The Government of the Republic of Korea

Press Release

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Korea Prevails in Section 67 Challenge at the English Court Regarding the Elliott Case

- English Court Overturns the Award and Remands the Case to the Tribunal, Lifting KRW 160 Billion in Compensation -

- On February 23, 2026 (19:30 KST), the Republic of Korea ("Korea") won its set-aside proceeding in the English courts regarding the International Investor-State Dispute Settlement (ISDS) award (the "Award") involving the U.S. private equity fund, Elliott Associates ("Elliott").
- Following the Court's decision, the Award which recognized the Korea's liability is no longer enforceable, and the case has been remanded to the Arbitral Tribunal(the "Tribunal").
- Elliott sought over USD 1 billion in damages regarding the exercise of voting rights by the National Pension Service ("NPS") during the Samsung C&T("SC&T") and Cheil Industries("Cheil") merger. In June 2023, the Tribunal partially ruled against Korea, ordering approximately KRW 60 billion in principal damages, which, including interest, totaled approximately KRW 160 billion as of February 2026.
- After a series of challenges—including a set-aside application in the English High Court (the "Court") in July 2023 and a successful appeal against an initial dismissal in July 2025—the Court accepted Korea's core argument: the NPS is not a "state organ" for which the state bears international responsibility.
- This victory is a hard-earned and meaningful outcome achieved through Korea's unified efforts, led by the Ministry of Justice("KMOJ"), to persist without ever giving up and to persuade the Court to the very end. KMOJ will continue to do its utmost in the remanded arbitral proceedings to protect the national interest of Korea.

1. Overview

☐ On February 23, 2026, Korea prevailed in its action before the English Court to set aside the arbitral award in the ISDS brought by U.S. private equity fund Elliott.

☐ Accordingly, the Award recognizing Korea’s liability can no longer be sustained, and the case has been remanded to the arbitral proceedings.

2. Case Overview and Major Developments

☐ **(Factual Backgrounds)** As a shareholder of the former SC&T, Elliott opposed the merger between SC&T and Cheil. Following the consummation of the merger, On July 12, 2018, Elliott initiated an ISDS claim against Korea based on the Korea-U.S. Free Trade Agreement (“KORUS FTA”), making an issue with NPS’s exercise of voting rights in favor of the transaction.

☐ **(Arbital Proceedings)** Elliott contended that NPS exercised its voting rights as a result of undue pressure exerted by the Korean Governement, occurring against the backdrop of the so-called ‘state affairs’ scandal. Elliott claimed that this interference resulted in damages exceeding KRW 1 trillion due to the subsequent decline in stock prices.

○ On June 20, 2023, the Tribunal partially accepted Elliott’s arguments and ordered Korea to pay approximately KRW 69 billion (roughly 7% of the amount claimed by Elliott) plus interest. Following the Korea’s submission pointing out specific errors in the calculations, the Tribunal initiated a correction procedure. On September 1, 2023, the compensation was reduced to approximately KRW 59.3 billion plus interest, representing a reduction of approximately KRW 9.7 billion from the original award.

☐ **(Set-Aside Proceedings)** Unable to accept the Award—which deemed that NPS a "state organ", and recognized damages resulting from the Korean Government's exercise of pressure—Korea filed an application on July 18, 2023, with the English court at the seat of arbitration to set aside the Award on the legal basis of a Section 67 challenge under the Arbitration Act 1996.

○ **(First Instance)** On August 1, 2024, the Court dismissed Korea's application, ruling that the grounds for set-aside asserted by the claimant did not constitute valid grounds under the interpretation of the KORUS FTA.

○ **(Appellate Proceeding)** Korea appealed this decision, and on July 17, 2025, the English Court of Appeal overturned the first instance judgment. The Court of Appeal ruled that Korea's asserted grounds for set-aside were indeed valid and remanded the case to the first instance court for a determination on the merits.

○ **(Remand Proceedings)** In the remand proceedings where the merits of the set-aside grounds were heard, the Court accepted Korea's grounds. Consequently, Korea's Section 67 challenge succeed, the Court partially set aside the Award and remanded the case back to the Tribunal.

3. Rationale for the Victory

○ The central issue in the remand proceedings of the first instance was whether the NPS's exercise of voting rights could be deemed a measure adopted or maintained by a "State Organ" (Party) under Article 11.1 of the KORUS FTA.

※ To bring an ISDS, the governmental measure challenged by the investor must fall within the arbitral tribunal's jurisdiction, and the relevant requirements are set out in Article 11.1 of the KORUS FTA. One such requirement is whether the measure in question was carried out by a state organ (i.e., a Party).

KOR-US FTA Article 11.1
ARTICLE 11.1: SCOPE AND COVERAGE 1. This Chapter applies to measures adopted or maintained by a Party relating to: (a) investors of the other Party; (b) covered investments; and (c) with respect to Articles 11.8 and 11.10, all investments in the territory of the Party.

○ **(Core Findings of the Ruling)** The Court accepted Korea's arguments and set aside the portion of the Award predicated on the NPS being a "state organ". This decision was based on the following considerations:

- The NPS possesses a separate legal personality distinct from the Korean government.
- The management of public pension funds does not constitute a core state function, such as policing or national defense.
- The daily decision-making processes of the NPS are not entirely subordinate to the Government.

※ The Court did, however, rule that the acts of intervention by the Blue House and the MOHW in the NPS's decision-making process regarding the merger constitute "related measures" under Article 11.1 of the KORUS FTA.

○ **(Judgement)** Consequently, the case has been remanded to the arbitral tribunal to determine whether the actions of the Blue House and the MOHW alone—premised on the fact that the NPS is not a state organ—possess a sufficient causal link to Elliott's alleged damages.

- As the NPS is not considered a state organ, the arbitral tribunal must now adjudicate the existence of state liability based solely on the conduct of the Blue House and the MOHW. Accordingly, the Award can no longer stand.

4. Significance and Future Action Plans

Persistent Efforts to Safeguard the Public's Retirement Pensions

□ This case holds significant meaning in that, through the Government's persistent efforts, it overcame various adverse circumstances to safely protect the management of the National Pension Fund from foreign speculative capital. Simultaneously, it redefined the role of Article 11.1 of the KORUS FTA as a "gateway provision*".

* A provision stipulating the requirements for an ISDS claim; a claim must satisfy these requirements to proceed to a hearing on the merits by an arbitral tribunal.

○ **(A Dramatic Turnaround)** Undeterred by the partial loss in the original arbitral proceedings and the initial dismissal of the set-aside application, Korea persistently pursued rectification, set-aside proceedings, and appeals. By maintaining a consistent legal theory, Korea achieved a remarkable outcome that exceeds the approximately 3% success rate for setting aside arbitral awards in English courts observed over the last two years.

○ **(Overcoming Adverse Circumstances)** Korea successfully secured a remand to the Tribunal despite the negative impact of domestic criminal convictions related to the "state affairs" scandal on the ISDS defense. Furthermore, it overcame a significant disparity in financial resources compared to Elliott, which expended approximately six times more on litigation costs than Korea.

○ **(Safeguarding the Management of the National Pension Fund)** The Court's decision established the legal principle that investment activities, such as the exercise of voting rights by the NPS, are not subject to ISDS. By securing recognition for the independence and autonomy of the NPF, Korea has laid a solid foundation for the safe management of the public's vital retirement assets

○ **(Redefining the Role of KORUS FTA Provisions)** By reaffirming the function of Article 11.1 of the KORUS FTA as a "gateway" provision, the Government has preemptively mitigated risks where the state could become vulnerable to the abuse of ISDS claims by foreign speculative capital.

□ This outcome represents another milestone achieved through the collective dedication of the KMOJ’s International Dispute Settlement Division—which previously secured a total victory for the Government in the Lone Star ISDS annulment proceedings—working in close coordination with the International Investment Dispute Response Task Force (comprising relevant ministries such as the MOHW) and the Korean Government’s domestic and international legal counsel*.

* Peter & Kim, Arnold & Porter Kaye Scholer LLP, Sam Wordsworth KC, Peter Webster, Richard Hoyle

Future Plans

□ Moving forward, the Government will make every effort to address remaining issues, such as the specific scope of the set-aside and the allocation of legal costs, while remaining fully prepared for any potential appeal by Elliott to ensure that national interests are prioritized at every stage.

○ Furthermore, the Korean Government will disclose as much information as possible within the limits of relevant laws and regulations. In all subsequent procedures, Korea will continue to leverage its accumulated expertise and maintain close coordination with relevant ministries, external experts, and its domestic and international legal counsel to represent and protect the national interest with the utmost diligence. ▨

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