57 Hearing Tr Day 1, 117:14-119:3.

58 Reply, para 37; Hearing Tr Day 1, 60:20 – 61:10.

59 Counter-Memorial, paras 69, 70, 77, 118, citing CA-LA-3, ICSID, *Updated Background Paper on Annulment*, March 2024, paras 88, 89; CA-LA-54, *Total SA v Argentine Republic*, ICSID Case No ARB/04/01, Decision on Annulment, 1 February 2016, paras 171, 173; RA-LA-23, *Occidental Petroleum Corporation and Occidental Exploration and Production Company v The Republic of Ecuador*, ICSID Case No ARB/06/11, Decision on Annulment of the Award, 2 November 2015, para 57; RA-LA-19, *Alapli Elektrik BV v Republic of Turkey*, ICSID Case No ARB/08/13, Decision on Annulment, 10 July 2014, para 238; CA-LA-8, *Industria Nacional de Alimentos, SA and Indalsa Perú, SA (formerly Empresas Lucchetti, SA and Lucchetti Perú, SA) v Republic of Peru*, ICSID Case No ARB/03/4, Decision on Annulment, 5 September 2007, para 101; RA-LA-43, *NextEra Energy Global Holdings BV and NextEra Energy Spain Holdings BV v Kingdom of Spain*, ICSID Case No ARB/14/11, Decision on Annulment, 18 March 2022, para 78; RA-LA-48, *Cementos La*

70. The Respondent agrees with the Applicant that the "*manifest*" standard means that the excess of power must be "*obvious, clear or self-evident, and discernible without the need for an elaborate analysis of the award*"[60] and without the need for detailed examination and extensive argumentation.[61]

71. The Respondent contends that where there are several possible interpretations for a treaty provision, an annulment committee's preference for one interpretation is not a basis upon which to determine that there has been a "*manifest excess of powers*"[62] and that it is not an annulment committee's role to verify whether a tribunal's interpretation was correct.[63]

72. The Respondent submits that, in determining whether there has been an excess of powers relating to a tribunal's decision on jurisdiction, an annulment committee's inquiry is limited to determining whether the tribunal's finding was tenable or reasonable based on the materials before it. Article 52(1)(b) of the ICSID Convention does not allow for a full or *de novo* review of a tribunal's determinations, regardless of whether a ground of annulment relates to the tribunal's jurisdiction or the merits of the award.[64]

Union SA and Aridos Jativa SLU v Arab Republic of Egypt, ICSID Case No ARB/13/29, Decision on Annulment, 31 July 2023, para 138; RA-LA-47, *Hydro Energy 1 Sàrl and Hydroxana Sweden AB v Kingdom of Spain*, ICSID Case No ARB/15/42, Decision on the Kingdom of Spain's Application for Annulment, 20 March 2023, para 129; CA-LA-24, *Caratube International Oil Company LLP v Republic of Kazakhstan (I)*, ICSID Case No ARB/08/12, Decision on the Annulment Application of Caratube International Oil Company LLP, 21 February 2014, para 166.

60 Counter-Memorial, para 118.

61 Hearing Tr Day 1, 179:24-180-1.

62 Counter-Memorial, paras 75-76, citing RA-LA-14, *MCI Power Group, LC and New Turbine, Inc v Republic of Ecuador*, ICSID Case No ARB/03/6, Decision on Annulment, 19 October 2009, para 51; RA-LA-38, *Blusun SA, Jean-Pierre Lecorcier and Michael Stein v Italian Republic*, ICSID Case No ARB/14/3, Decision on Annulment, 13 April 2020, para 148; CA-LA-72, *Cyprus Popular Bank Public Co Ltd v Hellenic Republic*, ICSID Case No. ARB/14/16, Decision on Annulment, 28 November 2022, para 246; CA-LA-52, *Daimler Financial Services AG v Argentine Republic*, ICSID Case No ARB/05/1, Decision on Annulment, 7 January 2015, para 187; CA-LA-8, *Industria Nacional de Alimentos, SA and Indalsa Perú, SA (formerly Empresas Lucchetti, SA and Lucchetti Perú, SA) v Republic of Peru*, ICSID Case No ARB/03/4, Decision on Annulment, 5 September 2007, para 112.

63 Counter-Memorial, para 21.

64 Counter-Memorial, paras 89, 79-80, citing CA-LA-8, *Industria Nacional de Alimentos, SA and Indalsa Perú, SA (formerly Empresas Lucchetti, SA and Lucchetti Perú, SA) v Republic of Peru*, ICSID Case No ARB/03/4, Decision on Annulment, 5 September 2007, para 112; RA-LA-14, *MCI Power Group, LC and New Turbine, Inc v Republic of Ecuador*¸ ICSID Case No ARB/03/6, Decision on Annulment, 19 October 2009, para 51; RA-LA-15, *Rumeli Telekom AS and Telsim Mobil Telekomunikasyon Hizmetleri AS v Republic of Kazakhstan*, ICSID Case No. ARB/05/16, Decision of the a*d hoc Committee*, 25 March 2010, para 96; CA-LA-27, *TECO Guatemala Holdings LLC v Republic of Guatemala*, ICSID Case No ARB/10/23, Decision on Annulment, 5 April 2016, para 78; CA-LA-24, *Caratube International Oil Company LLP v Republic of*

(2) Allegations

a. <u>The Applicant's position</u>

73. The Applicant submits that there was an excess of powers relating to jurisdiction, as the Tribunal incorrectly interpreted Article 1(1) of the Treaty and failed to apply the Vienna Convention on the Law of Treaties ("**VCLT**").[65] The Applicant contends that this failure led the Tribunal to wrongly refuse to exercise jurisdiction.[66]

74. The Applicant complains that the Tribunal failed to adequately analyse the text of the Treaty itself, instead focusing on the interpretation of "*investment*" clauses in prior cases, and unduly broadening the temporal scope of the assessment of illegality beyond the making of the investment to include the "*previous or subsequent performance*" of the investment. The Applicant posits, *inter alia*:[67]

(a) The Tribunal failed to explain what the "*subtle differences*" were between Article 1(1) of the Treaty and the legality clauses in the other treaties that it had analysed,[68] which were interpreted to be temporally limited to the making of the investment (whereas, in this case, the Tribunal broadened the scope of illegality to include an

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Kazakhstan (I), ICSID Case No ARB/08/12, Decision on the Annulment Application of Caratube International Oil Company LLP, 21 February 2014, para 166; RA-LA-18, *SGS Société Générale de Surveillance SA v Republic of Paraguay*, ICSID Case No ARB/07/29, Decision on Annulment, 19 May 2014, para 112; RA-LA-46, *OperaFund Eco-Invest SICAV PLC and Schwab Holding AG v Kingdom of Spain*, ICSID Case No ARB/15/36, Decision on Annulment, 2 March 2023, para 248; Rejoinder, paras 35(b), 40-42, 49, citing RA-LA-45, *Global Telecom Holding SAE v Canada*, ICSID Case No ARB/16/16, Decision on Annulment, 30 September 2022, paras 125, 221; RA-LA-4, *Tenaris SA and Talta - Trading e Marketing Sociedade Unipessoal Lda v Bolivarian Republic of Venezuela (II)*, ICSID Case No ARB/12/23, Decision on Annulment, 28 December 2018, paras 44, 64; CA-LA-8, *Industria Nacional de Alimentos, SA and Indalsa Perú, SA (formerly Empresas Lucchetti, SA and Lucchetti Perú, SA) v Republic of Peru*, ICSID Case No ARB/03/4, Decision on Annulment, 5 September 2007, para 101; CA-LA-54, *Total SA v Argentine Republic*, ICSID Case No ARB/04/1, Decision on Annulment, 1 February 2016, para 242; RA-LA-18, *SGS Société Générale de Surveillance SA v Republic of Paraguay*, ICSID Case No ARB/07/29, Decision on Annulment, 19 May 2014, para 114; Hearing Tr Day 1, 181:5-22.

65 Memorial, paras 67-69, citing CA-LA-12, Sir Robert Jennings QC and Arthur Watts KCMG QC (ed), *Oppenheim's International Law (9th ed, June 2008), vol 1, Parts 2 to 4, pp1271-1272;* Award, para 158.

66 Memorial, paras 67-69, citing CA-LA-12, Sir Robert Jennings QC and Arthur Watts KCMG QC (ed), *Oppenheim's International Law (9th ed, June 2008), vol 1, Parts 2 to 4, pp1271-1272;* Award, para 158.

67 Reply, para 39(a).

68 Memorial, para 77.

assessment of unfulfilled investor intent at the time of the making of the investment).[69]

(b) The Tribunal inexplicably leaped from the Treaty language of "*used as investment*" to a standard of "*used*" and then "*intention to use*".[70] These unexplained leaps constitute an obvious deviation from the plain language of Article 1(1) and reflect the Tribunal's failure to apply the rules of treaty interpretation contained in Articles 31-32 of the VCLT.[71]

75. The Applicant also contends that even if the Tribunal's interpretation of Article 1(1) of the Treaty were correct, the Tribunal manifestly exceeded its powers when it applied the interpretation to reach the erroneous conclusion that, when Pi Korea was incorporated in October 2007, there was an "*intention to use*" the Pi Korea shares for an illegitimate purpose on the part of the Applicant. The Applicant asserts that the Tribunal failed to make the necessary factual and legal findings to conclude that there was a violation of the ECA in which the Applicant was an accomplice.

(a) While Mr [redacted] had offered 30% of Pi Korea shares to Mr [redacted] in September 2007, the Seoul High Court had found that Mr [redacted] rejected Mr [redacted]'s offer on the spot, and the 30% of Pi Korea shares were never transferred to Mr [redacted].[72] Accordingly, when Pi Korea was incorporated in October 2007, there was no "*intention to use*" the Pi Korea shares for an illegitimate purpose on the part of the Applicant.[73] On the contrary, the Korean courts held that the relevant illegality that occurred was the payment of money to Mr [redacted] under the PM Agreement, which occurred months after the relevant investment was made. Therefore, the Tribunal erred by relying on a post-investment event, i.e., the transfer of money under the PM Agreement, to conclude that there was a "*single continuous corrupt relationship*"

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69 Memorial, paras 80, 81, citing CA-LA-13, *Bank Melli Iran and Bank Saderat Iran v The Kingdom of Bahrain*, Award, 9 November 2021, paras 354, 356.

70 Memorial, paras 78, 81.

71 Memorial, para 86.

72 Memorial, para 85, citing CA-3, Judgment of the Seoul High Court in relation to Mr [redacted] (Korean with English translation), 6 September 2011.

73 Memorial, para 85, citing CA-3, Judgment of the Seoul High Court in relation to Mr [redacted] (Korean with English translation), 6 September 2011.

that tainted the formation of Pi Korea and ousted the Tribunal of its jurisdiction under Article 1(1) of the Treaty.[74]

(b) The Tribunal failed to explain how Mr [redacted]'s intention in September 2007 upon offering Mr [redacted] 30% of the Pi Korea shares could be attributed to the Applicant for the purpose of the Tribunal's conclusion that there was an "*intention to use*" the shares for an illegitimate purpose under Article 1(1) of the Treaty.[75] None of the Korean criminal courts found that the Applicant was an accomplice to Mr [redacted]'s offer.[76]

76. The Applicant submits that the errors in the Tribunal's analysis are "*manifest*" as they emerge on a first reading of the Award.[77] According to the Applicant, if the Tribunal had engaged in a proper analysis of the Treaty in accordance with the VCLT, "*the Tribunal would have concluded that it had jurisdiction over this case, and that any illegality arising from the PM agreement has nothing to do with the Tribunal's jurisdiction*".[78] Consequently, the Applicant contends that the Tribunal's "*mistake is serious, material and determinative of the outcome of this case*".[79]

b. <u>The Respondent's position</u>

77. The Respondent counters that the Applicant's arguments are based on false factual premises, including a misunderstanding of the Seoul High Court's finding.[80] The Respondent contends, *inter alia*, that:

(a) contrary to the Applicant's position, the Seoul High Court had found that there was an agreement between Messrs Min, [redacted], and [redacted] regarding the shareholding of

74 Memorial, para 89.
75 Memorial, para 88.
76 Memorial, para 88.
77 Reply, paras 39-42.
78 Memorial, para 90.
79 Memorial, para 90.
80 Counter-Memorial, paras 91 *et seq.*; Rejoinder, paras 55 *et seq.*

Pi Korea, which was subsequently implemented in a concrete way with the PM Agreement;[81]

(b) the Applicant relies on a supposed translation error in a Seoul High Court judgment that was not challenged by the Applicant before the Tribunal to argue that the judgment contains no finding that Mr [redacted] accepted or consented to the corrupt offer.[82] Since the updated translation submitted in these annulment proceedings[83] was not in the record as it stood before the Tribunal, the updated translation is irrelevant to the Committee for the purpose of determining whether there was an annullable error;[84] and

(c) the Tribunal's findings that Mr [redacted] had accepted the corrupt offer are well supported in the Arbitration record, including contemporaneous records and responses to cross-examination questions during the Arbitration.[85]

78. The Respondent submits that the Applicant's case is essentially an attempt to appeal the Tribunal's jurisdictional findings by alleging that the Tribunal erred in interpreting the

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81 Hearing Tr Day 1, 137:3-13.

82 Rejoinder, paras 59-63, citing RA-LA-46, *OperaFund Eco-Invest SICAV PLC and Schwab Holding AG v Kingdom of Spain*, ICSID Case No ARB/15/36, Decision on Annulment, 2 March 2023, para 41; RA-LA-1, *MTD Equity Sdn Bhd and MTD Chile SA v Republic of Chile*, ICSID Case No ARB/01/7, Decision on Annulment, 21 March 2007, para 31; RA-LA-47, *Hydro Energy 1 Sàrl and Hydroxana Sweden AB v Kingdom of Spain*, ICSID Case No ARB/15/42, Decision on the Kingdom of Spain's Application for Annulment, 20 March 2023, para 217; RA-LA-3, *Bernhard von Pezold and others v Republic of Zimbabwe*, ICSID Case No ARB/10/15, Decision on Annulment, 21 November 2018, para. 239; RA-LA-24, *EDF International SA, SAUR International SA and León Participaciones Argentinas SA v Argentine Republic*, ICSID Case No ARB/03/23, Decision on Annulment, 5 February 2016, para 64.

83 *See* CA-10, Certified translation of CA-3, Judgment of the Seoul High Court in relation to Mr [redacted] (Korean with English translation), 6 September 2011, p 17.

84 Rejoinder, paras 62-63, citing RA-LA-46, *OperaFund Eco-Invest SICAV PLC and Schwab Holding AG v Kingdom of Spain*, ICSID Case No ARB/15/36, Decision on Annulment, 2 March 2023, para 41; RA-LA-1, *MTD Equity Sdn Bhd and MTD Chile SA v Republic of Chile*, ICSID Case No ARB/01/7, Decision on Annulment, 21 March 2007, para 31; RA-LA-47, *Hydro Energy 1 Sàrl and Hydroxana Sweden AB v Kingdom of Spain*, ICSID Case No ARB/15/42, Decision on the Kingdom of Spain's Application for Annulment, 20 March 2023, para 217; RA-LA-3, *Bernhard von Pezold and others v Republic of Zimbabwe*, ICSID Case No ARB/10/15, Decision on Annulment, 21 November 2018, para. 239; RA-LA-24, *EDF International SA, SAUR International SA and León Participaciones Argentinas SA v Argentine Republic*, ICSID Case No ARB/03/23, Decision on Annulment, 5 February 2016, para 64.

85 Rejoinder, para 64, citing CA-3, Judgment of the Seoul High Court in relation to Mr [redacted] (Korean with English translation), 6 September 2011, pp 12, 17; CA-7, Judgment of the Seoul Central District Court ([redacted]), 8 February 2013, p 15; RA-5, Judgment of the Seoul High Court, 10 October 2016, p 44; RA-1, Record of Statement of the Applicant, 22 July 2010, p 5; RA-2, Record of Statement of the Applicant, 26 July 2010; Hearing Tr Day 1, 137:25-138:2.

Treaty's legality requirement, which is outside of the scope of the Committee's mandate in annulment proceedings.[86]

79. The Respondent also contends that it is clear from the Award that the Tribunal interpreted Article 1(1) of the Treaty in good faith in accordance with the ordinary meaning of the terms in their context, by engaging with the express terms of the Treaty and undertaking an interpretation of the legality requirement in light of the "*specific language*" of Article 1(1) of the Treaty pursuant to Articles 31-32 of the VCLT.[87] The Respondent submits that the Tribunal followed a reasoned analytical sequence in arriving at a tenable interpretation of Article 1(1):

(a) It examined the differently worded provisions at issue in other cases and found that none had required a tribunal to construe the phrase "*assets used as investments*" as it appears in the Treaty, clearly explaining where the "*subtle differences*" were.[88]

(b) It engaged in several analytical steps to conclude that Article 1(1) required the showing of an asset that, at the time of the investment, had been brought into existence for use in accordance with Korean law.[89]

80. It concluded that the illegality tainted the very investment itself, because the corrupt promise, consisting in the agreement on the 30% of Pi Korea shares, affected the investment vehicle. The illegality therefore did occur "*at the time of investment*".[90]

81. The Respondent also cites several authorities for the proposition that tribunals do not have to explicitly mention the VCLT to be found to have applied it.[91]

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86 Counter-Memorial, para 21; Rejoinder, paras 70-75.
87 Counter-Memorial, paras 107-108.
88 Counter-Memorial, para 108(b).
89 Hearing Tr Day 1, 193:11-22; Counter-Memorial, para 108(c).
90 Hearing, Tr Day 1, 196:25-197:8.
91 Counter-Memorial, para 106, citing CA-LA-8, *Industria Nacional de Alimentos, SA and Indalsa Perú, SA (formerly Empresas Lucchetti, SA and Lucchetti Perú, SA) v Republic of Peru*, ICSID Case No ARB/03/4, Decision on Annulment, 5 September 2007, paras 113, 116, 129; RA-LA-39, *Blue Bank International & Trust Ltd v Bolivarian Republic of Venezuela*, ICSID Case No ARB/12/20, Decision on Annulment, 22 June 2020; RA-LA-45, *Global Telecom Holding SAE v Canada*, ICSID Case No ARB/16/16, Decision on Annulment, 30 September 2022, paras 97, 125; CA-LA-53, *Fraport AG Frankfurt Airport Services*

82. The Respondent further asserts that the Tribunal's interpretation of Article 1(1) of the Treaty is reasonable, and at the very least tenable, and the fact that the provision could be interpreted several ways "*alone is sufficient to negate a finding that the tribunal committed a manifest excess of powers*".[92] In addition, the Respondent contends that the Applicant failed to articulate a clear and coherent case as to the proper interpretation of the legality requirement, offering instead a series of different formulations that simply highlight the difficulty in interpreting this "*unique provision*" which is amenable to several interpretations.[93] Lastly, the Respondent highlights that any alleged excess of powers cannot be said to be "*manifest*", as the Applicant himself had to make extensive arguments on this issue to explain what the manifest error purportedly was.[94]

(3) The Committee's Analysis

a. <u>The applicable legal standard</u>

83. The Applicant and the Respondent agree that the term "*manifest*" as used in Article 52(1)(b) of the ICSID Convention refers to an excess of power that is "*obvious*", "*clear*" or "*self-evident*".[95]

84. The Committee agrees with the Parties that this is the correct interpretation of the term "*manifest*" under Article 52(1)(b) of the ICSID Convention. As set forth in *CDC v Seychelles* (as recounted in *SGS Société Générale de Surveillance SA v Republic of Paraguay*[96]):

> "*As interpreted by various ad hoc Committees, the term 'manifest' means clear or 'self-evident'. Thus, even if a Tribunal exceeds its*

Worldwide v Republic of the Philippines (I), ICSID Case No ARB/03/25, Decision on Annulment, 23 December 2010, paras 103-104, 112.

92 Counter-Memorial, paras 109, 118; Rejoinder, para 70.

93 Hearing Tr Day 1, 196:16-24.

94 Counter-Memorial, paras 73-74, 117-118, citing RA-LA-4, *Tenaris SA and Talta - Trading e Marketing Sociedade Unipessoal Lda v Bolivarian Republic of Venezuela (II)*, ICSID Case No ARB/12/23, Decision on Annulment, 28 December 2018, para 80; RA-LA-42, *Infrastructure Services Luxembourg Sàrl and Energia Termosolar BV (formerly Antin Infrastructure Services Luxembourg Sàrl and Antin Energia Termosolar BV) v Kingdom of Spain*, ICSID Case No ARB/13/31, Decision on Annulment, 30 July 2021, para 152.

95 Counter-Memorial, para 118; Memorial, paras 64-65, citing CA-LA-3, ICSID, *Updated Background Paper on Annulment*, March 2024, para 89, fns 168, 169.

96 Respondent's Opening Presentation, Slide 21, citing RA-LA-18, *SGS Société Générale de Surveillance SA v Republic of Paraguay*, ICSID Case No ARB/07/29, Decision on Annulment, 19 May 2014, para 113.

powers, the excess must be plain on its face for annulment to be an available remedy".

85. The majority of *ad hoc* committees, likewise, have consistently interpreted the "*manifest*" requirement in Article 52(1)(b) as denoting "*an excess that is obvious, clear or self-evident, and which is discernible without the need for an elaborate analysis of the award*".[97]

86. The Committee accepts this interpretation of the term "*manifest*" and finds it to be consistent with the exceptional and limited character of annulment proceedings. The Committee further agrees with the Applicant[98] that the manifest nature of an excess of powers is not necessarily an indication of the seriousness of the excess or the fundamental nature of the rule violated, but rather of the cognitive process by which the excess is discerned, i.e., whether it is apparent without the need for elaborate analysis.

87. An annulment is not an appeal. Moreover, pursuant to Article 41(1) of the ICSID Convention, a tribunal shall be the judge of its own competence. Taken together, these principles preclude an annulment committee from undertaking a *de novo* examination of reasoning underlying the tribunal's decisions in the arbitration.

88. The Committee also agrees with the Respondent's submission that the correct approach to determining whether there has been a "*manifest excess of powers*" is to apply the "*tenable*" standard of review, that is, "*in the face of different opinions on the questions submitted to a Tribunal, an Annulment Committee must evaluate whether the answers given by the Tribunal seem tenable and are not arbitrary*".[99] The Committee further agrees that *"[i]n the absence of manifest errors and if the tribunal's disposition is tenable and non-arbitrary, the committee should not annul an award*".[100]

89. This standard of review has been repeatedly applied by previous annulment committees and is consistent with the principle that an *ad hoc* committee should not conduct a *de novo*

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97 CA-LA-3, ICSID, *Updated Background Paper on Annulment*, March 2024, para 89.

98 Memorial, para 65, citing CA-LA-3, ICSID, *Updated Background Paper on Annulment*, March 2024, fns 168, 169.

99 Counter-Memorial, para 80, citing RA-LA-18, *SGS Société Générale de Surveillance SA v Republic of Paraguay*, ICSID Case No ARB/07/29, Decision on Annulment, 19 May 2014, para 112.

100 Reply, para 37; Hearing Tr Day 1, 60:16-61:6.

review of the tribunal's decision. While the Applicant has argued that applying this "*tenable*" standard of review would or may lead the Committee to speculate or substitute its own views for those of the Tribunal,[101] the Committee is not convinced of the merits of this argument. The focus is on considering the Tribunal's reasoning and determining whether it is tenable.

90. In assessing whether the tribunal's interpretation is tenable, an *ad hoc* committee does not substitute its own reading of the applicable provision for that of the tribunal. It asks only whether the interpretation adopted falls within the range of interpretations a reasonable tribunal could have reached, even if the committee considers it incorrect as a matter of law.[102] An interpretation is untenable only where no reasonable tribunal could have adopted it, on the basis of the record presented to it. In the words of the *Industria Nacional de Alimentos v Peru* committee: "*[t]he Committee is not charged with the task of determining whether one interpretation is 'better' than another, or indeed which among several interpretations might be considered the 'best' one. The Committee is concerned solely with the process by which the Tribunal moved from its premise to its conclusion*".[103]

91. That said, the Committee's analysis above is not equivalent to it deciding that if a treaty provision is capable of several interpretations, this "*alone is sufficient to negate a finding that the tribunal committed a manifest excess of powers*", as alleged by the Respondent.[104] The Committee considers that, frequently, there is more than one interpretation of treaty provisions, and even in those cases, tribunals may adopt an untenable interpretation, which, in turn, could lead a committee to find that a manifest excess of powers exist.

92. As regards the Applicant's submission that a different and more exacting standard of review should apply where the alleged manifest excess of powers concerns a tribunal's decision on jurisdiction versus merits, the Committee is similarly not persuaded by either the

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101 Hearing Tr Day 1, 120:8-19.

102 CA-LA-62, *Duke Energy International Peru Investments No 1 Ltd v Republic of Peru*, ICSID Case No ARB/03/28, Decision on Annulment, 1 March 2011, para 99.

103 CA-LA-8, *Industria Nacional de Alimentos, SA and Indalsa Perú, SA (formerly Empresas Lucchetti, SA and Lucchetti Perú, SA) v Republic of Peru*, ICSID Case No ARB/03/4, Decision on Annulment, 5 September 2007, para 112.

104 *See supra*, para 81.

arguments nor the authorities cited by the Applicant.[105] There is nothing in the ICSID Convention which indicates that a different standard of review should apply to a tribunal's decisions on jurisdiction as opposed to merits. Accordingly, while it is possible for a tribunal to manifestly exceed its powers in making a jurisdictional determination, an annulment committee should apply the same standard of review to its analysis under Article 52(1)(b), regardless of whether the excess of powers alleged by the applicant relates to a decision on jurisdiction or merits.

b. Whether there was a manifest excess of powers when the Tribunal declined to exercise jurisdiction

93. The Committee finds no basis to conclude that the Tribunal has manifestly exceeded its powers in declining jurisdiction over the Parties' dispute.

94. First, the Applicant has not shown that the Tribunal's interpretation of Article 1(1) of the Treaty is untenable or unreasonable.

95. The Award shows that the Tribunal analysed the language in Article 1(1) and concluded that: (i) the moment at which legality is to be tested is *"the time of investment*"; and (ii) the phrase "*in accordance with applicable law*" relates to the words "*used as investment by investors of one Contracting party within the territory of the other Contracting Party*".[106] This conclusion is tenable because:

(a) The temporal element is expressed in the Treaty itself: Article 1(1) defines "*investments*" as assets used as investment "*in accordance with the applicable laws and regulations of that other Contracting Party at the time of investment*". The

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105 Reply, para 28; Hearing Tr Day 1, 52:9-59:11, relying on *e.g.*, RA-LA-35, *Fábrica de Vidrios Los Andes, CA and Owens-Illinois de Venezuela, CA v Bolivarian Republic of Venezuela* (I), ICSID Case No ARB/12/21, Decision on Annulment, 22 November 2019, para 94 (stating that standard applicable under Article 52(1)(b) does not distinguish between a manifest excess of powers pertaining to jurisdiction and the merits); RA-LA-18, *SGS Société Générale de Surveillance SA v Republic of Paraguay*, ICSID Case No ARB/07/29, Decision on Annulment, 19 May 2014, para 114 ("*there is no difference in the standard of review applicable to a claim of manifest excess of powers on the basis of jurisdiction or on the merits*").

106 Award, paras 161-162.

Tribunal's conclusion that legality is to be tested at the time of investment is a reading which the text naturally supports and is a tenable interpretation.

(b) The Tribunal's attachment of the phrase "*in accordance with the applicable laws and regulations*" to the words "*used as investment by investors of one Contracting Party within the territory of the other Contracting Party*" is a permissible construction of Article 1(1).

(c) The Tribunal's conclusion follows from the above two premises. The Tribunal reasoned that the asset must be "*used*" in accordance with the applicable laws of the host state, and if legality is assessed at the time of investment, then an asset that comes into existence at the same moment satisfies Article 1(1) only if it is "*brought into existence for use*" in accordance with such laws.[107] The Tribunal did not read words into the Treaty; it applied the Treaty's requirements. It is not for the Committee to decide whether a different interpretation of Article 1(1) would have been preferable, or which among the available interpretations is the best one. The Committee's inquiry is confined to the process by which the Tribunal moved from its premises to its conclusion, and that process was reasoned and anchored in the Treaty's text.

96. The Committee considers therefore that the Tribunal's interpretation of Article 1(1) of the Treaty to be tenable and reasonable. The standard has been met, and no manifest excess of powers arise.

97. For completeness, the Committee has considered but rejects the Applicant's submissions as set out above that the Tribunal had manifestly exceeded its powers by (i) failing to explain the "*subtle differences*" between the language of the other treaties it analysed and Article 1(1) of the Treaty; and (ii) failing to interpret the Treaty in accordance with the rules of interpretation set forth in Articles 31-32 of the VCLT.

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107 Award, para 162.

98. The Committee does not find merit in the former argument. As submitted by the Respondent[108] and accepted by this Committee, there are no other cases in which a tribunal has had to consider the actual language used in Article 1(1), in particular, the phrase "*used as investment*". The Tribunal was entitled to adopt its own interpretation, provided that such interpretation was tenable and reasonable. Moreover, the Award did explain the difference between Article 1(1) of the Treaty and the language of the other treaties that the Tribunal analysed.[109]

99. With respect to the latter argument, the Committee agrees with Respondent that there is no requirement that a tribunal must expressly identify and describe the rules of interpretation that it applied in an award.[110] The fact that the Award did not expressly cite the VCLT does not mean that the VCLT rules of treaty interpretation were not applied, and the absence of express reference to the VCLT cannot in itself constitute a manifest or annullable error. Moreover, as already mentioned, the Tribunal analysed the language of the Treaty itself and adopted an interpretation which, in the view of the Committee, coheres with the ordinary meaning of the terms in their context, as required by Articles 31-32 of the VCLT.

100. Secondly, the Applicant has not shown that there are any errors or contradictions in the Tribunal's application of its interpretation of Article 1(1) of the Treaty, let alone one which would amount to a manifest excess of powers by the Tribunal.

101. As summarised above at paragraph 75, the thrust of the Applicant's submission here is that, even assuming the Tribunal's interpretation of Article 1(1) of the Treaty were correct, the Tribunal manifestly exceeded its powers when it applied that interpretation to reach the erroneous conclusion that, when Pi Korea was incorporated in October 2007, there was an "*intention to use*" (on the part of the Applicant) the Pi Korea shares for an illegitimate purpose.

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108 Counter-Memorial, para 110, citing RA-LA-19, *Alapli Elektrik BV v Republic of Turkey*, ICSID Case No. ARB/08/13, Decision on Annulment, 10 July 2014, para 82.

109 *See* for example Award, paras 102, 158, 160-162.

110 Counter-Memorial, para 106(a), citing CA-LA-8, *Industria Nacional de Alimentos, SA and Indalsa Perú, SA (formerly Empresas Lucchetti, SA and Lucchetti Perú, SA) v Republic of Peru*, ICSID Case No ARB/03/4, Decision on Annulment, 5 September 2007, paras 113, 116, 129.

102. The Committee cannot review *de novo* the Tribunal's factual determinations, nor make or substitute its own findings of fact in lieu of the Tribunal's.

103. Within the four corners of the Award, the Tribunal explained how it concluded that, at the time Pi Korea was incorporated in October 2007, there was an "*intention to use*" the Pi Korea shares for an illegitimate purpose.

(a) The Tribunal identified the pertinent facts which it accepted: (i) *"[s]ome time in September 2007, the Claimant, Mr* [redacted] *and Mr* [redacted] *met in Seoul and, during that meeting, Mr* [redacted] *offered Mr* [redacted] *30 per cent of the shares in Pi Korea*"; (ii) "*on 27 December 2007, a week after the loan agreement* [has been made] *with Korea Life Assurance* […]*, the Claimant transferred* […] *30 per cent of the* [Pi Korea Shares] *to Mr* [redacted]"; and (iii) "*the shares transferred to Mr* [redacted] *were intended for Mr* [redacted]".[111]

(b) The Tribunal also stated that while arrangements may have changed, and Mr [redacted] was eventually paid off under the PM Agreement instead, there was still a "*giving and receiving of the promise of the shares, made in September 2007*".[112]

(c) The Tribunal further stated that it does not accept the Applicant's "*attempts to distance himself from Mr* [redacted] *'s offer* [of the 30% Pi Korea shares to Mr [redacted]] *and to suggest that it was unconnected with obtaining* [the] *loans*".[113]

104. Therefore, on the face of the Award, there is no unexplained gap in reasoning or incoherence which would lead this Committee to conclude that the Tribunal has manifestly exceeded its powers in concluding that there was an "*intention to use*" the Pi Korea shares for an illegitimate purpose as of October 2007.

105. The Committee is not persuaded as to the relevance and accuracy of the Applicant's contentions that: (i) the Seoul High Court found that Mr [redacted] rejected Mr [redacted]'s offer in September 2007 and the 30% of Pi Korea shares were never transferred to Mr [redacted]; (ii)

111 Award, paras 180, 184.
112 Award, para 184.
113 Award, para 184.

none of the Korean criminal courts found that the Applicant was an accomplice to Mr [redacted]'s offer of transferring 30% of the Pi Korea shares to Mr [redacted]; and (iii) the Tribunal failed to show how Mr [redacted]'s intention in September 2007 (of offering Mr [redacted] 30% of the Pi Korea shares) could be attributed to the Applicant for the purpose of the Tribunal's conclusion. The Applicant's reliance on alleged findings or non-findings of the Korean courts does not assist his case in these annulment proceedings, as the Committee is not entitled to conduct a *de novo* review of the Tribunal's findings by re-assessing the underlying evidentiary record accepted by the Tribunal.[114] In any event, the Committee notes that contrary to the Applicant's contention, the Seoul High Court held that Mr [redacted] "*received a proposal*" for a 30% stake in Pi Korea from both Mr [redacted] and the Applicant in September 2007, and Mr [redacted] had in return carried out his promise of procuring the approval of Woori Bank for the loans to Pi Korea.[115]

106. In these circumstances, the Committee finds no reason to conclude that the Tribunal has manifestly exceeded its powers in how it interpreted Article 1(1) of the Treaty, or concluded that, at the time of investment, the Applicant intended to use the Pi Korea shares for an illegitimate purpose.

107. The Committee therefore finds no basis to annul the Award on the grounds that the Tribunal has manifestly exceeded its powers in declining jurisdiction over the Parties' dispute.

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114 ICSID Arbitration Rule 34(1) ("*The Tribunal shall be the judge of the admissibility of any evidence adduced and of its probative value*"); CA-LA-10, *Hussein Nauman Soufraki v United Arab Emirate*s, ICSID Case No ARB/02/7, Decision of the a*d hoc* Committee on the Application for Annulment of Mr Soufraki, 5 June 2007, para 111.

115 CA-3, Judgment of the Seoul High Court in relation to Mr [redacted] (Korean with English translation), 6 September 2011, p 12; *See also* the updated translation at CA-10, Certified translation of CA-3, Judgment of the Seoul High Court in relation to Mr [redacted] (Korean with English translation), 6 September 2011, which similarly states that Mr [redacted] "***received** an offer of 30% stake in* [Pi Korea] […] *from* [redacted] *and Fengzhen Min* […] ***as a consideration** for* [Mr [redacted]'s] *arrangement of the loan for the project financing*" (emphasis added in bold).

GROUND 1B: MANIFEST EXCESS OF POWERS RELATING TO APPLICATION OF LAW

(1) Legal Standard

a. The Applicant's position

108. The Applicant contends that a failure to apply the proper law may amount to an excess of powers by a tribunal.[116]

109. The Applicant further submits that while a simple error of law by a tribunal does not constitute a failure to apply the proper law, "*a gross or egregious misapplication or misinterpretation of the applicable law*" amounts to a failure to apply the proper law and constitutes an annullable error, especially when such a misapplication leads a tribunal to reject jurisdiction where jurisdiction exists.[117] In advancing this ground, the Applicant also contends that the duty to apply the proper law entails a duty to endeavour to apply that law in good faith and in conformity with national jurisprudence and the prevailing interpretations of the State's judicial authorities.[118]

b. The Respondent's position

110. According to the Respondent, while a failure to apply the proper law may amount to an excess of powers if it is manifest, the erroneous application of law is not a ground for annulment.[119] The Respondent observes that a proposal made to the drafts of the ICSID

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116 Memorial, para 58, citing CA-LA-3, ICSID, *Updated Background Paper on Annulment*, March 2024, para 96.

117 Memorial, paras 58-63, citing CA-LA-3, ICSID, *Updated Background Paper on Annulment*, March 2024, para 96; CA-LA-9, *Klöckner Industrie-Anlagen GmbH and others v United Republic of Cameroon and Société Camerounaise des Engrais*, Decision of the ad hoc Committee, 3 May 1985, paras 60-61; CA-LA-10, *Hussein Nauman Soufraki v United Arab Emirates*, Decision of the ad hoc Committee on the Application for Annulment of Mr Soufraki, 5 June 2007, para 86; CA-LA-7, *Malaysian Historical Salvors SDN BHD v Malaysia*, Decision on the Application for Annulment, 16 April 2009, para 74; CA-LA-11, *Adem Dogan v Turkmenistan*, Decision on Annulment, 15 January 2016, para 105.

118 Reply, paras 50-51. Applicant's Opening Presentation, Slide 78, citing CA-LA-10, *Hussein Nauman Soufraki v United Arab Emirate*s, ICSID Case No ARB/02/7, Decision of the *ad hoc* Committee on the Application for Annulment of Mr Soufraki, 5 June 2007, para 96.

119 Counter-Memorial, para 82.

Convention to add "*manifestly incorrect application of the law*" as a ground for annulment was soundly defeated, by seventeen votes to eight.[120]

111. Relying on *Daimler v Argentina*[121], the Respondent presents the test for applying the proper law as follows: "…*what the Committee can do is to determine whether the Tribunal correctly identified the applicable law and endeavoured to apply it. As to the latter, there is a distinction between endeavouring to apply the correct law and correctly applying the law. While the former may provide a ground for annulment the latter is outside the scope of authority of an ad hoc annulment committee*".

112. The Respondent acknowledges that some *ad hoc* committees left open the possibility of assessing the seriousness of an error of law.[122] The Respondent states that this approach requires too much analysis and would be inconsistent with the requirement that a "*manifest*" excess of powers must be clearly discernible from the award, and risks turning annulment proceedings into an appeal.[123]

113. Finally, the Respondent submits that the practical impact of the Parties' diverging positions on the applicable legal standard is limited, since on the Applicant's own account only a gross or egregious misapplication, one that no reasonable person could accept, would

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120 Counter-Memorial, para 84, citing CA-LA-3, ICSID, *Updated Background Paper on Annulment*, March 2024, paras 16, 22, 96; RA-LA-52, ICSID, *History of the ICSID Convention: Documents Concerning the Origin and the Formulation of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States*, 1968, Volume II-2, pp 851, 853-854.

121 Counter-Memorial, para 86, citing CA-LA-52, *Daimler Financial Services AG v Argentine Republic*, ICSID Case No ARB/05/1, Decision on Annulment, 7 January 2015, paras 189, 191.

122 Counter-Memorial, para 87, citing RA-LA-56, C Schreuer *et al*, *Schreuer's Commentary on the ICSID Convention: A Commentary on the Convention on the Settlement of Investment Disputes between States and Nationals of Other States,* 3rd edition, Cambridge University Press 2022, paras 52-29, 52-30 and 52-246; RA-LA-55, C Schreuer, From ICSID Annulment to Appeal Half Way Down the Slippery Slope, 2011, The Law and Practice of International Courts and Tribunals, pp 215, 218-219, 221 and 225; RA-LA-27, *Venoklim Holding v Bolivarian Republic of Venezuela*, ICSID Case No ARB/12/22, Decision on Annulment, 2 February 2018, para 204; RA-LA-33, *Flughafen Zürich AG and Gestión e Ingeniería IDC SA v Bolivarian Republic of Venezuela*, ICSID Case No ARB/10/19, Decision on Annulment, 15 April 2019, para 73.

123 Counter-Memorial, para 87, citing RA-LA-56, C Schreuer *et al*, *Schreuer's Commentary on the ICSID Convention: A Commentary on the Convention on the Settlement of Investment Disputes between States and Nationals of Other States,* 3rd edition, Cambridge University Press 2022, paras 52-29, 52-30 and 52-246; RA-LA-55, C Schreuer, From ICSID Annulment to Appeal Half Way Down the Slippery Slope, 2011, The Law and Practice of International Courts and Tribunals, pp 215, 218-219, 221 and 225; RA-LA-27, *Venoklim Holding v Bolivarian Republic of Venezuela*, ICSID Case No ARB/12/22, Decision on Annulment, 2 February 2018, para 204; RA-LA-33, *Flughafen Zürich AG and Gestión e Ingeniería IDC SA v Bolivarian Republic of Venezuela*, ICSID Case No ARB/10/19, Decision on Annulment, 15 April 2019, para 73.

constitute a ground for annulment. In the Respondent's submission, the Applicant has failed to identify any error of law at all, still less one that is gross or egregious.[124]

(2) Allegations

a. <u>The Applicant's position</u>

114. The Applicant argues that the Tribunal failed to apply the applicable law, i.e., Korean law, in its legality analysis, and rather applied "*its own false estimation of Korean law*", which amounts to a manifest excess of power.[125]

115. The relevant Korean law in question is Articles 5 and 6 of the ECA:[126]

(a) Article 5 of the ECA provides that "*(1) If any officer or employee of a financial institution accepts, demands or **promises** any money or other benefit, in connection with his duties, he shall be punished by imprisonment for not more than five years, or a suspension of qualification for not more than ten years*" (emphasis added).

(b) Article 6 of the ECA provides that "*(1) Any person who **promises**, gives or expresses his intention to give, the money or other profits as prescribed in Article 5, shall be punished by imprisonment for not more than five years, or by a fine not exceeding thirty million won*" (emphasis added).

116. According to the Applicant, a "*promise*" of bribery for the purposes of Articles 5-6 of the ECA requires "*a **conclusive meeting of the minds** of both parties to **give/receive** a bribe in relation to the public official's duties in the future*" (emphasis added).[127] In support, the Applicant relies on a statement from the September 2011 Judgment.[128] On this basis, the Applicant argues that since Mr [redacted] had rejected the offer of 30% of the Pi Korea shares

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124 Rejoinder, paras 13, 54.
125 Memorial, para 91.
126 Memorial, para 95, citing CA-3, Judgment of the Seoul High Court in relation to Mr [redacted] (Korean with English translation), 6 September 2011, pp 9, 10.
127 Memorial, para 95(2).
128 Memorial, fn 83, referring to CA-3, Judgment of the Seoul High Court in relation to Mr [redacted] (Korean with English translation), 6 September 2011, p 9.

in September 2007, there was no "*conclusive meeting of minds*" concerning the 30% Pi Korea share offer between the Applicant and Mr [redacted].[129]

117. The Applicant contends that the Tribunal had relied on the Korean criminal court's findings, yet had inexplicably failed to consider: (i) why the Korean criminal court found that there was an absence of a crime in relation to the 30% share offer; and (ii) why the Korean Prosecutor chose not to indict the Applicant and Mr [redacted] for the alleged crime.[130] The Applicant submits that the Tribunal, by applying its own erroneous definition of "*promise*" in its consideration of Articles 5-6 of the ECA, and by failing to explain its departure from the Korean authorities' treatment of the 30% Pi Korea share offer, has grossly or egregiously misinterpreted or misapplied Korean law,[131] and this misinterpretation or misapplication is "*obvious, clear, self-evident and outcome determinative*".[132]

118. The Applicant thus concludes that "*the Tribunal's excess of powers is demonstrated by the fact that it declined to exercise jurisdiction when jurisdiction existed and/or it failed to apply the proper Korean law in doing so. Both errors are obvious, clear or self-evident, and are discernible without the need for an elaborate analysis of the Award, and therefore manifest*".[133]

*b. **The Respondent's position***

119. According to the Respondent, the Applicant has failed to demonstrate a manifest excess of powers relating to the application of the proper law.[134]

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129 Memorial, para 96.
130 Memorial, para 97.
131 Memorial, paras 98-100, citing CA-LA-14, *Emmis International Holding, BV, Emmis Radio Operating, BV, MEM Magyar Electronic Media Kereskedelmi és Szolgáltató Kft v Republic of Hungary*, Award, 16 April 2014, para 175.
132 Memorial, para 101.
133 Reply, para 53.
134 Rejoinder, paras 82-93, citing CA-8, Respondent's Opening Slides, 13 November 2023, Slide 25.

120. The Respondent submits that the Tribunal identified and applied the correct law,[135] and that that the Tribunal did expressly apply the ECA and engage with its substantive contents.[136]

121. The Respondent further submits that even *ad hoc* committees which left open the possibility of assessing the seriousness of an error of law have stressed that an annulment on grounds of error of law will only occur in exceptional circumstances, where the tribunal's error is gross or egregious.[137] The Respondent contends that the Applicant is not able to satisfy this high threshold given, *inter alia*, the following reasons:

(a) The Tribunal was entitled, on the evidentiary record before it, to find that there was a "*conclusive meeting of minds*" regarding the promised bribe of 30% of Pi Korea shares.[138]

(b) Contrary to the Applicant's submissions, the Korean courts concluded that there was a promise to pay a bribe in contravention of the ECA in September 2007 that was later concretely implemented through the payment of KRW 5.6 billion to Mr [redacted].[139]

(c) The Korean Prosecutor's decision not to bring charges expressly in respect of the 30% Pi Korea share offer does not establish that the underlying conduct did not constitute an offence under the ECA.[140]

122. The Respondent also contends that, in any event, the Applicant's arguments concerning the requirement of a "*meeting of the minds*" was first raised during these annulment proceedings and should accordingly be rejected by the Committee, especially given that the Applicant does not dispute the principle that new arguments raised for the first time in

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135 Rejoinder, para 82.
136 Counter-Memorial, para 124.
137 Counter-Memorial, para 128, citing CA-3, Judgment of the Seoul High Court in relation to Mr [redacted] (Korean with English translation), 6 September 2011, pp 9, 16; CA-7, Judgment of the Seoul Central District Court, 8 February 2013, p 15.
138 Counter-Memorial, para 128(a).
139 Counter-Memorial, para 128(b).
140 Counter-Memorial, paras 130-131, citing RA-4, Indictment, 17 December 2020, pp 2-3.

annulment proceedings are inadmissible.[141] The Respondent submits that the Applicant had made "*no submissions whatsoever with respect to the constitutive elements of the crime of bribery in the Arbitration, let alone with respect to the meaning of a 'promise'*".[142]

123. Similarly, the Respondent submits that the Applicant's contention that, in applying Korean law, the Tribunal was bound to follow the interpretation prevailing before the domestic courts was not advanced before the Tribunal and is accordingly inadmissible before this Committee. The Respondent further states that the Applicant's argument rests on the premise that a failure to consider certain aspects of the applicable law is tantamount to a failure to apply that law at all.[143]

(3) The Committee's Analysis

a. <u>The applicable legal standard</u>

124. The Parties agree that a failure to apply the proper law may amount to an excess of powers by a tribunal where the failure is manifest. Both Parties also agree that the test for a failure to apply the law is whether the tribunal correctly identified the applicable law and endeavoured to apply it.[144]

125. The Parties disagree, however, on whether an annulment committee may substantively assess an erroneous application of law by a tribunal. On the Applicant's case, an annulment committee may do so, and may annul the award where the erroneous application or interpretation is so egregious as to amount to a failure to apply the proper law.[145] In contrast, the Respondent submits that such an inquiry would be tantamount to an appeal.

126. For the purposes of the present Decision, it is not necessary for this Committee to decide whether the Applicant's or the Respondent's position is correct.[146] Even assuming,

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141 Rejoinder, paras 87-88.
142 Counter-Memorial, para 122.
143 Rejoinder, para 13.
144 Counter-Memorial, para 82; Reply, para 49.
145 Reply, para 48.
146 Counter-Memorial, para 88, citing RA-LA-14, *MCI Power Group, LC and New Turbine, Inc v Republic of Ecuador*, ICSID Case No ARB/03/6, Decision on Annulment, 19 October 2009, para 51; RA-LA-23, *Occidental Petroleum Corporation and Occidental Exploration and Production Company v Republic of Ecuador (II)*, ICSID Case No ARB/06/11, Decision on Annulment of the Award, 2 November 2015, para 56;

arguendo, that the Applicant's position on the applicable legal standard is correct, the Applicant has failed to demonstrate that the Tribunal failed to identify the applicable law or endeavoured to apply it, or that there is any misinterpretation or misapplication of Korean law, let alone one that is so egregious as to amount to a failure to apply Korean law.

b. Whether there was a manifest excess of powers relating to the application of law

127. The Parties are in agreement that the Tribunal properly identified Articles 5-6 of the Economic Crimes Act as the proper law. The Applicant alleges, nevertheless, that the Tribunal's identification of the ECA as the applicable law was "*purely formal and was unsupported by any pertinent analysis of the relevant provisions*".[147]

128. The thrust of the Applicant's case on manifest excess of powers for failure to apply the proper law rests on two propositions: (i) that the ECA requires a meeting of the minds to satisfy the element of "*promise*"; and (ii) that the Tribunal was required, and failed, to apply the interpretation prevailing before the domestic courts. The Committee notes that the Applicant has failed to show that these two propositions were advanced in the Arbitration.[148] The Committee has already decided at paragraph 56 above that new arguments or evidence relating to the underlying dispute are inadmissible in an annulment

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CA-LA-24, *Caratube International Oil Company LLP v Republic of Kazakhstan*, ICSID Case No ARB/08/12, Decision on Annulment, 21 February 2014, para 81; CA-LA-10, *Hussein Nauman Soufraki v United Arab Emirates*, ICSID Case No ARB/02/7, Decision of the ad hoc Committee on the Application for Annulment of Mr Soufraki, 5 June 2007, para 86; CA-LA-59, *Ioan Micula, Viorel Micula and others v Romania (I)*, ICSID Case No ARB/05/20, Decision on Annulment, 26 February 2016, para 130; RA-LA-19, *Alapli Elektrik BV v Republic of Turkey*, ICSID Case No ARB/08/13, Decision on Annulment, 10 July 2014, para 82; Rejoinder, para 54.

147 Reply, para 51.

148 Reply, para 17 (addressing this point and noting that in the Arbitration, the Claimant merely denied the existence of any illegality and argued that he was not party to the 30% offer, without contending that the question of what constitutes a "*promise*" under Article 5 of the ECA required a meeting of the minds). This question was also put to the Parties by the Committee during the Hearing (Hearing Tr Day 2, 69:11-19), and the Applicant provided a similar response. See Hearing Tr Day 2, 67:22-68:8 ("*Mr President, what we did raise was that we did not violate the ECA in September 2007 and we said that for all sorts of reasons […]. It is true, this was not a debated requirement whether a meeting of the minds is required, and indeed that's why the error is so manifest, because there is no dispute on this*"). See also Hearing Tr Day 2, 70:10-15 ("*It is certainly true, if you go to the slides that I gave you, that there's not the claimant saying, you know, 'Here are the eight elements. We didn't do this for this reason, didn't do this for that reason', meeting of the minds is not discussed in that way*").

proceeding. It follows that neither can be entertained by this Committee, and the Applicant's argument on this ground cannot succeed.

129. For the sake of completeness, the Committee observes that the Applicant has not established that the Tribunal failed to identify and endeavour to apply the proper law, nor that the Tribunal grossly misinterpreted or misapplied Korean Law. To the contrary, the Committee finds that the Tribunal engaged in a *bona fide* interpretative and analytical process directed at applying the applicable legal framework to the facts of the case.

130. The Tribunal identified Korean law as the "*applicable law of the host State*" to which Article 1(1) refers,[149] and in particular the Economic Crimes Act as the domestic legislation said to have been breached. [150] It then examined the terms of the Economic Crimes Act in detail to determine whether the Respondent was required to establish a causal link between the alleged bribes and the Claimant's investment in order to sustain its Legality Objection,[151] and found that the Act required no causal connection between the alleged bribery and the making of the Korean Loans, and that in the circumstances of the case it was sufficient for the Respondent to prove that the bribe was made to an officer or employee of a financial institution in connection with his duties at that institution.[152] The Tribunal then evaluated the factual evidence adduced by the Parties, including the findings of the Korean courts and the content of the interviews placed before them,[153] and independently concluded that "*the giving and receiving of the promise of the shares, made in September 2007, involving an officer of Woori Bank, were clear breaches of the Economic Crimes Act*".[154]

131. In the Committee's view, the Award reflects that the Tribunal examined the sequence of events, engaged with the substantive content of Articles 5 and 6 of the Korean Economic Crimes Act, and concluded that there was an agreement between the Applicant, Mr [redacted] and Mr [redacted] in September 2007 in relation to the promised bribe of 30% of the Pi Korea

149 Award, paras 161, 165 and 166.
150 Award, paras 171, 176.
151 Award, paras 167-171.
152 Award, para 171.
153 Award, paras 175-184.
154 Award, para 184.

shares, and this bribe was subsequently implemented by the payment of KRW 5.6 billion to Mr [redacted] under the PM Agreement. Thus, even assuming that a "*conclusive meeting of minds*" is required to satisfy the element of "*promise*" under Articles 5-6 of the ECA, or that the Tribunal was required to entertain the decisions of the Korean courts in its application of the Korean Law, the Applicant has not shown that the Tribunal failed to consider or egregiously misapplied such requirements.

132. The Committee accordingly finds no basis to annul the Award on the grounds that there was a failure to apply the proper law by the Tribunal amounting to a manifest excess of powers under Article 52(1)(b) of the ICSID Convention.

B. GROUND 2: SERIOUS DEPARTURE FROM A FUNDAMENTAL RULE OF PROCEDURE

(1) Legal Standard

133. The Parties agree that in order for an applicant on annulment to succeed under Article 52(1)(d) of the ICSID Convention, two elements must be satisfied: (i) the procedural rule alleged to have been violated must be "*fundamental*"; and (ii) the tribunal must have seriously departed from that rule.[155]

a. Fundamental rule of procedure

134. The Parties dispute what constitutes a fundamental rule of procedure.

135. The Applicant contends that:

(a) the standard and burden of proof are *per se* fundamental rules of procedure,[156] that his case is based on the "*Tribunal's complete disregard of the standard and burden*

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155 Counter-Memorial, para 132, citing RA-LA-30, *OI European Group BV v Bolivarian Republic of Venezuela*, ICSID Case No ARB/11/25, Decision on the Application for Annulment of the Bolivarian Republic of Venezuela, 6 December 2018, paras 245-246; RA-LA-10, *CDC Group plc v Republic of Seychelles*, ICSID Case No ARB/02/14, Decision on Annulment, 29 June 2005, para 48; RA-LA-42, *Infrastructure Services Luxembourg Sàrl and Energia Termosolar BV (formerly Antin Infrastructure Services Luxembourg Sàrl and Antin Energia Termosolar BV) v Kingdom of Spain*, ICSID Case No ARB/13/31, Decision on Annulment, 30 July 2021, para 196; CA-LA-64, *SolEs Badajoz GmbH v Kingdom of Spain*, ICSID Case No ARB/15/38, Decision on Annulment, 16 March 2022, para 93; Hearing Tr Day 1, 85:4-11; Applicant's Opening Presentation, Slide 84; Memorial, para 103, citing CA-LA-3, ICSID, *Updated Background Paper on Annulment*, March 2024, para 105.

156 Reply, paras 61-65, 70, citing CA-LA-3, ICSID, *Updated Background Paper on Annulment*, March 2024.

of proof in the Award, not just its failure to articulate them".[157] According to the Applicant, the standard of proof is the benchmark against which the cumulative probative value and sufficiency of the evidence is measured and constitutes an intrinsic and fundamental part of the treatment of evidence,[158] and the burden of proof includes "*not only who bears it but whether that burden has been discharged*".[159]

(b) even assuming, *arguendo,* that the standard and burden of proof are not *per se* fundamental rules of procedure, their disregard in cases of corruption would violate due process, which is a fundamental rule of procedure; [160] and

(c) the right to be heard is a fundamental rule of procedure.[161]

136. The Respondent underscores that not every procedural rule is fundamental.

137. The Respondent asserts that "*[t]o date, no ad hoc committee has considered that a tribunal's application of the standard of proof is capable of constituting a fundamental rule of procedure*".[162] The Respondent similarly maintains that the burden of proof is not a fundamental rule of procedure.[163] Additionally, the Respondent argues that tribunals are not required to lay out in express terms their approach to the burden and standard of proof,[164] and neither the misapplication of the burden of proof nor the misapplication of

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157 Reply, para 58.

158 Reply, para 65; Hearing Tr Day 1, 88:1-10; Applicant's Opening Presentation, Slide 88.

159 Applicant's Opening Presentation, Slide 93.

160 Reply, paras 70-71; Hearing Tr Day 1, 88:15-89:4.

161 Memorial, para 106, citing CA-LA-53, *Fraport AG Frankfurt Airport Services Worldwide v Republic of the Philippines (I)*, ICSID Case No ARB/03/25, Decision on the Application for Annulment, 23 December 2010, para 197.

162 Counter-Memorial, paras 143-144, 163, citing RA-LA-49, *Niko Resources (Bangladesh) Ltd. v. Bangladesh Oil Gas and Mineral Corporation (Petrobangla), Bangladesh Petroleum Exploration and Production Company Limited (Bapex)*, ICSID Case No ARB/10/18, Decision on Annulment, 12 October 2023, para 132.

163 Counter Memorial, para 142, citing RA-LA-4, *Tenaris SA and Talta - Trading e Marketing Sociedade Unipessoal Lda v Bolivarian Republic of Venezuela (II)*, ICSID Case No ARB/12/23, Decision on Annulment, 28 December 2018, para 96.

164 Counter-Memorial, paras 136 *et seq.;* Rejoinder, paras 103, 122, citing RA-LA-4, *Tenaris SA and Talta - Trading e Marketing Sociedade Unipessoal Lda v Bolivarian Republic of Venezuela (II)*, ICSID Case No ARB/12/23, Decision on Annulment, 28 December 2018, para 96; Respondent's Opening Presentation, Slide 68, citing CA-LA-69, *Continental Casualty Company v Argentine Republic*, ICSID Case No ARB/03/9, Decision on Application for Partial Annulment, 16 September 2011, para 135.

the standard of proof may, by itself, violate a fundamental rule of procedure.[165] Citing the *Niko Resources v Petrobangla and Bapex* decision on annulment, the Respondent adds that the standard of proof is substantively related to the application of the proper law as opposed to a fundamental rule of procedure.[166]

138. As regards the Applicant's argument that the Tribunal's failure to consider the standard and burden of proof constitutes a violation of due process, the Respondent argues that even if a tribunal did not expressly articulate all of the relevant rules of evidence, this does not mean that the tribunal did not apply them, or that the decision is arbitrary.[167] The Respondent also contends that there is no rule requiring tribunals to articulate the rules of evidence in general, or the standard and burden of proof in particular.[168]

139. While the Respondent agrees that the right to be heard is a fundamental rule of procedure, the Respondent argues that the "*there is no right to an unlimited opportunity to be heard*".[169] The Respondent cites decisions of other *ad hoc* committees in support of the view that, provided that the tribunal renders a decision within the legal framework presented by the disputing parties, there is no departure from the right to be heard where a specific argument was presented, albeit briefly, by one party only, or where an argument

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165 Counter-Memorial, paras 140-142, citing CA-LA-56, *(DS)2, SA, Peter de Sutter and Kristof De Sutter v Republic of Madagascar (II)*, ICSID Case No ARB/17/18, Decision on the Annulment Application, 14 October 2022, para 143; CA-LA-24, *Caratube International Oil Company LLP v Republic of Kazakhstan (I)*, ICSID Case No ARB/08/12, Decision on the Annulment Application of Caratube International Oil Company LLP, 21 February 2014, para 97; RA-LA-4, *Tenaris SA and Talta - Trading e Marketing Sociedade Unipessoal Lda v Bolivarian Republic of Venezuela (II)*, ICSID Case No ARB/12/23, Decision on Annulment, 28 December 2018, para 93; RA-LA-44, *Cube Infrastructure Fund SICAV and others v Kingdom of Spain*, ICSID Case No ARB/15/20, Decision on Annulment, 28 March 2022, para 448; CA-LA-26, *Tulip Real Estate Investment and Development Netherlands BV v Republic of Turkey*, ICSID Case No ARB/11/28, Decision on Annulment, 30 December 2015, para 84; Respondent's Opening Presentation, Slides 69-70, citing RA-LA-4, *Tenaris SA and Talta - Trading e Marketing Sociedade Unipessoal Lda v Bolivarian Republic of Venezuela (II)*, ICSID Case No ARB/12/23, Decision on Annulment, 28 December 2018, paras 93-96; CA-LA-69, *Continental Casualty Company v Argentine Republic*, ICSID Case No ARB/03/9, Decision on Application for Partial Annulment, 16 September 2011, para 140.

166 Counter-Memorial, paras 143-144, citing RA-LA-49, *Niko Resources (Bangladesh) Ltd v Bangladesh Oil Gas and Mineral Corporation (Petrobangla) and Bangladesh Petroleum Exploration and Production Company Limited (Bapex)*, ICSID Case No ARB/10/18, Decision on Annulment, 12 October 2023, paras 131-132.

167 Rejoinder, para 134.

168 Rejoinder, para 135.

169 Counter-Memorial, para 145, citing RA-LA-3, *Bernhard von Pezold and others v Republic of Zimbabwe*, ICSID Case No ARB/10/15, Decision on Annulment, 21 November 2018, para 255.

was not explicitly articulated but the parties could have reasonably anticipated that it would be taken into consideration.[170]

b. Serious departure

140. The Parties disagree on what constitutes a "*serious*" departure from a fundamental rule of procedure.

141. The Applicant maintains that "*serious*" is met by showing that observance of the relevant rule could have had an impact on the award, not that observance would have led to a different result.[171]

142. The Respondent argues that the violation of a rule of procedure must have materially changed the outcome of the case and not merely had the potential to do so.[172]

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170 Counter-Memorial, paras 146-149, citing CA-LA-9, *Klöckner Industrie-Anlagen GmbH and others v United Republic of Cameroon and Société Camerounaise des Engrais*, ICSID Case No ARB/81/2, Decision of the *ad hoc* Committee (English unofficial translation from the French original), 3 May 1985, para 91; CA-LA-6, *Compañía de Aguas del Aconquija SA (formerly Aguas del Aconquija) and Vivendi Universal SA (formerly Compagnie Générale des Eaux) v Argentine Republic (I)*, ICSID Case No ARB/97/3, Decision on Annulment, 3 July 2002, paras 84-85; CA-LA-22, *Víctor Pey Casado and President Allende Foundation v Republic of Chile*, ICSID Case No ARB/98/2, Decision on the Application for Annulment of the Republic of Chile, 18 December 2012, para 192; RA-LA-22, *Tza Yap Shum v Republic of Peru*, ICSID Case No ARB/07/6, Decision on Annulment, 12 February 2015, para 141; CA-LA-21, *Wena Hotels Ltd v Arab Republic of Egypt,* ICSID Case No ARB/98/4, Decision on Application for Annulment, 5 February 2002, paras 68-69.

171 Memorial, paras 108-114, citing CA-LA-22, *Víctor Pey Casado and President Allende Foundation v Republic of Chile,* ICSID Case No ARB/98/2, Decision on Application for Annulment, para 78; CA-LA-24, *Caratube International Oil Company LLP v Republic of Kazakhstan (I)*, ICSID Case No ARB/08/12, Decision on the Annulment Application, 21 February 2014, para 99; CA-LA-25, *Eiser Infrastructure Limited and Energía Solar Luxembourg Sàrl v Kingdom of Spain*, ICSID Case No ARB/13/36, Decision on the Kingdom of Spain's Application for Annulment, 11 June 2020, paras 248-253; CA-LA-26, *Tulip Real Estate Investment and Development Netherlands BV v Republic of Turkey*, ICSID Case No ARB/11/28, Decision on Annulment, 30 December 2015, para 78; CA-LA-27, *TECO Guatemala Holdings, LLC v Republic of Guatemala*, ICSID Case No ARB/10/23, Decision on Annulment, 5 April 2016, paras 84-85; Reply, paras 72-73; Hearing Tr Day 1, 95:5-17, citing CA-LA-22, *Víctor Pey Casado and President Allende Foundation v Republic of Chile,* ICSID Case No ARB/98/2, Decision on Application for Annulment, para 78.

172 Counter-Memorial, paras 153-154, citing CA-LA-21, *Wena Hotels Ltd v Arab Republic of Egypt,* ICSID Case No ARB/98/4, Decision on Application for Annulment, 5 February 2002, para 58; RA-LA-30, *OI European Group BV v Bolivarian Republic of Venezuela*, ICSID Case No ARB/11/25, Decision on the Application for Annulment of the Bolivarian Republic of Venezuela, 6 December 2018, para 248.

(2) Allegations

143. To summarise, in its written pleadings, the Applicant advanced two reasons why the Award should be annulled under Article 52(1)(d) of the ICSID Convention:

(a) the Tribunal engaged in a complete disregard of the standard and burden of proof in relation to corruption allegations, which constitutes either a serious departure from a fundamental rule of procedure in itself, or alternatively a violation of due process that amounts to such a departure.[173] According to the Applicant, the Tribunal relied repeatedly on "*intuition without an analytical path*",[174] rather than articulating "*an objective and measurable standard against which the evidence was measured*"[175] or an "*indication of the weight and probity of evidence required*";[176] and

(b) the Tribunal failed to invite submissions on a decisive issue (i.e., the ECA), which constitutes a violation of due process and, accordingly, a serious departure from a fundamental rule of procedure.

144. As stated above at paragraph 137, the Respondent contends neither the burden nor standard of proof are fundamental rules of procedure.[177] The Respondent adds that, in any event, the Applicant's contention that the Tribunal should have decided whether corruption requires a heightened standard of proof was raised for the first time in the Annulment Application,[178] and that the Applicant has failed to show that there has been a relevant departure. The Respondent contends that far from making "*intuitive conclusions*",[179] the Tribunal instead "*properly assessed the credibility, relevance and strength of the evidence*".[180]

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173 Hearing Tr Day 1, 93:4-21, 123:5-25; Reply, paras 58, 75; Applicant's Opening Presentation, Slide 96.
174 Reply, para 75; Applicant's Opening Presentation, Slide 101.
175 Reply, para 75.
176 Applicant's Opening Presentation, Slide 101.
177 Counter-Memorial, para 163.
178 Counter-Memorial, para 164.
179 Counter-Memorial, para 165.
180 Rejoinder, para 14.

145. The Respondent further contends that "*the Tribunal decided the burden of proof in relation to key issues going to the question of whether there was a relevant breach under the Economic Crimes Act*"[181] and that in any case "*a misapplication of [the] burden of proof does not automatically result in violation of [a] fundamental rule of procedure, but may do so depending on the circumstances of the particular case*".[182]

146. With regards to the due process contention, the Respondent posits that the Applicant's arguments are not due process complaints, but instead an attempt to challenge the Tribunal's legal conclusion on the meaning of the Economic Crimes Act, since the Applicant was afforded ample opportunity to present his case in the Arbitration. Therefore, there was no denial of due process.[183]

(3) The Committee's Analysis

147. For the reasons set out below, the Committee does not consider it necessary to determine whether the matters invoked by the Applicant constitute fundamental rules of procedure. Even assuming in the Applicant's favour that they do, the Committee is not satisfied that there was a departure from a fundamental rule of procedure, let alone a serious departure.

a. Burden of proof

148. The Committee notes that during the Hearing, the Applicant abandoned his contention that the Tribunal's disregard of the burden of proof is an independent ground for setting aside the Award under Article 52(1)(d) of the ICSID Convention, stating that there had been no violation on the part of the Tribunal[184] and that "[i]*n fact, we're not really making a real case about burden of proof*".[185] Accordingly, the Committee will address the issue of burden of proof only to the extent that it is relevant to the issue of standard of proof.

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181 Rejoinder, para 126.
182 Rejoinder, para 120.
183 Rejoinder, paras 138-144.
184 Hearing Tr Day 1, 127:1-5 ("*We're not really saying independently that there was -- we're saying that that the burden of proof is a fundamental rule of procedure, but that it did not necessarily, on its own -- was not on its own violated here*").
185 Hearing Tr Day 2, 75:16-19.

b. Standard of proof

149. Turning to the standard of proof, the Applicant has not shown that the Tribunal failed to apply a standard of proof. The Tribunal weighed the evidence for its credibility, relevance and probative value, determined on the totality of the evidence that the definition of bribery under the ECA was met, and concluded that its finding sufficed to place the investment outside the protection of the Treaty. More specifically:

(a) The Tribunal recorded that it "*recognises the crucial importance of properly proving any allegation of corruption*", and then identified, by reference to the terms of Articles 5 and 6 of the ECA, precisely what had to be proved, i.e., that a bribe was promised or given to an officer or employee of a financial institution in connection with his duties at that institution.[186]

(b) The Tribunal assessed the evidence bearing on those elements. It observed that it was not bound by the findings of the Korean courts and had to decide the question of bribery independently.[187] It examined the SID interrogation records, acknowledged that prolonged interrogation may produce false admissions and that the English translations were imperfect, and gave its reasons for nonetheless accepting the records.[188] It also tested the Applicant's competing account of the insurance policies against that evidence and rejected it.[189]

(c) The Tribunal then expressed that it was highly satisfied with the evidence. It stated that it had "*no doubt*" that the Applicant purchased the insurance policies, at least in part in order to ingratiate himself and Mr [redacted] with Mr [redacted].[190] It found the promise of shares to Mr [redacted] to be "*clearly*" a promise made in connection with his duties at Woori Bank, describing the Applicant's own account to the SID as "*entirely credible and consistent with other elements of the evidence*".[191] The

186 Award, paras 171, 174 and 176.
187 Award, para 175.
188 Award, para 182.
189 Award, para 183.
190 Award, para 183.
191 Award, para 184.

Tribunal also characterized the giving and receiving of that promise as "*clear*" breaches of the Economic Crimes Act.[192] It was on that footing that the Tribunal concluded that the investment was made for use in a scheme that was illegitimate under Korean law, and accordingly fell outside Article 1(1) of the Treaty.[193]

(d) The Award itself therefore does not support the Applicant's contention that the Tribunal proceeded without regard to the sufficiency of the evidence or the standard that governed it.

150. It is not a part of the Committee's function to determine what standard of proof was applicable to the Respondent's Legality Objection. The identification of the applicable standard, and its application to the evidence, were matters for the Tribunal. The Award discloses that the Tribunal weighed the sufficiency of the evidence, articulated what had to be proved, and gave reasons for the conclusions it reached. That is sufficient to dispose of the Applicant's contention as framed.

c. Alleged failure to invite submissions on the ECA

151. The Applicant's contention that the Tribunal violated due process by failing to invite submissions on the interpretation of the ECA is likewise unpersuasive.

152. The substance of the Applicant's complaint is that, in the Arbitration, the Tribunal did not identify or indicate to the Parties the role of the 30% Pi Korea share offer to its analysis on whether there had been a breach of the ECA.[194] The Applicant submits that the Tribunal should have put specific and concrete legal questions to both Parties on the interpretation of the ECA, and invited submissions as regards whether the 30% share offer alone was sufficient to constitute a crime. According to the Applicant, the Tribunal's failure to "*allow the parties to comment on a decisive issue*" constituted a violation of due process and therefore a serious departure from a fundamental rule of procedure.[195]

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192 Award, para 184.
193 Award, para 194.
194 Memorial, paras 147-148; Reply, paras 88-92.
195 Memorial, paras 147-148; Reply, paras 88-92.

153. The record from the Arbitration does not support the Applicant's argument. The interpretation of the ECA, and the relevance of the 30% Pi Korea share offer to the question of whether there was a breach of the ECA, were clearly matters which the Parties considered to be relevant to the legality analysis under Article 1(1) of the Treaty.

154. The Respondent first raised the 30% Pi Korea share offer in its Counter-Memorial in the Arbitration, where the Respondent argued at paragraphs 226-228 and 386 that the Applicant's alleged "*investment*" in Pi Korea is not protected by the Treaty because the *"promising and giving* [of] *bribes to employees of financial institutions and receipt of such bribes by those employees are very serious offences under the [ECA]*".[196]

155. The Applicant also advanced submissions on this issue in his Post-Hearing Brief, where he argued that the 30% Pi Korea share offer is not relevant to the legality analysis because the Respondent "*failed to establish any factual foundation for the alleged 30% Share Bribe*".[197]

156. In light of the above, the Tribunal cannot be said to have failed to "*allow the parties to comment on a decisive issue*", when the record shows that Parties had considered the same issue to be relevant and had argued the matter before the Tribunal.

157. Insofar as the Applicant's complaint is that the Tribunal should have invited submissions from the Parties on the *specific* issue of whether there was a "*meeting of minds*" between Mr [redacted] and the Applicant,[198] the Committee is likewise unconvinced as to the merits of this argument. As explained above, the issue of whether there had been breach of the ECA formed part of the Respondent's case in the Arbitration, and the Applicant was in a position to address it in his Reply, during the hearing, and in his post-hearing brief. The Applicant could have raised the argument in the Arbitration that there was no "*meeting of minds*" and therefore no breach of the ECA at these junctures, and adduced expert evidence on Korean law to support that position. The Applicant did not do so.[199] In the circumstances, the

196 RA-8, Korea's Counter-Memorial, 30 January 2023.
197 RA-14, Applicant's Post-Hearing Brief, 8 January 2024, paras 65, 71, 72.
198 *See* Reply, para 90.
199 Hearing Tr Day 2, 68:4-8.

Tribunal cannot be faulted for not inviting submissions on the specific issue of a *"meeting of minds*" which was not raised before the Tribunal.

158. For these reasons, the Applicant has not discharged his burden of showing that the Tribunal violated due process, or committed any departure from a fundamental rule of procedure. There is accordingly no basis to annul the Award under Article 52(1)(d) of the ICSID Convention.

C. GROUND 3: FAILURE TO STATE REASONS

(1) Legal Standard

a. The Applicant's position

159. As regards the legal standard for failure to state reasons, the Applicant cites *MINE v Guinea* as the leading authority, explaining that the requirement to state reasons can be met only when the award permits one to "*follow how the tribunal proceeded from Point A. to Point B., and eventually to its conclusion, even if it made an error of fact or of law*".[200] The Applicant also notes that other annulment committees have recognized that a total absence of reasons, as well as insufficient, inadequate or contradictory reasoning may constitute grounds for annulment under Article 52(1)(e) of the ICSID Convention.[201] In the Applicant's view, "*what's most important in terms of failure to state reasons is the tribunal's analysis of the law and how it applied that analysis to the facts*".[202]

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200 Memorial, para 154, citing CA-LA-61, *Maritime International Nominees Establishment v. Republic of Guinea (II)*, ICSID Case No. ARB/84/4, Decision for Partial Annulment of the Arbitral Award, 22 December 1989, para 5.09.

201 Hearing Tr Day 2, 14:5-15:3; Reply, paras 97-102, citing CA-LA-76, *Rasia FZE and Joseph K. Borkowski v Republic of Armenia*, ICSID Case No. ARB/18/28, Decision on Annulment, 5 November 2024, para 241; CA-LA-10, *Hussein Nauman Soufraki v United Arab Emirates*, ICSID Case No ARB/02/7, Decision of the *ad hoc* Committee on the Application for Annulment of Mr Soufraki, 5 June 2007, para 126; CA-LA-9, *Klöckner Industrie-Anlagen GmbH and others v United Republic of Cameroon and Société Camerounaise des Engrais*, ICSID Case No ARB/81/2, Decision of the *ad hoc* Committee (English unofficial translation from the French original), 3 May 1985, para 120; CA-LA-70, *Vestey Group Ltd v Bolivarian Republic of Venezuela*, ICSID Case No ARB/06/4, Decision on Annulment, 26 April 2019, paras 92-93; CA-LA-71, *Mr Patrick Mitchell v Democratic Republic of the Congo*, ICSID Case No ARB/99/7, Decision on the Application for Annulment of the Award, 1 November 2006, para 21.

202 Hearing Tr Day 2, 16:1-5.

160. Reviewing prior decisions, the Applicant cites the following as cases where *ad hoc* committees found that an award falls short of the requirement to state reasons: (a) where there was a complete absence of reasons on a particular point; (b) where there was some apparent reasoning, but there was a critical lacuna in the explanation which renders it impossible for the reader to follow the reasoning up to the conclusion; (c) where there were contradictory reasons that undermine the basis of the conclusions; (d) where the statement of reasons was unrelated to the issues before the tribunal; (e) where there were frivolous, insufficient or inadequate reasons; and (f) where there was a failure to observe relevant evidence.[203]

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[203] Memorial, para 157, citing CA-LA-10, *Hussein Nauman Soufraki v United Arab Emirates*, ICSID Case No ARB/02/7, Decision of the *ad hoc* Committee on the Application for Annulment of Mr Soufraki, 5 June 2007, paras 122, 123; CA-LA-4, *Sempra Energy International v Argentine Republic*, ICSID Case No ARB/02/16, Decision on the Argentine Republic's Application for Annulment of the Award, 29 June 2010, para 167; CA-LA-9, *Klöckner Industrie-Anlagen GmbH and others v United Republic of Cameroon and Société Camerounaise des Engrais*, ICSID Case No ARB/81/2, Decision of the *ad hoc* Committee (English unofficial translation from the French original), 3 May 1985, paras 116, 120, 141; CA-LA-67, *CMS Gas Transmission Company v Argentine Republic*, ICSID Case No ARB/01/8, Decision of the *ad hoc* Committee on the Application for Annulment of the Argentine Republic, 25 September 2007, para 97; CA-LA-68, *Enron Creditors Recovery Corporation (formerly Enron Corporation) and Ponderosa Assets, LP v Argentine Republic*, ICSID Case No ARB/01/3, Decision on the Application for Annulment of the Argentine Republic, 30 July 2010, para 76; CA-LA-61, *Maritime International Nominees Establishment v Government of Guinea (II),* ICSID Case No ARB/84/4, Decision for Partial Annulment of the Arbitral Award, 22 December 1989, paras 5.09, 6.107; CA-LA-3, ICSID, *Updated Background Paper on Annulment*, March 2024; CA-LA-6, *Compañía de Aguas del Aconquija SA (formerly Aguas del Aconquija) and Vivendi Universal SA (formerly Compagnie Générale des Eaux) v Argentine Republic (I)*, ICSID Case No ARB/97/3, Decision on Annulment, 3 July 2002, para 65; CA-LA-69, *Continental Casualty Company v Argentine Republic*, ICSID Case No ARB/03/9, Decision on the Application for Partial Annulment of Continental Casualty Company and the Application for Partial Annulment of the Argentine Republic, 16 September 2011, para 103; CA-LA-60, *Tidewater Inc et al. v Bolivarian Republic of Venezuela*, ICSID Case No ARB/10/5, Decision on Annulment, 27 December 2016, paras 173-191; CA-LA-70, *Vestey Group Ltd v Bolivarian Republic of Venezuela*, ICSID Case No ARB/06/4, Decision on Annulment, 26 April 2019, paras 92, 93; CA-LA-51, *Amco Asia Corporation and others v Republic of Indonesia*, ICSID Case No ARB/81/1, *ad hoc* Committee Decision on the Application for Annulment, 16 May 1986, para 43; CA-LA-22, *Víctor Pey Casado and President Allende Foundation v Republic of Chile*, ICSID Case No ARB/98/2, Decision on the Application for Annulment of the Republic of Chile, 18 December 2012, para 86; CA-LA-23, *Perenco Ecuador Limited v Republic of Ecuador*, ICSID Case No ARB/08/6, Decision on Annulment, 28 May 2021, para 167; CA-LA-71, *Mr Patrick Mitchell v Democratic Republic of the Congo*, ICSID Case No ARB/99/7, Decision on the Application for Annulment of the Award, 1 November 2006, para 21; CA-LA-27, *TECO Guatemala Holdings, LLC v Republic of Guatemala*, ICSID Case No ARB/10/23, Decision on Annulment, 5 April 2016, paras 131 and 135.

*b. **The Respondent's position***

161. The Respondent agrees that *MINE v Guinea* presents the most commonly accepted test for the legal standard on failure to state reasons.[204]

162. The Respondent contends that, as with the other grounds for annulment, the threshold for annulment is high, and this annulment ground must be strictly construed, especially as this particular ground has the highest risk of transforming annulment proceedings into an appeal.[205]

163. The Respondent adds that an applicant on annulment must show that the tribunal failed to address a point that was necessary to the tribunal's decision.[206]

164. The Respondent also submits that, when analysing this ground for annulment, the award must be taken in its entirety, and the reasoning of the tribunal can be implicit from a reading of the award as a whole.[207]

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204 Counter-Memorial, para 186, citing CA-LA-61, *Maritime International Nominees Establishment v Government of Guinea (II),* ICSID Case No ARB/84/4, Decision for Partial Annulment of the Arbitral Award, 22 December 1989, para 5.09.

205 Hearing Tr Day 1, 178:1-5; Counter-Memorial, paras 185-188, citing RA-LA-42, *Infrastructure Services Luxembourg Sàrl and Energia Termosolar BV (formerly Antin Infrastructure Services Luxembourg Sàrl and Antin Energia Termosolar BV) v Kingdom of Spain*, ICSID Case No ARB/13/31, Decision on Annulment, 30 July 2021, para 234; RA-LA-56, C Schreuer *et al*, *Schreuer's Commentary on the ICSID Convention: A Commentary on the Convention on the Settlement of Investment Disputes between States and Nationals of Other States,* 3rd edition, Cambridge University Press 2022, para 52-431; RA-LA-23, *Occidental Petroleum Corporation and Occidental Exploration and Production Company v The Republic of Ecuador*, ICSID Case No ARB/06/11, Decision on Annulment of the Award, 2 November 2015, para 66; RA-LA-4, *Tenaris SA and Talta - Trading e Marketing Sociedade Unipessoal Lda v Bolivarian Republic of Venezuela (II)*, ICSID Case No ARB/12/23, Decision on Annulment, 28 December 2018, para 111; RA-LA-16, *AES Summit Generation Limited and AES-Tisza Erömü Kft v Republic of Hungary (II)*, ICSID Case No ARB/07/22, Decision of the *ad hoc* Committee on the Application for Annulment, 29 June 2012, para 47; RA-LA-28, *CEAC Holdings Limited v Montenegro*, ICSID Case No ARB/14/8, Decision on Annulment, 1 May 2018, para 95.

206 Counter-Memorial, para 189, citing CA-LA-20, *Joseph Charles Lemire v Ukraine (II)*, ICSID Case No. ARB/06/18, Decision on Annulment, 8 July 2013, para 279; RA-LA-29, *Standard Chartered Bank (Hong Kong) Limited v Tanzania Electric Supply Company Limited*, ICSID Case No ARB/10/20, Decision on the Application for Annulment, 22 August 2018, paras 606, 611.

207 Counter-Memorial, para 190(a), citing RA-LA-42, *Infrastructure Services Luxembourg Sàrl and Energia Termosolar BV (formerly Antin Infrastructure Services Luxembourg Sàrl and Antin Energia Termosolar BV) v Kingdom of Spain*, ICSID Case No ARB/13/31, Decision on Annulment, 30 July 2021, para 232; RA-LA-34, *Teinver SA, Transportes de Cercanías SA and Autobuses Urbanos del Sur SA v Argentine Republic*, ICSID Case No ARB/09/1, Decision on Argentina's Application for Annulment, 29 May 2019, para 209; CA-LA-69, *Continental Casualty Company v Argentine Republic*, ICSID Case No ARB/03/9, Decision on

165. The Respondent further contends that numerous *ad hoc* committees have confirmed that there cannot be an enquiry into the sufficiency or adequacy of reasons, as this draws the *ad hoc* committee into an examination of the substance of the tribunal's decision.[208]

166. Regarding contradictory reasons, the Respondent submits that there is a very high threshold for finding annulment on this basis. The contradictory reasons must "*completely cancel each other out, leaving the [a]ward with a total absence of reasons*", and it cannot be "*merely arguable whether there is a contradiction*".[209]

(2) Allegations

167. The Applicant submits that there are nine grounds that warrant annulment of the Award for failure to state reasons. Each of these nine grounds is summarized below, in the subsection presenting the Committee's Analysis.

168. The Respondent contends that none of the nine grounds raised by the Applicant supports a finding that there was an annullable failure to state reasons.[210] The Respondent asserts that the Applicant's arguments are merely a critique of the adequacy of the Tribunal's reasoning and an attack on the correctness of the Award.[211] According to the Respondent, the "*Tribunal's reasons for upholding the Legality Objection are plainly stated in its Award, and are far from being 'impossible to follow*'", and therefore do not constitute an annullable

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the Application for Partial Annulment of Continental Casualty Company and the Application for Partial Annulment of the Argentine Republic, 16 September 2011, para 126.

208 Counter-Memorial, paras 190-193, citing RA-LA-42, *Infrastructure Services Luxembourg Sàrl and Energia Termosolar BV (formerly Antin Infrastructure Services Luxembourg Sàrl and Antin Energia Termosolar BV) v Kingdom of Spain*, ICSID Case No ARB/13/31, Decision on Annulment, 30 July 2021, para 230; RA-LA-30, *OI European Group BV v Bolivarian Republic of Venezuela,* ICSID Case No ARB/11/25, Decision on the Application for Annulment of the Bolivarian Republic of Venezuela, 6 December 2018, para 321; Rejoinder, para 145, citing CA-LA-64, *SolEs Badajoz GmbH v Kingdom of Spain*, ICSID Case No ARB/15/38, Decision on Annulment, 16 March 2022, para 82.

209 Counter-Memorial, para 194, citing RA-LA-29, *Standard Chartered Bank (Hong Kong) Limited v Tanzania Electric Supply Company Limited*, ICSID Case No ARB/10/20, Decision on Annulment, 22 August 2018, para 611; CA-LA-52, *Daimler Financial Services AG v Argentine Republic*, ICSID Case No ARB/05/1, Decision on Annulment, 7 January 2015, para 77; CA-LA-69, *Continental Casualty Company v Argentine Republic*, ICSID Case No ARB/03/9, Decision on the Application for Partial Annulment of Continental Casualty Company and the Application for Partial Annulment of the Argentine Republic, 16 September 2011, para 103; CA-LA-64, *SolEs Badajoz GmbH v Kingdom of Spain*, ICSID Case No ARB/15/38, Decision on Annulment, 16 March 2022, para 84.

210 Counter-Memorial, paras 195-244; Rejoinder, paras 152-200.

211 Counter-Memorial, paras 195-197; Rejoinder, para 149.

error.[212] During the Hearing, the Respondent took the Committee through the Award and concluded from this exercise that the Tribunal's reasoning is coherent and the Award can be followed on its face.[213]

(3) The Committee's Analysis

a. <u>The applicable legal standard</u>

169. The Committee notes that the Applicant and the Respondent are in agreement that *MINE v Guinea* is the leading authority on the applicable legal standard, and "*the requirement to state reasons is satisfied as long as the award enables one to follow how the tribunal proceeded from Point A. to Point B. and eventually to its conclusion, even if it made an error of fact or of law*".[214]

170. The Committee also accepts the Applicant's position that a total absence of reasons, as well as insufficient, inadequate or contradictory reasoning may constitute grounds for annulment where the reasoning or the lacuna "*makes it impossible for the reader to follow the reasoning on this point*".[215]

b. <u>Whether the Tribunal failed to state reasons</u>

1. Alleged lack of reasoning on what constituted the relevant investment

171. The Applicant contends that the Tribunal failed to identify with sufficient clarity the "*investment*" under consideration for the purposes of Article 1(1) of the Treaty.[216] The Applicant also argues that, if the "*investment*" in question was the issuance of the Pi Korea shares to the Applicant, the subsequent share transfer to Mr [redacted]'s nominee (Mr [redacted])

212 Counter-Memorial, para 197. Rejoinder, para 150.
213 Hearing Tr Day 1, 175:13-19.
214 CA-LA-61, *Maritime International Nominees Establishment v Republic of Guinea (II),* ICSID Case No ARB/84/4, Decision for Partial Annulment of the Arbitral Award, 22 December 1989, para 5.09.
215 Reply, para 105, citing CA-LA-67, *CMS Gas Transmission Company v Argentine Republic*, ICSID Case No ARB/01/8, Decision of the *ad hoc* Committee on the Application for Annulment of the Argentine Republic, 25 September 2007, para 97.
216 Memorial, paras 159, 161.

and the promise to pay KRW 5.6 billion to Mr [redacted] fall outside the scope of "*investment*" and would therefore be irrelevant to the legality analysis.[217]

172. The Committee is not persuaded by the Applicant's submissions.

173. First, the Tribunal expressly identified the Pi Korea shares as the Applicant's investment.[218] The Applicant itself agrees that the Tribunal did indeed do so.[219] The Tribunal further explained that Pi Korea and the shares, as the investment, were a "*vehicle for bribery*" and "*were called into existence […] to carry out a corrupt scheme*", noting that 30% of the shares had been the promised as a bribe, even before the company was incorporated.[220]

174. Secondly, the Tribunal did explain how the subsequent share transfer to Mr [redacted] and the promise to pay KRW 5.6 billion to Mr [redacted] are relevant to the legality analysis. The Tribunal reasoned that the share transfer to Mr [redacted] was "*intended for Mr* [redacted]" as Mr [redacted] was Mr [redacted]'s nominee, and the share transfer was therefore relevant to the legality analysis as it formed part of the "*giving and receiving of the promise of the [30% Pi Korea] shares, made in September 2007*".[221] The Tribunal also observed that while the promise to pay KRW 5.6 billion to Mr [redacted] could indicate that the *"arrangements [for the bribe] were subsequently changed*", the promise of KRW 5.6 billion was nonetheless relevant to the legality analysis as it formed part of a "*single continuous corrupt relationship*" connected with the 30% Pi Korea share offer and the establishment of Pi Korea.[222]

2. Alleged conflation of "used as investment" with an "intention to use"

175. The Applicant contends that the Tribunal improperly conflated the Treaty's requirement that an asset be "*used as investment*" with an assessment of the investor's intention to use

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217 Memorial, para 162.

218 *See* Award, paras 173 and 190.

219 Memorial, paras 160, 162; Hearing Tr Day 2, 18:25-19:1. In his Reply, the Applicant stated that his case is not "*whether the Tribunal correctly identified the Pi Korea Shares as the purported investment, but having done so, whether the Tribunal remained faithful to the definition of 'investment' for [the] legality purposes under the Treaty […] and how that 'investment' squared with the […] temporal requirement of the legality clause of the Treaty*". *See* Reply, para 111. This argument is a repeat of the Applicant's other grounds for failure to state reasons, which are addressed by this Committee in the Decision below at paras 187-189.

220 Award, para 173.

221 *See* Award, para 184.

222 *See* Award, paras 184 and 191.

the asset, without providing any reasoning for this shift.[223] The Applicant also argues that on the Tribunal's own finding, the 30% Pi Korea share offer was "*dropped*", which meant that the intention to bribe using the 30% Pi Korea share was an "*abandoned intention*".[224] The Applicant says that the Tribunal failed explain how an allegedly "*abandoned intention*" resulted in the conclusion that the Pi Korea shares were not entitled to Treaty protection.[225]

176. The Committee does not accept these arguments.

177. First, as set out at paragraph 95 above, the Tribunal explained in the Award how and why it reached the conclusion that the requisite illegality exists where, at the time of investment, the asset is brought into existence for a use that is contrary to the laws of the host State. The Applicant has not discharged his burden of showing that there is a lacuna or unexplained shift in the Tribunal's reasoning that is "*so incomplete and defective that [it does] not enable a reader to establish how the Tribunal reached its decision*".[226]

178. Secondly, the Applicant's characterisation that the 30% Pi Korea share offer was an "*abandoned intention*" is inconsistent with the Tribunal's findings. The Tribunal found that Mr [redacted] had *received or accepted* the 30% Pi Korea share offer in September 2007,[227] While the Tribunal acknowledged that the Applicant's case was that the 30% Pi Korea share offer was "*dropped*"[228], the Tribunal expressly stated in the Award that it did not consider the offer to be abandoned, but only that "*it was...dropped in the sense that it was replaced by a promise to pay money*".[229] This is consistent with the Tribunal's finding that:

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223 Memorial, paras 165-166.
224 Memorial, paras 167-171.
225 Memorial, paras 167-171.
226 Reply, para 105, citing CA-LA-67, *CMS Gas Transmission Company v Argentine* Potestà, ICSID Case No ARB/01/8, Decision of the *ad hoc* Committee on the Application for Annulment of the Argentine Republic, 25 September 2007, para 97.
227 Award, para 184.
228 Award, para 129.
229 Award, fn 206.

(a) the 30% Pi Korea share offer was *effected* by the transfer of the said shares to Mr [redacted]'s nominee, Mr [redacted];[230] and

(b) even if the arrangements later morphed into the payment of KRW 5.6 billion to Mr [redacted], the 30% Pi Korea share offer *still* formed part of a "*single continuous corrupt relationship*" connected to the establishment of the investment.[231]

179. In these circumstances, the Applicant's complaint (i.e., that the Tribunal failed to explain how an "*abandoned intention*" led to a finding of illegality) cannot succeed, as the Tribunal did not find that the 30% Pi Korea share offer was abandoned in the first place.

3. Alleged lack of reasons on why an abandoned offer constitutes an illegal purpose

180. The Applicant argues that the Tribunal failed to provide sufficient reasoning with respect to the Applicant's argument that Pi Korea was not formed for the purpose of obtaining loans from Korean financial institutions by bribery. In this regard, the Applicant contends that:

(a) the Tribunal acknowledged that Pi Korea was established at the request of Woori Bank;[232]

(b) there was no "*meeting of minds*" in relation to the alleged 30% Pi Korea share offer to Mr [redacted];[233]

(c) the Tribunal itself accepted that the 30% Pi Korea share offer may have been abandoned but failed to explain why an "*abandoned intention*" nonetheless resulted in the Pi Korea shares falling outside the protection of the Treaty;[234] and

230 Award, paras 180(g) and 184.
231 Award, paras 184-91.
232 Memorial, para 173.
233 Memorial, para 174.
234 Memorial, para 175.

(d) if the 30% Pi Korea share offer was dropped after the formation of Pi Korea, the Tribunal failed to explain why a company which had the proper purpose of acquiring real property in China could become tainted with illegality.[235]

181. The Committee is not persuaded by these arguments.

182. As regards the first contention, this Committee accepts, consistent with the Respondent's position, that the Tribunal did not find that Pi Korea was established "*at the request of Woori Bank*"[236]. The Tribunal merely quoted the Applicant's assertion without endorsing it.[237]

183. As regards the second contention, the Tribunal did find that there was in effect a "*meeting of minds*" between the Applicant and Mr [redacted], i.e., a "*giving and receiving of the promise of the [30% Pi Korea] shares, made in September 2007*"[238]. To the extent that the Applicant challenges this finding of fact made by the Tribunal, such a challenge falls outside the scope of annulment proceedings.

184. As regards the third contention, the Applicant's characterisation of the Tribunal's findings is misplaced. As the Committee already explained in the subsection immediately above, the Tribunal did not find that the offer of the 30% Pi Korea shares was "*dropped*" or that it was an "*abandoned intention*".

185. As regards the fourth contention, the Tribunal found that Pi Korea had an illegal purpose at the time of investment because, at the time the investment was made, the Applicant and Mr [redacted] promised to transfer the 30% Pi Korea shares to Mr [redacted],[239] which promise was later effected by the transfer of shares to Mr [redacted]'s nominee, as addressed in paragraphs 174 and 178 above.

186. Moreover, the Tribunal did explain that it considered the shares to fall outside the Treaty protection because the asset (i.e., the Pi Korea shares), which was created at the time of the

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235 Reply, para 129(c).
236 Counter-Memorial, para 217(a), referring to Award, paras 75 and 91(g).
237 Award, paras 75 and 91(g).
238 Award, para 184.
239 Award, para 184.

investment, had been brought into existence with the intention of using it contrary to the laws of the host State in force from the outset.[240] Accordingly, the Tribunal has adequately explained that this initial intention was central to its decision to treat the investment as falling outside the protection of the Treaty, a finding that may not be reviewed or revised by this Committee.

4. *Alleged conflation of the Pi Korea shares with the loan transactions*

187. The Applicant argues that because the Tribunal interpreted Article 1(1) of the Treaty to mean that the requisite illegality must exist at the time of investment, only an "*improper share transfer occurring at the time the investment was made* [...] *could trigger the legality clause's temporal requirement*".[241] He adds that, since the Pi Korea shares were issued only to the Claimant, subsequent transfers could not fall within the scope of the legality clause. The Applicant further contends that, to resolve this alleged inconsistency, the Tribunal concluded that the bribery need not be connected to the loan transactions themselves, but only to Mr [redacted]'s duties as financial officer — thereby artificially detaching the loan transactions from the Tribunal's finding on bribery and attaching that finding instead to the formation of Pi Korea and the issuance of the Pi Korea shares, adopting in this way "*an illogical and unsustainable framework of reasoning*"[242].

188. On this basis, the Applicant contends that the Tribunal failed to explain how it moved from the requirement that illegality must exist at the time of investment, to its finding that the Pi Korea shares were a vehicle for bribery, given that the 30% Pi Korea share offer was rejected in September 2007 by Mr [redacted], and the subsequent share transfer to Mr [redacted] only occurred after the investment was made.[243]

189. The Committee is not persuaded by the Applicant's submission, as it finds that the Tribunal's reasoning in the Award can be readily followed:

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240 Award, para 162.
241 Memorial, para 177.
242 Memorial, para 178.
243 Memorial, paras 177-180.

(a) The Tribunal's interpretation of Article 1(1) of the Treaty is that an "*investment*" falls outside the protection of the Treaty if, at the time of investment, the asset is brought into existence for a use that is contrary to the laws of the host State.[244]

(b) The Tribunal applied this interpretation to the factual record before it and, on the basis that the 30% Pi Korea share offer was accepted by Mr [redacted] in September 2007, concluded that the Pi Korea shares were brought into existence to carry out a corrupt scheme, i.e., to obtain loans by bribery, and were accordingly not afforded protection by the Treaty.[245]

(c) The Tribunal did not, as the Applicant asserted, proceed on the basis that the 30% Pi Korea share offer was rejected by Mr [redacted] in September 2007. There is accordingly no inconsistency or unexplained gap in the Tribunal's reasoning.

5. Alleged failure to explain the applicable Korean law

190. The Applicant contends that the Tribunal failed to conduct a specific analysis of the ECA, in particular the requirement that there must be a "*meeting of minds*" in order for there to be a "*promise*" under the ECA.[246] The Applicant further submits that the Tribunal disregarded, and failed to explain its disregard of, crucial evidence that Mr [redacted] rejected the offer of the 30% Pi Korea shares, which negated the existence of a "*promise*" under the ECA.[247]

191. The Committee does not find the Applicant's arguments to be meritorious for the following reasons.

192. First, it is evident from the Award that the Tribunal analysed the ECA and applied it to the facts before concluding that it had been breached.[248] As regards the Applicant's specific complaint that the Tribunal did not consider the requirement that there be a "*meeting of minds*", as set out in paragraphs 151 to 157 above, this issue was not canvassed before the

244 Award, paras 162-164.
245 Award, paras 184-187.
246 Memorial, paras 181-183.
247 Memorial, para 183.
248 Award, paras 65, 116, 171, 176, 184.

Tribunal by the Parties, and the Tribunal cannot be faulted for failing to address a contention that was not put before it.

193. Secondly, the Committee does not accept that the Tribunal disregarded the "*crucial evidence*" that Mr [redacted] rejected the offer of the 30% Pi Korea shares. The Tribunal expressly considered the Applicant's interview records with the SID, including Mr Min's statement that Mr [redacted] "*was given the 30% share, [and] he said that he will proactively work so that the loan can be approved*".[249] The Tribunal found this evidence to be convincing and "*broadly consistent with the facts proved*".[250] On this basis, the Tribunal found that Mr [redacted] had received the promise of shares in September 2007 and that the shares transferred subsequently to Mr [redacted] were intended for Mr [redacted] as part of the agreed bribe.[251] In the premises, the Applicant has not shown that the Tribunal disregarded material evidence or failed to explain its treatment or disregard of it.

6. Failure to state reasons for the finding of breaches of Korean law

194. The Applicant contends that the Tribunal:[252]

(a) failed to articulate the burden and standard of proof applicable to the issue of legality; and

(b) failed to provide its reasons for its finding of a breach of the ECA at the time of investment, since Mr [redacted] rejected the offer for the 30% Pi Korea shares outright and the offer of the 30% Pi Korea shares was made by Mr [redacted] and not the Applicant. To this end, the Applicant argues that if Korean authorities, applying their own laws, did not find an offense in relation to the 30% Pi Korea share offer, the Tribunal's conclusion to the contrary demands rigorous justification, which is absent from the Award.

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249 Award, para 86 (p 29).
250 Award, para 182.
251 Award, para 184.
252 Memorial, paras 184-188, citing CA-LA-36, *Worley International Services Inc v Republic of Ecuador*, PCA Case No 2019-15, Final Award, 22 December 2023, para 430; CA-LA-35, *Sanum Investments Limited v Lao People's Democratic Republic*, PCA Case No 2013-13, Award, 6 August 2019, para 108.

195. The Committee is not persuaded by these arguments, which substantially overlap with the Applicant's submissions that have already been addressed above.

196. First, as regards the burden and standard of proof, the Tribunal notes that there was no dispute between the Parties in the Arbitration on these issues.[253] In the circumstances, the Tribunal cannot be faulted for not expressly explaining the burden and standard of proof when these were not matters put in issue by the Parties.

197. Secondly, the Applicant has not demonstrated that the Tribunal failed to provide its reasons for its conclusion that there was a breach of the ECA at the time of the investment. The Tribunal found that that Mr [redacted] accepted the offer for the 30% Pi Korea shares, as set forth in paragraphs 174 and 178 above. The Tribunal also found on the basis of the Applicant's SID interview records that the Applicant had participated in the 30% Pi Korea share offer to Mr [redacted].[254] On the back of these factual findings, the Tribunal concluded that there was a breach of the ECA at the time of investment.[255]

198. Thirdly, this Committee is not persuaded by the Applicant's argument that the Tribunal failed to explain why it departed from the Korean authorities' decision not to prosecute or indict the Applicant for the 30% Pi Korea share offer. Given the findings of the Tribunal noted immediately above, it is questionable whether the Tribunal's purported failure to explain a departure from decisions of domestic authorities would, without more, constitute a ground for annulment under Article 52(1)(e) of the ICSID Convention. Even assuming that it would, the Applicant has not shown that the Tribunal's conclusions were inconsistent with the factual findings of the Korean authorities as reflected in the record. To the contrary, it would appear that the Seoul Central District Court also found that there was a 30% Pi Korea share offer to Mr [redacted] in September 2007 that the Applicant participated

253 Hearing Tr Day 2, 79:15-80:13 (The Applicant states that "*there really is nothing that directly discusses the standard of proof that should be applied* […] *it is important to ask ourselves how issues of burden and standard of proof come into being in the first place in these kinds of cases. There is no dispute that the burden of proof lies with the respondent as it is the party alleging corruption*").

254 Award, para 184.

255 Award, para 184.

in, and the payment of KRW 5.6 billion was a "*means of concrete implementation*" of the same promise of bribery.[256]

7. Failure to explain the shift from the PM Agreement to the Pi Korea shares

199. The Applicant contends that the Tribunal failed to articulate why it treated the alleged promise to pay KRW 5.6 billion under the PM Agreement as part of the same corrupt scheme as the alleged 30% Pi Korea share offer for the purpose of the legality analysis.[257]

200. The Committee does not consider that the Applicant has made out his contention. Based on the Award, a reader can follow that the Tribunal considered the promise to pay KRW 5.6 billion and the 30% Pi Korea share offer as part of *"a single continuous corrupt relationship*" for the same reasons already set out above, namely:

(a) the Tribunal did not accept that the Pi Korea share offer was "*dropped*", but rather that it morphed into an agreement to pay money to Mr [redacted][258]; and

(b) the Tribunal considered that, even if the arrangements for the payment of the bribe were subsequently changed into the payment of KRW 5.6 billion to Mr [redacted] under the PM Agreement, both formed parts of the same underlying bribery scheme.[259]

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256 CA-7 (Exhibit C-241 in the Arbitration), Judgment of the Seoul Central District Court, 8 February 2013, p 15 ("*Defendant* [redacted] *met with* [redacted] *together with Defendant Fengzhen Min around September 2007 and proposed to offer a 30% stake in Pi Korea in relation to the loan arrangement, so the crime in this part in which Defendant Fengzhen Min promised to* [redacted] *around 5 March 2008 to provide KRW 5.6 billion in relation to the PF loan duties under the pretext of service fees through the form of a PM agreement appears to have arisen as a means of concrete implementation after the Defendants had already decided to pay* [redacted] *the reward for the loan arrangement around September 2007*") (cited in Award, para 94).

257 Memorial, paras 189-194, citing CA-3, Judgment of the Seoul High Court in relation to Mr [redacted] (Korean with English translation), 6 September 2011, pp 9-10.

258 Award, fn 206.

259 Award, para 191.

201. The Applicant also states that "*more convincing evidence shows that the plan was dropped due to Mr [redacted]'s rejection in September 2007*".[260] However, this is a challenge to the Tribunal's finding of fact which falls outside the purview of the Committee.

8. Failure to explain why ratification does not exist

202. The Applicant contends that the Tribunal failed to provide reasons for its finding that the alleged corrupt scheme was not ratified or endorsed by the Respondent, in particular in light of: (i) the alleged establishment of Pi Korea at the request of Woori Bank; and (ii) the Korean criminal courts' purported endorsement of the legitimacy of Pi Korea.[261]

203. The Committee is not persuaded by these submissions.

204. First, the Tribunal did not find that Pi Korea was established at the request of Woori Bank. As noted above, the Tribunal merely quoted the Applicant's assertion without endorsing it.[262]

205. Secondly, the Applicant has not identified where or how the Korean criminal courts purportedly endorsed the legitimacy of Pi Korea. The passages cited by the Applicant to support his contention does not contain such an endorsement.

206. In these circumstances, the Applicant's complaint proceeds on factual premises that are not supported by the record. There is therefore no basis to conclude that the Tribunal omitted to address a material issue or failed to explain its reasoning in this respect.

9. Contradictory reasoning

207. The Applicant identified 6 alleged contradictions in the Tribunal's reasoning:[263]

(a) The Tribunal proclaimed that the decisive question would "*turn on the language of the treaty in question*", yet adopted without explanation an interpretative method

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260 Memorial, para 192, citing CA-3, Judgment of the Seoul High Court in relation to Mr [redacted] (Korean with English translation), 6 September 2011, pp 9-10.

261 Memorial, paras 195-197.

262 Award, para 75 and 91(g).

263 Memorial, paras 198-206.

that departed from the plain wording of the legality clause in Article 1(1) of the Treaty.

(b) The Tribunal conceded that the Pi Korea shares were not obtained by bribery, while also tying the purpose of Pi Korea to the act of obtaining Korean Loans through allegedly corrupt means.

(c) The Tribunal stated that Pi Korea was formed for the purpose of obtaining loans by bribery, while also pointing out that Pi Korea was formed for the legitimate purpose of purchasing a building in Beijing.

(d) The Tribunal accepted that the 30% Pi Korea share offer may have been dropped, but on the other hand still held that Pi Korea was a vehicle for bribery at the time of investment.

(e) The Tribunal concluded that illegality must occur at the time of the investment, but tied a pre-investment event (i.e., Mr [redacted]'s offer of 30% of the Pi Korea shares) and a post-investment event (i.e., the PM Agreement) together.

(f) The Tribunal stated that it would *"assume that the acts and omissions of Woori Bank are attributable to the Respondent*", but did not consider Woori Bank's act of requesting the establishment of Pi Korea and the Korean court's endorsement of the legitimate purpose of Pi Korea when addressing the issue of ratification.

208. The Committee considers allegations (a), (d), (e) and (f) to be reformulations of the Applicant's submissions that have already been addressed and rejected above at paragraphs 177, 178, 187-189, 199-201 and 202-206.

209. As regards allegation (b), the Applicant has not shown that there is any inherent contradiction. The Applicant referenced paragraph 173 of the Award to support this allegation, where the Tribunal stated that "*the Pi Korea Shares were not obtained by bribery* […] *but were, allegedly a vehicle for bribery. The company and its shares were called into existence* […] *in order to carry out a corrupt scheme*". The Committee sees no

contradiction in this passage the Applicant cited, particularly in light of paragraph 19 above, which sets out the Tribunal's conclusion concerning the issue of bribery.

210. As regards allegation (c), the Applicant references paragraph 180(c) of the Award, where the Tribunal observed that Pi Korea was established for the purpose of seeking loans from Korean financial institutions to fund the acquisition of a building in Beijing. The Tribunal did not make a finding of fact in this paragraph (or elsewhere in the Award) that the method employed by Pi Korea to seek those loans was legitimate. There is accordingly no discernible contradiction between the Tribunal's observation at paragraph 180(c) of the Award and its factual finding that Pi Korea was established to obtain loans through bribery.

211. In light of the above, the Committee finds that the Applicant has not discharged his burden of showing that there is a total absence of reasons, or insufficient, inadequate or contradictory reasoning in the Award which "*makes it impossible for the reader to follow the reasoning*".[264] The Committee accordingly declines to annul the Award on the basis that there was a failure to state reasons under Article 52(1)(e) of the ICSID Convention.

VII. COSTS

A. THE APPLICANT'S COSTS SUBMISSION

212. In his submission on costs, the Applicant requests two alternative cost allocations, depending on which party is successful in these annulment proceedings.

213. **Scenario 1 - The Applicant Prevails**: The Applicant argues that if he prevails in whole or in part in these annulment proceedings, the Respondent should bear the total arbitration costs incurred by him under the prevailing "*costs follow the event*" principle, including: (i) Hearing expenses, ICSID's administrative fee and the Committee's fees and expenses; and

[264] Reply, para 105, citing CA-LA-67, *CMS Gas Transmission Company v Argentine Republic*, ICSID Case No ARB/01/8, Decision of the *ad hoc* Committee on the Application for Annulment of the Argentine Republic, 25 September 2007, para 97.

(ii) legal costs and other expenses.[265] The Applicant maintains that his costs were reasonable and the work was conducted in a highly effective and efficient manner.[266]

214. **Scenario 2 - The Respondent Prevails**: The Applicant submits that if he is unsuccessful in these annulment proceedings, he should bear the Hearing expenses, ICSID's administrative fee and the Committee's fees and expenses, but each Party should bear its own legal costs, for the following reasons: (i) the Applicant advanced his annulment grounds in good faith, on a legitimate and substantiated basis; (ii) the Applicant has at all times acted expeditiously, cooperatively, and in compliance with the Rules and all procedural orders, contributing to the efficient conduct of the annulment; and (iii) applying the principle of "*costs follow the event*" to both categories of costs would impose an unreasonable burden upon the Applicant.[267]

215. The Applicant has submitted **USD 1,436,659.58** in total costs for the annulment proceedings, with the breakdown as follows:

(a) Lodging fee, advance on costs (1) and (2): **USD 453,179.15**; and

(b) Applicant's legal costs: **USD 983,480.43**.[268]

B. THE RESPONDENT'S COSTS SUBMISSION

216. In its submission on costs, the Respondent submits that the Committee should exercise its discretion and follow the "*costs follow the event*" principle to order the Applicant to pay:

(a) the full ICSID administrative costs and the Committee's expenses;

(b) the full legal and other costs incurred by the Respondent in these proceedings amounting to **KRW 1,512,835,044.48**,[269] which comprises: (i) the legal fees and the costs and disbursements incurred by A&O Shearman, Yulchon LLC and

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265 Applicant's Costs Submission, paras 3, 11-13.
266 Applicant's Costs Submission, para 13.
267 Applicant's Costs Submission, para 4.
268 Applicant's Costs Submission, para 29.
269 For the purpose of comparison to the Applicant's costs, this KRW sum is equivalent to approximately USD 1,120,601.95 on 10 September 2026. *See* https://www.xe.com/currencyconverter/ (visited on 10 September 2026).

Matthew Hodgson (Partner, Linklaters LLP) in the amount of **KRW 1,497,232,204.48**; and (ii) other costs incurred by the Respondent's representatives in relation to flights, accommodation, transportation and *per diem* payments for attending the Hearing in the amount of **KRW 15,602,840.00**;[270] and

(c) simple interest to Korea on the sum awarded at the SOFR plus 2% from the date of the Committee's Decision until full payment.[271]

217. The Respondent also submits that it should not be liable for any of the Applicant's costs.[272]

218. The Respondent argues that it is entitled to recover its costs with interest as these proceedings were an abuse of the ICSID annulment mechanism.[273] Applying the "*costs follow the event*" principle, the Respondent submits that the following factors, among others, weigh in favor of an award of its costs: (i) the annulment application was a thinly disguised appeal against the substantive correctness of the Award; (ii) the Applicant relied on new arguments never raised in the Arbitration and false factual premises; and (iii) the Applicant's conduct in the annulment proceedings complicated the dispute and increased costs.[274]

219. The Respondent submits that the Applicant should be required to pay interest at the SOFR plus 2% from the date of the Committee's Decision until full payment, given that (i) the Applicant filed his annulment application as part of ongoing efforts to delay the enforcement of security over the Building before the courts of the People's Republic of China; (ii) the Applicant's substantive position in support of his annulment application has been entirely unmeritorious; (iii) the Applicant's conduct in the proceedings needlessly complicated the dispute and increased the costs of the Parties and the Committee; and (iv) the Respondent's conduct and its costs in the annulment proceedings are entirely reasonable.

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270 Respondent's Costs Submission, para 2.
271 Respondent's Costs Submission, para 22.
272 Respondent's Costs Submission, para 23.
273 Respondent's Costs Submission, para 10.
274 Respondent's Costs Submission, paras 11-20.

C. THE COMMITTEE'S ANALYSIS

220. Article 61(2) of the ICSID Convention provides:

> "*In the case of arbitration proceedings the Tribunal shall, except as the parties otherwise agree, assess the expenses incurred by the parties in connection with the proceedings, and shall decide how and by whom those expenses, the fees and expenses of the members of the Tribunal and the charges for the use of the facilities of the Centre shall be paid. Such decision shall form part of the award*".

221. This provision, together with Arbitration Rule 47(1)(j) (applicable by virtue of Arbitration Rule 53) gives the Committee discretion to allocate all costs of the proceeding, including attorney's fees and other costs, between the Parties as it deems appropriate.

222. Since the Respondent is the successful party in these proceedings, the Committee considers it appropriate, in the exercise of its discretion, to require the Applicant:

(a) to bear the costs of the annulment proceedings, including the fees and expenses of the Committee, ICSID's administrative fees, and direct expenses;

(b) to pay to the Respondent the costs that the Respondent has incurred in defending against the Application, which the Committee finds to be reasonable; and

(c) to pay simple interest to the Respondent on the sum awarded at the SOFR plus 2% from the date of the Committee's Decision until full payment.

223. The costs of the annulment proceedings, including the fees and expenses of the Committee, ICSID's administrative fees and direct expenses, are as follows (in USD):

Committee Members' fees	
Cavinder Bull, *S.C.*	91,750.00
David A. Pawlak	87,500.00
Mairée Uran Bidegain	87,766.67
Committee Members' expenses	
Cavinder Bull, *S.C.*	438.44

David A. Pawlak	11,775.38
Mairée Uran Bidegain	18,149.70
ICSID's administrative fees	104,000.00
Direct expenses	25,370.92
Total	**426,751.11**

224. The above costs have been paid out of the advances made by the Applicant pursuant to Administrative and Financial Regulation 15(5).[275] As a consequence of the Committee's decision above, these costs will be borne by the Applicant, and the Respondent will not be required to reimburse the Applicant for his advances towards the costs of the annulment proceedings.

VIII. DECISION

225. For the reasons set forth above, the *ad hoc* Committee unanimously decides as follows:

(1) The Application for Annulment of the Award dated 30 May 2024 in the Arbitration proceedings between Fengzhen Min and the Republic of Korea (ICSID Case No ARB/20/26) is rejected in its entirety.

(2) The Applicant is to bear the costs of these annulment proceedings of USD 426,751.11.

(3) The Applicant is to pay to the Respondent KRW 1,512,835,044.48, being the sum of the costs and expenses incurred by the Respondent in these annulment proceedings.

(4) The Applicant is to pay simple interest on the sums awarded at the SOFR plus 2% from the date of the Committee's Decision until full payment.

[275] The remaining balance will be reimbursed to the Applicant.

Ms. Mairée Uran Bidegain
Member of the *ad hoc* Committee

Date: 11 - September - 2026.

Mr David A. Pawlak
Member of the *ad hoc* Committee

Date:

Mr Cavinder Bull, *S.C.*
President of the *ad hoc* Committee

Date:

Ms. Mairée Uran Bidegain
Member of the *ad hoc* Committee

Date:

Mr David A. Pawlak
Member of the *ad hoc* Committee

Date: SEP 11 2026

Mr Cavinder Bull, *S.C.*
President of the *ad hoc* Committee

Date:

Ms. Mairée Uran Bidegain
Member of the *ad hoc* Committee

Date:

Mr David A. Pawlak
Member of the *ad hoc* Committee

Date:



Mr Cavinder Bull, *S.C.*
President of the *ad hoc* Committee

Date: SEP 11 2026