관계부처합동 **Press Release** 대체불가 대한민국

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ROK Prevails in Annulment Proceeding of Chinese Investor 'Fengzhen Min' ISDS Case

- Claimant's Application for Annulment Dismissed in Its Entirety, Leaving Intact the Award in Korea's Favor Rendered Two Years Ago -

- Successfully Defended Against the Damages Claims of Approximately KRW 2 Trillion Initially and KRW 264.1 Billion Ultimately -

- **On September 12 (Sat.), at around 05:25 a.m. (KST),** in the annulment proceeding of the international investment dispute(ISDS) case filed with the International Centre for Settlement of Investment Disputes (ICSID) in 2020 by Chinese national Fengzhen Min (the "Claimant"), who brought a claim of approximately KRW 2 trillion against the Government of the Republic of Korea, the Committee **dismissed the Claimant's application for annulment in its entirety** and ordered the Claimant to pay approximately KRW 1.5 billion (approx. USD 1.12 million) in legal costs incurred by the Republic of Korea in the annulment proceeding.

- This case concerns an ISDS claim filed in August 2020 by the Claimant, who had established a company in Korea around 2007 and procured KRW 380 billion in PF loans from Korean financial institutions to acquire a building located in China. The Claimant alleged that ▲ **the civil litigation** concerning the enforcement of security interests by the financial institution following default on the loans (the sale of company shares), and ▲ **the investigations and criminal proceedings** concerning the provision of money, valuables or other benefits to executives or employees of the financial institution during the loan process constituted **violations of the Korea-China BIT**.

- **The Government prevailed in the underlying arbitration on May 31, 2024, with all claims* brought by the Claimant dismissed.** However, the Claimant filed an application for annulment of the Award with ICSID on September 28, 2024.

  * Amount claimed: initially approx. KRW 2 trillion; ultimately approx. KRW 264.1 billion.

  - After nearly two years of persuading the *ad hoc* Committee, the Ministry of Justice, together with relevant government ministries and domestic and foreign counsel representing the Government, succeeded in having **<u>the Claimant's application for annulment dismissed in its entirety</u>**.

- This was the first case in which a foreign investor directly alleged that **<u>Korea's domestic civil and criminal judicial proceedings and their results constituted violations of the Treaty</u>**.

  - The Government achieved a complete victory both in the underlying arbitration and in the annulment proceeding, thereby firmly reaffirming the principle that "**<u>investments made in violation of the host State's domestic law are not entitled to protection under the Treaty.</u>**"

- The Government will continue to work closely with relevant government ministries, experts, and domestic and foreign counsel, and will take all necessary follow-up measures to protect the national interest.

1. Overview

☐ On September 12, 2026, at around 05:25 a.m. (KST), The Government of the Republic of Korea (the "Government") received a decision of complete victory in the annulment proceeding arising from the ISDS case brought against it on August 3, 2020 by **<u>an investor of Chinese nationality, Fengzhen Min</u>** (the "Claimant"), pursuant to the Korea-China Bilateral Investment Treaty.1)

○ **<u>The Claimant in this case established a company</u>** called Pi Investment Korea Co., Ltd. ("Pi Korea" or the "Company") **<u>in order to obtain PF loans</u>** for the acquisition of the Huapu Building in China (which the Claimant asserted had a market value of approximately KRW 1.5 trillion; USD 1,108.84 million), **<u>and thereafter obtained the loans</u>**.

- After the Claimant defaulted on the repayment of the loans, the financial institution disposed of the Company shares pledged as collateral (i.e., enforced its security interests), and the Claimant **<u>was unsuccessful in the civil litigation</u>** challenging that enforcement.

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1) The Korea–China Bilateral Investment Treaty (the "BIT" or the "Treaty") refers to the "Agreement between the Government of the Republic of Korea and the Government of the People's Republic of China on the Promotion and Protection of Investments", which entered into force on December 1, 2007, stipulating and provides for the protection of investments by investors of each country in the territory of the other and ISDS procedures.

- Separately, through investigations and criminal proceedings conducted in relation to the loan process, **it was established that the Claimant had provided money, valuables or other benefits to executives or employees of the financial institution, and the Claimant's criminal conviction became final**. Following this, the Claimant filed **an ISDS claim challenging the enforcement of the security interests, the civil proceedings, and the investigations and criminal proceedings**.[2)]

❍ In May 2024, the Tribunal in the underlying arbitration (the "Arbitration") accepted the Government's argument that Pi Korea was established as part of an illegal scheme to obtain PF loans by providing money, valuables or other benefits to executives or employees of the financial institution, and therefore held that the Claimant's investment — namely, the Pi Korea Shares — was not protected under the Treaty.

- Accordingly, the Tribunal ▲ **dismissed all of the Claimant's claims** on the ground that **the investment was not protected by the Treaty** and that the Tribunal therefore lacked jurisdiction over the case, and ▲ ordered the Claimant to pay approximately KRW 4.9 billion (approx. USD 3.65 million) in legal costs incurred by the Government, together with interest.[3)]

❍ On September 28, 2024, the Claimant filed an application for annulment of the Award with the International Centre for Settlement of Investment Disputes ("ICSID"). **On September 12, 2026, at 05:25 KST** (September 11, 16:25 EDT), the *ad hoc* Committee (the "Committee") **dismissed the Claimant's application in its entirety**.[4)]

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2) Amount claimed (amount in dispute): initially approx. KRW 2 trillion (approx. USD 1.49 billion); ultimately approx. KRW 264.1 billion (approx. USD 191.5 million).

3) Refer to the press release dated June 12, 2024 − "Chinese Investor ISDS Case: Arbitral Award Rendered".

4) In addition, the Committee ordered the Claimant to pay approximately KRW 1,512,830,000 (approx. USD 1.12 million) representing the legal costs incurred by the Government in the annulment proceeding, together with interest.

2. Key Procedural History ※ based on KST[5)]

- 2020. 8. 3. Request for Arbitration registered
- 2024. 5. 31. Arbitral Award ("Award") rendered (victory for the Government)
- 2024. 9. 28. Application for annulment filed with ICSID
- 2025. 3. 26.~11. 6. Written submissions exchanged between the parties
- 2026. 2. 25.~26. Hearing (Singapore)
- 2026. 9. 12. **Application for annulment dismissed in its entirety**

3. Summary of the Committee' s Decision

Background and Summary of the Award

- **(Background)** While pursuing a project with a business partner to acquire and develop the Huapu Building (Grand Central Plaza) in Beijing, China, the Claimant **established Pi Korea** in Korea around October 2007 to procure funds for the acquisition of the Building. The Company subsequently **borrowed a total of KRW 380 billion (approx. USD 280.66 million) through two loans arranged and guaranteed by domestic Bank A**.
  - **(Default and Enforcement of Security Interests)** When the Company failed to repay the loans, Bank A acquired the loan receivables pursuant to the payment guarantee agreement and extended the repayment deadlines several times. However, when the loans ultimately remained unpaid, Bank A **commenced enforcement of the security interests around 2011** and **sold the Company shares provided as collateral between 2014 and 2015**.
  - **(Civil Proceedings)** The Claimant **filed a civil lawsuit** in July 2013 challenging the enforcement of the security interests but ultimately **lost the case**, and **the Supreme Court rendered a final judgment against the Claimant in July 2017**.

5) Detailed procedural history is provided in the Annex.

- **(Investigation and Criminal Proceedings)** It was established that, during the loan process, the Claimant had promised and provided money, valuables or other benefits to executives or employees of Bank A, and **the criminal conviction became final** in March 2017.

❍ **(Claimant's Arguments)** The Claimant argued that ▲**Bank A's sale of the Company shares** held by the Claimant, and ▲**the civil proceedings described above, as well as the investigations and criminal proceedings**, constituted ▲unlawful expropriation, ▲denial of justice, and ▲a violation of the obligation of fair and equitable treatment.

[Alleged violations of the Treaty asserted by the Claimant]

▲ **Unlawful expropriation** : The Claimant argued that he was unlawfully deprived of his shares in Pi Korea due to, among other things, the judgments of the Korean civil courts recognizing the validity of Bank A's enforcement of the security interests and the resulting transfer of the shares.

▲ **Denial of justice** : The Claimant argued that he was denied a fair trial because applications for orders to produce key documents, such as the share purchase agreement, were rejected in the Korean civil proceedings, and his arguments and evidence were not properly considered.

▲ **Violation of fair and equitable treatment** : The Claimant argued that a series of measures, including allegedly improper decisions in the civil proceedings and violations of procedural rights in the investigations and criminal proceedings, constituted a violation of the obligation to accord fair and equitable treatment.

❍ **(Government's Arguments)** The Government argued that because the establishment of Pi Korea and the Claimant's acquisition of its shares **constituted part of an illegal scheme to procure loans by providing money, valuables or other benefits** to executives or employees of Bank A, the relevant shares did not constitute an investment protected by the Treaty, and therefore the Tribunal lacked jurisdiction over the case.[6]

6) In addition, the Government argued that Bank A's enforcement of the security interests was not attributable to the Republic of Korea, and that the court proceedings and investigations concerning the Claimant were lawfully conducted.

❍ **(Outcome of the Arbitration: Complete Victory)** On May 31, 2024, the Tribunal accepted the Government's argument regarding the "illegality of the investment" and found that Pi Korea was established as part of, and in furtherance of, an illegal scheme to procure loans through bribery, and that the Pi Korea Shares were issued, and the Claimant's investment was made, for use in that scheme. The Tribunal therefore held that the investment did not qualify for protection under the Treaty.

- Accordingly, the Tribunal determined that it **lacked jurisdiction** over the case, **dismissed all of the Claimant's claims**, and ordered the Claimant to pay approximately KRW 4,912,600,000 (approx. USD 3.65 million) in legal costs incurred by the Government, together with interest.

Summary of the Parties' Arguments in the Annulment Proceeding

☐ The ICSID Convention Limits the Grounds for Annulment to Five

❍ An ICSID annulment proceeding is not an appellate proceeding that re-examines the correctness of the factual findings or legal conclusions of the original award. Rather, an award may be annulled only on one or more of the five limited grounds set forth in Article 52 of the ICSID Convention.

- One or more of the following grounds for annulment must be established: ① the Tribunal was not properly constituted; ② the Tribunal has **manifestly exceeded its powers**; ③ there was corruption on the part of a member of the Tribunal; ④ there has been a **serious departure from a fundamental rule of procedure**; or ⑤ the award has **failed to state the reasons** on which it is based.

☐ Arguments of the Claimant Fengzhen Min

❍ In the annulment proceeding, the Claimant argued that the Award contained **three grounds for annulment** under Article 52 of the ICSID Convention and therefore should be annulled in its entirety.

- ① Although the Claimant had lawfully acquired the shares of Pi Korea, the Tribunal incorrectly interpreted and applied the Treaty and domestic law, **improperly determining that the investment was an "illegal investment" and declining to exercise jurisdiction**. **(Manifest excess of powers)**

- ② The Tribunal **failed to properly explain the burden and standard of proof concerning the illegality of the investment** and failed to provide the Claimant with sufficient opportunity to present his arguments regarding key issues. **(Serious departure from a fundamental rule of procedure)**

- ③ The Tribunal **interpreted the language of the Treaty broadly and unfairly in a manner favorable to the Government**, failed to clearly explain its reasons, or provided contradictory reasons, thereby failing to state the reasons on which the Award was based. **(Failure to state reasons)**

□ **Arguments of the Government of the Republic of Korea**

❍ In response, the Government argued that: ▴ **the Claimant** was **improperly using the annulment proceeding as an appellate mechanism** by seeking to overturn the factual findings and legal conclusions of the Tribunal; and ▴ there were **no grounds for annulment whatsoever in the Award**.

❍ Specifically, the Government presented the following arguments:

- ① **The Tribunal properly interpreted and applied the Treaty and domestic law**. Moreover, the Claimant's disagreement with the Tribunal's interpretation did not constitute a ground for annulment based on manifest excess of powers. **(The Tribunal acted within its powers)**

- ② There is no such fundamental rule of procedure requiring an arbitral tribunal to expressly state the standard of proof in its award; the Tribunal **provided the Claimant with sufficient opportunity to present his case regarding the illegality of the investment**; and the Tribunal **properly determined the illegality of the investment after comprehensively examining the relevant evidence**. **(Compliance with procedural rules)**

- ③ Based on the court judgments and other evidence submitted by the Government, the Tribunal made factual findings concerning ▲the circumstances surrounding the **establishment of Pi Korea and the Claimant's acquisition of its shares**; ▲**the process by which the PF loans were improperly obtained**; and ▲**the provision of money, valuables or other benefits in connection with the loans**. The Tribunal also considered the interpretation of the Treaty and sufficiently explained its reasons for declining jurisdiction. **(No failure to state reasons)**

Summary of the Annulment Committee's Decision

☐ After nearly two years of intensive written and oral proceedings, the Committee accepted the position of the Government on September 12, 2026, and **dismissed the Claimant's application for annulment in its entirety**.

❍ The principal findings of the Committee are as follows:

- ① The Committee found that **the Tribunal's interpretation of the Korea-China BIT was a tenable and reasonable interpretation based on the text of the Treaty**. The Committee further determined that there was no manifest excess of powers in the process by which the Tribunal concluded that, at the time of establishing Pi Korea, **the Claimant intended to use the shares of Pi Korea as part of an illegal scheme to procure loans** **(⇒ No manifest excess of powers existed)**

- ② The Tribunal identified the matters necessary for determining whether there had been a violation of the "Act on the Aggravated Punishment, etc. of Specific Economic Crimes" (the "ECA"), and examined the credibility, relevance, and probative value of evidence, including the investigation records, in determining the illegality of the investment. Accordingly, the Committee determined that the Tribunal **could not be considered to have disregarded the applicable standard of proof**. The Committee also found **that the Claimant had been afforded sufficient opportunity to present his case.** **(⇒ No serious departure from a fundamental rule of procedure existed)**

- ③ The Tribunal made factual findings based on the evidence and carefully examined the legal interpretation of the Treaty. The Committee determined that **the reasoning in the Award could be followed and that there was no omission or contradiction in the reasons supporting the Award** **(⇒ No failure to state reasons existed)**

❍ Accordingly, **the Award** in favor of Korea **remains final and binding**.

- In addition, the Committee ordered the Claimant to **pay the Government approximately KRW 1,512,830,000 (approx. USD 1.12 million) in legal costs incurred in the annulment proceeding**, together with interest accruing from the date of the Decision until full payment.[7]

4. Significance and Future Plans

☐ **The Award's Conclusion that Unlawful Investments Are Not Entitled to Treaty Protection Remains Intact**

❍ By dismissing the annulment application in its entirety, the Committee left intact the Award's conclusion that **investments that are unlawful under domestic law are not entitled to treaty protection.**

❍ The Government also successfully **defended against an attempt, through ISDS, to overturn matters that had already been determined in Korea's domestic civil and criminal proceedings**.

☐ **Korea's First Full ISDS Victory, Preserved Through Annulment**

❍ **The Arbitration** was **the first ISDS case in which the Government of the Republic of Korea prevailed after the proceedings had advanced through the merits phase**. Through the complete victory in the annulment proceeding as well, **there is no basis for resubmission of the dispute under Article 52(6) of the ICSID Convention.**

7) The Committee also ordered the Claimant to bear the full costs of the annulment proceedings, amounting to USD 426,751.11 (approx. KRW 573 million), payable to ICSID.

○ The Ministry of Justice, **through the interagency ISDS Response Task Force** and in **close cooperation** with domestic and foreign counsel[8], academia, and other experts, **analyzed the extensive record and evidence and made every effort in responding to the proceedings.** As a result, the Government preserved the Award in its favor and successfully prevented an outflow of national wealth equivalent to approximately KRW 2 trillion.

□ Future Plans

○ The Government will make every effort to **recover the costs** awarded to it and will endeavor to **disclose** the annulment decision and related information **to the extent possible,** in consultation with the Claimant.

Office for Government Policy Coordination	Financial Policy Division	Director	Youngju Yoon	(044-200-2190)
		Deputy Director	Manhyuk Lim	(044-200-2192)
Ministry of Finance and Economy	International Economic Cooperation Division	Director	Kiyoung Moon	(044-215-7630)
		Deputy Director	Hyang Namgung	(044-215-7632)
Ministry of Foreign Affairs	Economic Legal Affairs Division	Director	Eunhye Joo	(02-2100-7716)
		Deputy Director	Youngjae Choi	(02-2100-7719)
Ministry of Justice	International Dispute Settlement Division	Director	Ara Cho	(02-2110-3331)
		Prosecutor	Junyeul (Alex) Yang	(02-2110-4321)
Ministry of Trade, Industry and Energy	Trade Dispute Settlement Division	Director (Acting)	Joosil Han	(044-203-5940)
		Deputy Director	Kyungeun Park	(044-203-5952)
Financial Services Commission	Fair Market Division	Director	Eunju Jeon	(02-2100-2910)
		Deputy Director	Miae Kim	(02-2100-2914)

8) **Yulchon LLC, A&O Shearman, and Matthew Hodgson**

Annex Key Procedural History of Fengzhen Min ISDS Case

※ Dates are based on KST

Development	Date	Description
Background of the Case		
Establishment of Korean company	2007. 10. 30.	The Claimant established Pi Korea in order to procure funds for the Huapu Building project.
Execution of loans	2007. 12. - 2008. 1.	Pi Korea borrowed a total of KRW 380 billion from financial institutions. ※ Bank A arranged and guaranteed the loans and subsequently acquired the loan claims.
Enforcement of security interests	2011. 8. - 2015. 1.	Due to default on repayment of the loans, Bank A enforced the security interests over the Pi Korea Shares provided as collateral (sold to a third party.)
Criminal proceedings finalized	2017. 3. 22.	The Claimant was convicted and the criminal judgment became final in relation to the provision of money or other benefits to executives or employees of Bank A during the loan process.
Civil proceedings finalized	2017. 7. 18.	The Supreme Court rendered a final judgment against the Claimant in the civil action (filed in July 2013) challenging the enforcement of the above security interests.
Arbitration Proceedings		
Submission of the Notice of Arbitration	2020. 3. 18.	The Claimant submitted a Notice of Intent to Arbitrate.
Submission of the Request for Arbitration	2020. 8. 3.	ICSID registered the Claimant's Request for Arbitration.
Constitution of the Arbitral Tribunal	2021. 2. 1.	Presiding Arbitrator Ian Glick Appointed by the Goverment Donald McRae Appointed by the Claiment Stephen Drymer
Written proceedings	2021. 2. - 2023. 9.	The parties conducted written submissions on the merits and document production proceedings.
Hearing	2023. 11. 13.-20.	Oral hearing held (Singapore) - Examination of witnesses. arguments on jurisdiction and merits. closing arguments
Award	2024. 5. 31.	The Tribunal rendered the Award fully in favor of the Republic of Korea. ※ The Award ordered the Claimant to pay approx. KRW 4.9 billion in the Government's costs.
Annulment Proceedings		
Filing of Application for Annulment	2024. 9. 28.	The Claimant filed an application for annulment with ICSID.
Constitution of the *Ad Hoc* Committee	2024. 11. 8.	- President Cavinder Bull - Member David Pawlak - Member Mairée Urán Bidegain
Written proceedings	2025. 3.-11.	Written submissions were exchanged between the parties.
Hearing	2026. 2. 25.-26.	Oral hearings held (Singapore)
Closure of the Proceedings	2026. 8. 11.	The Committee declared the closure of the proceedings.
Decision	2026. 9. 12.	The Committee dismissed the application for annulment in its entirety. (Republic of Korea prevailed)