

**IN THE MATTER OF AN ARBITRATION  
BEFORE A TRIBUNAL CONSTITUTED IN ACCORDANCE WITH  
THE FREE TRADE AGREEMENT BETWEEN THE REPUBLIC OF KOREA AND THE  
UNITED STATES OF AMERICA, DATED 30 JUNE 2007**

**- and -**

**THE ARBITRATION RULES OF THE UNITED NATIONS COMMISSION  
ON INTERNATIONAL TRADE LAW, 2013**

**PCA CASE NO. 2018-51**

**-between-**

**ELLIOTT ASSOCIATES, L.P. (U.S.A.)  
(the “Claimant”)**

**-and-**

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

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**DECISION ON REQUESTS FOR CORRECTION AND  
INTERPRETATION OF THE AWARD**

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**The Arbitral Tribunal**

Dr. Veijo Heiskanen (Presiding Arbitrator)

Mr. Oscar M. Garibaldi

Mr. J. Christopher Thomas KC

**Registry**

Permanent Court of Arbitration

1 September 2023

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## I. INTRODUCTION

1. On 20 June 2023, the Tribunal issued its award in this arbitration (the “**Award**”), the operative part of which reads as follows:<sup>1</sup>

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

- a. The Respondent has breached the Treaty;
- b. The Respondent is ordered to pay the Claimant compensation for the losses caused to the Claimant by the Respondent’s breach in the amount of USD 53,586,931.00;
- c. The Respondent is ordered to pay the Claimant pre-award interest at a rate of 5 percent on the sum in sub-paragraph (b) above, compounded yearly from 16 July 2015 until the date of this Award;
- d. The Respondent is ordered to pay the Claimant post-award interest at a rate of 5 percent, compounded yearly, from the date of this Award until payment of the sum in subparagraph (b) above in full;
- e. The Parties are to bear their own costs of arbitration;
- f. The Claimant is ordered to pay the Respondent the legal costs incurred by the Respondent in relation to these proceedings in the amount of USD 3,457,479.87, with interest at the rate of 5 percent, compounded yearly, payable from 30 days of the date of this Award;
- g. The Respondent is ordered to pay the Claimant the legal costs incurred by the Claimant in relation to these proceedings in the amount of USD 28,903,188.90, with interest at the rate of 5 percent, compounded yearly, payable from 30 days of the date of this Award; and
- h. All other claims and requests for relief are dismissed.

2. On 18 July 2023, the Respondent submitted its Request for Correction and Interpretation of the Award (the “**Respondent’s Request**”) in accordance with Articles 37 and 38 of the 2013 UNCITRAL Arbitration Rules (the “**UNCITRAL Rules**”).

3. On 20 July 2023, the Claimant submitted its Request for Correction of the Award (the “**Claimant’s Request**”) in accordance with Article 38 of the UNCITRAL Rules.

4. On 1 August 2023, the Claimant submitted its response to the Respondent’s Request (the “**Claimant’s Response**”), in which it requested that the Tribunal (i) dismiss the Respondent’s Request in its entirety; and (ii) order the Respondent to pay the Claimant the legal costs incurred in connection with the Respondent’s Request in U.S. Dollars, with interest.

5. On 4 August 2023, the Respondent submitted its response to the Claimant’s Request (the “**Respondent’s Response**”), in which it requested that the Tribunal (i) dismiss the Claimant’s

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<sup>1</sup> Unless otherwise indicated, the abbreviations and definitions used in this Decision are the same as those introduced in the Award.

Request in its entirety; and (ii) order the Claimant to pay the Respondent the legal costs incurred in connection with the Claimant's Request.

## II. THE RESPONDENT'S REQUEST

6. The Respondent submits two requests. First, the Respondent requests that the Tribunal correct an error in the computation of damages, caused by the "inadvertent" use of a post-tax figure when a pre-tax figure was intended.<sup>2</sup> Second, the Respondent seeks clarification regarding the currency of pre-award interest ordered in paragraph 995(c) of the Award in accordance with Article 37 of the UNCITRAL Rules.
7. The Claimant argues that the Respondent's request for correction exceeds the scope of Article 38 of the UNCITRAL Rules. It further contends that no ambiguity exists in the Award that warrants an interpretation.

### A. REQUEST FOR CORRECTION

#### 1. *The Respondent's Position*

8. The Respondent submits that the category of "any error in computation" stipulated in Article 38(1) of the UNCITRAL Rules is broader than "any clerical or typographical error" and includes errors, such as miscalculation, use of incorrect data, omission of data in the tribunal's assessment of costs, or failure to include an amount that should have been included in a calculation.<sup>3</sup> Moreover, the error must be "obvious on the face of the award" and the correction must be to "effectuate the tribunal's true intentions rather than to alter those intentions."<sup>4</sup> Accordingly, the Respondent notes that the categories of correctible errors under Article 38(1) of the UNCITRAL Rules are distinct from each other, not all of which are clerical in nature.<sup>5</sup>

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<sup>2</sup> Respondent's Request, para. 7.

<sup>3</sup> Respondent's Response, para. 29, *referring to* Jan Paulsson & Georgios Petrochilos, *UNCITRAL Arbitration* (2017), Art. 38, para. 5 (**CLA-205**).

<sup>4</sup> Respondent's Response, para. 11, *citing* N. Blackaby et al., *Redfern and Hunter on International Arbitration* (7th ed. 2023), para. 10.14 (**RLA-176**); L. Olavo Baptista, *Correction and Clarification of Arbitral Awards in Arbitration Advocacy in Changing Times* (ICCA Congress Series No. 15) (A. Jan van den Berg ed., 2011), pp. 275, 283 (**RLA-174**); G. Born, *International Commercial Arbitration* (3rd ed., 2022), para. 24.03 (**RLA-175**).

<sup>5</sup> Respondent's Response, para. 28.

9. On this basis, the Respondent seeks “to correct the Tribunal’s inadvertent use of a post-tax figure (wrong data) that does not correspond to the Tribunal’s stated intention to use pre-tax figures (failure to account for an amount that should have been accounted for).”<sup>6</sup>
10. Specifically, the Respondent submits that the Tribunal “unwittingly” used a post-tax figure in computing the loss in relation to the Claimant’s shares in SC&T that were subject to a reappraisal right under Korean law (the “**Putback Shares**”), despite its “affirmative intention ... to consistently use pre-tax figures for all three components of [the] formula.”<sup>7</sup> In support of its assertion, the Respondent points to the Tribunal’s analysis in the Award as follows:
- (a) The Tribunal stated that “the pre-tax amount is the one to be taken into account, to ensure consistency; and indeed Mr. Boulton in his calculation of the Claimant’s trading losses also took into account the pre-tax amounts;”<sup>8</sup>
  - (b) The Tribunal used pre-tax amounts for the value of the Claimant’s shareholding in the Putback Shares (KRW 535,881,584,700) and the sale proceeds the Claimant received in exercising its reappraisal right for the Putback Shares (KRW 456,620,599,950);<sup>9</sup> and
  - (c) The Tribunal observed that the Claimant received a “Top-Up Payment from SC&T of KRWS 65,902,634,943, net of withholding and other taxes.”<sup>10</sup>
11. According to the Respondent, the adoption of the post-tax amount of the Top-Up Payment “resulted in an erroneously understated amount for the Top-Up Payment (both in ‘total’ and ‘per share’ terms), thereby (by virtue of arithmetic) overstating the difference between the Counterfactual Scenario Value and the Actual Scenario Proceeds—i.e., the amount of Claimant’s total loss for the Putback Shares.”<sup>11</sup> This, in turn, “directly resulted in an erroneous enlargement of the quantum of damages awarded to Claimant.”<sup>12</sup> Consequently, the Respondent asks the

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<sup>6</sup> Respondent’s Response, para. 30.

<sup>7</sup> Respondent’s Request, paras. 2, 10-11. The Respondent summarizes the Tribunal’s formula for the computation of the Claimant’s loss in relation to the Putback Shares as follows: *Total loss of Putback Shares = Counterfactual Scenario Value – (Sale Proceeds + Top-Up Payment)*. Respondent’s Request, para. 9.

<sup>8</sup> Respondent’s Request, para. 10, *citing* Award, para. 936.

<sup>9</sup> Respondent’s Request, para. 10, *referring to* Award, para. 935.

<sup>10</sup> Respondent’s Request, para. 11, *citing* Award, para. 906.

<sup>11</sup> Respondent’s Request, para. 12.

<sup>12</sup> Respondent’s Request, para. 12.

Tribunal “to re-calculate Claimant’s Actual Scenario Proceeds from sale of the Putback Shares, using the *pre-tax* amount of the Top-Up Payment ... and to make all necessary corresponding corrections to all parts of the Award that state the incorrect figure for the Top-Up Payment or the Actual Scenario Proceeds, or any figure derived from such incorrect figures.”<sup>13</sup>

12. The Respondent states that, notwithstanding the Claimant’s failure to provide the pre-tax amount of the Top-Up Payment in its Reply Post-Hearing Brief,<sup>14</sup> this value can be calculated using the formula prescribed in the Settlement Agreement between EALP and SC&T, which can be expressed as follows:<sup>15</sup>

$$\text{Top-Up Payment} = (\text{amount per share in excess of the Suggested Price} - \text{KRW } 57,234) \times 7,732,779$$

13. The Respondent further explains that (i) the judgment of the Korean Supreme Court, affirming KRW 66,602 per share as the reappraisal price of former SC&T shares, triggered a Top-Up Event under the Settlement Agreement; and (ii) the reappraisal price of KRW 66,602 per share was higher than the Suggested Price defined as KRW 57,234 per share under the Settlement Agreement.<sup>16</sup> Consequently, the Respondent arrives at a pre-tax Top-Up Payment amount of KRW 72,440,673,672 (instead of KRW 65,902,634,943) which, according to the Respondent, is the “correct figure that the Tribunal intended to use ... when computing the quantum of Claimant’s loss in relation to the Putback Shares.”<sup>17</sup>

$$\begin{aligned} \text{Top-Up Payment} &= \text{KRW } 9,368 \text{ [per share consideration in excess of Suggested Price]} \times \\ & \quad 7,732,779 \text{ [number of Claimant’s Putback Shares]} \\ &= \text{KRW } 72,440,673,672 \end{aligned}$$

14. The Respondent notes that the Claimant has not objected to its calculation of the pre-tax figure and “accordingly has conceded its accuracy.”<sup>18</sup>

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<sup>13</sup> Respondent’s Request, para. 30 (emphasis in original).

<sup>14</sup> Respondent’s Request, para. 21.

<sup>15</sup> Respondent’s Request, paras. 15-16, *referring to* Share Purchase Price and Transfer Agreement between Elliott Associates, L.P. and Samsung SC&T Corporation, 15 March 2016, Art. 2.4 (C-450).

<sup>16</sup> Respondent’s Request, paras. 17-18. *See also* Respondent’s PHB, 13 April 2022, para. 234.

<sup>17</sup> Respondent’s Request, paras. 19-20.

<sup>18</sup> Respondent’s Response, para. 31.

15. Based on this “correct” pre-tax Top-Up Payment amount of KRW 72,440,673,672 (*i.e.* KRW 9,368 per share), the Respondent submits that a series of corresponding corrections to the Award are required in the calculations that involve “the incorrect figure for the Top-Up Payment or the Actual Scenario Proceeds, or any figure derived from such incorrect figures.”<sup>19</sup>
16. Ultimately, the Respondent submits that the “Claimant’s loss of value in its investment as a result of the Respondent’s breach of the Treaty” awarded by the Tribunal should be corrected to (i) “KRW 62,206,067,478” from “KRW 68,744,114,123” and, in its USD equivalent, (ii) “USD 48,490,251.66” from “USD 53,586,931.00.”<sup>20</sup>
17. The Respondent rejects the Claimant’s contention that its request for correction seeks to alter the Tribunal’s substantive methodology or approach.<sup>21</sup> Rather, the request merely seeks to correct an “error in computation,” which is “evident on the face of the Award,” and to make “corresponding mechanical adjustments to other parts of the Award” in order to align the damages computation with the Tribunal’s stated rationale and methodology.<sup>22</sup> Therefore, for the Respondent, “a slight complexity in the necessary corrections” cannot be a reason to deny its request for correction of an error as such.<sup>23</sup>

## ***2. The Claimant’s Position***

18. According to the Claimant, the Tribunal has only “circumscribed power” under Article 38 of the UNCITRAL Rules to correct errors in computation that are “calculating equivalent of the ‘clerical or typographical’ errors of which this provision allows the correction.”<sup>24</sup> The types of errors that may be corrected are therefore those that are “merely mechanical,” such as, for example, changes to dates, names and addresses referenced in the award, sums that do not add up, mixing up currencies, or figures that contain decimal points rather than commas.<sup>25</sup>

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<sup>19</sup> Respondent’s Request, paras. 30-31; Respondent’s Response, para. 31.

<sup>20</sup> Respondent’s Request, para. 20, *citing* Award, paras. 948, 952.

<sup>21</sup> Respondent’s Response, para. 30.

<sup>22</sup> Respondent’s Response, paras. 26, 31.

<sup>23</sup> Respondent’s Response, para. 31.

<sup>24</sup> Claimant’s Request, para. 6; Claimant’s Response, paras. 5-6.

<sup>25</sup> Claimant’s Request, para. 6; Claimant’s Response, paras. 7-8.

19. Measured against this standard, the Claimant argues that the Respondent's request for correction should be dismissed for two reasons.<sup>26</sup>
20. First, contrary to what the Respondent alleges, the Claimant submits that the Tribunal's adoption of a post-tax Top-Up Payment value was not "inadvertent."<sup>27</sup> Recalling that the Tribunal explicitly referred to the Top-Up Payment "net of withholding and other taxes," the Claimant contends that the Tribunal "consciously" and "knowingly" adopted the post-tax amount.<sup>28</sup>
21. Moreover, the Claimant maintains that the adoption of the post-tax Top-Up Payment was "entirely logical," as it "ensure[d] consistency in how the Tribunal valued the purchase and sale value of the same shares."<sup>29</sup> In this respect, the Claimant notes that the Tribunal observed Mr. Boulton's calculation of the Claimant's net trading losses, but not the Top-Up Payment, which had also taken into account pre-tax values.<sup>30</sup> To the contrary, the Claimant posits that the Tribunal gave no indication that, for reasons for consistency or otherwise, that it "intended" to apply a pre-tax value for the Top-Up Payment.<sup>31</sup>
22. Insofar as the Tribunal was not provided with a pre-tax Top-Up Payment value, the Claimant argues that the Respondent should not be allowed to remedy its "own omission" in post-award briefing "in the guise of a purported correction application."<sup>32</sup>
23. Second, even assuming *arguendo* that the error was inadvertent, the Claimant alleges that the Respondent's requested correction is not the computational equivalent of clerical or typographical error.<sup>33</sup> Rather, it calls on the Tribunal to reconsider evidence, make new findings of fact, adopt a new mathematical formula in order to derive, by itself, the pre-tax value of the Top-Up Payment, adjust its methodology for calculating damages using this new input, and based on these new factual findings, make a series of corrections to the Award.<sup>34</sup> Accordingly, for the Claimant, the

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<sup>26</sup> Claimant's Response, para. 10.

<sup>27</sup> Claimant's Response, para. 11.

<sup>28</sup> Claimant's Response, para. 13, *citing* Award, para. 906.

<sup>29</sup> Claimant's Response, para. 14

<sup>30</sup> Claimant's Response, para. 14.

<sup>31</sup> Claimant's Response, para. 15.

<sup>32</sup> Claimant's Response, para. 12.

<sup>33</sup> Claimant's Request, para. 10; Claimant's Response, para. 17.

<sup>34</sup> Claimant's Request, para. 8; Claimant's Response, paras. 16-17.



Respondent's request is "more akin to a third bite of the apple of post-hearing submissions on quantum" and thus exceeds the "strict scope" permitted under Article 38 of the UNCITRAL Rules.<sup>35</sup>

24. Finally, the Claimant notes that the Respondent has applied to set aside the Award in part for "serious irregularity" under section 68 of the English Arbitration Act 1996 in part for the alleged methodological error that the Respondent requests be addressed by way of correction.<sup>36</sup> In the Claimant's view, "the Tribunal's introduction by way of an Article 38 correction of such a new step in its methodology for calculating damages could itself amount to a serious procedural irregularity."<sup>37</sup>

## **B. REQUEST FOR INTERPRETATION**

### ***1. The Respondent's Position***

25. According to the Respondent, ambiguity arises because the Tribunal initially stated that "[t]he currency to which the pre-award interest is applicable is therefore Korean Won," and then subsequently ordered the Respondent to pay pre-award interest at rate of 5% on a sum reflecting the Claimant's loss in U.S. Dollars.<sup>38</sup> The Respondent contends that these two statements offer two competing interpretations: (a) the Respondent is required to pay pre-award interest that accrued on USD 53,586,931, without any need for any currency conversion; or (b) the Respondent is required to pay pre-award interest that accrued on KRW 68,744,114,123, with payment to be made in U.S. Dollars.<sup>39</sup>
26. If pre-tax interest is to be awarded in Korean Won but be payable in U.S. Dollars, the Respondent further submits that there is ambiguity as to the applicable date of conversion from Korean Won to U.S. Dollars.<sup>40</sup>
27. Consequently, the Respondent requests that the Tribunal clarify "whether the Tribunal intended to order [the Respondent] to calculate the pre-award interest in US Dollars, as stated in paragraphs

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<sup>35</sup> Claimant's Request, para. 9; Claimant's Response, para. 6.

<sup>36</sup> Claimant's Request, para. 11.

<sup>37</sup> Claimant's Request, para. 11.

<sup>38</sup> Respondent's Request, paras. 26-27.

<sup>39</sup> Respondent's Request, para. 27.

<sup>40</sup> Respondent's Request, para. 27.

995(b) and 995(c), or in Korean Won, as stated in paragraph 961 (and, if the latter, a further clarification as to the applicable date of conversion to US Dollars).”<sup>41</sup>

## **2. The Claimant’s Position**

28. The Claimant submits that the Respondent has failed to identify an ambiguity in the Tribunal’s Award within the scope of Article 37 of the UNCITRAL Rules.<sup>42</sup>
29. As to the currency applicable to the pre-award interest, the Claimant asserts that the Tribunal’s reference to Korean Won being the currency to which pre-award interest applied was made only to explain the Tribunal’s decision to use the Korean statutory rate of 5% interest compounded annually.<sup>43</sup> According to the Claimant, this was “not a determination that the amount awarded as pre-award interest should actually be *paid* in Won.”<sup>44</sup> In fact, such a determination would have been incompatible with the Tribunal’s finding that “the Claimant is entitled to payment of compensation awarded in U.S. Dollars.”<sup>45</sup>
30. The Claimant also asserts that there is no ambiguity as to the date of conversion of the pre-award interest from Korean Won to U.S. Dollars because the Tribunal clearly stated that that “the appropriate date of conversion from KRW to USD is the date of this Award.”<sup>46</sup>
31. In any event, the Claimant disputes the need for any clarification of the Award because, in its view, the Respondent “remains liable to pay the same amount of pre-award interest irrespective of whether it is calculated by reference to a US dollar figure or whether it is first calculated by referenced to a Korean won figure and subsequently converted into US dollars.”<sup>47</sup> As such, for the Claimant, the two possible interpretations of the Award identified by the Respondent would “lead exactly to the same quantum of damages owed to the Claimant.”<sup>48</sup>

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<sup>41</sup> Respondent’s Request, para. 28.

<sup>42</sup> Claimant’s Response, paras. 20-21, 23.

<sup>43</sup> Claimant’s Response, para. 24.

<sup>44</sup> Claimant’s Response, para. 24 (emphasis in original).

<sup>45</sup> Claimant’s Response, para. 24, *citing* Award, para. 961.

<sup>46</sup> Claimant’s Response, para. 25, *citing* Award, para. 952.

<sup>47</sup> Claimant’s Response, para. 26

<sup>48</sup> Claimant’s Response, para. 26

### III. THE CLAIMANT'S REQUEST

32. In the event that the Tribunal finds that Article 38 of the UNCITRAL Rules encompasses methodological corrections, the Claimant requests that the Tribunal correct the “methodological error” in its calculation of pre-award interest, consistent with the Tribunal’s intention to make the Claimant “whole.”<sup>49</sup>

33. The Respondent argues that the Claimant’s Request seeking to alter the Tribunal’s chosen methodology is impermissible under Article 38 of the UNCITRAL Rules and is, in any event, without merit.

#### A. THE CLAIMANT'S POSITION

34. Should the Tribunal determine that the scope of Article 38 of the UNCITRAL Rules extends to corrections in calculation methodology, the Claimant requests that the Tribunal correct the calculation of the interest awarded to the Claimant to reflect the Tribunal’s decision to compensate the Claimant “based on what it would have obtained had it invested the funds corresponding to the amount of compensation during the period when it was deprived of such funds.”<sup>50</sup>

35. According to the Claimant, while the Tribunal recognized that “the partial set off of the Claimant’s loss was piecemeal over time, rather than immediate on 16 July 2015,” it failed to take this fact into account when it calculated interest on the Claimant’s net loss of KRW 68.74 billion with interest running on this amount from 16 July 2015.<sup>51</sup> Consequently, the Claimant contends that the Tribunal “made a methodological error in its calculation of interest and erroneously failed to make the Claimant ‘whole’ (as it intended to do), when it omitted to calculate interest based on the actual amount of funds of which the Claimant was deprived for the period between 16 July 2015 and 20 June 2023.”<sup>52</sup>

36. Accordingly, consistent with the Tribunal’s intention and the underlying principles of international law, the Claimant requests that Tribunal recalculate the interest after taking into account that the value of the SC&T shares held by the Claimant on 16 July 2015 was in fact KRW 771,026,741,100,21 “which it only subsequently recovered in partial tranches months and years

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<sup>49</sup> Claimant’s Request, para. 17.

<sup>50</sup> Claimant’s Request, paras. 12-14, 18, *citing* Award, para. 961.

<sup>51</sup> Claimant’s Request, para. 17.

<sup>52</sup> Claimant’s Request, para. 17.

later: (a) between 17-25 September 2015 (KRW 179,759,400,000); (b) on 18 March 2016 (KRW 456,620,599,950); and (c) on 12 May 2022 (KRW 65,902,634,943).”<sup>53</sup>

**B. THE RESPONDENT’S POSITION**

37. The Respondent submits that it is common ground between the Parties that the Claimant’s Request does not seek to correct an “error of computation” or an error “of a similar nature” within the meaning of Article 38 of the UNCITRAL Rules, but rather “seeks to alter the method adopted by the Tribunal to calculate pre-award interest.”<sup>54</sup> The Respondent submits that the Claimant’s acknowledgement as such is a sufficient reason to deny the Claimant’s Request.<sup>55</sup>
38. According to the Respondent, the Claimant has failed to identify an “error” that is obvious on the face of the Award that may be corrected under Article 38 of the UNCITRAL Rules.<sup>56</sup> Instead, the Claimant has attempted to “manufacture” an error by “effectively seeking to change not only the Tribunal’s methodology as to Pre-Award Interest but also its finding as to the principal amount of Claimant’s loss.”<sup>57</sup> The Respondent underscores the Tribunal’s finding that the Claimant’s loss was limited to “the difference between the FMV, or the fair market value, of the Claimant’s shares in the but-for scenario [*i.e.* SC&T’s share price on the valuation date, 16 July 2015] and the actual sales proceeds from the Claimant’s sale of the SC&T shares it held.”<sup>58</sup> Yet, the Respondent contends that, contrary to this finding, the Claimant’s proposed methodology leads to principal amounts that far exceed the amount of compensation awarded by the Tribunal.<sup>59</sup> The Claimant is therefore attempting to recover interest on amounts that did not constitute any part of the loss awarded by the Tribunal.<sup>60</sup>
39. Even assuming *arguendo* that the purported error can be corrected in accordance with Article 38 of the UNCITRAL Rules, the Respondent rejects the Claimant’s proposed methodology for

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<sup>53</sup> Claimant’s Request, paras. 15-17. *See* Claimant’s Request, para. 19.

<sup>54</sup> Respondent’s Response, paras. 4, 13.

<sup>55</sup> Respondent’s Response, para. 3.

<sup>56</sup> Respondent’s Response, para. 14.

<sup>57</sup> Respondent’s Response, para. 16.

<sup>58</sup> Respondent’s Response, paras. 8, 18-19, *citing* Award, para. 919. *See also* Award, para. 932.

<sup>59</sup> Respondent’s Response, para. 13.

<sup>60</sup> Respondent’s Response, paras. 7-9, 20-21, 23.

calculating loss as “flawed” and “improper.”<sup>61</sup> It argues that the Claimant’s proposed methodology (a) awards the Claimant, in the first two of its four time periods, interest on funds corresponding to total shareholding in the SC&T still held by the Claimant during that period; (b) adds to the principal amount in the second, third, and fourth time periods the compounded interest from all prior periods, contrary to the Tribunal’s direction that interest be compounded annually.<sup>62</sup> In the Respondent’s view, this error compounds the previous error by including interest from the first two time periods in the principal amount for the third and fourth time periods.<sup>63</sup>

#### **IV. THE TRIBUNAL’S ANALYSIS**

40. The Tribunal will first address the Respondent’s requests for correction and interpretation, and then the Claimant’s request for correction.

##### **A. THE RESPONDENT’S REQUEST**

###### ***1. The Respondent’s Request for Correction***

41. The relevant provision is Article 38 of the UNCITRAL Rules, which deals with “correction of the award.” Article 38 provides:

1. Within 30 days after receipt of the award, a party, with notice to other parties, may request the arbitral tribunal to correct in the award any error of computation, any clerical or typographical error, or any error or omission of a similar nature. If the arbitral tribunal considers that the request is justified, it shall make the correction within 45 days of receipt of the request.
2. The arbitral tribunal may within 30 days after the communication of the award make such corrections on its own initiative.
3. Such corrections shall be in writing and shall form part of the award. The provisions of article 34, paragraphs 2 to 6, shall apply.

42. It is undisputed that the Respondent’s request was made within 30 days of the receipt of the Award by the Parties, and accordingly it is timely.

43. As to the applicable legal standard, the Respondent’s request for correction is based on the argument that the Tribunal made an “error in computation” in the Award within the meaning of Article 38(1) of the UNCITRAL Rules. According to the Respondent, “[t]he purpose of

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<sup>61</sup> Respondent’s Response, para. 22.

<sup>62</sup> Respondent’s Response, para. 22.

<sup>63</sup> Respondent’s Response, para. 22.

correction is to conform the award to the decision intended by the arbitral tribunal.”<sup>64</sup> The Respondent contends that, in the present case, the Tribunal made a “self-evident error” in its computation of damages, “caused by the erroneous (and apparently inadvertent) use of a post-tax figure when a pre-tax figure was intended.”<sup>65</sup>

44. As summarized above, the Claimant argues, in response, that pursuant to Article 38 of the UNCITRAL Rules, “the Tribunal has only a limited power to correct mechanical, clerical errors.”<sup>66</sup> According to the Claimant, “the kind of error in ‘computation’ of which [Article 38] is intended to allow correction is the calculating equivalent of the ‘clerical or typographical’ errors of which this provision also allows the correction.”<sup>67</sup> The Claimant submits that the corrections requested by the Respondent “would entail the Tribunal making new findings by revisiting the factual evidence and reevaluating the Tribunal’s judgment; they are akin to a third bite at the apple of post-hearing submissions on quantum and should be dismissed.”<sup>68</sup>
45. Having considered the Parties’ legal arguments and the legal authorities relied upon by the Parties in support of their positions, the Tribunal finds that a proper reading of Article 38(1) of the UNCITRAL Rules requires that a distinction be made between an “error in computation” and “any clerical or typographical error.” As noted by the Iran-United States Claims Tribunal in *Petrolane, Inc. v. Islamic Republic of Iran*,

[t]he Tribunal Rules [which were adapted from the 1976 UNCITRAL Rules, and as to Article 36, currently Article 38, without any modification] make provision for a correction of award on the basis of two main categories of errors: (a) material or substantive errors (ex. errors in computation), and (b) textual errors (such as those made in typing or printing the text, or which are of a grammatical nature). As regards the passage or any errors of similar nature, it unquestionably embraces any conceivable errors which could be categorized as either substantive or textual.<sup>69</sup>

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<sup>64</sup> Respondent’s Request, para. 6.

<sup>65</sup> Respondent’s Request, para. 7.

<sup>66</sup> Claimant’s Response, para. 2(i).

<sup>67</sup> Claimant’s Response, para. 5.

<sup>68</sup> Claimant’s Response, para. 2(i).

<sup>69</sup> *Petrolane, Inc. v. Islamic Republic of Iran*, Dec. No. DEC 101-131-2 (25 November 1991), reprinted in 27 Iran-US CTR 264, 265 (1199-II), p. 11 (CLA-211). The language of the first sentence of Article 36 of the Tribunal Rules is in substance identical to the language of the first sentence of Article 38 of the UNCITRAL Rules. See also Luis Olavo Baptista, Correction and Clarification of Awards, ICCA Congress Series No. 15 (Rio 2010), Arbitration Advocacy in Changing Times, p. 281 (RLA-174) (“Material errors are computational, such as mistakes in the calculation of a certain amount.”); Jan Paulsson & Georgios Petrochilos, UNCITRAL Arbitration, p. 347 (CLA-205) (“All three categories of errors described in article 38(1) fall within the notion of inadvertent slips. ... The error must thus be of a material nature rather than an intellectual error in the tribunal’s judgment.”).

46. Accordingly, the Tribunal determines that a “material or substantive” error in computation qualifies as an “error in computation” within the meaning of Article 38(1) of the UNCITRAL Rules. Article 38(1) does not deal merely with errors “equivalent of” clerical or typographical errors, but also allows the correction of a material or substantive error in computation.
47. Having considered the Parties’ positions, the Tribunal finds that there is indeed an error of computation in the Award within the meaning of Article 38(1) of the UNCITRAL Rules, as interpreted above. As noted by the Respondent, the Tribunal made clear in the Award that it intended to rely consistently on pre-tax amounts of all elements relevant to the computation of the compensation due to the Claimant, including the actual proceeds for the Putback Shares that the Claimant received pursuant to the Settlement Agreement. The actual proceeds in turn were calculated by the Tribunal as the sum of the proceeds that the Claimant received in exercising its reappraisal right for the Putback Shares under Article 1.1 of the Settlement Agreement and the Top Up Payment that the Claimant received pursuant to Article 2.4 of the Settlement Agreement.
48. However, the amount of the Top Up Payment (KRW 65,902,634,943) received by the Claimant, as communicated by the Claimant in its Reply PHB, was “net of withholding and other taxes.”<sup>70</sup> Although the Claimant did not provide the pre-tax amount in its submission and such amount was not available as such anywhere else in the record (indeed the Parties’ Reply PHBs being the very last substantive submissions in the matter), the Tribunal notes that the amount can be calculated, as noted by the Respondent, by using the formula set out in Article 2.4 of the Settlement Agreement. The formula reads as follows:

“Top Up Payment” means A multiplied by B, where (i) = the amount of consideration or other transfer of value per share (whether described as such or not and including without limitation any payment or transfer of value which is described as compensation for or in respect of any loss, cost or liability) which is in excess of the Suggested Price paid or made (a) in respect of or in connection with the purchase by SC&T or any other SC&T Group member or other SC&T Person, or any of their respective nominees of any shares in Extinct SC&T (now being shares in SC&T) from any shareholder or former shareholder of Extinct SC&T (or any of its affiliates or its or their officers or controllers) which or who exercised dissention rights with respect to the Merger; or (b) in respect of any other Top Up Event transaction, and (B) = 7,732,779.<sup>71</sup>

49. The Settlement Agreement defined the “Suggested Price” as KRW 57,234, whereas the amount paid to shareholders other than the Claimant in the form of the appraisal price as confirmed by

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<sup>70</sup> Claimant’s Reply PHB, para. 102.

<sup>71</sup> Share Purchase Price and Transfer Agreement between Elliott Associates, L.P. and Samsung SC&T Corporation, 15 March 2016, Art. 2.4, Definition of “Top Up Payment” (C-450).

the Korean Supreme Court in April 2022 amounted to KRW 66,602 per share, which is KRW 9,368 higher than the Suggested Price.<sup>72</sup> Accordingly, applying the formula set out in Article 2.4 of the Settlement Agreement (KRW (66,602 – 57,234) x 7,732,779), the pre-tax amount of the Top Up payment is KRW 72,440,673,672 (instead of KRW 65,902,634,943, as stated in the Award). The Award must thus be corrected to reflect the pre-tax amount of the Top Up Payment.

50. The Tribunal has reviewed the corrections to the Award requested by the Respondent and agrees that, except for a number of typographical errors, they correctly set out the consequences of the above correction. The Tribunal therefore corrects the relevant paragraphs (936, 938, and 948) of the Award, including the typographical errors in the Respondent’s Request, as set out in Section V (“Decision”) below.

## ***2. The Respondent’s Request for Interpretation***

51. The relevant provision governing this request is Article 37 of the UNCITRAL Rules, which deals with “interpretation of the award.” Article 37 provides:

1. Within 30 days after receipt of the award, a party, with notice to the other parties, may request that the arbitral tribunal give an interpretation of the award.
2. The interpretation shall be given in writing within 45 days after the receipt of the request. The interpretation shall form part of the award and the provisions of article 34, paragraphs 2 to 6, shall apply.

52. The Respondent requests that the Tribunal “resolve an ambiguity in relation to the currency in which pre-award interest should be computed.”<sup>73</sup> The Respondent notes that according to paragraph 961 of the Award, since the Claimant incurred and has quantified its losses in Korean Won, “[t]he currency to which the pre-award interest is applicable is therefore Korean Won.”<sup>74</sup> Nevertheless, since the operative part of the Award orders that the Respondent pay the Claimant pre-award interest at a rate of 5 percent on the sum stated in paragraph 995(b) of the Award, which is stated in U.S. Dollars, there is an ambiguity in the Award as to whether pre-award interest should be calculated in Korean Won or U.S. Dollars, and further whether, if pre-award interest is to be calculated in Korean Won and then to be converted to U.S. Dollars, “whether that date [*i.e.* the date of conversion] should be the date of the Award or the date of payment.”<sup>75</sup>

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<sup>72</sup> Supreme Court Case No. 2016Ma5394 (Consolidated), 14 April 2022 (C-782).

<sup>73</sup> Respondent’s Request, para. 23.

<sup>74</sup> Respondent’s Request, para. 26, *citing* Award, para. 961.

<sup>75</sup> Respondent’s Request, para. 27.



53. The Claimant argues, in response, that there is no ambiguity in the Award, for three reasons. First, the Tribunal determined clearly that the currency in which the pre-award interest is applicable is Korean Won. This finding did not imply that the amount awarded as pre-award interest should actually be paid in Korean Won. Second, there is no ambiguity as to the date of conversion for purposes of payment since the Tribunal determined “in no uncertain terms” that the appropriate date of conversion from Korean Won to U.S. Dollars is the date of the Award.<sup>76</sup> Third, no clarification is required in any event since for the purposes of calculating damages, including pre-award interest, “any conversion from Korean won to US dollars must take place on the date of the Award.”<sup>77</sup> Accordingly, the two possible interpretations are “mathematically equivalent and would lead to exactly the same quantum of damages owed to the Claimant.”<sup>78</sup>
54. The Tribunal notes that the Respondent’s application was made within 30 days of the receipt of the Award, and accordingly it was timely.
55. The Tribunal notes that it made the following determinations in the Award regarding pre-award interest that are relevant to the issue of the currency in which pre-award interest is to be calculated and paid:
- (a) In paragraph 948 of the Award, the Tribunal determined that “the Claimant’s loss of value of its investment as a result of the Respondent’s breach of the Treaty amounts to KRW 68,744,114,123;”
  - (b) In paragraph 952 of the Award, the Tribunal determined that the Claimant is entitled to payment of compensation in U.S. Dollars, and that “the appropriate date of conversion from KRW is the date of this Award.” The Tribunal determined that on that date the amount of the Award was USD 53,586,931;
  - (c) In paragraph 961 of the Award, the Tribunal determined that “since the Claimant incurred and has quantified its losses in Korean Won, the appropriate date of conversion must be the date of the Award and not any earlier date,” and that accordingly “[t]he currency to which the pre-award interest is applicable is therefore Korean Won;” and

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<sup>76</sup> Claimant’s Response, para. 25.

<sup>77</sup> Claimant’s Response, para. 26.

<sup>78</sup> Claimant’s Response, para. 26.

(d) In paragraph 995(c), which forms part of the operative part of the Award, the Tribunal ordered the Respondent “to pay the Claimant pre-award interest at a rate of 5 percent on the sum in sub-paragraph (b) above, compounded yearly from 16 July 2015 until the date of this Award.”

56. Accordingly, in light of these determinations, the pre-award interest is to be calculated on the amount of the Award in Korean Won, KRW 68,744,114,123, at a rate of 5 percent, compounded yearly from 16 July 2015 until the date of the Award. The total amount awarded, including pre-award interest, is then to be converted into U.S. Dollars on the date of the Award, as reflected in the language of paragraphs 952, 995(b) and 995(c) of the Award. The reference in paragraph 995(c) of the Award to “the sum in sub-paragraph (b) above” thus must be read as referring to the amount of the Award in Korean Won, as converted into U.S. Dollars on the date of the Award, in accordance with paragraph 952 of the Award.<sup>79</sup>

57. In conclusion, the Tribunal does not consider that there is any ambiguity in the Award, and accordingly the Respondent’s request for interpretation is dismissed.

## **B. THE CLAIMANT’S REQUEST**

58. As summarized above, the Claimant requests that the Tribunal correct its computation of interest, as “there have been errors, so that the outcome has deviated from [the determinations and principles on which the Award is based], contrary to the Tribunal’s own intention.”<sup>80</sup> The Claimant submits its request on the assumption that the Tribunal accepts that “Article 38 encompasses methodological corrections,” even though its primary case, in response to the Respondent’s request, is that Article 38 does not extend to methodological errors.<sup>81</sup>

59. The Claimant submits that “the partial set off of the Claimant’s loss was piecemeal over time, rather than immediate on 16 July 2015.”<sup>82</sup> However, according to the Claimant, the Tribunal’s calculation failed to reflect this fact. Specifically, the Tribunal based its interest calculations on

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<sup>79</sup> The Tribunal recognizes that the recapitulation of the sums set out in paragraphs 55-56 above reflected the Tribunal’s analysis at the time of the making of the Award and that they now stand to be corrected in light of its decision to accept the Respondent’s request for correction.

<sup>80</sup> Claimant’s Request, para. 16.

<sup>81</sup> Claimant’s Request, para. 12.

<sup>82</sup> Claimant’s Request, para. 17.

the Claimant's net loss with interest running on the final net amount from 16 July 2015, however, according to the Claimant,

the value of the SC&T shares that the Claimant held on 16 July 2015 was KRW 771,026,741,100, which it only subsequently recovered in partial tranches months and years later: (i) between 17-25 (KRW 179,759,400,000); (ii) on 18 March 2016 (KRW 456,620,599,950); and (iii) on 12 May 2022 (KRW 65,902,634,943). The Tribunal therefore made a methodological error in its calculation of interest and erroneously failed to make the Claimant "whole" (as intended to do), when it omitted to calculate interest based on the actual amount of funds of which the Claimant was deprived for the period between 16 July 2015 and 20 June 2023.<sup>83</sup>

60. The Claimant therefore proposes a correction to the Award "to ensure that the computation reflects the Tribunal's decision to compensate the Claimant 'based on what it would have obtained had it invested the funds corresponding to the amount of compensation during the period when it was deprived of such funds.'" <sup>84</sup> The Claimant sets out the basis on which the Claimant's entitlement to interest should be calculated in paragraph 19 of its Request for Correction, and its requested corrections in paragraph 20 of its Request for Correction.
61. The Respondent argues that the Claimant's Request is "utterly without merit" and should be denied as the Claimant itself acknowledges that it seeks to "alter the 'methodology' adopted by the Tribunal for determining Claimant's loss."<sup>85</sup> According to the Respondent, the Claimant's request falls outside the scope of Article 38 of the UNCITRAL Rules and "is of a fundamentally different nature than Korea's Request."<sup>86</sup> The Respondent notes that the Tribunal quantified the amount of compensation on which the Respondent was ordered to pay interest at KRW 68,744,114,123, whereas "the amount of principal on which Claimant seeks to accrue pre-award interest is larger – by an order of magnitude – than the amount of compensation award by the Tribunal."<sup>87</sup> Accordingly, in the Respondent's view, the "Claimant is seeking a windfall by attempting to recover interest on amounts that did not constitute any part of the loss awarded by the Tribunal. Put differently, Claimant effectively is seeking to challenge the Tribunal's determination of the amount of Claimant's principal loss."<sup>88</sup>

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<sup>83</sup> Claimant's Request, para. 17 (citations omitted).

<sup>84</sup> Claimant's Request, para. 18.

<sup>85</sup> Respondent's Response, para. 3.

<sup>86</sup> Respondent's Response, para. 3.

<sup>87</sup> Respondent's Response, para. 8.

<sup>88</sup> Respondent's Response, para. 9.

62. The Claimant's application was made within 30 days of the receipt of the Award, and accordingly it was timely.
63. As noted above, under Article 38(1) of the UNCITRAL Rules, a party may request that the arbitral tribunal "correct in the award any error in computation, any clerical or typographical error, or any error or omission of a similar nature." The Claimant's case is that the Tribunal's award of interest does not reflect the principles and determinations in the Award, in particular the principle that the Claimant be made whole and that the amount of compensation be based on "what [the Claimant] would have obtained had it invested the funds corresponding to the amount of compensation during the period when it was deprived of such funds."<sup>89</sup> According to the Claimant, the Tribunal should therefore have relied upon the market value of the SC&T shares on 16 July 2015, *i.e.* KRW 771,026,741,100, as the basis of its interest calculation rather than the Claimant's net loss (KRW 68.74 billion). The Claimant thus seeks a change of the basis of calculation of interest, and therefore its request is not for a correction of an error in computation, but for a revision of the Award.
64. Accordingly, since the correction that the Claimant is seeking does not qualify as a correction of "error in computation" within the meaning of Article 38(1) of the UNCITRAL Rules, it stands to be dismissed.

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<sup>89</sup> Claimant's Request, para. 18, *citing* Award, para. 961.

**V. DECISION**

65. In view of the above, the Tribunal determines as follows:

(a) The Respondent's request for correction of the Award is granted as follows:

1. In paragraph 936, lines 9-10 of the Award, the sentence "Pursuant to the Settlement Agreement, EALP subsequently received a 'Top Up Payment' from SC&T, in the total amount of KRW 65,902,634,943" is replaced to read "Pursuant to the Settlement Agreement, EALP subsequently received a 'Top Up Payment' from SC&T, in the total amount of KRW 65,902,634,943, corresponding to a pre-tax amount of KRW 72,440,673,672," and the related footnote no. 1573 ("*See* Claimant's Reply PHB, para. 102") is corrected to read "*See* Claimant's Reply PHB, para. 102; Supreme Court Case No. 2016Ma5394 (Consolidated), 14 April 2022 (**C-782**); Settlement Agreement, Art. 2.4 (**C-450**);"
2. In paragraph 936, line 12 of the Award, "KRW 65,902,634,943" is replaced to read "KRW 72,440,673,672;"
3. In paragraph 936, line 12 of the Award, "KRW 8,522.50" is replaced to read "KRW 9,368;"
4. In paragraph 936, line 14 of the Award, "KRW 67,572.50" is replaced to read "KRW 68,418;"
5. In paragraph 936, line 15 of the Award, "KRW 522,523,208,978, or approximately KRW 522.5 billion" is replaced to read "KRW 529,061,273,622, or approximately KRW 529.1 billion;"
6. In paragraph 936, line 18 of the Award, "KRW 1,727.50" is replaced to read "KRW 882;"
7. In paragraph 936, line 19 of the Award, "KRW 13,358,357,723, or approximately KRW 13.4 billion" is replaced to read "KRW 6,820,311,078, or approximately KRW 6.8 billion;"
8. In paragraph 938, line 2 of the Award, "KRW 68,744,114,123" is replaced to read "KRW 62,206,067,478;"

9. In paragraph 938, line 3 of the Award, “KRW 13,358,357,723” is replaced to read “KRW 6,820,311,078;”
  10. In paragraph 938, lines 2-4 of the Award, “KRW 68,744,114,123, or approximately KRW 68.7 billion (KRW 6,820,311,078 for the Putback Shares + KRW 55,385,756,400 for the non-putback shares)” is replaced to read “KRW 62,206,067,478, or approximately KRW 62.2 billion (KRW 6,820,311,078 for the Putback Shares + KRW 55,385,756,400 for the non-putback shares);”
  11. In paragraph 948, line 2 of the Award, “KRW 68,744,114,123” is replaced to read “KRW 62,206,067,478;”
  12. In paragraph 952, line 4 of the Award, “USD 53,586,931.00” is replaced to read “USD 48,490,438.00;”<sup>90</sup> and
  13. In paragraph 995(b), line 2 of the Award, “USD 53,586,931.00” is replaced to read “USD 48,490,438.00.”
- (b) The Respondent’s request for interpretation of the Award is denied;
- (c) The Claimant’s request for correction of the Award is denied; and
- (d) All other requests for relief are denied.

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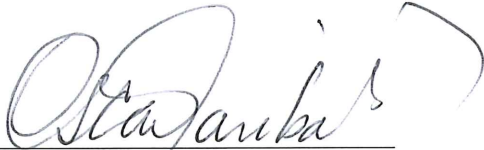
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<sup>90</sup> The U.S. Dollar amount calculated using the the “currency converter” tool on the OANDA website, as in the Award.

Place of Arbitration: London, United Kingdom


Date: 1 September 2023

The Arbitral Tribunal



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Mr. Oscar M. Garibaldi



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Mr. J. Christopher Thomas KC



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Dr. Veijo Heiskanen  
(Presiding Arbitrator)