



MINBYUN-Lawyers for a Democratic Society

Sinjeong B/D, 34, Banpodae-ro 30-gil, Seocho-gu, Seoul, Republic of Korea, P.O. 06646
Tel: (82 2) 522 7284 Fax: (82 2) 522 7285 <http://minbyun.org> dhlee@minbyun.or.kr

NGO in Special Consultative Status with the Economic and Social Council of the United Nations

ICSID
1818 H Street, N.W.
MSN J2-200
Washington, D.C. 20433
United States of America
Phone No. (202) 458-1534
Fax No. (202) 522-2615
E-mail: ICSIDsecretariat@worldbank.org

November 30, 2015
VIA Express Mail, FAX & E-Mail

**Request for an *Amicus Curiae* Written Submission as Non-disputing Party
According to the ICSID Rule 37(2)
on LSF-KEB Holdings SCA and others v. Republic of Korea
(ICSID Case No. ARB/12/37)**

Dear Honorable Secretary General Meg Kinnear,

I write on behalf of MINBYUN-Lawyers for Democratic Society that files for leave to make a written submission on LSF-KEB Holdings SCA and others v. Republic of Korea (ICSID Case No. ARB/12/37, hereinafter referred to as “this Case”).

MINBYUN, in a Special Consultative Status in United Nations, would like to submit an *amicus curiae* written submission as non-disputing party according to the ICSID Rule 37(2).

MINBYUN’s written submission will bring particular knowledge and insight that are different from those of the disputing parties regarding factual or legal issues related to this Case proceeding within the scope of this Case.

First, as the tribunals at the *Salini v. Kingdom of Morocco*(ARB/00/4), *Tokios Tokeles v. Republic of Ukraine*(ARB/02/18), and *Inceysa v. Republic of El Salvador*(ARB/03/26) rule, the requirement that investments be made in compliance with laws and regulations of host state is a common requirement in modern BITs including the Belgium-Luxembourg-Korea BIT of this Case.

However, the investment of the claimant LSF-KEB Holdings SCA (hereinafter “the Claimant”) for 64.62 percent of the stocks of the Korean Exchange Bank was not made in compliance with the Banking Act of the Republic of Korea (hereinafter “the Act”) which stipulates that ‘non-financial business operator’ may not hold more than four (4) percent of the total number of issued voting stocks of a bank (Article 16(2) of the Act).

In order to comply with the Article 16(2) of the Act, the Claimant should have submitted the total gross capital records of all '*specially related persons*' including those that are classified as non-financial companies within the definition of Article 2(1)-1 of the Act to the Financial Services Commission (hereinafter referred to as "the FSC") of the Republic of Korea that has regulatory power to review and determine whether the Claimant fell within the definition of *non-financial business operator* or not.

Nonetheless, the Claimant did not report the records of some of the *specially related persons* that are non-financial companies, including 'KC Holdings, SA', 'Star Holdings, SA' and 'U.S. Restaurant Properties, Inc.' in order to avoid being determined as a *non-financial business operator* by the FSC. In sum, the investment of the Claimant violated the Article 16(2) of the Act, hence did not satisfy the requirement the Belgium-Luxembourg-Korea BIT of this Case.

The endorsements by the Korean Government shall not be deemed to have cured the violation or estopped the Korean Government as indicated in the paragraph 387 of Fraport AG Frankfurt Airport Services Worldwide v. Republic of the Philippines (ARB/03/25).

Secondly, regarding the argument against Korean Government's tax measure, the Claimant failed to waive the rights to initiate any local proceedings under the Article 8.2 of the Belgium-Luxembourg-Korea BIT.

As the attached notarized record of the Korean Supreme Court (www.scourt.go.kr) shows, the Claimant filed a local remedy law-suit against the argued tax measure of the Korean Government on November 23, 2012 (Case No. 2012-Guhap-39544 Korean Seoul Administrative Court), appealed on December 29, 2014 (Case No. 2014-Nu-74178 Korean Seoul High Court) and made a final appeal to the Korean Supreme Court on October 28, 2015 (Case No. 2015-Du-55134 Korean Supreme Court).

MINBYUN's written submission will bring detailed factual and legal argument and evidence regarding above issues within the scope of this Case.

MINBYUN, as a lawyers' NGO in a Special Consultative Status in United Nations, has a significant interest in this Case in terms of the rule of law and harmony in the power of the Korean court and international arbitration tribunal.

In this regard, MINBYUN is duly requesting the permission of *amicus curiae* written submission as non-disputing party according to ICSID Rule 37(2).

Respectfully submitted,



Ki-ho SONG

Attorney-at-Law, Chairperson of International Trade Committee
MINBYUN-Lawyers for a Democratic Society

[제41호 서식]

Registered No. 2015 - 3893

NOTARIAL CERTIFICATE



GYUNGBOK LAW & NOTARY OFFICE INC

(Seocho-Dong, Haengrim B/D)

#102, Banpodae-ro30gil 47, Seocho-Gu, Seoul, Korea.

Tel: +82(2) 3486-5822 · Fax: +82(2) 3486-5881

Supreme Court

www.scourt.go.kr

Easy, fast, safe and Eco-friendly

Electronic Case Filing System

Case information provided at this site has no legal validity, please use for references only. If using the homepage of electronic case filing system about the cases proceeding in electronic case filing of civil suit, patent suit, etc., you may see all the written judgment or case record on internet.

>> Click

General contents of case

Proceeding contents of case

>> Printing

>> Searching my case

Case No. : Supreme Court 2015Du55134

▶ Basic Content

Case No.	2015Du55134	Name of Case	[Electronic Case] Revocation of rectification refusal disposition
Plaintiff	LSF KEB Holdings SCA and one other	Defendant	Head of Namdaemun tax office
Justice Department	Special part 2 (Tel.:3480-1364)		
Date of Receipt	Oct. 28, 2015	Result	
Plaintiff's value of the subject matter of litigation	1,779,238,581	Defendant's value of the subject matter of litigation	1,656,484,275
Acceptance division	Filing a lawsuit	Merge division	Principal lawsuit
Appellant		Date of appeal	
Date of dismissal of appeal			
Balance information according to the end of the transmittal fee, money on deposit		It is impossible to inquiry the transmittal fee and money on deposit as this case is not concluded.	
Date of judgment arrival		Date of conclusion of judgment	

▶ Instance content

Court	Case No.	Result
Seoul High Court	2014Nu74178	Reject of appeal on Sep. 23, 2015
Seoul Administrative Court	2012Guhap39544	Plaintiff's partial winning of the lawsuit

▶ Status of court hearing progression

Date	Content
Oct. 28, 2015	Receipt of the case
Oct. 30, 2015	Distribution of justice department
Nov. 10, 2015	Served the written notification of receipt of the final appeal record/duplicate of petition for the final appeal to defendant (appellee and appellant) Hocheol Son, Minhyun Jo, Cheolho Jo, Jinjae Bae, Changsu Kim, Jaebang Kim, Taehun Kim. (Arrived on Nov. 17, 2015)
Nov. 10, 2015	Served the written notification of receipt of the final appeal record/duplicate of petition for the final appeal to defendant (appellee and appellant) Jeongmi Kim. (Arrived on Nov. 18, 2015)
Nov. 10, 2015	Served the written notification of receipt of the final appeal record/duplicate of petition for the final appeal to plaintiffs (appellant and appellee) Attorney Seokhun Kang, Dongsu Kim, Beomjun Kim, Minyeong Seong, Sunmu So, Yeongjun Jeon, Seri Yun. (Arrived on Nov. 10, 2015)

▶ Content of receiving the documents submitted lately

>> read more



Print

**빠르고 편리한 고품질 사법서비스
대법원 전자소송**

본 사이트에서 제공된 사건정보는 법적 효력이 없으니 참고자료로만 활용하시기 바랍니다.
민사 특허 등 전자소송으로 진행되는 사건에 대해서는 전자소송 홈페이지를 이용하시면 판결문이나 사건기록을 모두 인터넷으로 보실 수 있습니다.

[» Click](#)

사건일반내용 **사건진행내용** [» 인쇄하기](#)

▶ 사건번호 : 대법원 2015두55134 [» 나의 사건 검색하기](#)

▶ 기본내용

사건번호	2015두55134	사건명	[전자] 경정거부처분취소
원고	엘에스에프 케이이비 홀딩스 에스씨에이 외 1명	피고	남대문세무서장
재판부	특별2부 (전화:3480-1364)		
접수일	2015.10.28	종국결과	
원고소가	1,779,238,581	피고소가	1,656,484,275
수리구분	제소	병합구분	본소
상소인		상소일	
상소각하일			
송달료,보관금 종결에 따른 잔액조회	사건이 종결되지 않았으므로 송달료, 보관금 조회가 불가능합니다.		
판결도달일		확정일	

▶ 심급내용

법원	사건번호	결과
서울고등법원	2014누74178	2015.09.23 항소기각
서울행정법원	2012구합39544	2014.11.21 원고일부승

▶ 심리진행상황

일자	내용
2015.10.28	사건접수
2015.10.30	재판부배당
2015.11.10	피고(피상고인겸상고인) 손호철,조민현,조철호,배진재,김영진,김창수,김제방,김태훈에게 상고기록접수통지서/상고장부분 송달 (2015.11.17 도달)
2015.11.10	피고(피상고인겸상고인) 김정미에게 상고기록접수통지서/상고장부분 송달 (2015.11.18 0시 도달)
2015.11.10	원고들(상고인겸피상고인) 소송대리인 강석훈,김동수,김범준,성민영,소순무,전영준,윤세리에 상고기록접수통지서/상고장부분 송달 (2015.11.10 도달)

▶ 최근 제출서류 접수내용 [» 상세보기](#)

위 번역문은 원문과 상위없음을
서약합니다.

2015 . 11 . 24

서약인 이 민향



I swear that the attached trans-
lation is true to the original
Nov., 24, 2015

Signature *Lee, Minhyang*

등부 2015 년 제 3893 호

Registered No. 2015 - 3893

인 증

Notarial Certificate

위 촉탁인 이 민 향 은
본 공증인의 면전에서 위 번역문
이 원문과 상위없음을 확인하고
서명날인하였다.

2015 . 11. 24일 이 사무소에서
위 인 증 한다.

Lee, Min Hyang personally
appeared before me, confirmed
that the attached translation
is true to the original and
subscribed his(her) name.

This is hereby attested on this
24th day of Nov., 2015
at this office.

공증인가 법무법인 경 북

서울중앙지방검찰청 소속
서울특별시 서초구 반포대로30길
47, 102호(서초동, 행림빌딩)

GYUNGBOK LAW & NOTARY OFFICE INC.

Belong to Seoul Central District
Prosecutors' Office.
(Secho-dong, Haengnim B/D)
#102, Banpodae-ro30gil 47, Seocho-gu,
Seoul. KOREA.

공증담당
변 호 사

신 환 보



Shin Hwan bok

Shin hwan bok

(Signature of the Notary Public)

This office has been authorized
by the Minister of Justice, the
Republic of Korea, to act as
Notary Public since 29, Dec. 2009.
Commission Expires: FEB. 06, 2020