IN THE MATTER OF AN ARBITRATION UNDER THE FREE TRADE AGREEMENT BETWEEN THE REPUBLIC OF KOREA AND THE UNITED STATES OF AMERICA AND THE UNCITRAL ARBITRATION RULES

PCA Case No. 2018-55

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In the Matter of Arbitration Between:

MASON CAPITAL L.P. and MASON MANAGEMENT LLC,

Claimants,

and

THE REPUBLIC OF KOREA,

Respondent.

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HEARING ON PRELIMINARY OBJECTIONS, Volume 2

Thursday, October 3, 2019

New York International Arbitration Center
150 East 42nd Street
17th Floor Conference Room
New York, New York

The hearing in the above-entitled matter came on at 9:35 a.m. before:

PROFESSOR DR. KLAUS SACHS, President of the Tribunal

THE RT. HON. DAME ELIZABETH GLOSTER, Co-Arbitrator

PROFESSOR PIERRE MAYER, Co-Arbitrator
Also present:

Registry and Administrative Secretary to the Tribunal:

DR. LEVENT SABANOGULLARI

Assistant to the Tribunal:

MR. MARCUS WEILER

Court Reporter:

MR. DAVID A. KASDAN
Registered Diplomate Reporter (RDR)
Certified Realtime Reporter (CRR)
Worldwide Reporting, LLP
529 14th Street, S.E.
Washington, D.C. 20003
United States of America
APPEARANCES:

On behalf of the Claimants:

MS. CLAUDIA T. SALOMON
MR. MICHAEL A. WATSULA
MR. JON WALTON
MS. LAURA VAZQUEZ
Latham & Watkins, LLP
885 Third Avenue
New York, New York  10022
United States of America

MS. SOPHIE J. LAMB, QC
MR. BRYCE WILLIAMS
Latham & Watkins, LLP
99 Bishopsgate
London EC2M 3XF
United Kingdom

MR. DONG-SEOK (JOHAN) OH
MR. JOHN M. KIM
MS. JISUN HWANG
KL Partners
7th Floor, Tower 8,
7 Jongro 5 gil, Jongro-gu,
Seoul
Republic of Korea  03157

Interpreter:

MS. WANSOO SUH
APPEARANCES: (Continued)

On behalf of the Respondent:

MR. CHANGWAN HAN
MR. DONGHWAN SHIN
MS. SUJIN KIM
Ministry of Justice
Government of the Republic of Korea

MR. SANGJIN PARK
MR. KYUNGSUNG YOO
Ministry of Health and Welfare
Government of the Republic of Korea

MR. PAUL FRIEDLAND
MR. DAMIEN NYER
MR. SVEN VOLKMER
MR. SURYA GOPALAN
White & Case, LLP
1221 Avenue of the Americas
New York, New York 10020-1095
United States of America

MR. SANGHOON HAN
MS. JI HYUN YOON
MR. RICHARD JUNG YEUN WON
Lee & Ko
Hanjin Building
63 Namdaemun-ro Jung-gu
Seoul 04532
Republic of Korea

Interpreter:

MR. CHI-HYUN AHN
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ROLF LINDSAY and RACHEL REYNOLDS,

CONFERENCING WITNESSES CALLED

PRESIDENT SACHS: So, good morning, ladies and gentlemen, Day 2 of our Hearing on Preliminary Objections.

Today, we will hear the Experts Reynolds and Lindsay.

In front of you is a declaration, or should be a declaration, that we would ask you to read aloud.

THE WITNESS: (Ms. Reynolds) I solemnly declare upon my honor and conscience that my statement will be in accordance with my sincere belief.

PRESIDENT SACHS: Thank you, Ms. Reynolds.

THE WITNESS: (Mr. Lindsay) I solemnly declare upon my honor and conscience that my statement will be in accordance with my sincere belief.

PRESIDENT SACHS: Thank you, Mr. Lindsay.

Now, today, we will ask you questions in form of what we call "hot-tubbing"; that's to say you sit together, and questions will be put to the two of you. The Claimant will start with the questions and Respondent will follow.

That was the agreement.

We thank you for your written expert reports that were submitted to the Tribunal. We appreciate that, to some extent, there is agreement between you, so obviously
we would like to focus today on the points of disagreement so that we can hopefully see clearer thereafter.

So, unless there are any housekeeping matters to deal with, and I see that there are none, we would invite the Claimants to start questioning the two experts.

MS. SALOMON: Thank you.

BY MS. SALOMON:

Q. Ms. Reynolds, my name is Claudia Salomon--

MR. VOLKMER: Apologies to interrupt so early, but there was going to be a presentation by the experts, at least by our expert.

MS. SALOMON: That was not agreed. We agreed to conferencing and questions. We didn't agree to any presentations.

MR. VOLKMER: Then that was a misunderstanding, but there was definitely always going to be a presentation of our expert.

MS. SALOMON: We can look back at the joint document, but I don't believe that's the case.

Can we take a moment off the record, please?

PRESIDENT SACHS: Yes.

So, off the record, David, please.

(Off the record.)

PRESIDENT SACHS: On the record.

MS. SALOMON: Members of the Tribunal, as ordered
by the Members of the Tribunal, the Parties met and
conferred with regard to the proposed procedure for this
Hearing, and we submitted a Joint Statement to the Members
of the Tribunal as to how the procedure for the examination
of fact witnesses and then also examination of expert
witnesses would go, and we expressly stated that, for the
conferencing of the Cayman Law Expert, subject to the
Tribunal's preferences, the Parties had agreed on a
particular procedure. That procedure originally had been
proposed that the Parties would exchange a proposed list of
questions, try to reach agreement on a joint list of
questions to be submitted or, alternatively, separate lists
if no agreement can be reached.

In the conference, the Tribunal will ask its
questions first. They may choose to ask some or none. And
then following the Tribunal's questions, the Claimants and
then Respondent will have a brief period to ask their own
questions to both experts. The Parties are not limited to
the questions they originally proposed and may react and
seek to clarify the evidence that has already been given.

There was no mention of any report by the Experts,
and I can say that it's something that we had considered
because sometimes it is appropriate for experts to give
reports, and we did not think that was the case, or
presentations because they have already submitted their
written reports. Then it is our understanding that when we had the pre-hearing telephonic conference, the Tribunal stated that they would like to revise this procedure and go directly to the Parties, asking questions of the Experts where the Claimants would go first and then Respondent, and then the Tribunal would ask any questions.

Again, during the pre-hearing telephonic conference, there was no mention whatsoever by the Respondent that there would be a presentation sought by their expert, and we, therefore, think it's inappropriate. We're confident that the Experts' views are going to come out in the context of the questions. We want to assure that all questions by the Tribunal with regard to the points of agreement and disagreement are clarified.

Therefore, we would request that we have the opportunity to certainly go directly into our questions; and then, if there's something that the Respondent wishes to have their expert clarify when it is their time, they would be given the opportunity to do so.

PRESIDENT SACHS: Thank you, Mrs. Salomon.

(Tribunal conferring.)

PRESIDENT SACHS: Yes, probably we will hear that from the Respondent.

MR. VOLKMER: Yes. Thank you, Mr. Chairman.

So, the e-mail that I believe counsel on the other
side was referring to was the proposed agenda with comments from the Parties for the pre-hearing conference call--

ARBITRATOR GLOSTER: Can you give us the date of that, please?

MR. VOLKMER: Yes. The date of that e-mail was on the 23rd of September.

ARBITRATOR GLOSTER: Thank you.

MR. VOLKMER: Now, the Procedural Order for season—Provision 2.7.3—the Procedural Order in Section 7.3 says that there would be presentations by the Experts of 30 minutes, up to 30 minutes. The proposal that was discussed between the Parties was always to decide what would happen in lieu of cross-examination, which was foreseen after the presentation. So, when we had these discussions, it was not our understanding and not our agreement that we would dispense with the presentations, but only what would happen with the cross-examination bit of the Hearing.

PRESIDENT SACHS: So, we understand. So, there seems to be a disagreement more than—well, disagreement. If I may—

MS. SALOMON: Mr. Chairman, might I react?

PRESIDENT SACHS: Yes.

MS. SALOMON: Just one quick moment, which is that the timetable provided for the Hearing itself doesn't
allocate any time for presentations. One would expect that, had there been a plan to do so, that would have been built in, there would have been a discussion to have the presentations, and then the examination, and certainly that's not the case.

Again, of course, we want to assure that the Tribunal has all the information they need to address the Cayman Law issues.

PRESIDENT SACHS: Well, I think--well, there is a disagreement, and I think we must now handle the situation in a fair way. We note that you, Ms. Reynolds, have prepared a presentation whereas you, Mr. Lindsay, have not. So I would say--and I think I speak also in the name of my two colleagues--that since you're legal experts and since we're all lawyers and since we have read and studied your Reports, I think we could go directly to cross-examination. Of course, it would be helpful, in theory, to hear a presentation, but we would assume that, in your presentation, you would summarize what you already told us in writing, in your Reports, and, therefore, I would suggest--and please tell me if you are in agreement, colleagues--that we go immediately to cross-examination.

ARBITRATOR GLOSTER: I agree.

ARBITRATOR MAYER: I agree also.

PRESIDENT SACHS: But during the
cross-examination, if you feel the need to expand, then, of course, you are invited to do so, but keep in mind that we studied carefully your Reports and that we are lawyers and that we understood your positions. I just want to make sure that we understand your points of disagreement.

Okay. So, please proceed.

MS. SALOMON: Thank you.

CROSS-EXAMINATION

BY MS. SALOMON:

Q. Ms. Reynolds, my name is Claudia Salomon--I am counsel for Claimants here--and, as agreed between the Parties, I will have the opportunity to ask both Experts questions first. And then, after I am finished with my questions to both Experts, then Korea's counsel will have the opportunity to ask you both questions.

I first want to focus on the background of both Experts.

Ms. Reynolds, does your practice focus on the formation of investment funds and their activities?

A. (Ms. Reynolds) My practice involves disputes concerning Limited Partnership Agreements, formation, any vehicle related to investment funds or, say, trust vehicles, so both trust and investment funds. I head up the litigation practice for Ogier, globally, and, in my practice, I tend to specialize in investment fund disputes
because that's the large part of what Cayman does.

Q.  And you're a member of the firm's restructuring and insolvency group and trust advisory groups as well?

A.  (Ms. Reynolds) That's right.

Q.  Okay.  Mr. Lindsay, does your practice focus on the formation of investment funds?

A.  (Mr. Lindsay) Yes.

Q.  And can you describe your practice a bit?

A.  (Mr. Lindsay) We have an investment funds practice, which is based in the Cayman Islands.  I am the partner principally responsible--

COURT REPORTER:  Keep your voice up, please.

THE WITNESS:  (Mr. Lindsay) Certainly.

I'm the partner principally responsible for matters in relation to particularly Partnerships within the context of that practice.  I've led that part of the practice for some 10 years now.

BY MS. SALOMON:

Q.  Ms. Reynolds, are you recognized or recommended in any of the well-established directories, Chambers, Legal 500 or Who's Who in the category of investment funds?

A.  (Ms. Reynolds) In dispute resolution regarding investment funds, yes.

Q.  Is there a specific category for dispute resolution in investment funds or broadly in dispute
resolution?
   A. (Ms. Reynolds) There is a category for dispute resolution.
   Q. And have you ever established an Exempt Limited Partnership?
   A. (Ms. Reynolds) No. I litigate in relation to investment funds.
   Q. Right.
   And have you ever drafted an Exempt Limited Partnership Agreement?
   A. (Ms. Reynolds) No. I analyze them on a regular basis, but I have never drafted one.
   Q. Mr. Lindsay, are you recognized or recommended by any of the well-established directories in the category of investment funds?
   A. (Mr. Lindsay) Yes, I am.
   Q. And do you know what that category is?
   A. (Mr. Lindsay) I have the higher recommendations available in most of the recognized directories.
   Q. And have you ever established an Exempt Limited Partnership and, if so, can you estimate about how many?
   A. (Mr. Lindsay) It would be in the thousands.
   Q. And is that estimate of thousands the same for the number of Exempt Limited Partnership Agreements you've drafted?
A. (Mr. Lindsay) Drafting--the drafting of Partnership Agreements tends to be done in conjunction with offshore counsel, U.S. counsel, Asian counsel, so it's a collaborative process; but yes, I've collaborated on the preparation of that many Partnership Agreements.

Q. And I understand the law on Exempt Limited Partnerships was comprehensively redrafted in 2013. Ms. Reynolds, were you involved in the drafting of the new ELP Law?

A. (Ms. Reynolds) I was aware of it, and a member of my firm was involved in the process. It was something we talked about quite regularly. Some of the issues that were there in the original version were sorted out. We'd identified to our committee a number of issues that we saw at that time, and those were rectified in the new version. We were part of that process, yes.

Q. And were you, yourself, selected to be on the committee to draft the law?

A. (Ms. Reynolds) I'm on other committees, the Financial Services Division, particularly. One of the areas I sit on, the Drafting Committee, is how one deals with financial services in the Cayman Islands and issues with the regime generally.

Q. And, Mr. Lindsay, were you involved in the drafting of the new ELP Law, and if so, what was your role?
A. (Mr. Lindsay) Yes, I chaired the Committee that 
drafted the new law.

Q. Thank you.

Now I want to turn to the use of ELPs, which will 
sometimes be referred to as "Partnerships."

The Exempt Limited Partnership structure at issue 
in this arbitration that Mason has—is commonly used 
investment firm structure; isn't that right, Ms. Reynolds?

A. (Ms. Reynolds) Yes.

Q. And you're in agreement?

A. (Mr. Lindsay) Yes, yes.

Q. And the Cayman Exempt Limited Partnerships are 
commonly used by hedge funds and private equity firms from 
the U.S. and from Asia; correct?

A. (Ms. Reynolds) Yes. It's something we see often.

Q. And, Mr. Lindsay, you're in agreement?

A. (Mr. Lindsay) That is correct, yes.

Q. Ms. Reynolds, do you know what percentage of hedge 
 funds use Cayman ELPs?

A. (Ms. Reynolds) Globally or just in the Cayman 
 Islands?

Q. Globally?

A. (Ms. Reynolds) Well, the Cayman Islands has a high 
 proportion, and a high percentage of the ones that I see in 
 my practice are Partnerships. Across my desk I see roughly
50:50, whether it's corporate entities or it's Exempt Limited Partnerships.

Q. Mr. Lindsay, can you comment on the use of Cayman ELPs by hedge funds and private-equity funds globally? Who is using them and about what percentage of funds are using them globally?

A. (Mr. Lindsay) Certainly.

In the hedge fund context, about 49 percent on our numbers earlier this year, about 49 percent of hedge funds are formed in Delaware. About 44-45 percent are formed used Cayman Islands structures globally. Of those hedge funds, a significant portion used Exempted Limited Partnerships, particularly in relations to the master fund aspect of a hedge fund structure. The sort of structure that we have today is extremely typical.

In terms of the people that use those structures for hedge funds, the hedge funds are formed in the Cayman Islands by managers based in London, in particular from a European perspective, and then all across North, Central, and South America and across the Asian region, the Cayman Islands structure would be the default structure used in those jurisdictions.

Q. And this structure is often used where funds are ultimately sourced from entities which are exempt from U.S. tax; is that correct, Ms. Reynolds?
A. (Ms. Reynolds) Used for a number of reasons, but typically an onshore feeder and an offshore feeder, and it's used because people need to invest through a normal onshore.

Q. And the structure is not used to evade taxation; isn't that right?

A. (Ms. Reynolds) Well, that's not the purpose of the Cayman vehicle, no.

Q. And, Mr. Lindsay, do you have any further comments on that issue?

A. (Mr. Lindsay) No, that's absolutely right.

So, the Investors into the Cayman part of the structure, it's no surprise that the numbers come out just about even between Cayman and Delaware because you do often see a side-by-side structure. The investors into the Cayman Islands structure will, as you say, be not liable to U.S. tax in the ordinary course. So, U.S. taxable investors would invest into the U.S. structure and then tax-exempt investors from the U.S. and then international investors who have no tax relationship to the U.S. would invest in Cayman and then be taxed in their home jurisdictions in the ordinary course.

Q. And, Ms. Reynolds, it's correct that the identity of the General Partner of an Exempt Limited Partnership is not a secret.
A. Yes, of course.

Q. The identity of a General Partner of an Exempt Limited Partnership is not a secret. It's a matter of public record; isn't that right?

A. (Ms. Reynolds) Yes.

Q. Mr. Lindsay?

A. (Mr. Lindsay) Yes, that's correct.

Q. I think it's uncontroversial, but would like it stated on the record that the Experts are in agreement that an Exempt Limited Partnership does not have a separate legal personality or capacity under Cayman Law; is that correct, Ms. Reynolds?

A. (Ms. Reynolds) That's certainly correct. There are certain aspects of a Partnership where—and it has features which make it akin to a commercial corporate structure. So, for example, it's possible for the Partnership to enter into a transaction with its own Partners; it's possible for a Partner to be a Partner of a Partner, as it were.

So—but, technically and legally, it's not a separate legal entity.

Q. Mr. Lindsay, can you comment on that?

A. (Mr. Lindsay) Yes, that's absolutely correct. It has no separate legal personality.

Q. And I also believe the next question I have is
uncontroversial, but wish to have confirmation on the
record: That as a matter of Cayman Law, the General
Partner was the legal owner of the Samsung Shares; isn't
that right, Ms. Reynolds?
A. (Ms. Reynolds) Well, I think that may be a
question for Korean law, but to the extent that the General
Partner or the Partnership has an asset, it's deemed to be
held on trust by the General Partner.
Q. As a matter of Cayman Law?
A. (Ms. Reynolds) Well--
Q. My question--my question is specifically on Cayman
Law. As a matter of Cayman Law.
A. (Ms. Reynolds) Well, Cayman Law would defer to the
Law of Incorporation to determine who owns shares. So, if
we're talking about Korean shares, then we would refer to
the law of Korea as to who owns them.
But as a matter of if this were a Cayman company
and we're talking about shares in a Cayman company,
absolutely correct that it would be--any assets held by the
Partnership is deemed to be held on trust by the General
Partner.
Q. What is the basis--what specific Cayman Law are
you referencing to make the assertion you're now making
that the legal ownership of the Shares would be determined
by Korean law and not Cayman?
A. (Ms. Reynolds) It's common law. It's referred to in Dicey and Morris. It's a well-known principle that you--where there's a foreign company, you defer to the law of incorporation.

Q. Why didn't you deal with that in your Report?
A. (Ms. Reynolds) I wasn't asked that. I wasn't asked to deal with that in my Report.

Q. Mr. Lindsay, can you address this issue?
A. (Mr. Lindsay) That slightly confuses the point.

The point is--the point that Dicey and Morris makes is about whether the Shares are owned--if the analysis is that the Shares are owned by the Partnership, then the legal title to those Shares is determined as a matter of Cayman Islands law. It's a noncontroversial point of international law.

It cannot be correct to say that the Partnership owns anything because the Partnership has no legal personality. If the analysis under Korean law is that the Shares are conveyed to the name of the Partnership, then our law is quite specific on how we deal with those sets of circumstances, and we say specifically--this is not controversial--it's in both experts' evidence--that assets conveyed in the name of the Partnership are held by the General Partner.

PRESIDENT SACHS: May I interject?
THE WITNESS: (Mr. Lindsay) Yes.

PRESIDENT SACHS: You didn't mention the words "in trust," "on trust," which your colleague read us mentioned those words in your questions--

(Overlapping speakers.)

THE WITNESS: Sorry, sorry.

PRESIDENT SACHS: I thought reading your Reports that you both agree that the General Partner owns the assets on trust for the Exempted Limited Partnership. Could you both agree with that?

THE WITNESS: (Mr. Lindsay) That's correct. That's in accordance with the express provisions of the law. The question was in relation to who holds legal title to the Shares, and legal title to the Shares is held by the General Partner.

THE WITNESS: (Ms. Reynolds) The full picture is it's a statutory trust that's created and so, to the extent they do own the legal title, by necessity it has to be held on trust.

THE WITNESS: (Mr. Lindsay) That's correct.

PRESIDENT SACHS: Okay.

THE WITNESS: (Mr. Lindsay) On trust--the full sentence is on trust for the benefit of the Partners, and that is all of the Partners.

PRESIDENT SACHS: And the words "for the benefit
of the Partners," is that in the law?

THE WITNESS: (Mr. Lindsay) It is on trust for benefit of the Exempted Limited Partnership, and the Exempted Limited Partnership is the Partners and their contractual and statutory relationships that persist.

ARBITRATOR GLOSTER: Am I right--and I'm addressing this question to both of you--that under Cayman Law there is a distinction recognized between legal title and beneficial interest?

THE WITNESS: (Ms. Reynolds) Yes.

THE WITNESS: (Mr. Lindsay) Yes.

ARBITRATOR GLOSTER: And am I right that, under Cayman Law, the General Partner, as a matter of Partnership Law, has to have the legal title?

THE WITNESS: (Mr. Lindsay) That's correct.

ARBITRATOR GLOSTER: --vested in it--

THE WITNESS: (Ms. Reynolds) Yes.

ARBITRATOR GLOSTER: --to any asset?

THE WITNESS: (Ms. Reynolds) Yes.

ARBITRATOR GLOSTER: And, as I understand both your evidence, you both agree with that proposition, and you also agree that the beneficial interest, although however you want to define it, is held on trust for the--the property is held on trust for the benefit of the General Partner and the Limited Partner in accordance with
their entitlement under the relevant Partnership deed.

THE WITNESS: (Ms. Reynolds) Exactly.

THE WITNESS: (Mr. Lindsay) That's correct, yes.

ARBITRATOR GLOSTER: And therefore, since the Partnership as such has no separate personality, which you both agree, it's a bit of a fudge to say that the asset is held on trust for the Partnership because there is no such thing. What that really means is on trust for the General Partner and the Limited Partner in accordance with whatever their interests are under the Partnership Agreement.

THE WITNESS: (Ms. Reynolds) Yes.

THE WITNESS: (Mr. Lindsay) That's exactly right.

ARBITRATOR GLOSTER: And you both agree about that. Thank you, that clarifies my view.

MS. SALOMON: Mr. Chairman, I would like to get to the whole issue of on trust in more detail as well in just a moment to further address the question that you raised.

PRESIDENT SACHS: Yes, please.

BY MS. SALOMON:

Q. Just with regard to the issue of legal ownership, as Dame Gloster noted, Ms. Reynolds, in Paragraph 9 of your Report, you concede, indeed, in your Report that the General Partner was the legal owner of the Samsung Shares; isn't that right?

A. (Ms. Reynolds) Well, I think for a while it was.
So, to the extent it is the owner--and I can't speak to whether they own the Samsung Shares or not--that's going to be a question for law of incorporation. What I can say is to the extent that they own the Shares, they're deemed to hold them on trust for the Partnership.

Q. Let's take you to Paragraph 9 of your Report. You don't have any language of "to the extent" they are the legal owner under Cayman Law. You don't qualify that. You say in your clause expressly: "While the General Partner was the legal owner of the Samsung Shares."

A. (Ms. Reynolds) Can I take you to Paragraph 6 where I say "I understand that the Partnership acquired Shares in Samsung, and I understand the Partnership sold the Samsung Shares." So, I've made it clear the basis of my understanding, and therefore what I go on to say in nine is based on that understanding and clearly my Report is based on that understanding. If they were the owner, they hold them in trust, so it's consistent.

Q. So, the word "while" in your Paragraph 9 is during the time the General Partner was the legal owner of the Samsung Shares, then you qualify it held the Samsung Shares on trust?

A. (Ms. Reynolds) It's a way of saying whilst. So, to the extent, if in the event that, whilst, so while they may have their legal ownership of the Shares, they hold...
them on trust. That's really all I was trying to get to in that paragraph.

Q. There is no dispute--and I think it's clear--that, as a matter of Cayman Law, the General Partner is, indeed, the legal owner--

A. (Ms. Reynolds) Correct.

Q. --of the Samsung Shares; correct?

A. (Ms. Reynolds) Well, I would not speculate about who the legal owner of the Samsung Shares were. What I'm saying is, to the extent that Korean law, or whichever asset we're talking about, the local law of incorporation, if they determine that someone holds it, all I'm saying is as a matter of Cayman Law, that asset is held on trust for the Partnership.

Q. Mr. Lindsay, can you comment, please?

A. (Mr. Lindsay) I think the point--we may be talking slightly at cross-purposes. I think this answers the point because if we look at Paragraph 6, I understand the Partnership acquired the Shares. What we're saying in Paragraph 9 of that Report and elsewhere in my Report is what that means from a Cayman perspective is, if the Partnership acquired the Shares, then those Shares are held by the General Partner.

Q. And the Shares are held by the General Partner because the Exempted Limited Partnership itself has no
capacity to hold title or otherwise own assets; correct, Ms. Reynolds?

A. (Ms. Reynolds) So, any property, whether it's registered in the name of the Partnership or not, is deemed to be held on trust by the General Partner, and yes, it is true that the Partnership is not a separate legal entity, and that's the reason that the General Partner holds the assets.

Q. Okay. And Mr. Lindsay, you agree?

A. (Mr. Lindsay) Yes, that's correct.

Q. Now, the beneficial interests in an Exempted Limited Partnership are governed by the Partnership Agreement; is that correct, Ms. Reynolds?

A. (Ms. Reynolds) That's correct.

Q. And Mr. Lindsay?

A. (Mr. Lindsay) Yes, that's correct.

Q. And under the Partnership Agreement, in this case, the General Partner has an indivisible beneficial interest in all of the Partnership assets; isn't that right?

A. (Ms. Reynolds) So, the concept of "indivisibility" is talking about--and I think Mr. Lindsay agrees with me on this--is simply saying that a Partner can't point to a particular asset and say "I own it. Because under the Partnership Agreement I'm entitled to 50 percent, that says a proportion I can't look at 50 percent of the assets and
say they're mine." And it is akin to a trust in that a beneficiary has a right for a Trustee to administer the entirety of the property in accordance with the trust. It has a right to expect that the property as a whole will be used to discharge the debts and liabilities of the entity, of the trust or the Partnership, whatever we're talking about, and it's the same here. So, that indivisibility doesn't say that the GP has 100 percent beneficial interest. It simply says, "until such time as those assets are distributed, there is an interest in making sure that it's the whole thing is administered properly." So, the LP, yes, has an indivisible right to the entirety of the property being administered in accordance with the fiduciary obligations and the contractual obligations of the General Partner.

Q. Mr. Lindsay, can you comment on that?
A. (Mr. Lindsay) Yeah. That's largely correct, the idea of the indivisible interest is--simply means that you cannot point to any particular asset of the Partnership and say, "because I'm entitled to 10 percent or 20 percent or 40 percent of the Partnership that I'm entitled to 10 or 20 or 40 percent of that particular asset." We're all interested in the assets, the way in which we're interested in those assets financially is determined by reference to the provisions of the Partnership Agreement. That is
largely correct.

Q. And Ms. Reynolds made a comment that the indivisible beneficial interest is akin to a trust. Can you comment on that?

A. (Mr. Lindsay) Each of the Partners' interests in the underlying assets is--well, it's akin to a trust in the sense--this is the trust aspect of a Partnership, the assets are held on trust, and what we mean by that is there are certain persons who are beneficiaries of those assets, and in that sense it is very similar to a trust in structure, but it isn't, in fact, a trust because there is a distinction here between the legal title that the General Partner holds, the beneficial title that all of the Partners have in the underlying assets, and the context of a trust you would distinguish between the legal title which the Trustee has and the beneficial title which all of the--which the beneficiaries have excluding the Trustee, and that is the key distinction between the Partnership here and a trust. The distinction is that the General Partner, in addition to its legal title, has a beneficial interest.

As to what the beneficial interest is in respect of any particular asset, that is not possible to determine at any particular point because no aspect of the Agreement requires you to look or allows you to look at any
particular asset and to say "I have--each asset is divided
up in this way."

What the Agreement requires us to do is to look at
the overall performance of the Partnership; and, by looking
at the overall performance of the Partnership, that then
tells us how our interest in the overall assets of the
Partnership is divided, and so it's absolutely true to say
the General Partner cannot look to an asset and say
"because of my indivisible interest, I'm 100 percent
interested in that particular asset." There may be assets
in the final analysis where its interest does work out to
100 percent, but that's not a meaningful question to ask in
the circumstances. The meaningful question to ask is we
are all, as Partners, beneficially interested in all of
these assets at the same time.

A. (Ms. Reynolds) Could I just pick up on one point
which is that it's not a trust, and in fact, and it is,
it's a statutory trust. There are different types of
trusts and this one is a statutory trust. The trust is
created by the legislation.

But, secondly, where Mr. Lindsay says that this is
distinct from a trust because whereas in a trust situation
it's just the beneficiaries who benefit and not the
Trustee. In an Exempted Limited Partnership context, the
GP wears two hats, and that's made clear in the law and
other contexts that the GP has its "I'm the GP hat" and it has fiduciary obligations in that capacity as the Trustee, but it also may wear its hat as its own personal capacity and have an interest as itself. And so there is no difference. It becomes a beneficiary through that personal capacity but it's not the same hat it's wearing when it's the GP and the Trustee.

So, the only distinction I suppose is it itself can become a beneficiary, and it can do that in a number of ways, but in this particular one it is a beneficiary of the trust.

PRESIDENT SACHS: You said that's a number of ways namely? Give some examples.

THE WITNESS: (Ms. Reynolds) So, it may be that it can itself have a Limited Partnership Interest. The GP can have a separate Limited Partnership Interest. It would be wearing two hats in that way. In this particular case, it has a Capital Account into which money flows, so that's a second way.

THE WITNESS: (Mr. Lindsay) That's precisely the point, a General Partner could also have a Limited Partnership Interest. It doesn't happen to have one, and that's meaningless.

The point is that the General Partner has, in its capacity as General Partner a beneficial interest in the
assets. Its entitlement to the Incentive Allocation comes to the General Partner because it is the General Partner. It comes to the General Partner because of the way in which the General Partner exercises the powers, authorities, controls that the Partnership Agreement gives it. If it exercises that authority well, then it earns the Incentive Allocation. The Incentive Allocation is part of the General Partner's interest in the Partnership. It's not some other separate interest that it holds in some other capacity. It's directly related.

Q. But that defines its beneficial interest.

THE WITNESS: (Mr. Lindsay) Yes.

ARBITRATOR MAYER: May I point to--sorry.

MS. SALOMON: Please.

ARBITRATOR MAYER: To a provision in the law, it's Article 4(2) of the law which says--the last words of the paragraph: "A General Partner without derogation from his position as such may in addition take an interest as a Limited Partner in the Exempted Limited Partnership."

THE WITNESS: (Mr. Lindsay) Yes.

ARBITRATOR MAYER: So, it's not as General Partner. It's as one of the Limited Partners. That's in the law. That's not, I think, exactly how it's written in the Agreement.

THE WITNESS: (Mr. Lindsay) It may in addition
take an interest as a Limited Partner, so the terms of the
Partnership Agreement determine your beneficial interest on
the basis of whether you're a General Partner or a Limited
Partner. In circumstances of this transaction, had the
General Partner contributed a sum of capital to the
Partnership, for example, in terms of a dollar number, it
had given $100 million to the Partnership, that would be a
Limited Partnership Interest, and the benefit that the
General Partner had in respect of that interest would be
determined as though it were a Limited Partner.

So, it would then sit alongside the other Limited
Partners for the divvying up of the Partnership assets and
the Partnership profits, but that is separate from the
interests that it holds then as General Partner.

And the interest that it receives as General
Partner is the Incentive Allocation, that is one that is
directly applied to its position as General Partner.

ARBITRATOR MAYER: Thank you. But in this case,
is the General Partner also a Limited Partner?

THE WITNESS: (Mr. Lindsay) There isn't, as far as
I'm aware, no material investment by the General Partner,
also as a Limited Partner.

THE WITNESS: (Ms. Reynolds) No, but I would say
that the fact that it has a Capital Account and is paid
into the Capital Account in that sense it has its own
personal interest, beneficial interest, in the Partnership. 

And just as an example that a GP, whilst a GP and only a GP can act in two separate capacities, there's a reference in 27(1) of the law, for example, so 27(1) of the ELP Law provides that it's doing some things in its capacity of its own right and some things in its capacity as General Partner. That's just an example where it's negotiating, for example, the LPA.

So, it can have two different capacities. I don't think anything turns on this because the reality is that the beneficial interest is determined by the Partnership Agreement, and I think we're both in agreement as to how you work it out.

BY MS. SALOMON:

Q. So, indeed, if as in this case where the General Partner is only acting in its capacity as the General Partner of the Partnership and not also as the Limited Partner, it's not wearing two hats here. It's wearing its hat as the General Partner of the Exempted Limited Partnership; is that correct?

A. (Mr. Lindsay) That's correct. The determination of its beneficial interest depends on how well it performs its functions as General Partner, so the two things are directly related and linked.

A. (Ms. Reynolds) Except that it has a beneficial
interest as well, and the beneficial interest is its own interest, but it's GP, it's got fiduciary obligations to both Partners.

Q. Mr. Lindsay--

ARBITRATOR GLOSTER: Could I ask a question?

THE WITNESS: (Mr. Lindsay) Sorry, I'm just confused by that distinction.

ARBITRATOR GLOSTER: Can I ask you a question not dealing with this particular Partnership and the terms of the Trust Deed but generally.

The General Partner, not the Limited Partner, has an obligation to pay the debts and liabilities--

THE WITNESS: (Mr. Lindsay) That's correct.

ARBITRATOR GLOSTER: --of the Partnership.

What is the position as to the assets under the statutory trust? Could you direct me, please, one or both of you, to the provision in the Partnership Act/Law or the Exempted Partnership Law that tells me, if it be the case that the assets are held on trust in the first instance to discharge the debts of the Partnership?

THE WITNESS: (Mr. Lindsay) If we look at Section 4(2) which is the section we've just gone to.

ARBITRATOR GLOSTER: Of the Exempted?

THE WITNESS: (Mr. Lindsay) Of the Exempted Limited Partnership Law.
MS. SALOMON: We can provide the CLA number. It's 22. It's CLA-22.
And it will be on your screens.

PRESIDENT SACHS: That's paragraph?

THE WITNESS: (Mr. Lindsay) Section 4(2), which is the section that's on the screen.

So, the first sentence: "An Exempted Limited Partnership shall consist of one or more persons called General Partners who shall, in the event that the assets of the Exempted Limited Partnership are inadequate, be liable for all debts and obligations of the Limited Partnership."

ARBITRATOR GLOSTER: That's not quite the question I'm asking.

THE WITNESS: (Mr. Lindsay) I understand.

ARBITRATOR GLOSTER: The provision I'm looking for is the provision that says the statutory trust in relation to the assets is that they are in the first instance to be applied--

THE WITNESS: (Ms. Reynolds) 16(2).

THE WITNESS: (Mr. Lindsay) I'm taking you through the relevant provisions of the law that will get us to that answer.

THE WITNESS: (Ms. Reynolds) But I think it's just 16(2) is the answer. 16(2) of the Exempted Limited Partnership.
ARBITRATOR GLOSTER: Thank you very much.

THE WITNESS: (Ms. Reynolds) It's "Any debt or obligation incurred by a General Partner in the conduct of the business of an Exempted Limited Partnership shall be a debt or obligation of the Exempted Limited Partnership."

ARBITRATOR GLOSTER: And does that mean that the assets are held on trust--

THE WITNESS: (Ms. Reynolds) And 16(1) provides that the--all rights of property, every description, including choses in action that's conveyed or vested in or held on behalf of any one or more of the General Partners--

ARBITRATOR GLOSTER: It's 16(2), effectively.

THE WITNESS: (Ms. Reynolds) Yes, 16(1) and (2).

So, 16(1) is the trust, 16(2) is the assets of a trust asset.

ARBITRATOR GLOSTER: Well, the debts.

THE WITNESS: (Ms. Reynolds) The debts and obligations.

(Overlapping speakers.)

THE WITNESS: (Mr. Lindsay) It's important to understand that in the context--that's why I was going to take you through the law building up to Section 16 because it's important to understand all of that context. So, the General Partner is liable to the extent that the assets are inadequate.
16(2), as part of the trust concept that's set out in the Partnership law, entitles the General Partner to have recourse to the assets that it holds on trust for the benefit of the Partnership.

ARBITRATOR GLOSTER: Yes.

THE WITNESS: (Mr. Lindsay) So, the General Partner is liable. 16(2) tells you where the General Partner can look to in terms of settling that liability.

But it comes to the same point, the assets of the General Partner apply to the obligations of the Partnership.

THE WITNESS: (Ms. Reynolds) It's only in the event that there are no assets in the Partnership that the GP becomes liable.

ARBITRATOR GLOSTER: Yes, but obviously he has got an interest in making sure that the assets are applied in discharge of the Partnership's debts?

THE WITNESS: (Mr. Lindsay) Yes.

THE WITNESS: (Ms. Reynolds) All Partners do, yes.

THE WITNESS: (Mr. Lindsay) The General Partner has a particular interest because if they're not, then his separate assets are subject--if you look at the provisions of the law that deal with the way in which the General Partner interacts with third parties, third parties contract with the General Partner. If there is a dispute,
the General Partner is the person the third parties are required to sue. From a third parties' perspective, it matters not a jot where those assets happen to be. From a third party perspective, it sues the General Partner. The General Partner, then because it's acting in its capacity as General Partner, has recourse to the assets that it holds and to its own separate assets. If the assets that it holds for the Partnership are insufficient, then the General Partner's assets are applied.

ARBITRATOR GLOSTER: Can I, again following on from a question from the President, may I ask you both this question--and again, I'm not asking specifically in relation to this Partnership deed--but if the Partnership were to say that the General Partner had an interest in 50 percent of the assets--leave aside any Incentive Allocation--and the Limited Partner had an interest in 50 percent that it contributed, is that possible as a matter of the law of Exempted Partnerships?

THE WITNESS: (Mr. Lindsay) Of course.

ARBITRATOR GLOSTER: So, it all depends--the interest of the General Partner qua General Partner depends on the terms of the Partnership deed?

THE WITNESS: (Ms. Reynolds) Yes, because it would be normally be limited unless it had a separate LP interest, the interests of the GP are going to be limited
to the remuneration terms of it serving as a General Partner--

ARBITRATOR GLOSTER: That's the question why--explain to me why if the General Partner makes a contribution, why his interest cannot be defined as 25 percent, 50 percent of the assets at any time?

THE WITNESS: (Ms. Reynolds) So, if it makes a financial contribution, a Capital Contribution, typically that's going to be done in its Capital Account, and yes, they would effectively have a Limited Partnership Interest, although it may not call itself a Limited Partnership--

ARBITRATOR GLOSTER: Why would it be--what I'm not understanding at the moment is why it has to be a Limited Partnership Interest.

THE WITNESS: (Ms. Reynolds) I'm just using that phrase as in that's the investor. Those who typically put in the capital--

ARBITRATOR GLOSTER: I'm not asking about typical.

I'm asking so that I understand--

(Overlapping speakers.)

ARBITRATOR GLOSTER: I'm not asking as typical, I'm asking as a matter of the Exempted Partnership Law, can you have a situation--and I would like both your views on this, where the General Partner puts in a hundred, the Limited Partner puts in a hundred, the Limited Partner has
limited liability, the General Partner doesn't, and the terms of the Partnership Agreement, apart from any incentivization provision is that the Partner, the Limited Partner and the General Partner, share 50:50.

THE WITNESS: (Ms. Reynolds) Yes.

ARBITRATOR GLOSTER: And that doesn't involve the General Partner becoming a Limited Partner? That's the question I'm putting to you.

THE WITNESS: (Ms. Reynolds) Not by name. It would just be another investor, Partner in the business.

ARBITRATOR GLOSTER: Okay.

PRESIDENT SACHS: And why would a General Partner exercise the option to become a Limited Partner in addition to its function as a General Partner? I mean, this is provided for by the law, but what could be the interest of a General Partner to add on the hat, as you say, of a Limited Partner?

THE WITNESS: (Ms. Reynolds) Because, if it was a Limited Partner and held assets as a Limited Partner, those assets wouldn't be exposed to unlimited liability, so that's why typically a General Partner won't have free assets that are available. The typical entity that says it's a GP is an SPV entity. It's specially set up--

PRESIDENT SACHS: For funds.

THE WITNESS: (Ms. Reynolds) --for a particular
Partnership, it won't have assets in its name that are available.

So, this may exist and--and this is quite important to note--that this may be the provision that there is unlimited liability, but in reality we don't come across GP vehicles themselves and leave aside the sponsor, leave aside the Investment Manager that will have free assets in their names that will be exposed to this unlimited liability.

BY MS. SALOMON:

Q. Mr. Lindsay, can you correct this?

THE WITNESS: (Mr. Lindsay) That's not accurate at all. The circumstances in which a General Partner might also become a Limited Partner is if we had a slightly more simplified fund structure where all of the Investors came into the same investment structure alongside one another, it's often the case that investors will want the General Partner, the persons controlling the General Partner, to have an element of what's called "skin in the game," and we have that in this structure, but the investment is made into a different part of the structure. It could easily have been made into this Master Fund structure.

And what that does is it means that in addition to--in addition to conducting the business of the General Partner there are separate and additional assets of the
people involved in managing the General Partner that are also at risk and stand alongside the other Investors on precisely the same terms.

So, it's not necessarily the case--and the General Partner may regard the investment strategy as being one that's fantastically interesting and one that he would like to be involved in the investment of also, so you could have a variety of people then pooling their capital and the General Partner would also like to do so, and it pools its capital.

The idea that that LP interest has been somehow insulated from third-party creditors, is not correct. But there are a variety of reasons why the General Partner may also want to invest capital on the same terms as the other Limited Partners. Either, because it's compelled to or because the investment opportunity is particularly attractive.

But that interest is then a general asset of the General Partner. If the General Partner is sued, then its interest as a Limited Partner, which is its personal separate interest is available to those creditors to satisfy the obligations of the Partnership.

PRESIDENT SACHS: That's clear.

THE WITNESS: (Mr. Lindsay) So, it doesn't somehow insulate it from risk.
PRESIDENT SACHS: Now, please proceed. And apologies for having somehow hijacked it.

MS. SALOMON: No apologies needed. The purpose is truly to provide information the Tribunal needs.

BY MS. SALOMON:

Q. I want to loop back to this discussion where the Experts are in agreement that you can't point to any particular asset and say the General Partner's interest in that asset is only a certain percentage. And following through on that I want to give a hypothetical that, for example, even though the Limited Partner may have provided, let's say, 10 percent of the starting cash for the General Partner to purchase, say, 100 shares, the Limited Partner cannot say it beneficially owns 10 percent of those shares; isn't that true?

A. (Ms. Reynolds) Yes, it would depend on what the Limited Partnership Agreement provides in terms of allocating the assets.

Q. And Mr. Lindsay?

A. (Mr. Lindsay) Yes, that's correct.

Q. Okay. And a Partner's beneficial interest is its entitlement to share in the assets of the Partnership; correct?

A. (Ms. Reynolds) On the terms of the Limited Partnership Agreement, yes.
Q. Yes. And Mr. Lindsay?
A. (Mr. Lindsay) Yes, that's correct.
Q. And under the Partnership Agreement in this case, the General Partner may be entitled to an Incentive Allocation; correct?
A. (Ms. Reynolds) Correct.
A. (Mr. Lindsay) Yes, that's correct.
Q. And that Incentive Allocation is based on the net profits for assets in the relevant period; correct?
A. (Ms. Reynolds) Well, there are a number of conditions. The first one is it has to have made a profit during the relevant period, yes.
Q. So based on Net Profits during the Relevant Period?
A. (Ms. Reynolds) That's the first hurdle.
Q. Okay. And Mr. Lindsay, is that your understanding?
A. (Mr. Lindsay) Yes, it's based on profits calculated over the Relevant Period, yes.
Q. And so, it is an entitlement to share in the assets of the Partnership; correct? In other words, the beneficial interest is an entitlement to share in the assets of the Partnership; correct?
A. (Ms. Reynolds) Well, it's not unconditional in that sense, no. You have to overcome several hurdles
before you get there. So, it's quite possible that the Partnership can make a profit in any one year and no Incentive Allocation would be payable.

Q. But that doesn't change the fact that by having the right to an Incentive Allocation in the future, the General Partner then has an indivisible beneficial interest; correct?

A. (Ms. Reynolds) Well, I would say the indivisible interest is completely separate. That's just a concept. It doesn't tell you what the--I think indivisibility has got no bearing on what the beneficial entitlement is in the assets in terms of allocation.

Q. Mr. Lindsay, can you correct that?

A. (Mr. Lindsay) That's not true.

If I could illustrate the indivisible nature of the interest in the assets and why that's meaningful. I will use an example, say a Partnership has 10 Partners, it makes 10 investments, each of those Partners and each of those investments is $100 and each Partner has committed $100, so the notional asset base of the Partnership is $1,000. Each Partner is then interested indivisibly in all of those assets to the extent of its ability to share in the outcome. That's the indivisible aspect of the beneficial interest.

If one of those Partners was to withdraw from the
Partnership, the way in which you deal with that withdrawal is not to go to each asset and sell 10 percent of each asset. You might sell one, you might sell half of two. You might sell a third of three of the assets, depending on how you wanted to manage the liquidity of the Partnership, but you might then come to a position if you decided just to sell one asset in order to pay for the withdrawal of that Limited Partner, that that Limited Partner then is interested in 100 percent of that asset which it then takes the proceeds of, and the other Partners continue to be indivisibly interested in the rest of the assets.

As to what the ultimate interest of each of those Partners in each of those assets is depends on the point of which the Partner is entitled to cash and take that cash out.

Does that make sense?

Q. So, I want to now focus on the term "Partnership Interest" in the Partnership Agreement.

It's true that the term "Partnership Interest" isn't used anywhere in the Partnership Agreement to calculate the Partner's entitlement to share in the assets; correct, Ms. Reynolds?

A. (Ms. Reynolds) So--well, I think we should turn to Partnership Interest.

MS. SALOMON: And that's C-30.
BY MS. SALOMON:

Q. So, I want you to answer my specific question, which is--

A. (Ms. Reynolds) I'm answering your question, I think, by reference to what Partnership Interest is under the LPA, if that's all right.

Q. Yes.

A. (Ms. Reynolds) So, if you look at 2.12 of the Limited Partnership Agreement, this provides the Partnership Interest shall mean a Partner's interest in the Partnership, and it's part of the same definition, it goes on. The Partner's economic interest shall be divided as a percentage equal to (1) the balance in the Capital Accounts of each Partner divided by, (2), the aggregate balance in the Capital Accounts of all the Partners at any given time. And so, the Partnership Interest is the term what a Partner's interest is in the Partnership. It includes an economic interest which is described here.

Now, the economic interest is described as a percentage or a proportion. That's replicated elsewhere. You have in the context of distributions, you have--and distributions are dealt with I think in 4.09. And in 4.09, the way that you calculate distributions is in the same way. It's by fraction, and fraction is simply the same as the percentage.
Equally, when you go to 4.06, 4.06 talks about how you allocate profits and losses. It's exactly the same way as economic interest as described in Partnership Interests. And also in termination, it's the same thing, you pay off the debts and liabilities, and then the balance is distributed. So, I am answering your question in that Partnership Interest is defined by reference to economic interests, and that concept is used throughout the Agreement.

Q. Mr. Lindsay, can you please respond?
A. (Mr. Lindsay) Yes.

So, one of the things that we agree upon is that in order to work out beneficial interest, which is what this is all about, is that you have to look to the context of the Transaction, and to the particular provisions of the Partnership Agreement.

"Partnership Interest" is a defined term under the Partnership, the language that's used there is used in order to define that term. It's not used in order to create economic rights or describe the economic rights of any particular Parties. It's there to define a term. That is a term that's used in a handful of places in the Partnership Agreement to deal with circumstances pertaining only to Limited Partners, either to their withdrawal or to the transfer of their interests or to circumstances in
which you might look to Limited Partners for consent to do something.

The beneficial interest is determined by reference to the provisions of the Partnership Agreement. And those provisions are in Section 4. At no point in Section 4.06 does it talk about the Partnership Interest, and the reason it doesn't talk about the Partnership Interest is because the beneficial interest is not distributed amongst Partners in accordance with that term. If it were then it would simply use the shorthand reference to "Partnership Interest" there and would simply say, the profits and losses of the Partnership will be divided amongst Partners in accordance with their Partnership Interests, and that would be the end of it. That's not what the Agreement says. The Agreement is quite particular in the context--in Section 4.06 about how the profits and losses are divided up.

To use a defined term that has limited application, the Partnership Agreement to override somehow the provisions of Section 4.06 which is the detailed analysis of how the profits are allocated is contrary to what we agree to be the law in this regard.

A. (Ms. Reynolds) But no one is trying to override 4.06. I'm pointing to 4.06. What I'm simply saying is you just said there that the economic interest isn't determined
by Partnership Interest. Part of the definition of Partnership Interest is the economic interest which is determined as the Capital Account balance divided as a proportion of the total, and that's exactly what 4.06 does.

So when it comes to distributing the Net Profits and Net Losses you look at the proportionality of the Capital Accounts, and you divide it accordingly. That's all I'm saying. I don't think we're in disagreement on that.

A. (Mr. Lindsay) We are absolutely in disagreement on this point.

The Limited Partner's beneficial interest is determined by reference to its Capital Account balance. The General Partner's beneficial interest is not determined by reference to its relative Capital Account balance.

BY MS. SALOMON:

Q. And why is that, please?

PRESIDENT SACHS: The question is, for my understanding--take the scenario that Dame Elizabeth mentioned earlier, so a Limited--a General Partner that invests 50 or 100 and a Limited Partner that contributes 100, so would in that case the Partnership Interest of the General Partner be addressed here or would fall under the definition of Partnership Interest?

THE WITNESS: (Mr. Lindsay) It wouldn't be
meaningful because of the way in which the Partnership Interest of the defined term is used. It only applies to Limited Partners.

PRESIDENT SACHS: That is my question because it speaks of "Partners," and "Partners" is a defined terms. "Partner" includes both General Partner and Limited Partner, so assume a General Partner contributes as 50 percent contributed to the Capital Account, his Capital Account, so wouldn't that apply, then, also to the General Partner?

THE WITNESS: (Mr. Lindsay) I will explain why it wouldn't be meaningful to the General Partner.

PRESIDENT SACHS: Would it apply?

THE WITNESS: (Mr. Lindsay) The definition would include the General Partner. So, if—but I will tell you why that doesn't make sense in the context of the Agreements. We have to look to the Agreements in the context. So that's defined--

PRESIDENT SACHS: It's not our agreement. It's a hypothetical.

THE WITNESS: (Mr. Lindsay) But "Partnership Interest," as it's defined here, only has a meaning in this Agreement. It doesn't have a hypothetical meaning.

THE WITNESS: (Ms. Reynolds) But it does include General Partners.
THE WITNESS: (Mr. Lindsay) So the question that would be it—so, "Partnership Interest" is used in the defined term when you transfer—when Limited Partners transfer their interest, so a Limited Partner may transfer its Partnership Interest; a Limited Partner may withdraw its Partnership Interest. Those are only points that have meaning for Limited Partners.

So, what happens ordinarily is if the General Partner does have a significant investment into the Partnership, if that was the case—and we've described circumstances in which that might happen—then in those circumstances, the drafting Parties are quite careful to make sure that where they talk about "Partnership Interest" where they go to Limited Partners for a vote, for instance, they will always ensure that when we aggregate the interest of Limited Partners when they are voting on a piece of conduct by the General Partner, we exclude from that the General Partner's separate economic interest because otherwise the General Partner is voting in respect of itself, and that's commercially unacceptable.

But that phrase here in this context, and the rule is quite clear, you look at the Partnership Agreement and you look at the context. That phrase in this context has no bearing on the General Partner's beneficial interest.

THE WITNESS: (Ms. Reynolds) Could I come back--
MS. SALOMON: Let Mr. Lindsay finish the point.

THE WITNESS: (Mr. Lindsay) If you let me finish the point. The General Partner's beneficial—the Limited Partner's beneficial interest is determined by reference to their Capital Account balances from time to time. Nobody here is disputing that Limited Partners have a beneficial interest. The question that we're looking to is whether the General Partner has a beneficial interest. The General Partner's beneficial interest in this Partnership under this Agreement is not determined at all by reference to its Capital Account balance.

BY MS. SALOMON:

Q. And why is that? Why isn't the General Partner's beneficial interest not defined by its contribution to the Capital Account?

A. The General Partner's beneficial interest here, the Incentive Allocation, is determined by reference to how well the General Partner has done its job, and as a consequence what the overall profits of the Partnership are. It has nothing to do with what the General Partner's Capital Account balance is from time to time.

Q. And why isn't the General Partner required to contribute cash to the Partnership in order to have a beneficial interest?

A. (Mr. Lindsay) Because the beneficial interest of
the General Partner is determined by reference to how well
it does its job.

What the General Partner contributes in order to
receive its beneficial interest, is the doing of its job.

Q. And can you describe--

(Overlapping speakers.)

A. (Ms. Reynolds) Could I go back on answer on the
question--

Q. I will give you a moment to answer the questions.

MR. VOLKMER: Apologies, to interrupt, but this is
supposed to be a conference. And if you cut off our
experts in giving answers, that defeats the purpose of a
conference.

MS. SALOMON: And we're dealing with the total
topic, and I want to have this--

PRESIDENT SACHS: Just one more question, and then
Ms. Reynolds.

MS. SALOMON: Thank you, please.

BY MS. SALOMON:

Q. In what ways does the General Partner,
Mr. Lindsay, contribute other than by contributing cash to
the Partnership? And then, of course, I will allow
Ms. Reynolds to address these issues.

A. (Mr. Lindsay) Well, the General Partner
contributes its management of the Partnership assets, its
time, care, skill, attention, expertise, experience, the
ability to source assets, all of these things. All of the
Partners agree that that has a value. We determine what
that value is by how well you do that. If you say, "I'm
exceptionally good at finding investments, managing
investments, entering into them at the right time, exiting
them at the right time, that is what I bring to this
arrangement, to this Partnership between us. You will
bring the capital, I will bring my expertise. Hopefully as
a consequence we will generate a profit, that's what a
Partnership is formed to do. And if we do generate a
profit, this is how we will divide the proceeds."

PRESIDENT SACHS: Ms. Reynolds?

THE WITNESS: (Ms. Reynolds) So, I'm going back
because we were talking about Partnership Interest. You've
now talked about another point, which is contribution. But
going back to Partnership Interest in 2.12, Mr. Lindsay
said they would be very careful in how they defined things
in a Partnership Agreement were it to be the case that it
was intended that the GP have an interest based on its
Capital Account. But if we look at the definition in this
particular agreement at 2.12, it says: "The
Partners'"--capital P--"economic interest shall be
expressed as." Now, that's got to have a meaning, the
"Partners' economic interest."
And if you look at the Preamble on the very first page of the Partnership Agreement, it's express that a Partner includes General Partner and Limited Partner.

Now, elsewhere in the Agreement, there are specific references just to the Limited Partner, so where it's just intended to refer to Limited Partners, the term "Limited Partner" is used. Here it's talking about a Partner's economic interest, and it very expressly says that it's to be expressed as a percentage equal to the balance in the Capital Account of such Partner. Again, the term "Partner" is used, divided by the aggregate balance in the Capital Accounts of the Partners at any given time. It's very clear in this particular case it was intended that the General Partner would have a Capital Account, the Limited Partner would have a Capital Account, and that very clearly makes the allocation between them.

And then going on to this contribution point, it's not a concept that is familiar, under Cayman Law, for in addition to the remuneration that someone gets as a GP, for somehow a contribution of expertise or whatever, to be given a value, that's not going to appear on a balance sheet. There's reference in here to an in-kind contribution by a General Partner, but that would have to have a monetary marketable value such as contributing securities, contributing shares, real estate into the
Partnership. Someone's expertise that they bring as a General Partner is recognized by the remuneration in the LPA. It's not an additional contribution that the LPA makes. It's a service provided by the SPV, and it's remunerated by that. And of course, it's absolutely true, if they make a profit and if that goes above the Net Losses then there's going to be remuneration based on the Incentive Allocations provisions.

THE WITNESS: (Mr. Lindsay) That's quite an important point in relation to remuneration.

PRESIDENT SACHS: Yes.

THE WITNESS: (Mr. Lindsay) The entire investment funds industry, the pool of investment managers would be horrified to hear the Incentive Allocation described as "remuneration." The Incentive Allocation is--

(Overlapping speakers.)

PRESIDENT SACHS: Ms. Reynolds--

THE WITNESS: (Mr. Lindsay) It is not remuneration. It's an equity interest. It is taxed on the basis that it is--on the basis of capital appreciation and capital gains. It is not, in any sense, a fee or remuneration. And if it were described as such, it would undermine a significant element of international tax structuring.

The whole point of this arrangement is that it is
an equity interest, and this is the allocation by the
Partnership of entitlements to share in the equity, it is
not—and the General Partner's entitlement is in exchange
for its contribution to the Partnership. To call that
"remuneration" or to call it a "fee" or to call it
something of that nature would undermine a fundamental
aspect of tax structuring.

PRESIDENT SACHS: Ms. Reynolds, short reply?

THE WITNESS: (Ms. Reynolds) By "remuneration," I
mean it is what it is paid for the job that it does, the
service that it provides. There is also a separate
Investment Manager in this structure, which irrespective of
performance--

PRESIDENT SACHS: We know that.

THE WITNESS: (Ms. Reynolds) --gets a fee. What
we're talking about here is how the General Partner gets
money into its Capital Account, and one of the ways is by
Incentive Allocation. One of the ways is by an allocation
of profits and loss, but it's determined in accordance with
the economic interests which is as a proportion of the
Capital Accounts.

PRESIDENT SACHS: What about the tax on capital
gains argument? Is that correct?

THE WITNESS: (Ms. Reynolds) I'm not really
looking at that. What I'm looking at--
PRESIDENT SACHS: Is it correct? I mean, is the payment under the Incentive Allocation subject to capital tax gains?

THE WITNESS: (Ms. Reynolds) Absolutely not something either of us would be advising on because that's not a Cayman question.

PRESIDENT SACHS: Mr. Lindsay just alluded to it.

MS. SALOMON: He would know that.

THE WITNESS: (Mr. Lindsay) I'm not a tax advisor, but it is a significant and material point. I can't tell you what the rate of capital gains is but it is better than income, and that is the reason why, instead of simply engaging a separate Investment Manager and paying an Investment Manager a fee, a structure is set up in order to ensure that everybody is involved and shares in the equity of the piece.

THE WITNESS: (Ms. Reynolds) But an Investment Manager has been engaged in this matter, are engaged and they're engaged at the feeder level. So, this isn't a case where this is instead of an Investment Manager. Let's make that clear.

BY MS. SALOMON:

Q. To be clear, there is an Investment Manager, we will get to how the Investment Manager's compensated and the role of the Investment Manager in relation to the
General Partner, but what we're talking about here is the interest of the General Partner.

Mr. Lindsay, the words--

PRESIDENT SACHS: Ms. Salomon, could we take this--ask the question?

ARBITRATOR GLOSTER: I've got a question for both of you, please. On Clause 4.01, of the Partnership Agreement, if you could both look at that. Which says: "Each Partner shall make an initial Capital Contribution in cash or in kind with the consent of the General Partner."

And also there are provisions that in 4.02 for additional Capital Contributions. And also when we get to new Partners at Clause 6.01, there are new Partners that can come in with minimum initial Capital Contributions. And then at 6.02, new General Partners and clearly envisaging the possibility of Capital Contributions.

Obviously, you're just here speaking as experts about the law and not what factually happened in this case, as I understand your role, but if we're looking at the interest of a Partner, it's clear under this Agreement--is it clear under this Agreement that a Partner can make an initial general Capital Contribution in cash or in kind?

THE WITNESS: (Ms. Reynolds) Yes. I would say "in kind" has to be something with value, something that you could monetize and value, so--and it happens. Typically,
if it were to happen, it would have to be something like a share or something with a marketable value.

ARBITRATOR GLOSTER: What about services?

THE WITNESS: (Ms. Reynolds) It's not known--never in my experience or my colleagues' experience have we seen a General Partner say that they--I suppose sometimes it's a de minimis nominal. The GP would normally give a nominal one dollar Capital Contribution to satisfy it that way, but we've never heard of it being valued as a Capital Contribution to a Partnership that they've given services.

THE WITNESS: (Mr. Lindsay) I'm quite surprised, and from my personal perspective, I'm concerned by that answer.

So, Walkers is a Partnership, an ordinary Partnership, in which I have a Capital Account and a beneficial interest.

I have contributed no capital to that Partnership. I contribute my services.

THE WITNESS: (Ms. Reynolds) So I should clarify. He's misunderstanding what I'm saying.

I'm not saying that it wouldn't be considered the nominal Capital Contribution. I'm saying you wouldn't, then, put a value on it and say, "Right, I've got 50 percent of the Partnership" when a Limited Partner has put in a million.
I'm saying if--there are Partnerships where you would all say, "Right, because of our knowledge and expertise, we've all contributed, and that's our contribution."

THE WITNESS: (Mr. Lindsay) I will finish the point.

So--and my--the contribution by me over a period of time, if my services entitles me to a certain beneficial interest and that's what we agree as Partners, that is the way in which we will value my contribution, and that's my beneficial interest determined by what we agree is the value of my contribution.

In a very similar way here, the Partners agree what the value of the General Partner's contribution is. The value of the General Partner's contribution is the Incentive Allocation.

Now, you can't determine that on Day 1 because we don't know whether the General Partner has been successful in fulfilling its part of the bargain. But if the General Partner is successful, then we all agree that there is a value to its contribution, and that is how we calculate the value of that contribution.

PRESIDENT SACHS: If I may follow up your question, would you technically describe this as a contribution in kind?
THE WITNESS: (Mr. Lindsay) That is--

PRESIDENT SACHS: "Contribution in kind" is a commonly used term in corporate law.

So would you say what you just said, namely that--and what you said in Paragraph 17 of your Supplementary Expert Report, namely that the Partnership Agreement simply delays the determination of that value--

THE WITNESS: (Mr. Lindsay) Yes.

PRESIDENT SACHS: --until such time as the value is demonstrated and then applies that value, if any, to the General Partner's Capital Account.

So, would you say this is contribution in kind and--

THE WITNESS: (Mr. Lindsay) That's exactly what it is.

PRESIDENT SACHS: --law, is that your position?

THE WITNESS: (Mr. Lindsay) That's exactly what it is. It's a contribution by the General Partner of something other than a particular asset.

PRESIDENT SACHS: The words in time as regards to the determination of its value?

THE WITNESS: (Mr. Lindsay) Yes.

PRESIDENT SACHS: Would you agree with that concept?

THE WITNESS: (Ms. Reynolds) I would say that the
Incentive Allocation is paid based on a specific formula, and if the Partnership performs and they make up the Net Losses, then yes, there is a payment under the Incentive Allocation at 4.06 that goes into the General Partner's Capital Account.

It's not under 4.01. It's under 4.06 that the Incentive Allocation is paid.

ARBITRATOR GLOSTER: Can I ask--sorry.

ARBITRATOR MAYER: Sorry.

ARBITRATOR GLOSTER: No, you go.

ARBITRATOR MAYER: This contribution in kind, how is it reflected apart from the Incentive Allocations which prove that that General Partner is efficient and good and works well? Does it appear somewhere in the Capital Account of the General Partner, apart from what is reflected in a way in these Incentive Allocations? Is there a figure anywhere?

THE WITNESS: (Mr. Lindsay) It's not possible to record it in the Capital Account of the General Partner until it's been earned because you don't know what that number is going to be. So it may be zero, it may be a hundred. It's impossible to say.

At the point that you make a determination, it's then recorded in the General Partner's Capital Account. But as is usual in these circumstances, the General Partner
would then withdraw that allocation from its Capital Account because the General Partner's economic position is different from the Limited Partner's economic position in the sense that the Limited Partner's essentially invested into the offshore part of the structure, a U.S. tax-exempt-type entities, and it's important, I think, to understand this context a little bit.

They are pension funds, endowment funds, people who have significant sums of money to invest but have no personal capacity to manage that, and they require that money to be managed over a significant period of time, which is why they would leave their investment in the Partnership.

The General Partner, on the other hand, will have mortgages and school fees and salaries and things of that nature to pay and so at that point of the determination, withdraws the money standing to the benefit of its Capital Account, but that doesn't determine, in any sense, what its beneficial interest is. That is just a point at which it can withdraw the benefit of its beneficial interest.

The Capital Account of the General Partner from time to time has no bearing on the determination of its Incentive Allocation.

THE WITNESS: (Ms. Reynolds) I think Mr. Lindsay might be conflating the concept of the sponsor or the
manager entity and the General Partner. The General Partner won't have any additional mortgages--

THE WITNESS: (Mr. Lindsay) Well, the General Partner has Shareholders who established the General Partner for the purposes of making a profit.

THE WITNESS: (Ms. Reynolds) It's an SPV. But I think the question was, is there anything that appears on the Capital Account balance other than the Incentive Allocation, and the only way that you populate the Capital Account balance is by 4.06.

THE WITNESS: (Mr. Lindsay) Yes. In retrospect, but not in advance.

ARBITRATOR MAYER: I'm not sure I see the difference between both of you on this point.

THE WITNESS: (Ms. Reynolds) I think I agree. I don't think there's an issue here.

I think what we're both saying is that the General Partner is paid an Incentive Allocation or a percentage of the profits and that goes into the Capital Account and that is their economic interest in the Partnership or their beneficial interest. That's how you identify it.

BY MS. SALOMON:

Q. Mr. Lindsay, is that--

THE WITNESS: (Mr. Lindsay) Sorry, that's not right.
The Capital Account--and perhaps I've not
explained myself particularly clearly.

The Capital Account of the General Partner is not
relevant to the determination of the General Partner's
beneficial interest. The General Partner's beneficial
interest is determined by reference to the performance of
the Partnership as a whole.

If the Partnership performs, then amounts are
credited to the General Partner's Capital Account and
almost immediately withdrawn, but the beneficial interest
in the--of the General Partner is its entitlement to that
amount. It is not an amount set out in a Capital Account.
It's not determined by reference to a Capital Account.

From the General Partner's perspective, its
Capital Account balance is irrelevant to the determination
of its beneficial interest.

ARBITRATOR GLOSTER: Could I ask a question?
PRESIDENT SACHS: Certainly.

ARBITRATOR GLOSTER: I think I'm understanding
what your respective positions is on this--are on this
point, but can I just see if I've got it.

You, Mr. Lindsay, are saying that the General
Partner's beneficial interest is defined by his legal
entitlement under the incentivization provisions and is not
defined by what he happens to leave in his Capital Account.
by way of cash at any time.

THE WITNESS: (Mr. Lindsay) That's correct.

ARBITRATOR GLOSTER: He may choose to leave it in there, he may choose to draw it out. You say, as I understand it, that normally General Partners draw out the monies they've made, but it doesn't have to do that.

THE WITNESS: (Mr. Lindsay) That's correct.

ARBITRATOR GLOSTER: You, on the other hand, Ms. Reynolds, are saying that you've defined the beneficial interest not by reference to the entitlement but by reference to what is actually standing to the credit of the Capital Account at any time.

THE WITNESS: (Ms. Reynolds) And I would say that's throughout the Agreement. Whenever--and if there's any entitlement to money or to distribution, on termination, on allocation of profit and loss, whatever context we're talking about, it goes back to this concept of calculating what the respective Capital Accounts are. Without that, you cannot determine who's owed what under the Partnership.

ARBITRATOR GLOSTER: So are you saying, as I understand it--and this is where I'm having difficulty--you're saying that there is an absolute identity in 2.12 between a Partner's interest and a Partner's economic interest?
THE WITNESS: (Ms. Reynolds) Their beneficial interest and their economic interest, what are they going to get out of this.

ARBITRATOR GLOSTER: No, no. I'm talking about legal--no, legal gets complicated.

Beneficial interest, how do define the beneficial interest? Do you define it as what a General Partner is entitled to under the terms of the Agreement, or do you define it as what is actually in the Capital Account at any time?

THE WITNESS: (Ms. Reynolds) If you mean by "beneficial interest" what are they entitled to monetarily, it depends on what we're talking about.

ARBITRATOR GLOSTER: No, I'm not saying that. I'm saying as a matter of equity law, Partnership Law, what is their beneficial interest? How do you describe their beneficial interest?

THE WITNESS: (Ms. Reynolds) Well, it may be that we're talking about cross-purposes because when I'm talking--

ARBITRATOR GLOSTER: Well, we may be. That's why I'm worried.

THE WITNESS: (Ms. Reynolds) Yes. I think I'm talking about economically what are they entitled to.

ARBITRATOR GLOSTER: Well, I'm--
THE WITNESS: (Ms. Reynolds) And if you're talking beneficially as a concept--

ARBITRATOR GLOSTER: It's different, isn't it--

THE WITNESS: (Ms. Reynolds) --then every Partner is entitled to have the assets of the Partnership administered in accordance with the Partnership Agreement, it's entitled to make sure there's proper custody of those assets, but what I'm talking about is what are they entitled to economically, what are they going to benefit--in that sense, a beneficiary.

ARBITRATOR GLOSTER: Okay. Well, can I see whether you agree with the proposition that in terms of how one articulates or defines as a matter of law a beneficial interest that won't necessarily be the same as his cash entitlement at any one time? Because his cash entitlement in the Capital Account--while it's actually there--may not reflect what has still got to come in, fees from clients, recoveries--

THE WITNESS: (Ms. Reynolds) But he won't be entitled to that, necessarily. So it's a bit difficult, I think. I'm looking at economically what someone is entitled to, and all of this has gone to that.

Now, there are beneficial interests of a right to have the Partnership conducted properly, but in terms of what someone is entitled to, monetarily, in this
Partnership Agreement is pretty clear, and that's the economic interest.

ARBITRATOR GLOSTER: Okay. Thank you.

THE WITNESS: (Mr. Lindsay) It is absolutely clear. I wonder whether you're having the same difficulty I'm having in following this line, but it is absolutely clear from the Agreement what the General Partner is economically entitled to. It's economically entitled to the Incentive Allocation. That is its beneficial interest, in the sense that we're using that term here.

ARBITRATOR GLOSTER: What about on a winding up of the Partnership? What happens--this particular Partnership?

THE WITNESS: (Mr. Lindsay) I understand. So--and I deal with that in my evidence. I'll just explain the point.

ARBITRATOR GLOSTER: Yes.

THE WITNESS: (Mr. Lindsay) We all agree that you have to look to the context of the particular transaction, that's what the authorities say, and so we look at the context of this transaction. If the Partnership is to be wound up in the ordinary course because of--not in insolvent circumstances; it's just decided to wind up the Partnership. The way in which that works, as a practical matter in respect of all Cayman Islands funds that are
registered with the Cayman Islands monetary authority as mutual funds, which this is, is that the assets are realized, the Limited Partners are compulsorily withdrawn from the Partnership. At that point of withdrawal, you then conduct the exercise of allocating the profits as between the General Partner and the Limited Partners in the ordinary course.

Those monies have been allocated and paid out. And at the point that there are no assets and liabilities, the Partnership is de-registered as a mutual fund and then permitted to be wound up. You can't be wound up whilst you continue to be registered as a mutual fund.

THE WITNESS: (Ms. Reynolds) But the assets are distributed in proportion to the Capital Accounts.

ARBITRATOR GLOSTER: Is that agreed?

THE WITNESS: (Mr. Lindsay) No, that's not correct.

If there were to be an insolvent winding up, one in which the General Partner was not in control, then at that point, the assets—a liquidator would come in, realize whatever assets they were, and effect a distribution.

In those circumstance, it's extremely unlikely the General Partner is going to have an Incentive Allocation. So that's not a meaningful scenario here.

But if we look to the particular context of this
Partnership and the way in which it would proceed, it would be unconscionable for a General Partner simply to allow the Partnership to become wound up and for the assets to be distributed in that way, if it had an entitlement to an Incentive Allocation.

What it would always do in circumstances where it had been resolved to wind up the Partnership--and bear in mind, that is a resolution of the General Partner unless there is an insolvency--the General Partner controls the entry into winding up, unless it's insolvent, the General Partner would then always effect the withdrawal of the Limited Partners so that it can calculate at that point its Incentive Allocation, take its Incentive Allocation, and then wind up the Partnership.

THE WITNESS: (Ms. Reynolds) So, the procedure for winding up is governed by 10.04, and it doesn't allow any interim provision. I mean, I accept what Mr. Lindsay says, that in certain circumstances there is an ability, mid-year or mid-point, to reflect the Incentive Allocation. That's if there's a withdrawal, if there's a termination--sorry, if there's a withdrawal or a separate Capital Contribution, then that period gets contracted and you look at the Incentive Allocation that's accrued.

But in the process of a termination, that's the 10.04 in the procedure you'll see at the top of Page 23, or
at the bottom, the remainder cash and securities are paid out in proportion to their then respective Capital Accounts after taking into account transactions up to the date of and related to the liquidation of the Partnership.

Now, it's quite possible, and how I see it regularly happen, if someone petitions to wind up. Now, if someone petitions to wind up, there's no possibility of doing what Mr. Lindsay's talked about, and busy getting everyone out to change the period that you're looking at. If someone petitions to wind up, you stop at that date, and if that comes in and a liquidator comes in when an order is eventually made.

ARBITRATOR GLOSTER: I wasn't putting the question, I think, on the basis of an insolvent winding up. If we're talking about a solvent dissolution and there are still monies/receivables to come in, what happens in those circumstances?

THE WITNESS: (Ms. Reynolds) Then you're at the top of Page 23.

ARBITRATOR GLOSTER: Yes.

I mean, does the potential for a receivable--let us say there is money to come in from a foreign investment, which has not yet been received--

THE WITNESS: (Ms. Reynolds) No.

ARBITRATOR GLOSTER: --does that get posted to the
Capital Account or not?

THE WITNESS: (Mr. Lindsay) Sorry, that's wrong.

THE WITNESS: (Ms. Reynolds) Only if you do it the way that Mr. Lindsay said. But that's not what this is providing for. If you follow the procedure set out in the Limited Partnership Agreement and it's wound up, you look at the proportion in the then Capital Accounts.

Now, there are other places in the Limited Partnership Agreement which allows mid-year contributions and withdrawals to have an impact on whether Incentive Allocation is drawn and allocated. It doesn't happen in a termination in the ordinary course.

ARBITRATOR GLOSTER: Let's say--and I'm not talking about this case, but let's say there's an outstanding lawsuit, the part--everybody resolves on dissolution. There's an outstanding lawsuit, and monies are still to flow in. How is that dealt with? And let's say that triggers the incentive payment, how is that dealt with in posting to the Capital Contribution?

THE WITNESS: (Mr. Lindsay) So, at the point you make your determination, so you decide--the General Partner decides--unless somebody petitions the Partnership to wind up, let's all understand the General Partner absolutely controls the process, so it makes the determination to wind up the Partnership. It then calculates what people's
entitlement would be to profits and losses and its own Incentive Allocation.

There is always, and that occurs at the end of end-year, for withdrawal halfway through the year, at any point that it makes such determination, contingent liabilities and contingent assets will be taken into account, and there will be an adjustment to the extent that those contingencies are either realized or not realized.

ARBITRATOR GLOSTER: Thank you. I understand.

Ms. Reynolds, do you want to say anything else on that?

THE WITNESS: (Ms. Reynolds) Well, distributions of anything coming in is dealt with in 4.09, and again, it follows the procedure that fractions are used, and the defined term for "fractions," if one looks at the definition at 2.04: "For the purposes of making allocations to any Capital Account for any valuation period shall mean the fraction, the numerator of which shall be the amounts of the Capital Account's Opening Capital Balance, such Valuation Period, and the denominator of which shall be the Account of all Opening Capital Balances of the Partnership's Valuation Period."

It doesn't provide for anything here that would indicate that you get to--

THE WITNESS: (Mr. Lindsay) Again, we need to
understand the context of this Partnership. Section 4.09 starts by saying: "The General Partner generally does not intend to make distributions to Limited Partners." This is a hedge fund. Hedge funds never make distributions to Limited Partners unless they are set up for a particular strategy of being an income fund, which is to provide regular returns to retirees or people of that nature.

In no other—in no circumstances would this Partnership ever make a distribution in accordance with the provisions of 4.09. That is an extremely unlikely scenario. The far more likely scenario and the far more usual scenario and the one that is universally adopted, unless there is an insolvency, is that Limited Partners are withdrawn, the accounts are determined, and then the Partnership is wound up.

There is no circumstance in which this Partnership would ever make a distribution pursuant to the provisions of Section 4.09.

MS. SALOMON: Can we take a break now?

PRESIDENT SACHS: It seems like a good point to have our morning break.

Thank you, David, for having endured this longer than expected.

We continue at 11:30.

You're still under expert testimony, so we would
ask you not to speak to your respective Appointors.

THE WITNESS: (Mr. Lindsay) Understood.

PRESIDENT SACHS: See you in 20 minutes.

(Brief recess.)

PRESIDENT SACHS: So, Mrs. Salomon, please proceed.

MS. SALOMON: Thank you.

BY MS. SALOMON:

Q. Ms. Reynolds, it's right to say that the General Partner has sole control over the business of an Exempt Limited Partnership; correct?

A. (Ms. Reynolds) Correct.

Q. Mr. Lindsay?

A. (Mr. Lindsay) Yes, that's correct.

Q. And, Ms. Reynolds, the Limited Partner has no control whatsoever over the business of the Partnership; correct?

A. (Ms. Reynolds) Correct.

A. (Mr. Lindsay) Yes, that's correct.

Q. And, in fact, the Limited Partner is specifically prohibited from taking part in the business of the Partnership or else it would lose its limited liability status; correct?

A. (Ms. Reynolds) Correct.

Q. Mr. Lindsay?
A. (Mr. Lindsay) Yes, that's correct.
Q. And that means the Limited Partner has no right or authority to direct the General Partner in business matters under this Partnership Agreement; correct?
A. (Ms. Reynolds) Has no authority to direct, no.
Q. Okay. And, Mr. Lindsay?
A. (Mr. Lindsay) Yes, that's correct.
Q. Okay. And just to be clear, then, the General Partner is the only entity which can acquire assets as part of the business; correct? Ms. Reynolds?
A. (Ms. Reynolds) On behalf of the Partnership, that's right.
Q. Yes.
Mr. Lindsay?
A. (Mr. Lindsay) Yes.
Q. Indeed, the General Partner is the only entity which can make management decisions regarding an asset once it has been acquired; isn't that true?
A. (Ms. Reynolds) Well, the General Partner can delegate and appoint agents.
Q. But the Limited Partner cannot make management decisions regarding an asset once it's been acquired; correct?
A. (Ms. Reynolds) Correct.
Q. And, Mr. Lindsay?
A. (Mr. Lindsay) That's correct. General Partner can
delegate, but the deleegee would be exercising the General
Partner's authority.

Q. Okay. And we'll come back to that issue. Just to
wrap up this point, if, for example, the General Partner
owns shares in its capacity as General Partner in an Exempt
Limited Partnership, the General Partner is the only entity
which can decide how to vote on those shares; correct?

A. (Ms. Reynolds) Subject to delegation, but yes.

A. (Mr. Lindsay) The delegation doesn't affect the
General Partner's ability to decide--the delegation doesn't
affect the General Partner's control of that
decision-making process. The General Partner is the only
person.

Q. The only person who can--

A. (Mr. Lindsay) Exercise a vote in shares owned by
the Partnership, yes.

Q. And the General Partner is the only entity which
can make the decision to sell an asset; isn't that correct,
Ms. Reynolds?

A. (Ms. Reynolds) Yes.

Q. And, Mr. Lindsay?

A. (Mr. Lindsay) Yes, the General Partner is the only
person with that authority.

Q. And, Ms. Reynolds, do you know the reason why a
General Partner formally delegates or may formally delegate some of its operational responsibilities to an investment manager?

A. (Ms. Reynolds) As a matter of practicality, there is often a manager involved, which will have conduct of the day-to-day business, of the management of the affairs and assets of the Partnership or fund whatever entity it is.

Q. Mr. Lindsay, is it simply a matter of practicality or are there other reasons why a General Partner may formally delegate some of its operational responsibilities to an investment manager?

A. (Mr. Lindsay) No. A general partner engages an investment manager because of the regulatory landscape in which investment funds are operated, so in most jurisdictions outside of Cayman, an investment manager would be a regulated entity and that an investment manager is engaged to assist in advising the general partner in investment decisions is meaningful to the general partner's ability to raise money in jurisdictions where it is necessary, so have a regulatory--a regulated person involved in that structure.

So, rather than regulate each individual fund, for example, in the United States, the SEC would regulate the investment manager. In Cayman, the position is--can be slightly different in that individual funds are regulated,
but the engagement of a regulated investment manager is an important part of the overall regulatory landscape of the fund.

Q. And pursuant to that delegation, that is if a General Partner formally delegates some of its operational responsibilities to the Investment Manager, the Investment Manager is merely an agent for the General Partner; correct, Ms. Reynolds?

A. (Ms. Reynolds) Yeah. There will be a contractual relationship between the General Partner or in this case, as I understand it, looking at the terms of the LPA, the manager seems to be appointed at the feeder level.

Q. Mr. Lindsay?

A. (Mr. Lindsay) Yes, there's a relationship between the Fund and the Investment Manager for a variety of procedural and administrative matters.

Q. And the Investment Manager is an agent, then, of the General Partner?

A. (Mr. Lindsay) To the extent the Investment Manager acts in respect of the Partnership, it acts as an agent to the General Partner.

Q. I'd like to turn to Schedule 1 of Mr. Lindsay's Supplemental Expert Report. That's at Page 13. I'd have both experts review the Schedule.

Mr. Lindsay, could you walk us through these three
examples and why you have provided these examples and then
give Ms. Reynolds the opportunity to comment.

A. (Mr. Lindsay) Certainly. So, the examples that
we've provided at Schedule 1 are intended to illustrate in
quite simple terms the way in which the value of individual
assets affects the beneficial interest of the General
Partner in the Partnership.

So, in example one, we have a situation where the
General Partner invests a hundred dollars in three
different assets. Each of those assets performs remarkably
well, generating a profit of $75 and the General Partner
receives an Incentive Allocation then of $15. In the
ordinary course, you would hope that all of your assets
were profitable, and that's what would happen if they were.
There is a net increase of 75, and the General Partner's
Incentive Allocation is calculated by reference to that net
increase, not by reference to the value of any particular
asset.

That's meaningful when we look to example two,
where one of the assets has performed less well in the
second year of the investment. So whilst Assets A and B
continue to perform, Asset C loses a significant part of
its value. That means the General Partner receives no
Incentive Allocation in respect of the stellar performance
of Assets A and B because the aggregate change in Net Asset
Value is diminished, so the performance of one asset affects the General Partner's notional interest in the other two assets is what that example is intended to illustrate.

When we get to example three, example three illustrates a similar point that continues year on year. So, in example three, Assets A and B and new Asset D have a particular value, and overall the Partnership is profitable, which means that Limited Partners will be able to share in that ability. But because there is a residual loss suffered by the Partnership from previous years, the General Partner's ability to share in that profit is limited.

What that's intended to illustrate is that when it comes to any loss suffered by the Partnership, the first person to suffer, to incur that loss is the General Partner; because of the overall loss of the Partnership, the General Partner's allocation is diminished, and the last person to benefit from the Partnership's subsequent profitability is the General Partner, so that the person most at risk from that loss in the first instance is the General Partner.

Q. Ms. Reynolds, do you agree with that description of how the Incentive Allocation would be calculated and the risk that the General Partner bears in connection with any
individual investment?

A. (Ms. Reynolds) I agree with each of the three examples. I would say that the--how the losses and profits are allocated at the very first step before you get to Incentive Allocation, is the allocation between the Capital Accounts of the profits and losses, and so, if there are losses in a year, 4.06(a), first of all, that's where there's going to be some allocation of losses between the Capital Accounts to the extent there's anything in the GP's Capital Account. If there isn't, then, of course, you'll go on to the next step, but there's a first step to this, and that is 4.06(a).

A. (Mr. Lindsay) That allocation is, pardon me, if you read the Agreement, that is simply an interim allocation because we don't know until the end of the particular period what the overall performance will be for the Relevant Period; and so, it's impossible until you get to the end of the year to determine what the General Partner's Incentive Allocation would be. And at the time that you do make that determination either because there's been a withdrawal or you've come to the end of the Fiscal Year, those interim allocations are then adjusted for the final and proper allocation of those profits and losses.

Q. I now want to switch to a different topic. Thank you for the explanation.
A. (Ms. Reynolds) Sorry, could I just clarify, the Incentive Allocation is calculated on the amount that goes into the LP's Capital Account, just to be clear on that, under 4.06(b), how you get Incentive Allocation is based on what goes into the LP's Capital Account from the first step, so there's a number of steps. I mean, maybe we can deal with that in more detail later, but how you get to Incentive Allocation is by looking at what's gone to the Limited Partners' Capital Account as part of the 4.06(a) process.

Q. Mr. Lindsay, is that correct?

A. (Mr. Lindsay) I confess, I'm not sure what point is being made. I can't comment on whether it's correct or not. I don't understand what distinction is being drawn by--

A. (Ms. Reynolds) Perhaps it would be helpful to look at 4.06(a).

A. (Mr. Lindsay) Yes.

A. (Ms. Reynolds) So, Net Profits and Net Losses for a Valuation Period, and that's defined, shall be preliminarily allocated among the Capital Accounts in proportion to their respective opening capital balances such Valuation Period, and then you go on to (b): With respect to each Capital Account of the Limited Partner as of the end of each Fiscal Year, there shall be allocated to
the Capital Account of the GP as its Incentive Allocation
20 percent of one, the Cumulative Net Profits preliminarily
allocated to such Capital Account as such Limited Partner
pursuant to Section 4.06(a). That's why I say 4.06(a) has
to come before 4.06(b).

A. (Mr. Lindsay) Yes, there's a preliminary
allocation, and then there's an adjustment at the end of
the year when you make a determination based on
performance.

A. (Ms. Reynolds) So, I'm just saying, you can only
get the Incentive Allocation once you've gone through (a).
I think it's a relevant step.

Q. Mr. Lindsay, please clarify.

A. (Mr. Lindsay) I don't understand--again, I don't
understand what point is being made. There is a
preliminary allocation throughout the course of the year
for profits and losses accrued, and at the end of the year
there is an adjustment. That--it seems relatively
straightforward. I'm not sure.

A. (Ms. Reynolds) I'm just simply clarifying that
Incentive Allocation is calculated based on what has been
received by that preliminary allocation by the LP.

Q. Right.

Moving on, when anyone, be it a Pension Fund,
university, or someone else decides to have Mason purchase
assets and give cash to Mason to do so, this is based on Mason's reputation as a fund; is that right, Ms. Reynolds?

A. (Ms. Reynolds) Yeah, there will typically be an offering document which might be relevant as well, but you're talking about becoming a shareholder in the feeder fund, which is part of the group.

Q. Yes.

And Mason's reputation or any hedge fund's reputation is a key component of the investor making a decision to invest its money with Mason?

A. (Ms. Reynolds) One might assume.

Q. And not only would someone consider Mason's reputation, but also its performance; isn't that true?

A. (Ms. Reynolds) Yes.

Q. Mr. Lindsay, is that your understanding?

A. (Mr. Lindsay) The performance is the key aspect of their reputation that people would consider.

Q. So, if there are significant losses and no profit has been made, pension funds, universities may decide not to invest with Mason and, indeed, if they have already invested with Mason, they may decide to withdraw; isn't that true?

A. (Ms. Reynolds) It seems a factual question. I don't disagree with it.

Q. Mr. Lindsay?
A. (Mr. Lindsay) Yes, that's correct. That's the way in which the industry ordinarily works.

Q. And the industry works that if an investment firm has significant losses, that fact becomes known in the broader market; isn't that true, Ms. Reynolds?

A. (Ms. Reynolds) Yes. I mean, typically, it would be known how (a)--it's available to search on-line, say.

Q. Mr. Lindsay, that's your understanding, the impact of losses or the fact that an investment firm has had significant losses becomes known in the industry?

A. (Mr. Lindsay) Yes. It's--the industry is remarkably small considering the value of the assets and the management particularly with regard to tax-exempt investors which tend to be a relatively limited pool of investors, and they speak regularly, and that the performance or not of the investment managers is the main topic of conversation.

Q. So, you agree that significant losses with respect to an asset can affect Mason's reputation in the market; correct, Ms. Reynolds?

A. (Ms. Reynolds) Well, whether a specific asset would will depend on what else is in the portfolio. It may be a drop in the ocean, but it's going to be the overall performance, yes.
Q. And, Mr. Lindsay, what's your response?
A. (Mr. Lindsay) Yes, if a fund incurs significant losses, then it has an adverse effect on its reputation in the market.

Q. Okay. Now, if there is loss to an asset held by an Exempt Limited Partnership, only the General Partner can bring a claim with respect to that loss; correct, Ms. Reynolds?
A. (Ms. Reynolds) Yes.

Q. And Mr. Lindsay?
A. (Mr. Lindsay) Yes, that's correct.

Q. If the General Partner recovers in any litigation or arbitration it has brought in its capacity as General Partner of an Exempt Limited Partnership, can it keep the full amount of its recovery or does it need to distribute the Award in the same manner as it would any other asset, Ms. Reynolds?
A. (Ms. Reynolds) Yes. It's not beneficially entitled to the entirety of the proceeds. It's going to account for it in the way that it has to under the LPA for any other income.

Q. Mr. Lindsay?
A. (Mr. Lindsay) That's correct. Any award in any proceeding brought in its capacity as General Partner is an asset to the Partnership. It's applied in accordance with
the provisions that would apply to any asset of the Partnership.

Q. And to clarify, Ms. Reynolds said it's not--it mean the General Partner--acting in its capacity as General Partner of an Exempt Limited Partnership bringing litigation or arbitration, she said that it is not beneficially entitled to the entirety of the proceeds. Can you respond to that statement?

A. (Mr. Lindsay) Well, the General Partner is in the same way as any other asset, if the General Partner were to receive an award in any litigation brought in its capacity as General Partner, that asset would form part of the assets that the General Partner holds for the benefit of the Partnership as a whole, and it would be--it would run through the same process as any other asset. So, it would be applied to the overall Net Profit or Net Loss of the Partnership, and the Partners, the Limited Partner and the General Partner, would be able to share in the proceeds of that asset in the way provided for in the Partnership Agreement.

As a consequence, if all of the activities of the Partnership in that year, including the relevant litigation the Partnership made a profit, the General Partner would receive its Incentive Allocation, all the profit would be applied to it and any communicative Net Loss in the
aggregate.

Q. So, if an asset, for example, lost $200 million but the General Partner in a litigation or arbitration was only awarded 20 percent of that--so that would be $40 million, 20 percent of $200 million--in reality, it may only recoup $8 million; correct? Assuming it would be entitled to an Incentive Allocation, and that's the only asset in the Fund?

A. (Ms. Reynolds) Sorry, you started the question by saying they would be awarded 20 percent. What do you mean? You mean by the Tribunal?

Q. Yes.

So, in a hypothetical situation in which there is a litigation in arbitration, and it is shown that the asset lost $200 million but the General Partner's only awarded 20 percent--

A. (Ms. Reynolds) Sorry, is there a reason why it would be awarded 20 percent?

Q. --just assume--

A. (Ms. Reynolds) Okay.

(Overlapping speakers.)

Q. Please.

Yes. In a hypothetical situation, where the General Partner is only awarded 20 percent because it has asserted that it only has--it is entitled to--let me just
rephrase my question for the Court Reporter.

I want you to assume that an asset has lost
$200 million.

A. (Ms. Reynolds) A Partnership has lost 200 million?
Q. The asset has lost $200 million.

And the General Partner brings a litigation or
arbitration in its capacity as General Partner of an Exempt
Limited Partnership, and for whatever reason, the Award is
only 20 percent of that loss, so in this circumstance it
would be $40 million, which is 20 percent of $200 million.

In reality, if a General Partner is entitled to a
20 percent Incentive Allocation, it would only be able to
recoup $8 million; isn't that true?

A. (Ms. Reynolds) So, I think that skips a step. So,
how it would work is, the money would come in, and as with
any other income, it would be preliminarily allocated
between the two Capital Accounts.

Now, in a case typically you would expect the LP
to have more than the GP, so the majority of that is going
to be allocated in accordance with the proportions to the
LP and then a percentage of what goes to the LP, 20 percent
of that, if the rest of the portfolio has performed, if the
Cumulative Unrecovered Net Losses have been recovered and
you go back up to the high watermark, and in that scenario,
yes, 20 percent of that at that stage then goes by way of
Incentive Allocation.

Q. So, if the only asset is the proceedings from a litigation or arbitration taking your steps, then if the General Partner is awarded only 20 percent of the loss, then it would only be entitled to 20 percent of what it is awarded, which would be $8 million in my scenario; isn't that right?

A. (Ms. Reynolds) I would need to see the Capital Accounts because I'd need to see what proportion they have. If you're telling me that the LP has 100 percent of the Capital Accounts, then yes, that scenario works, I think, just doing it off the top of my head.

Q. Mr. Lindsay?

A. (Mr. Lindsay) In that scenario, $8 million represents the highwater, what the General Partner would be able to receive, that may be reduced to the extent the Partnership hasn't performed particularly well in respect of its other assets. But if there were only one asset, then that mathematics works, if there are other assets then that $8 million may be reduced forever.

A. (Ms. Reynolds) And of course fees and expenses and costs both at the feeder level and loss level need to be taken into account.

A. (Mr. Lindsay) Yes, that's correct.

MS. SALOMON: No further questions.
PRESIDENT SACHS: Thank you, Ms. Salomon.
So, we go to the Respondent in cross.

MR. VOLKMER: Thank you, Mr. Chairman.

CROSS-EXAMINATION

BY MR. VOLKMER:

Q. Good morning, Ms. Reynolds, Mr. Lindsay. I will be asking you a few questions on behalf of Respondent. Starting—picking up on where we just left off, not a question about specific numbers, but as a general matter, would the Limited Partner benefit from an award of damages in this arbitration, and if so, how?

A. (Mr. Lindsay) Are you directing that to me?

Q. Either can answer first.

A. (Mr. Lindsay) Well, the Partnership would benefit from an award of damages. In the sense that the profits of the Partnership would be increased as to whether there was a Net Profit or Net Loss at the end of the Relevant Period would depend on the other performance, but this would certainly go towards the benefit of the Partners. As to its allocation between the Partners, that depends on the performance of the Fund overall.

A. (Ms. Reynolds) Yes, I would expect if the Limited Partner had the majority of the economic interest, according to the Capital Accounts, then the Limited Partner is going to get the majority of whatever is recovered.
Q. Mr. Lindsay, would you agree with that?
A. (Mr. Lindsay) No, you can't--you can't delineate a particular asset in that way. So, this is the point that I illustrated at the start of the evidence.

So, if there are 10 assets, until the point at which the asset is realized, the share of each of the Partners in those assets is indivisible. But the way in which people actually share in the assets to the point of realization is--may be different for each of the assets. One Limited Partner may receive, as it happens, 100 percent of the income, say, with a particular asset. But let's assume for the moment that the Partnership is under water. The General Partner's benefit from a particular piece of litigation that brings the Partnership back into profit would be disproportionate to its 20 percent. It would benefit to a greater extent than it would otherwise benefit. And so, it depends entirely on the financial status of the Partnership at the relevant time as to whether one particular asset has that benefit.

Q. Now you mentioned that the--
A. (Ms. Reynolds) I'm not sure I followed the fact that it could be disproportionate. Do you mean disproportionate to--I didn't follow that bit, what it would be disproportionate to?
A. (Mr. Lindsay) If one assumes all other things
being equal, that profits are divided on an 80:20 basis, and circumstances where the Partnership's performance year-on-year is profitable and continued to be profitable by reference to the previous year and there is no Incentive Allocation—sorry, there is no Cumulative Net Loss in the Partnership, then each asset that earns a profit, each of those assets would be—the profit from each of those assets would be apportioned on an 80:20 basis, but in circumstances where the Partnership has a Cumulative Net Loss because the profits would go to eliminating that Cumulative Net Loss, the allocation it's not 80:20 in terms of the profit. It depends entirely on the financial status of the Partnership at any given time. And when the Partnership, particularly if a Partnership is—has Net Losses from this or other assets, then the proportion of those allocations is not 80:20, and the effect could be—it could be anything, depending on the nature of the Partnership, and its profit or loss position at the time.

A. (Ms. Reynolds) But it would actually go, in that scenario where it's under water it's got Cumulative and Recovered Net Losses, it's going to go to—the majority is going to go to the Limited Partner. And I think we're just using the scenario that you just said, the hypothetical, which is only a single asset. I think that's what Mr. Volkmer said, that we were contending in that
situation, as I understand it, the LP would get--

A. (Mr. Lindsay) In circumstances of a single asset, then yes, the General Partner's beneficial interest would be 20 percent of profits, but...

Q. All right. Then we can move on to another topic or a related topic, the Incentive Allocation. We've already heard testimony about the conditions that are applicable to the Incentive Allocation, and we will get to that in a minute, but leaving aside the conditions for now, I think it is agreed that the Incentive Allocation is 20 percent of the net profits that are preliminarily allocated to the Limited Partner's account. Is that agreed so far?

A. (Ms. Reynolds) Yes.

Q. Mr. Lindsay?

A. (Mr. Lindsay) Yes.

Q. And I think Mr. Lindsay, you said that the Incentive Allocation is the beneficial interest of the General Partner, so I would just like to understand your position on that.

MS. SALOMON: I don't think that was his testimony.

BY MR. VOLKMER:

Q. Maybe you want to clarify that point, first.

A. (Mr. Lindsay) The right to receive the Incentive
Allocation is the General Partner's beneficial interest.

Q. Okay. So, the rights to the Incentive Allocation is the beneficial interest.

So, is it your position then that the General Partner has a 20 percent beneficial interest in the profits that are preliminarily allocated to the Limited Partner's account?

A. Presuming the Partnership to be profitable year-on-year, the General Partner's interest is to receive 20 percent of the profits earned by the Partnership overall, yes.

Q. And if the Partnership is not profitable?

A. (Mr. Lindsay) If the Partnership is not profitable in any particular year, then the General Partner would not receive an Incentive Allocation.

Q. And it would not have a beneficial interest in that sense, in that scenario?

A. (Mr. Lindsay) No, that's a complete misunderstanding of the nature of the beneficial interest. The beneficial interest is the General Partner's right to share in profits. The beneficial interest may be worth more or less in any particular year. In the same way that a Limited Partner's interest—if the Partnership made no profits, then the Limited Partner's beneficial interest is similar. If all of the assets were lost, then everybody's
beneficial interest would become worthless, but that is not
the same thing as saying it does or doesn't have a
beneficial interest.

Q.   Ms. Reynolds, do you have any comments?

A.   (Ms. Reynolds) If you're talking about what is
economically what they're going to get out of it, then I
would say it's based on the Capital Accounts. It depends
on the sense in which you're asking it, but if you're
asking what the value is or the amount, then it's based on
that allocation.

Q.   Thank you.

Now, going back to a hypothetical--I will try to
keep this simple--on the Incentive Allocation, assuming
that in 2015, the Limited Partner made a profit of
200 million on the Samsung Shares but suffered a loss of
300 million from the rest of the portfolio. In that
situation, would the General Partner receive 20 percent of
the profits from the Samsung Shares?

A.   (Mr. Lindsay) No. You determine, as we've
discussed, by reference to the overall value of the
Partnership. So, similarly, if one asset, one asset has
lost value and other assets have gained, then you look at
the overall performance of the piece. But because the
calculation is done cumulatively on a year-by-year basis,
losses in respect of one asset doesn't just affect the
ability to share beneficially in other assets for that year. They continue to effect the ability to share beneficially in assets year-on-year.

A. (Ms. Reynolds) Yes. I mean, Mr. Lindsay gives some very helpful examples to show that you can't just look at any one asset to determine that question. You've got to look at the entirety of the portfolio. So, if the whole thing, even if you've made money on Samsung but everything else had gone badly, there's not going to be any Incentive Allocation paid.

Q. And just one other hypothetical, still on the same point: Assuming the same 200 million profit from the Samsung Shares and now let's assume that the rest of the portfolio is also profitable, let's say 300 million, but their uncovered Net Losses from previous years of 720 million. In that scenario, would the GP receive any Incentive Allocation?

A. (Mr. Lindsay) It wouldn't receive an Incentive Allocation in that year, no, because of the overall performance of the Partnership.

Q. Thank you.

Ms. Reynolds?

A. (Mr. Lindsay) But, just to be clear, that is not the same as saying it has no beneficial interest in the assets of the Partnership. The beneficial interest is in
the performance of the assets of the Partnership over a period of time as a whole.

A. (Ms. Reynolds) But this is an interesting--sorry.
A. (Mr. Lindsay) No.
A. (Ms. Reynolds) This is an interesting point. The beneficial interest being an entitlement to potentially receiving Incentive Allocation. If you've got that scenario and you've got 720 million losses, what does the beneficial interest to receive an Incentive Allocation bite on? There is not going to be any Incentive Allocation, so there is no beneficial entitlement to Incentive Allocation in that scenario, so that's where I think this beneficial interest point is relevant.
A. (Mr. Lindsay) Sorry, that's a slightly bizarre characterization.

The General Partner's beneficial interests is its ability to share in whatever profits of the Partnership happen to be over a period of time. If the Partnership suffers significant losses in respect of any particular period, that has a significant meaningful material adverse effect on the General Partner's beneficial interest, and so in that sense, the General Partner feels the effect of that loss, and it affects its ability to generate income--to generate returns in respect of its beneficial interest, not only for that year but for many years to come. That is not
the same thing as saying the General Partner has no beneficial interest. It simply has--the effect of that loss has a very significant effect on the value of the General Partner's beneficial interest, and that, I think, is meaningful to the idea that the General Partner has suffered loss and is at risk in the transaction. That's sort of the key point.

A. (Ms. Reynolds) So, I wasn't saying there wouldn't be a beneficial interest. What I was saying is there wouldn't be a beneficial interest in relation to that particular asset because there was never going to be any hope for earning Incentive Allocation because of the 720 million of losses, you're never going to get with 200 million above the necessary watermark in order to earn Incentive Allocation, so it doesn't exist. That is the point.

A. (Mr. Lindsay) There is never a beneficial interest specifically calculated in respect of any particular asset.

A. (Ms. Reynolds) I agree with that.

A. (Mr. Lindsay) The beneficial interest is calculated by reference to the performance overall of the portfolio. Assets that perform poorly have an adverse effect on the beneficial interest, so the General Partner suffers a detrimental effect to the value of its beneficial interest. It doesn't somehow lose its beneficial interest.
It doesn't somehow have no beneficial interest. The Partnership continues as a going concern over a period of time. What the General Partner makes from its investment, if time and expertise over that period of time is determined by reference to the performance of the Partnership over that period of time, each individual asset adversely--adversely affects the value of the General Partner's beneficial interest, but it does not affect whether or not there is a beneficial interest.

Q. Okay. So, Mason argues that, but for the Respondent's conduct in this case, the Samsung Shares would have increased in value in 2015. With the information that you currently have, are you able to assess whether the GP would have earned an Incentive Allocation in 2015 if the Samsung Shares had increased in value?

A. (Mr. Lindsay) No.

A. (Ms. Reynolds) No.

Q. And what type of documents or information would you have to receive to make that kind of assessment?

A. (Mr. Lindsay) That's an assessment as to--an assessment as to whether the General Partner has or hasn't earned an Incentive Allocation, is only capable of being done by reference to the accounts of the Partnership. But that is not--but that's not a meaningful assessment for the topics that we've been asked to consider this morning which
are whether the General Partner has a beneficial interest and what is the nature of that interest. We're talking about what is the value of that interest, and that's a completely--that's a question of, if quantum, which I understand this Hearing not to have any meaningful--unless I misunderstood yesterday's submissions.

Q. Ms. Reynolds, do you have any questions--any comments on the documents that would be necessary for that kind of assessment?

A. (Ms. Reynolds) Well, I thought your question actually was whether--sorry, was your question whether we would have enough information in order to determine whether they would have earned any Incentive Allocation for the particular year--

Q. Right.

A. (Ms. Reynolds) --just based on knowing what the Samsung Shares, what it could have been--

Q. Yes.

A. (Ms. Reynolds) --the answer is no. And without the accounts, it's not possible to determine that.

Q. Okay. Then still staying on the Incentive Allocation, if we can have a look at Section 4.06(b) of the Limited Partnership Agreement, and we see here the calculation for the Incentive Allocation--

A. (Mr. Lindsay) Yes.
Q. --which is, in general terms, the Cumulative Net Profits off the LP minus certain expenses, and then over Cumulative Net Losses, so effectively also subtracting any Net Losses that--

A. (Mr. Lindsay) Yes.

Q. --over those years.

If at the end of that calculation the figure is positive, what does the GP receive?

A. (Mr. Lindsay) If that comes to a positive number, the General Partner receives 20 percent of the profit.

A. (Ms. Reynolds) Receives an Incentive Allocation, yes.

Q. Okay. If that figure is negative, what happens?

A. (Mr. Lindsay) Then the value of its beneficial interest is, for that year, is negative.

A. (Ms. Reynolds) Yeah, it doesn't turn an Incentive Allocation.

A. (Mr. Lindsay) Yes.

Q. Okay. Is there any scenario in which as a result of this calculation the GP would ever lose money, would ever be out of pocket?

A. (Mr. Lindsay) Well, the General Partner expends its resources in performing its functions. That comes at a cost to the people that own the General Partner. So what it loses is any income from its business. It has spent
two, three years working hard to ensure that the assets of
the Partnership are invested, and it receives nothing for
the expenditure of its work. So it has lost that part of
its contribution. It has lost what it has contributed to
the Partnership, which is its skill and expertise and
getting up every morning and going into the office.

A. (Ms. Reynolds) Well, except that, I think, that
day-to-day work is done by a manager entity, and the
manager entity is remunerated with approximately whatever
percentage of the assets irrespective of performance, and
the people who are doing the day-to-day work are
remunerated, and they are remunerated irrespective of
profit or loss.

ARBITRATOR GLOSTER: Could I be clearer? Are you
giving expert evidence in that last answer as to law, or
are you giving what you know about the facts of this case?

THE WITNESS: (Ms. Reynolds) Not about the facts
of this case. I'm giving it in every hedge fund will have
an investment manager, and in this particular one, I see
that there's reference to management fees payable at the
feeder level.

ARBITRATOR GLOSTER: Okay. So, it's not exactly
expert--your expert views on the law.

THE WITNESS: (Ms. Reynolds) I was responding to
Mr. Lindsay's comment that he's spent time and et cetera.
THE WITNESS: (Mr. Lindsay) But that is what the General Partner loses. It--its business is to generate Incentive Allocations. It spends a year engaged in that business. If it fails to generate an Incentive Allocation, then that is a year of lost work.

BY MR. VOLKMER

Q. Then, on a last topic, I'm coming back to the discussion of indivisibility.

Does the notion of "indivisibility" determine the amount of a Partner's beneficial interest in the Partnership?

A. (Ms. Reynolds) Do you mean quantum?

Q. Yes.

A. (Ms. Reynolds) I would say no.

A. (Mr. Lindsay) No, it doesn't. That's the whole--that is the point of indivisibility.

So, to the extent that two or three assets perform especially well and the General Partner feels buoyed by the idea that it will share in the upside of those assets, it has, until the point that you conduct the calculation of the Net Profit at the end of the year, it has notionally an indivisible interest in the upside of those assets. If one asset, then, performs particularly badly, then the General Partner loses the benefit of the stellar performance of the other assets.
Q. Right.

So, does the notion of indivisibility help us to determine if a Partner has, for example, 1 percent beneficial interest or a 99 percent beneficial interest?

A. (Mr. Lindsay) No.

A. (Ms. Reynolds) No.

MR. VOLKMER: We have no further questions.

PRESIDENT SACHS: Thank you.

QUESTIONS FROM THE TRIBUNAL

ARBITRATOR MAYER: I have two questions which relate to the law and the Agreement.

The first question starts with Article 33(3) of the law, and have a look at it. It says: "A Limited Partner may bring an action on behalf of an Exempted Limited Partnership if any one or more of the General Partners with authority to do so have, without cause, failed or refused to institute proceedings."

And then, if we go to the Agreement, we have Article 3.01, which says: "The Limited Partners shall have no part in the management, control, or operation of the Partnership," et cetera, "and shall have no authority to act on behalf of the Partnership in connection with any matter except as provided in Sections 10.01 and 12.01," which is not, I think, relevant here.

So, my question is: There seems to be a
contradiction, is it really one, and if it's a
contradiction, was it possible for the Agreement to deprive
the Limited Partner of a right which it has under the law?

THE WITNESS: (Ms. Reynolds) So, may I?

ARBITRATOR MAYER: Yes, please.

THE WITNESS: (Ms. Reynolds) So this refers to an
ability to bring a derivative action, and the same would
happen with the Company. The Directors normally,
obviously, have the power to bring actions on behalf of the
Company, but in certain limited circumstances, a
shareholder of that company can bring an action on behalf
of the Company.

Now, that's not the Shareholder bringing it
itself. That's not the Shareholder purporting to suddenly
become a director. It's simply the Court allowing the
Shareholder to bring the action against third parties to
recover loss, and this really just puts that into a
statutory context.

So it's simply saying that there are certain
circumstances where because of the GP's conflict or because
it's acting improperly, an LP can still go after the loss.
It has to be a derivative action under the statute.

THE WITNESS: (Mr. Lindsay) Again, that's not
quite right--sorry.

ARBITRATOR MAYER: So it--that's what the law
saying that, but apparently that's not what the Agreement says. It doesn't mention it at least.

So is your understanding that, in fact, it applies, although it's not mentioned, or--

THE WITNESS: (Ms. Reynolds) Yes, I would say it would apply because in normal context, there would be a common law right to apply to the Court to do this, and this puts it--this allows in those exceptional circumstances for a Limited Partner to do it.

But because this is the Limited Partner doing it on behalf of the Partnership, and it's permitted to do it on behalf of the Partnership, it wouldn't be the same as the Limited Partner itself taking on management of the Partnership.

THE WITNESS: (Mr. Lindsay) It is a--sorry--it's a--

ARBITRATOR MAYER: Mr. Lindsay, yes?

THE WITNESS: (Mr. Lindsay) That's not the reason for that provision in the law at all.

A derivative action would be a Partner taking part in proceedings as the General Partner because the General Partner is ordinarily a Party to the proceedings.

Now, in an ordinary Partnership, any of the Partners might bring an action on behalf of the Partners in respect of any matter, but they're precluded from the law
here from taking any part of the conduct of the Partnership's business. And if they do proceed in that way, then they lose their status as--of limited liability.

What the purpose of Section 33(3) and (4) is intended to do is to provide circumstances where Limited Partners faced with no other alternative, because they're not shareholders of the General Partner, they can't take a derivative action on behalf of the General Partner against--in respect to the Partnership assets. So, a derivative action is not available to them in those circumstances.

It enables them as a group of beneficiaries in circumstances where the General Partner has refused to take action without cause, and only in those circumstances, to then pursue their beneficial interest on behalf of all of the Partners. And it provides specifically that if it does so, if a Limited Partner does so in that scenario, it doesn't, then, lose--although it would be taking part in the conduct of the business, that is a very specific circumstance in which it would not lose its limited liability status.

ARBITRATOR GLOSTER: Mr. Lindsay, I don't see you're saying anything different from Ms. Reynolds. Ms. Reynolds is saying in these circumstances where the General Partner is not doing what he should--
THE WITNESS:  (Mr. Lindsay) Yes.

ARBITRATOR GLOSTER:  --the Limited Partner can bring an action, a derivative action, on behalf of the Partnership. But I don't see that you're disagreeing with that.

THE WITNESS:  (Mr. Lindsay) It's not a derivative action.

ARBITRATOR GLOSTER:  Why not? Why isn't it on behalf of the Partnership if, for example, the--if a Partnership should be suing a third party, an Investment Manager or any third party, why isn't it a derivative action on behalf of a Partnership?

THE WITNESS:  (Mr. Lindsay) A Partnership is not a thing. It's not a person. So, ordinarily, the only person entitled to bring any proceeding relating to the Partnership, or to be the Respondent in any proceeding relating to the Partnership, is the General Partner. And so a derivative action would be a derivative action of the General Partner, not of the other Partners. There is no--

ARBITRATOR GLOSTER:  Okay.

THE WITNESS:  (Mr. Lindsay) It probably comes to the same thing, but it is--but the reason for that clause is to preserve the limited liability status of Limited Partners in circumstances where the General Partner is frustrating their beneficial interest.
THE WITNESS: (Ms. Reynolds) But as 33(3) says, it's doing it on behalf of the Partnership. It's the equivalent of a Shareholder doing it on behalf of the Company.

And one of the points made in Mr. Lindsay's Expert Report, and maybe we don't need to get into it, but one point I wanted to clarify was that it is possible to bring it in the name of the Partnership, and that's provided for in the Grand Court rules. You do bring it in the name of the Partnership, and this entitles the LP to do that, bring it in the name of the Partnership to recover for the benefit of the Partnership.

All it's saying is that it's not doing it for itself.

THE WITNESS: (Mr. Lindsay) Yes. The High Court rules do entitle you to bring an action in the name of--when you are a Claimant or Respondent to name the firm. The High Court rules don't alter the status of any party under the law or under the statute. That is simply a convenient device in the same way that recording the name of the Limited Partner in a Share Register is a convenient device because it allows you at a glance to understand the relationships that then persist.

But the law is quite clear. The Claimant in any proceeding is the General Partner, and the Respondent in
any proceeding is the General Partner.

ARBITRATOR MAYER: Coming back to my question--

THE WITNESS: (Mr. Lindsay) Yes.

ARBITRATOR MAYER: --my question is: Does this Article 33(3), which is, I think, clear to the extent one understands how you can act on behalf of someone who does not exist as a person, but leaving that aside, does that provision apply or is it excluded in the Agreement?

THE WITNESS: (Mr. Lindsay) It's probably both. So it creates a contractual prohibition on a Limited Partner from taking a course of action, but it doesn't preclude a Limited Partner in those circumstances where the General Partner has failed to take action from proceeding.

It may be liable for breach of contract, but the law probably supersedes that. There are sections of the law that are not subject to the provisions of the Partnership Agreements and can be altered by the provisions of the Partnership Agreement.

ARBITRATOR MAYER: Ms. Reynolds, do you agree?

THE WITNESS: (Ms. Reynolds) Yes. I was going to say, throughout the Partnership law, there are a number of sections which are expressly subject to the Limited Partnership Agreement. This isn't one of them. This, therefore, trumps, and, therefore, it would be possible, notwithstanding it's not mentioned in the LPA.
ARBITRATOR MAYER: Thank you.

So I'm coming to my second question, which is on the law. It's on Article 16(1). Page 13. I'm only interested in a few words in this provision. I write what is important—I read, sorry: "Any rights of property, all property, of every description of the Exempted Limited Partnership"—and I skip some words—"shall be held or deemed to be held by the General Partner in accordance with the terms of the Partnership Agreement."

I'm intrigued by these words "held or deemed to be held," because if they are held—now, either they're held or not held. If they are held, not necessary to say that they are deemed to be held. If they are not held, what does it mean that they are deemed to be held? What's the consequence? What the reason for that expression?

THE WITNESS: (Ms. Reynolds) The reason for that expression is because—and it's held. The words are "upon trust as an asset," and the reason for that is because sometimes in parts of the world or in other context, the Partnership will be named as the owner, or there may be—because of the confusion of the particularities of this particular legislation, and the equivalent in the U.S. is a separate legal entity, for example, it may be that the Partnership is named as the holder of an asset; and, in those circumstances, it's deemed to be held on trust.
ARBITRATOR MAYER: Mr. Lindsay?

THE WITNESS: (Mr. Lindsay) Yes, that's correct.

It's to deal with circumstances where assets might be recorded that don't reflect the position under Cayman Islands law. So where assets are recorded, where the ownership of assets is recorded in a matter that is inconsistent with this provision of the law, the law says that, regardless of the way in which you've recorded those assets, this is what Cayman Islands law regards the relationship of the third parties to the assets to be.

THE WITNESS: (Ms. Reynolds) One caveat to that is I would say this doesn't purport to interfere with foreign law determination of ownership. It's simply saying as a matter of Cayman Law how you determine--

ARBITRATOR MAYER: No, it's understood that it is under Cayman Law. Thank you.

No other question.

PRESIDENT SACHS: All right. Thank you very much.

This brings us to the end of your expert witness testimony. We thank both of you. That was very interesting and helpful to the Tribunal, and in particular we also noted some further points of agreement, but there still remains some areas in which you have different views; and ultimately, it will be up to us to decide on them.

Thank you very much.
(Witnesses step down.)

PRESIDENT SACHS: We will have our lunch break.

Let's see. We had one hour, so let's--shall we resume at 1:30? Yeah? Okay. Good.

(Whereupon, at 12:26 p.m., the Hearing was adjourned until 1:30 p.m., the same day.)
PROFESSOR HYEOK-JOON RHO, RESPONDENT'S WITNESS, CALLED

PRESIDENT SACHS: All right. Good afternoon, Professor Rho. I understand you understand English, but you prefer to testify in Korean; is that correct?

THE WITNESS: (In English) Yes.

THE WITNESS: (Through Interpreter) Yes, that is correct, sir.

PRESIDENT SACHS: Okay. But perhaps--I have seen your impressive CV. Perhaps if you could help us a little bit, when you feel that you understood the question in English, maybe there's not always the need for a translation, but it's up to you. You must feel comfortable in your situation here as an expert on behalf of the Respondent; and, as such, I would ask you to read the statement that is in front of you. So, could you please read the statement.

THE WITNESS: Yes, sir.

I solemnly declare upon my honor and conscience that my statement will be in accordance with my sincere belief.

PRESIDENT SACHS: I now turn to you, Interpreter, because also for you there is a declaration.

THE INTERPRETER: Yes, sir.

PRESIDENT SACHS: On the table. And would you
please read it aloud.

THE INTERPRETER: I solemnly declare that I will interpret accurately, completely, impartially and in accordance with my best skill and judgment.

PRESIDENT SACHS: Thank you very much.

Now, we will start with the presentation, and the floor is now yours.

MS. SALOMON: I think, Mr. Chairman, if we may, we have a question with regard to the appropriateness of a presentation again in this context.

PRESIDENT SACHS: Oh, okay. Is there again a misunderstanding or...

MS. SALOMON: We do believe there is a misunderstanding in this context, that there was--these are legal experts. The Parties had discussion with regard to what the Procedural Timetable in examination of experts would be, and there was a discussion that there would be cross-examination, but there was no expectation or discussion that there would be presentations, so we set forth what the approach would be with regard to the Experts in our response to the Agenda, and we addressed those issues on the pre-hearing telephonic conference, and again presentations were not included, so we considered the approach that the Parties set forth to be the agreed-to approach for this Hearing rather than what might otherwise
be options at an evidentiary hearing.

PRESIDENT SACHS: I turn to the Respondent.

MR. HAN: Yes.

It is clear under the Procedural Order that the Expert shall make a presentation up to 30 minutes, and nothing has been agreed or discussed with the Claimant as to whether we need to change that order, so that's why we are here. Professor Rho has prepared a presentation under the agreed Procedural Order.

PRESIDENT SACHS: Then what about Professor Kwon? Has he prepared something?

MS. SALOMON: No. He has not prepared a presentation because that wasn't discussed in the context of the procedures for this Hearing, and so we expected limited direct, as—to the extent there is any biographical information, and there would be examination.

PRESIDENT SACHS: So, that mirrors the discussion that we had earlier with respect to the Cayman Islands law experts. We have a situation where there seems to be a misunderstanding.

I see Mr. Nyer raising his hand.

MR. NYER: If I may, the situation is materially different than what arose in the context of the Cayman experts. The Parties did not agree in any way, shape or form to modify the format of the examination of the Korean
law experts. There was no discussion of a hot tub as was agreed with respect to the Cayman Law experts.

The Procedural Order that was rendered at the beginning of this arbitration is very clear, that the Expert in that case, Mr. Rho, shall be entitled to make a short presentation up to 30 minutes to the Tribunal.

And I think there is also a basic due process consideration here, given that Mr. Kwon had the last word in writing, and Professor Rho should get a chance to respond to some of the arguments that have been raised by Professor Kwon.

MS. SALOMON: We would submit that there's a very different context in which the Procedural Order Number 1 set out the opportunity for presentation of experts, and that may be technical or damages experts here. These are legal experts. Both Parties dealt with--submitted reports addressing questions of law, and we will submit this presentation is akin to essentially another brief to which we certainly haven't had the opportunity to address.

PRESIDENT SACHS: Yes, I think we will need a moment to discuss this and come back in a few minutes, okay? Thank you.

Very sorry for that.

ARBITRATOR GLOSTER: Could we have a reference to the Procedural Order?
PRESIDENT SACHS: It's Number 1, I think, isn't it?

ARBITRATOR GLOSTER: Is it? Number 1.

(Tribunal conferring outside the room.)

PRESIDENT SACHS: All right. Now, we deliberated on the issue, and the Tribunal refers to Section 7(iii) of Procedural Order No. 1, which provides that the provisions set out in relation to witnesses apply mutatis mutandis to the evidence of experts, and here we can read that the Expert shall present a summary of their findings not exceeding 30 minutes. Unless the Parties agree otherwise, we note that there was no agreement to the contrary, and experts are being mentioned here without excluding legal experts. Therefore, we would admit the presentation.

On the other hand, in order to balance the interests of the Parties in connection with this incident, we would propose to Claimants either to decide that Mr. Kwon will be examined without giving a presentation or if you prefer that Professor Kwon also be given the opportunity to make a presentation, that we postpone his testimony until tomorrow morning, that we would start with him, so giving him the opportunity to make a presentation. If you then feel that the time left for your preparation of your Closing Arguments is too short, we could envisage to postpone the Closing Arguments to the afternoon so that
there is a buffer allowing you to prepare reflecting the
testimony, the expert testimony, of Mr. Kwon if it were to
be given only on Friday morning.

So, these are the two options that the Tribunal
submits to you, considering the interests of the Parties,
we would think this is a fair solution to this incident
which, to some extent, may be the result of a
misunderstanding, and you don't have to tell us right now
which option you would prefer. We would continue with the
Expert testimony of Professor Rho, but following his
testimony, you will let us know how we should proceed with
respect to the expert examination of Professor Kwon.

MR. KIM: Thank you, Mr. President.

I think we can articulate our position now. We do
not have any intention to have a separate presentation for
Professor Kwon, but I would like to point out that, as
Mr. President correctly stated, this should be--the
presentation that we're about to hear should be a summary
of evidence that has already been presented. If there is
anything that is to be presented--that will be presented in
this upcoming presentation that has not already been
included in Professor Rho's previous Expert Report or based
on any legal authorities that were not included as part of
his previous Expert Report, Claimant strongly objects based
on lack of fairness. We have not had a chance to--we did
not expect to have this presentation today, and we are not prepared necessarily to cross him on those matters of law because we don't know what his views or opinions are on those new legal authorities.

So, to the extent that the presentation is limited and, if we may, we can assist the Tribunal to point out what may be new and what may not be new depending on what comes out during the course of the presentation, but we would respectfully request that anything in today's presentation should be limited to Legal Authorities and content that was already provided in his previous report.

PRESIDENT SACHS: Thank you. That seems to be a fair point.

I would presume, Professor Rho, that, indeed, the handout that you submitted and the content of your presentation that is to follow will be limited to arguments and material that are already in the record. If this is not the case, please, Claimants red-flag so that we note the point, and we will then deal with such points, if any, at the end of the cross-examination so as to eventually give Claimants the right to reflect and continue a cross-examination possibly tomorrow morning, but we will see whether this is necessary once we have seen how many red flags, if any, there are, and to what they relate.

Would this cover the incident?
MR. HAN: Yes. Thank you, Mr. Arbitrator. Yes, we agree to this approach.

PRESIDENT SACHS: Also from your side, Claimants?

MR. KIM: Yes, that's fine.

I'd just like to point out, though, that as the Tribunal is aware, there were a number of additional Korean Legal Authorities that were submitted without any sort of background or explanation as to what Respondent's position is with regard to those authorities.

So, to the extent that we are limiting the scope of today's presentation, we believe that it would be fair to also exclude any explanations on those new--any new legal authorities that have been submitted prior to--just immediately prior to this Hearing since we don't know Professor Rho's views and, therefore, have not been able to prepare any sort of cross-examination on those.

So, in the same manner, we would ask that that apply as well.

PRESIDENT SACHS: Okay. Fair enough. I think whenever you feel that we have reached such a point, please let us know, and then we will deal it ad hoc, according to the situation.

So, I think this closes this debate.

Professor Rho, we would now invite you to give us your presentation.
MR. KIM: I'm sorry, Mr. President, but counsel took back the presentation materials pending your--oh, we got them back. I'm sorry.

(Pause.)

PRESIDENT SACHS: Please, Professor Rho.

DIRECT PRESENTATION

THE WITNESS: Good afternoon. I'm Dr. Rho, Professor at Seoul National University School of Law. And my area of expertise is Commercial Law and Capital Markets Act. I obtained my Ph.D. at the Seoul National University back in 2003. Before I became Professor at Seoul National University School of Law, I served as Army prosecutor and attorney and a judge.

It is my pleasure to speak about Korean law in front of a number of experts.

I'd like to talk about two topics in respect of foreign investing in Korea as a capital market, the scope of foreign entities' legal capacity to have rights, and the legal principle of determining share ownership under Korea's Corporate Law.

Let us move on to Slide Number 2.

Before delving into the issue of foreign entities' legal capacity, let me touch upon the general aspects of legal capacity under Korean law and a group of substantive domestic acts under status of foreigners collectively known
as the so-called "Alien Law."

MR. HAN: We have some technical problems, and the slide is not showing on the screen right now.

(Pause.)

THE WITNESS: Allow me to continue.

General Legal Capacity under Korean law refers to a general capacity to be a subject of rights and obligations.

MR. KIM: Mr. President. We object to that. This subject matter is not covered in Professor Rho's Expert Report.

PRESIDENT SACHS: Okay, noted, but nevertheless please proceed.

THE WITNESS: (In English) Okay.

(In Korean) Still, as such, a General Legal Capacity is not uniformly applied to all situations. In other words, a General Legal Capacity can be restricted or expanded in scope, depending on the specific area or the characteristics of the entity. Such capacity can be referred to as "Special Legal Capacity." Professor Kwon, the Claimants' Korean law expert, also said the following in his expert opinion: Even if a foreign organization does not have legal capacity under the laws of the place of its establishment or is a type of organization that is not recognized to have legal capacity under Korean law, it may
still be subject to a certain Korean statute that extends their application to cover foreign organizations in order to carry out the legislative purpose of the statute in question. As such, even where an entity does not have a General Legal Capacity, it can be subject to certain statutes obtaining the aforementioned Special Legal Capacity.

If I may take you to the next slide, for example, an unincorporated body with no General Legal Capacity can hold a legal capacity to be a Party to registration or litigation or have legal capacity for tax.

Further, foreigners are compared with Koreans have limited legal capacity such as for suffrage. This clearly shows that the principle of "General Legal Capacity" is not uniformly applied to all areas of law.

Next slide, please.

MR. KIM: Mr. President, this slide introduces law, legal concepts not only under Korean Law, but what is referred to as Alien Law. Clearly, this has not been covered in Professor Rho's report.

PRESIDENT SACHS: Noted.

Please proceed.

THE WITNESS: Allow me to move on to the Alien Law, known as the Conflict Law, the Private International Law determines which substantive law to apply to a domestic
issue where two or more substantive statutes can be applied, and this is detected in the upper diagram on the slide. In contrast, the Alien Law refers to a substantive domestic act that regulates international issues as opposed to domestic ones; where a relevant Alien Law is available, such law can be applied without relying on the Conflict Law. Therefore, to the extent there is an Alien Law providing relevant provisions, the Article 16 of the Private International Law on General Legal Capacity does not need to be relied on.

Next slide, please.

Examples of Korean Alien Laws include the Article 57 of the Civil Procedures Act and the Article 168(1) of the Capital Markets Act, the relevant provisions of which are shown on the slides.

Next, please.

Professor Kwon argues that the article of the Private International Law even governs all of foreign corporations' legal relations in Korea. Such proposition begs the question of why other Private International Law articles such as Articles 15 and 19 are not taken into account. As such, a uniform application of the Private International Law would end up defeating the purpose of Korean Alien Laws intended to govern foreigners and foreign organizations in specific areas. Where there is a relevant
Alien Law applicable such as in this arbitration case, applying such Alien Law without resorting to the Private International Law would be the only way to explain why such Alien Law exists in the first place.

Next slide, please.

And next I would like to talk about the intention of foreign investment related statutes under the Capital Markets Act. The Capital Markets Act and its Enforcement Decrees are designed to properly regulate foreign investment. Such provisions are typical Alien Law statutes in that they were originally intended for foreign investment at the time of creation. Here are the three key provisions on foreign investment under the Capital Markets Act. Allow me to draw your attention to the slides:

First, the concept of foreign corporation, et cetera. The foreign corporation, et cetera, referenced here includes organizations with no legal personality such as fund and association.

Second, the requirement for Investment Registration. The Capital Markets Act provides that a foreign investor should identify its legal status through Investment Registration before making investments. Accounting entity in this context refers to the beneficiary of economic interest. The requirement for accounting entity is intended to disclose the ultimate beneficiary of
profit in trading as opposed to trading in someone else's name.

Last but not least, limits on the number of shares that can be acquired. The Capital Markets Act places a limit on foreign investor's shareholding in certain Korean companies on the premise that foreign corporations, et cetera, can acquire shares.

Let me apply the legal capacity and the Alien Law discussed so far to the issues in this arbitration. Foreign investment-related provisions of the Capital Markets Act are Alien Law statutes, and thus those statutes are directly applied to foreign corporations, et cetera. Even where a foreign entity does not have a General Legal Capacity pursuant to the law of its place of establishment, such entity can be bestowed with legal capacity to the extent that such entity is subject to the Capital Markets Act. Such application of the Act can deter foreign entities' abusive acts such as a foreign entity denying all of its acts after having participated in the Korean capital market as a player by claiming that it does not have legal capacity pursuant to the law of its place of establishment.

Next slide.

The application filed by the Cayman Fund brings clarity to the substance of this arbitration case. The application for Investment Registration was filed in the
name of the Cayman Fund and the Fund was classified as "corporation" in the "investor" classification field.

Next slide.

In addition, Mason Capital Limited was listed as the 100 percent owner of the Fund. The application was filed pursuant to the Capital Markets Act by the Cayman Fund, which was classified as foreign corporation, et cetera, under the same act.

The application makes the argument nonsensical that, since the Fund did not have a General Legal Capacity pursuant to the law of its place of establishment, it was not subject to the statutes applicable to a foreign corporation, et cetera, under the Korean capital market and did not have any rights or obligations.

Next slide, please.

Next, let me touch upon share ownership under Korean Law. The topic of share ownership has come up quite often in Korean case law, especially in connection with transactions in someone else's name. The Korean Supreme Court regards the issue of share ownership in connection with transactions in someone else's name as the issue of determining whom each Party recognized as the counter-party to the transaction.

Let me take an example. As is shown in the upper diagram, let's imagine B makes an internal agreement with A
that B would subscribe for a company access new shares in
the name of A. In this scenario, the Supreme Court would
recognize Company X and a Titleholder A as the Parties to
the subscription agreement and determine that their shares
belong to A. If Company X is not aware of the internal
arrangement, their shares cannot belong to B. That's
because only when there are very exceptional circumstances
such as the Company acts being made aware of and approving
the arrangement between A and B would the Supreme Court
hold that the shares belong to B.

For more information, please refer to the ruling
submitted as R-12.

Even though the Court Decision is about new shares
subscription, the same logic is applied to transfer of
existing shares. Let us imagine that D, behind the scene a
fund provider internally agrees with C, that as shares held
by Y would be purchased in the name of C. In this case,
too, absent special circumstances, i.e., the counter-party
Y being made aware of and approving such internal
arrangement, the shares naturally belong to C.

In another case, where exercise of shareholder
rights was at issue, the Supreme Court dealt with a new
share subscription and purchase of existing shares in an
identical manner as demonstrated in the ruling submitted as
R-10.
Next slide.

As regards Listed Securities in particular like the ones in this arbitration, it should be deemed that the Shares belong to the titleholder, not to the undisclosed third party. Let me tell you why: First of all, at trading and Listed Securities is subject to the requirement for using real name, and individual looking to trade Listed Securities has to open an account with a brokerage firm in their own name, the individual's real name has to be verified in the process pursuant to the Act on Real Name Financial Transactions and Confidentiality.

MR. KIM: Mr. President, I would like to put on the record that there's no mention of so-called "Real Name Act" in Professor Rho's Expert Report.

PRESIDENT SACHS: Noted.

THE WITNESS: What I just mentioned is included in the ruling of the Supreme Court submitted as R-10. According to this ruling, when it comes to Listed Securities, the titleholder would be the owner of the Shares. This has been made clear by a Concurring Opinion in a Supreme Court's en banc ruling. In this Court case, the Supreme Court held that, I quote, "the stocks purchased by a securities company on a securities market exchange are stored in the transaction account of the titleholder of the account, and since such stored stocks belong to the
customer who is the principal consignor, the titleholder of the account is the Shareholder of the concerned stocks, even if there is a person who provides Funds to the titleholder of the account, and that is in principle merely a question of an agreement between the titleholder and the Fund provider."

In addition, shares in listed companies are traded on the Exchange's massive settlement system. Under the system buy and sell orders for Listed Securities are collected and settled on a batch basis. Such a system makes it very unlikely for a transferor of shares to recognize and approve the undisclosed third party, leading to the shares belonging to the titleholder.

Next slide.

MR. KIM: Mr. President, I would like to note that there is no record of Article 311 of the CMA in Professor Rho's Expert Report.

PRESIDENT SACHS: Noted.

THE WITNESS: Further, the Article 311, Paragraph 1, of the Capital Markets Act applicable to Listed Securities stipulates that the individual listed in the account roster of investors or the account roster of depositors is deemed to possess the securities. All things considered, there is no denying that the Shares belonged to the titleholder of the securities.
Next slide.

As shown in the slide, the Cayman Fund was listed as Shareholder in the Shareholder Registries of Samsung C&T and Samsung Electronics. Given the Shares in question are Listed Securities, the Shares do not and should not belong to any entity other than the Cayman Fund.

In closing, let me sum up.

It is inappropriate to argue that an entity does not have any rights or obligations in respect of the Alien Law provisions of the Capital Markets Act simply because it does not have legal capacity under the law of its place of establishment. Jurisprudence set forth in the Commercial Law and the stock-trading provisions of the Capital Markets Act such as that the Shares in question belong to the Cayman Fund, the titleholder.

Thank you for your attention.

PRESIDENT SACHS: Thank you very much, Professor Rho.

I note for the record that you raised four red flags.

MR. KIM: Okay.

PRESIDENT SACHS: The first one relating to the concept of legal capacity. The concept seems to be captured in the two Articles that we see on Page 5 and which are extracts of laws or acts that are part of the
Second, the Alien Law.

MR. KIM: Mr. President, before you proceed, if I may?

PRESIDENT SACHS: Yes.

MR. KIM: Specifically, the objection was the distinction or supposed distinction between what Mr. Rho—Professor Rho describes as a General Legal Capacity and a Special Legal Capacity. That is not presented in Professor Rho's Report or in any of the Legal Authorities that were accompanying his Report.

PRESIDENT SACHS: Okay. Thank you for the precision.

The third point, then, is the Real Name Act mentioned in R-10. But as you say not in Professor Kwon's Report.

And the fourth point is CMA Article 311(1), the deemed ownership.

MR. KIM: Right.

PRESIDENT SACHS: Mentioned, it seems in R-14 but as you say, not in Professor Kwon's report?

MR. KIM: With respect, if I may correct the President, it's "deemed to hold," not "deemed ownership."

PRESIDENT SACHS: Deemed to holding. You are right.
MR. KIM: Yes. Thank you.

PRESIDENT SACHS: So we note these points and you will tell us at the end of the cross-examination what you request in respect of these parts, whether you are satisfied with the result of the cross-examination.

MR. KIM: Okay. At the end of the cross-examination, if I may, I will confer with my colleagues and then let you know for sure.

PRESIDENT SACHS: Fair enough.

MR. HAN: Mr. Arbitrator, I would like to point out the points that the Claimant raised. First, as you correctly pointed out, the legal capacity concept, the very first issue that Claimant raised, was heavily discussed in the Paragraph 17 of Professor Rho's response. Professor Rho is further explaining the concept of legal capacity under Korean Law.

And for the second issue, application of Alien Law was the issue whether Korean Law can be applied to Cayman Fund shareholding in Korea.

And for the third issue, the Real Name Act is part of the Supreme Court Decision in R-10 that we have already submitted. For the last part, CMA Act Article 311 will, of course, as you can see the exhibit number is part of R-14 that Respondent has already submitted.

Thank you.
PRESIDENT SACHS: Yes, this overlaps to some extent with what I said.

Okay. That's on the record, and I think now we proceed to cross-examination.

MR. KIM: Thank you, Mr. President.

CROSS-EXAMINATION

BY MR. KIM:

Q. Professor Rho, good afternoon.

A. Good afternoon.

Q. My name is John Kim, and I'm acting as counsel for Claimants in these arbitration proceedings.

A. I see.

Q. I will be asking you some questions today about Korean Law.

A. Okay.

Q. If you have any trouble understanding my questions or would like the question repeated, please let me know.

A. I will. Thank you.

Q. I see that you have the Hearing Bundle in front of you.

A. (In English) Yeah, yeah.

Q. I may ask you from time to time to turn to a particular tab or page in the binder.

A. Yes, I--yes, but please understand that since I'm not familiar with handling this Hearing bundle, I might
take some time to get to the page or Tab you are pointing me to.

Q. I fully understand. And if you need any help, we will have someone to assist you.

A. Thank you.

Q. Professor Rho--

PRESIDENT SACHS: Sorry to interrupt you, but will we receive a similar binder, or is this--

MR. KIM: That's just the Hearing Bundle.

PRESIDENT SACHS: Okay, but--

MR. KIM: I'm not referring to--it's a new binder.

PRESIDENT SACHS: It's a new binder? We have two volumes. These two?

MR. KIM: Those are the two.

PRESIDENT SACHS: Okay. Go ahead.

BY MR. KIM:

Q. Professor Rho, at Paragraph 10 of your Expert Report, it states that you have been provided with copies of Respondent's Memorial on Preliminary Objections and Claimants' Counter-Memorial.

A. Yes, that is correct.

Q. Did you have a chance to read and study these submissions?

A. I simply skimmed through the submissions, so I'm not sure how much I can remember regarding these
Q. Okay. But would it be safe to say that you're generally familiar with the arguments that are being made by the Parties in this arbitration?

A. My area of interest was the ones related to Korean Law. And when I look at some records, I tend to focus on those records related to Korean Law.

Q. Okay. So, you must have reviewed Professor Kwon's Expert Report?

A. Yes, I read Professor Kwon's Report.

Q. And just for completeness, did you have a chance to read the Parties' expert reports regarding Cayman Law?

A. I'm not here to give evidence in regards to Cayman Law, and I didn't have a chance to carefully look at these expert reports on Cayman Law.

Q. Okay. Let me just give you a brief summary of the Cayman Exempted Limited Partnership that is the subject--that has been a topic of discussion in this arbitration.

A. (In English) Can you hold on a second?

(In Korean) Could you please explain to me why I need to listen to explanation on the Cayman Law?

Q. One of the questions, Professor Rho, before this Tribunal is which law should govern the Cayman ELP? Cayman Law or Korean Law?
A. Throughout my presentation, I have been consistent that the Alien Law under the Korean Law should be applicable to the matters in this arbitration case, and I do not see why I need to answer questions which are premised that the Cayman Law should be the governing law in this arbitration case.

Q. Professor Rho, I haven't asked you a single question about Cayman Law.

A. Please understand, I thought--get an explanation on Cayman Law would be based on the premise that the Cayman Law should be applicable to this arbitration case.

Q. So, Professor Rho, is it your view that, even when reviewing issues of Korean Law, in these preliminary proceedings, it is not necessary at all to understand the characteristics of a Cayman ELP? Is that your position? I mean, is that your opinion?

A. To my understanding, the matters at hand in this arbitration is who--whom the Samsung Shares belong to and who owns the Samsung Shares.

If this arbitration is solely about the internal decision-making process of the Cayman Fund and who holds a governance of the Cayman Fund, then, of course, the Cayman Fund would be governed by the Funds--governed by the law of the Fund's place of establishment.

Q. But, in the course of preparing your Expert Report
and your presentation earlier today, based on the responses that you have given, is it correct to state that you did not put any consideration into the type of organization that the Cayman ELP may be under the laws of its establishment?

A. As I mentioned in my expert opinion, the Cayman Fund does not have a legal personality pursuant to the law of the Fund's place of establishment. Having said that, under Korean Law, the Cayman Fund has a representative, and under--under a specific statute such as Corporate Tax Act and other statutes as shown in a ruling related to the Corporate Tax Act, it is my understanding that the Cayman Fund is something of substance, which can be the subject of rights and obligations.

Q. Professor Rho, I will get to the Corporate Tax Act later, but for now I would like to discuss the Act, Korea's Act on Private International Law which can be found at CLA-54.

A. Are you referring to Article 15 on the screen?

Q. On the screen, Professor Rho, you will see Article 16 of the Act.

A. Yes, I'm aware of that.

Q. And in the first line of Article 16, you'll see, and I quote--that you will see, and I quote: "Corporations and other organizations shall be governed by the applicable
law of the establishment thereof."

Do you see that?

A. Yes. If I may restrict—if I may restrict my
   comment to legal capacity, the provision you just
   referenced deals with General Legal Capacity.

MR. HAN: Professor Rho, please take—please refer
to the Korean original instead of translation on the
screen.

THE WITNESS: Sorry, I may take a while.

Yes, I'm on it.

BY MR. KIM:

Q. So, I'm just looking at the LiveNote, Professor
   Rho, in your response, you said in response to my question:
   "The provision you just referenced deals with General Legal
   Capacity"?

A. Yes.

In my class on Corporate Law, I touch upon the
Korean Alien Laws, and I'm aware there are specific Alien
Law statutes applicable, then this provision you referenced
does not need to be relied upon. That is, the provision is
not a one-size-fits-all solution, and the provision cannot
solve on every issue.

Q. So, Professor Rho, notwithstanding the clear
language of Article 16 of the Act, it is your view that the
application of this Article 16 may be limited?
A. This is not just my personal opinion. And there are Alien Law provisions included in the Corporate Law, and it is a widely accepted view that under, as such, Alien Law, are provisions whether or not a foreign entity has--a legal personality has no relevance.

And the intention of the Alien Law statutes is to protect traders working under domestic market in trades that is occurring in Korea. And if an entity claims it does not have legal capacity pursuant to the law of its place of establishment, then that can defeat the purpose of the legislation of the Alien Law statutes.

Q. Professor Rho, I will get to the--what you call--the "Alien Law statutes" in a minute.

Can we turn to CLA-55, which is a Supreme Court Judgment, Case Number 2017Da246739.

A. Can I be shown the Korean version of the ruling?

MR. HAN: It's in the same tab. So translation goes first, and in the back there is the Korean original.

THE WITNESS: Thank you.

BY MR. KIM:

Q. Professor Rho, notwithstanding the opinions that you have expressed today, isn't it the Supreme Court's position--and I quote--regarding Article 16 of the Act on--Private International Law, and I quote starting from the third line of the English version: "There are no
provisions that limit the application of this Article, and
thus the scope of application should be seen as including
all matters of legal entities such as establishment and
dissolution, organization and internal relationship, rights
and duties of institutions and members and legal capacity
to act."

Isn't that what the Supreme Court has said about
Article 16?

A. In fact, I think the ruling by the Supreme Court
in this case is simply the rephrasing of the Article 16 of
the Private International Law.

If you take a look at the specifics of the case,
the crux of the matter in this case was related to the
governing law applicable to members of an association under
Korean Law, and the Supreme Court pondered to what extent
members of the Association had responsibility, and this
issue has nothing to do with a capacity to hold shares.

Q. Okay. Leaving aside for a second the fact that
the passage that I just read talks about rights and duties
of institutions and members and legal capacity to act,
leaving that aside for a second, Professor Rho, is it your$view that this Judgment--this Decision of the Supreme Court
is correct or incorrect?

A. The ruling deals with General Legal Capacity. The
ruling does not mention anything pertaining to Special
Legal Capacity.

Q. That wasn't my question, Professor Rho. I just simply asked: Do you agree with this Decision or not?

A. And I think the ruling is an appropriate one for general matters as shown in this case.

Q. Okay. I will move on, then, to another topic.

Professor Rho, during yesterday's opening presentations, Respondent's counsel stated that, and I quote: "We say as a matter of Korean Law, the General Partner did not own or control the Samsung Shares because it was the Cayman Fund and not the Partner that was the Registered Shareholder of the Samsung entities at issue."

And that can be found at Transcript Day 1, Page 48, Lines 6 to 10.

A. Is the Transcript you referenced included in this binder?

Q. No. But you can take my word that's what was said.

A. Would it be okay if I take this bundle off the table?

Q. If you take the bundle off the table?

A. (In English) Okay. It's okay.

Q. I don't understand the question.

A. There are two--(in Korean) what I meant to say was the two binders were taking too much of the space on the
table, so I prefer to have one bundle sitting on the table while the other sit on the floor.

    MR. KIM: Mr. President, before I proceed to the next line of questioning, I have noted right in front of me that Professor Rho is referring to his internal notes that are on the table, and I would ask that all of those be removed.

    THE WITNESS: Yes.

    I also have my expert opinion in front of me for a smooth proceedings of this arbitration. And if you wish, I would remove my expert opinion as well.

    PRESIDENT SACHS: Well, I think it would be fair that he keeps his expert opinion on the desk but not further notes--

    MR. KIM: Mr. President, I was referring to his handwritten notes on the side of the Reports and on--

    PRESIDENT SACHS: I was just saying--let me finish, please.

    MR. KIM: I'm sorry.

    PRESIDENT SACHS: --but not internal notes or handwritten notes, in addition to your expert opinion.

    THE WITNESS: Am I allowed to take notes of questions I'm receiving in order to help with my understanding about the questions?

    PRESIDENT SACHS: Yes, you are.
MR. KIM: Did we get Professor Rho an excerpt of the Transcript?

BY MR. KIM:

Q. Do you still need that?

It's on the screen.

A. To my understanding--to my understanding, the Samsung Shares belonged to the Cayman Fund, the titleholder, so the argument put forward by the Respondent's counsel during their opening remarks corresponds to my position.

Q. That wasn't exactly my question. Maybe I can rephrase.

A. Thank you.

Q. I would like to point to the reasoning put forward by Respondent's counsel. The reasoning based on this statement by Respondent's counsel in its opening is that the General Partner cannot own because it was the Cayman Fund that was registered as the Shareholder on the Shareholders' Registry.

Do you see that?

A. Now I understand the purpose of your question.

Q. So, taking this statement alone--

A. Am I allowed to give my answer to your question?

Q. Sure.

A. If the sole basis for this argument is that the
Cayman Fund is registered in the Shareholders' Registries of Samsung Shares, then I find the argument less persuasive.

Q. Sorry, one clarification. One clarification. When you say "less persuasive," do you mean "incorrect"?

A. What I meant to say was, since the Samsung Shares are listed as securities, the Fund is listed in the Registry of Shareholders, also the Shares of Samsung belongs to the Fund.

Q. Professor Rho, if I may, can I ask you a general question of Korean Law?

A. Yes, of course.

Q. In your expert opinion, does registration as a shareholder in a Shareholders' Registry conclusively determine share ownership as a matter of Korean Law? "Yes" or "no."

I'm not talking about this case.

A. Do I need to answer questions that are not relevant to this arbitration case?

Q. Professor Rho, I asked you a general question of Korean Law. You are here as a Korean Law expert. I think it's an easy question.

PRESIDENT SACHS: Please answer the question.

THE WITNESS: (In English) Yeah, yeah, of course.
(In Korean) Conceptually speaking, as you had mentioned, it is possible that there can be a separation between a share ownership and the titleholder in the Shareholder Registry.

BY MR. KIM:

Q. Thank you.

But going back to my question, and I will read again from the LiveNote: "In your expert opinion, does registration as a shareholder in a Shareholders' Registry conclusively show share ownership as a matter of Korean Law? 'Yes' or 'no'."

"It's a very simple question."

MR. HAN: Professor Rho, before you answer, when you pause for the translation, please take time and answer the question. So when you pause, please let the Interpreter know that you will proceed after the translation.

THE WITNESS: I see.

Allow me to give you my answer to your earlier question.

When I just started my career as an attorney, a senior attorney of--a senior attorney I was acquainted with advised me not to answer "yes" to questions including phrases like "never," "decisively," or "conclusively." And if the question includes the word "conclusively," it would
be wrong to give my answer "yes."

BY MR. KIM:

Q. So, is your answer "no"?

A. And I think that is the answer you want to hear.

Q. I'm not--I'm just waiting to hear your answer, that's all, but we can move on.

A. Yes.

Q. In terms of Foreign Investment Registration, likewise, isn't it also true that that is not determinative of share ownership, just like a Shareholders' Registry?

A. There can be some difference between a Foreign Investment Registration and the Shareholder Registry.

Simply put, a Foreign Investment Registration bears all the hallmark--bears all the hallmarks of regulation.

If a foreign investor does not register themselves as part of a Foreign Investment Registration, the foreign investor cannot start making investment in the first place.

And if the foreign investor makes a misrepresentation in their application for a registration, that could lead to the revocation of the registration and that could also subject the foreign investor to administrative measures, including sanctions and being ordered--being ordered to take corrective actions.

Q. Professor Rho, my question was about ownership.
A. So, if an investor made misrepresentation in their application for Foreign Investment Registration, that means the Applicant shouldn't have made investment in the first place; and, as such, a violation could subject the foreign investor to corrective action, and it will be impossible for the Investor to continue to own their shares.

Q. You say "shouldn't have," but let me give you a hypothetical scenario.

Let's say there is a foreign party who registers through this regime and acquires listed shares in a Korean company. And I will put to you that that foreign party is the owner of the shares, for the purpose of this hypothetical, but later on it is found that the registration either erroneously, negligently, or otherwise, was filled out improperly.

While I understand, Professor Rho, that in such case there may be certain implications or even maybe sanctions, isn't it true that that has no effect on ownership rights?

A. And as I mentioned earlier, the sanctions are administrative sanctions. Theoretically speaking, such administrative sanctions have no impact on the legal ownership.

Having said that, in reality, the Party would be subject to a number of sanctions, and considering the
FSS's--considering the Financial Supervisory Service's very strict standards for the capital market, it will be impossible for a Party to continue to own their shares.

Q. Professor Rho, if a Foreign Investment Registration were to be suspended, am I correct to understand that that means that the Party's ability to trade on the Korean Stock Market would be suspended?

Is my understanding correct?

A. Foreign Investment Registration is the prerequisite for foreigners to make investment. With the cancellation or suspension of the Foreign Investment Registration, the Party no longer engages in routine trading.

Q. I agree.

But based on my hypothetical, if I am already the owner of Shares and I am no longer--and I will quote, "no longer able to engage in routine trading," isn't it natural that I will remain the owner of those shares?

A. That is why I said that that is theoretically possible, and a loss on books is not the same as loss in reality. And considering the substantive characteristics of the capital market, the Party would not be able to continue to own the shares.

Q. This will be my last line of questioning on this matter, but Professor Rho, you said "theoretically
possible," but if you turn to R-17 in your binder--and I'll wait. And I would ask you to look for Article 6-13, Paragraph 2.

A. (In English) R-7.

Q. R-17.

A. Was it R-17?

THE INTERPRETER: And which page are you referring to?

MR. KIM: Article 6-13, Paragraph 2.

BY MR. KIM:

Q. Have you found it?

A. Yes, I'm on it.

Q. What you just described, Professor Rho, as "theoretically possible," in Paragraph 2 of Article 6-13, it states that: "The Governor of the FSS may cancel or suspend in case of a number of enumerated cases, including"--and I point to subparagraph (1)--)"any of the facts specified in subparagraph--Paragraph (1) is discovered after the registration of investment."

Do you see that?

A. And the provision stipulates that any of the following included in Paragraph 1. So are you referring to the Paragraph 1 or subparagraphs under Paragraph 1?

Q. All I'm referring to, Professor Rho, is that, isn't it abundantly clear that a Party can acquire shares
after registration and then after certain defects in the registration are discovered after becoming the owner, and in such case, the only implication is that the registration is canceled or suspended? In other words, it has no impact on ownership rights?

That's my question.

A. And in my opinion, to answer that question, we don't have to bother to take a look at the Article 6-13 under the regulation on financial investment business. We can simply take a look at the principle of the Civil Code. And under the Civil Code, this paragraph is administrative provisions, and the Civil Code stipulates that the effect of ownership cannot be taken away.

And as I mentioned earlier, the civ--but I'm not talking about the--a Civil Code and not taking away the legal effect. My answer wasn't limited to whether the Party can continue to own their shares and continue to remain as a shareholder.

Q. Okay.

COURT REPORTER: Can we take a break soon?

MR. KIM: I was going to suggest the same.

I think maybe Professor Rho might want a break. Would that be okay?

COURT REPORTER: And the Interpreter, too.

MR. KIM: And--oh, that's a given.
PRESIDENT SACHS: Do you still have a question now, or--

MR. KIM: I'm more than happy to take a break, if that's okay with the Tribunal.

PRESIDENT SACHS: Okay. Then let's have a break now.

It's 20 minutes--shall we say 20 to 4:00? 20 to 4:00? Yeah? 20 to 4:00.

Professor Rho, you're still under expert testimony, so we would ask you not to speak to anyone.

THE WITNESS: (In English) Shall I stay here?

PRESIDENT SACHS: You may walk around, have a coffee or whatever, but not talk to them. Thank you.

(Brief recess.)

PRESIDENT SACHS: All right. Can we move on?

BY MR. KIM:

Q. Professor Rho, during your presentation earlier this afternoon, you spoke about what we've referred to in Korea as a "legal capacity to have rights,". Although I murdered the German pronunciation yesterday, in Korean, I'm quite confident that it is "kwon li neung reok."

A. Yes. You pronounced "kwon li neung reok" correctly.

Q. Thank you.

In your Expert Report at Paragraph 17 you provided
examples and mentioned that non-existing fictitious persons
or the deceased do not have a legal capacity to have rights
under Korean Law.

   Do you recall that?
A.  Yes.  And as I mentioned earlier, that portion
refers to the "General Legal Capacity."
Q.   So, in terms of a General Legal Capacity, a
fictitious or dead person cannot have a General Legal
Capacity to have rights; is that what you're saying?
A.   Yes.  Fictitious persons and the deceased cannot
have General Legal Capacity.
Q.   And in case of organizations, would you agree with
me that, unlike natural persons, an organization or
association may or may not have a legal capacity to have
rights, depending on the relevant laws and its internal
regulations?
A.   Yes.  Unlike General Legal Capacity, the scope of
special legal capacity of an organization or association
can be determined in a specific area, depending on the
relevant statutes and the characteristics of the
organization or association.
Q.   So, in Korea, there are some organizations or
associations that have and some that do not have a legal
capacity to have rights; isn't that correct?
A.   Yes, that is correct.
Q. And if an organization or association does not have a legal capacity to have rights, isn't it correct that such organization or association cannot be the owner of property, including shares?

A. It is not an accurate proposition that an entity without General Legal Capacity cannot own any type of assets.

Q. I'm sorry, can I correct the translator? I believe the word "not" was not included in his response, unless I heard incorrectly. I believe that the response was it is an accurate proposition, and then he was going to expand further.

PRESIDENT SACHS: Interpreter, can you confirm?

THE INTERPRETER: Since I have a short memory span, can I ask the Witness, please, to repeat his answer?

PRESIDENT SACHS: Yes.

THE WITNESS: It is not an accurate proposition that an organization without General Legal Capacity cannot own any type of assets. For example, an unincorporated entity can have a capacity to register real estate.

BY MR. KIM:

Q. How about shares?

A. As I mentioned earlier, if there is no applicable Korean Alien Law, an organization without legal personality cannot own shares under Korean Law.
Q. Professor Rho, you referred to "Alien Law," but I'm talking about a Korean organization or association. Then, in such case, isn't it true that an association or organization without a legal capacity to have rights cannot own shares under Korean Law?

A. And if an organization or association without legal personality is a Korean corporation, then such organization cannot own shares in its own name.

Q. Thank you. I agree, but I just want to confirm: Are there any exceptions to that rule?

A. To that end, we have to refer to a specific special act, and my earlier answer was limited to Korean corporations and organizations under their Korean Corporate Act.

Q. Professor Rho, can we turn to Paragraph 17 of your Expert Report.

A. Yes, I'm on it.

Q. Starting from the second sentence of Paragraph 17, you state as follows: "Therefore, anyone who is a subject of rights may become a shareholder, and there is no special requirement on shareholder qualifications."

Do you see that?

A. Yes, I do.

Q. And further on in that sentence, you articulate an exception, and I quote: "With the exception of those who
do not have the legal capacity to hold rights under Korean Law."

Do you see that?

A. Yes.

Q. And do you also see the very last sentence in that paragraph which states, and I quote: "Korean Law does not distinguish between Koreans and foreigners; the same applies to foreign shareholders."

Do you see that?

A. Yes, I do.

Q. Professor Rho, a few days before the commencement of these hearings, Respondent submitted a new legal authority which was referred to in the opening and stated it would be discussed by the Experts. One of those is R-25, and I would like you to turn to that.

And while you're finding it, I will just note that, as the title suggests, this--the title is the "Commentaries" on the Commercial Act."

A. Yes, I found it.

Q. I would like to point out--I'm sorry to--

MR. KIM: John, can we just leave it on the original for now without--the next page, the next page without the enlargement. Yes.

I would like to point out to the Tribunal that the page that is currently on the screen was the original form
of R-25 submitted by Respondent, and I will point out the relevance of that in a minute.

Would you like to translate that?

(Interpreter complies.)

BY MR. KIM:

Q. Respondent's counsel submitted this Legal Authority or excerpt from the Commercial Act, Article 621, titled "Status of Foreign Company."

Professor Rho, is this related to what you have referred to as General Legal Capacity and Special Legal Capacity in your presentation earlier today?

A. Yes. This can be called related to the extent that legal capacity is mentioned.

Q. Professor Rho, in the first sentence--and I'll read the first few words of Article 621, it states: "In applying other Acts, a foreign company," and I will stop there.

Do you see that?

A. Yes, I'm seeing it.

Q. And unlike Article 16 of the Act on Private International Law that we discussed earlier, which refers to corporations and other organizations, isn't it correct that Article 621 of the Commercial Act only applies to foreign companies?

A. Yes. This provision is quite often mentioned
during the course of the Corporate Act; and, because of that, I'm well aware of this provision. And having said that, it's a shame that there is little distinction between "corporation" and a "company" under Korean statutes.

And even though the term "foreign company" is used in this provision, there is a prevailing school of thought that, whether or not the organization in question has legal personality has no relevance.

MR. KIM: Mr. President, I would like to point out that on this page, you will see at the bottom of the page "Translation Omitted." A number of days ago, we submitted an English translation of the immediately following paragraph, and there has been some back and forth between counsels as to the accuracy. I believe that in the hearing binder there is Claimants' English translation as well as Respondent's English translation.

But for the sake of today's cross-examination, without accepting the accuracy, acknowledging the accuracy of Respondent's English translation, I will proceed based on their translation.

PRESIDENT SACHS: Okay. Noted.

MR. KIM: I will just wait until the part that was initially translated--I mean omitted but is now on the screen.

Actually, okay. It's on the screen now.
BY MR. KIM:

Q. Professor Rho, the first sentence of the part that was initially--intentionally omitted reads: "Whether a foreign company has, in general, legal capacity or not is an issue to be decided by the law of the country of the Company's establishment (lex personalis)." Would you agree that this is consistent with Article 16 of the Act on Private International Law?

A. As I mentioned earlier, it seems that this provision is based upon General Legal Capacity.

Q. I just noticed that this is our Claimants' translation, and after I said--I told the Tribunal that we will use Respondent's translation, so I'll wait for the Respondent's translation to come up.

The next sentence, Professor Rho, addresses what you have referred to as "General Legal Capacity" and a "Specific Legal Capacity" in Korea.

Do you see that?

A. Yes.

Q. And I acknowledge that at the end of the second sentence it states, "may have Specific Legal Capacity in Korea," may have the words: "may have Specific Legal Capacity in Korea." I acknowledge that.

And do you see that?

A. Yes.
Q. But I would put to you, Professor Rho, that the important part of this sentence is the first part of the sentence, which reads: "The extent to which a foreign company whose General Legal Capacity is acknowledged pursuant to the law of the country of its establishment." Do you see that?

A. There is some confusing discrepancy between the original Korean text and the English translation. Could you please repeat your question?

Q. Professor Rho, this is Respondent's translation.

A. (In English) Oh, I know.

(In Korean) The parts you are referring to, is it a foreign company whose General Legal Capacity is acknowledged pursuant to the law of its place of incorporation?

Q. Let me ask you a simple question: Isn't it clear that this only applies to, and I quote, "a foreign company whose General Legal Capacity is acknowledged pursuant to the law of the country of its establishment"? Isn't that clear?

A. I'm afraid that is the wrong interpretation.

(Overlapping speakers.)

A. Can I offer my explanation?

The interpretation that the Article 621 is only applicable to foreign companies whose legal capacity is
acknowledged pursuant to the law of its place of establishment is not consistent with a prevailing school of thought.

The proposition that the Article 621 is applicable whether or not a foreign company has a legal capacity pursuant to the law of its place of establishment is included in my textbook, and that proposition has been widely accepted in the legal community.

Q. Professor Rho--

(Overlapping speakers.)

A. So, I think the following is the correct interpretation of the portion.

Where a foreign company is acknowledged to have a General Legal Capacity pursuant to the law of its place of establishment, that company's Specific Legal Capacity will be determined based upon the Korean Law. The provision is not meant to exclude companies who do not have the legal personality pursuant to the law of their place of establishment.

Q. Professor Rho, I will remind you that this Legal Authority, which is an official commentary on the Commercial Act, was put forward by Respondent, not Claimant, and that this translation was also prepared by Respondent's counsel. And in my view, a plain reading while I understand that that is your opinion or
interpretation, in my view, a plain reading both in English
and Korean is clear, and that this only applies to, and I
quote, "a foreign company whose General Legal Capacity is
acknowledged pursuant to the law of the country of its
establishment." That's what it says.

A. I'm not saying that the counsel's interpretation
is incorrect. The provision in question is vaguely worded.
Because of that, even the best interpretation could leave
room for a difference in opinion.

MR. HAN: Mr. Arbitrator, now Claimant is trying
to confirm the interpretation of the translation with the
preface of--with the Expert rather than asking for his
interpretation of the Korean original text of the
commentary book.

MR. KIM: Mr. President, I stated that it is my
view that--and I reminded the Parties and the Tribunal
that, first of all, this is Respondent's translation; and
second, that in my view, that this English wording is
consistent with the Korean original, and I put that to
Professor Rho.

PRESIDENT SACHS: And I think we've covered the
point.

MR. KIM: Okay, I agree.

PRESIDENT SACHS: We could move on.

BY MR. KIM:
Q. Professor Rho, earlier today, when you were talking about special treatment under certain acts, and I believe that you mentioned this not only in your presentation today but also in your Expert Report, you covered as far as I can recall three acts: The Capital Markets Act, the Corporate Tax Act, and the Civil Procedure Act. I would just like to deal with these very quickly, if I may.

A. Yes.

Q. Can we look at Article 168 of the Capital Markets Act, which can be found at R-14.

A. I found it.

Q. Okay. Professor Rho, as you will see, the title of this Article is "Restrictions on Foreigners' Trading of Securities and Exchange-Traded Derivatives."

Do you see that?

A. Yes, I do.

Q. And, based on this Article in--you don't have to turn to it now--but in Paragraph 19 of your Expert Report, you conclude that because the definition of "foreign corporation" includes funds or associations created and supervised or managed in accordance with the statutes of a foreign country," you conclude that, and I quote, "even where a fund or partnership does not have the legal capacity to hold rights or to own shares pursuant to the
place of establishment of the fund or partnership," you state that Korean Law does not take into account such arrangements.

A. Yes, that is correct.

Q. I would like to recall what we have discussed today. Article 16 of the Act on Private International Law provides that foreign corporations shall be governed by the laws of its establishment.

We've also confirmed that for what you called--I know you mentioned it was only Korean companies, but for Korean companies, a person or organization without a General Legal Capacity to act--and I'm deliberately using your own words--cannot own shares. And notwithstanding that a Korean organization without legal capacity to own shares cannot own shares. It appears that it is your view, based on Article 168 of the Capital Markets Act, that somehow a foreign corporation without legal capacity can own shares under Korean Law. Is that true?

MR. HAN: Professor Rho, do not answer the part especially about the Claimant said "we've also confirmed" part.

THE WITNESS: The FSS--regarding that portion, the FSS had some concerns regarding "corporations, et cetera," in connection with Alien Laws. It seems that the counsel is referring to reverse discrimination, provisions set
forth in the Capital Markets Act have their purpose of regulation.

When it comes to domestic investment done by an association in Korea, the members of such association can be identified and confirmed by the regulators, and that's why there is no need to acknowledge trading done in the name of the association. But there is no way for the regulators to identify and confirm the members of foreign corporation, and that is why there is--that is why there is a need to allow foreign organizations without a legal personality to conduct transactions in the name of the association, and that is why there is a need to regulate such foreign associations.

Q. Professor Rho, I would put to you that the fact that Korean regulators cannot confirm, as you mentioned, is the exact reason why Article 16 of the Act on Private International Law dictates that the laws of the place of establishment should govern. That's logical.

A. I gather you have a different perspective regarding the Capital Markets Act. The Alien Law provisions under the Capital Markets Act reflect the intention of the Korean regulators to regulate foreign investors according to the method prescribed by the regulators.

Q. Professor Rho, you referred to "reverse
discrimination." Is it your view today that the Capital Markets Act regime discriminates against foreign investors?

A. As I mentioned earlier, in connection with counsel's remark, Korean associations demand that they should be allowed to conduct transaction and open account in the name of the association and can be construed as "reverse discrimination."

Q. For the record, I didn't--for the record, counsel never said the words "reverse discrimination." My point was that it's illogical. But I will move on. I will move on to the Corporate Tax Act.

Professor Rho, at Paragraph 20 of your Report, you state that the Supreme Court of Korea has ruled that a Limited Partnership established pursuant to the laws of the Cayman Islands was a foreign corporation within the meaning of the former Corporate Tax Act.

Do you see that?

A. Yes. That is what I wrote in Paragraph 20.

Q. While I agree with you that this Court treated the Cayman Partnership--let me start again, sorry.

While I agree that this case relates to tax treatment under the Corporate Tax Act, isn't it true, Professor Rho, that this Court never found that the Cayman ELP, in fact, had what you call a "legal capacity to have rights" or even a "General Legal Capacity to have rights"?
A. Yes. As you have pointed out, the ruling was made based upon the premise that the entity in question does not have a General Legal Capacity.

Q. And Professor Rho, can we turn to R-20.

R-20 provides Article 57 of the Civil Procedure Act.

Do you see that?

A. Yes, I'm looking at it.

Q. In fact, in your slide presentation earlier today, you referred to this in Paragraph 5 of your presentation as an example of where Korea's so-called "Alien Law" applies. Do you recall that?

A. Yes, of course I do recall.

Q. And do you agree with me that the title of this provision starts with the words "Special Provisions"?

A. Yes, I do.

Q. Professor Rho, is this an example of what you call "Special Legal Capacity"?

A. As the counsel is well-aware, there is a difference between litigation capacity and legal capacity to have rights, and this is cited--of course, the provision is not related to General Legal Capacity. The provision can serve as a clear example of Alien Law.

Q. Okay. I'm going to wrap up in five minutes, but I just want to ask one last question on this provision.
At the very last part of Article 57, it states:
"Even where he or she does not have such capacity pursuant to the laws of his or her home country."

Do you see that?

A. Yes.

Q. And I assumed that this is what you referred to as the application of Alien Law?

A. Yes. This is within the scope of Alien Laws.

Q. Professor Rho, is there any similar wording under the Capital Markets Act, specifically Article 168 of the Capital Markets Act, which you rely on?

A. And all of us here are legal experts. Whether or not there is express provision, an interpretation can lead us to a conclusion. It is true that there is no express provision similar to the wording under the Article 168 of the Capital Markets Act.

Having said that, the Article 168 is designed to be applied to foreigners, and the Article mentions foreigners' capacity to acquire shares. Arguing--simply because there is no such provision under the Civil Procedures Act, the argument that this is not Alien Law or there is no provision related to a special capacity, such argument is not appropriate.

MR. KIM: Mr. President, I have only two more questions, but I would ask, if possible, if we can put up
Professor Rho's presentation from earlier today on the screen, just two slides, the first one starting at Slide 11.

BY MR. KIM:

Q. Professor Rho, you will recall this slide from your presentation earlier today?
   A. Yes.
   Q. And you referred to the Supreme Court en banc decision that is referred to in the first paragraph?
   A. That is correct.
   Q. And in providing your thoughts or opinions on this Supreme Court case and relying on the excerpt in your presentation materials, I believe I recall you using the word the Court "held" that...
   A. The more accurate translation of the word I actually used in my presentation would be "say" or "state."
   Having said that, I don't find that translation of "hold" a gross mistranslation.
   Q. I will put to you, Professor Rho, that you did use the word the Court "held" that.
   A. I think that is a matter of interpretation.
   Q. Would you like to retract that statement?
   A. I'm having a hard time understanding why this is an issue.

PRESIDENT SACHS: We are a little bit lost, too.
What's the issue now?

MR. KIM: I will get there. I'm having a little bit of hard time understanding why this entire slide is in English, except for two small words at the end of that paragraph, after the word "R-10."

BY MR. KIM:

Q. Isn't it true, Professor Rho, that the excerpt that you have relied on was not part of the Majority Decision in this case?

A. First, the reason why we have some Korean words on the slide is because while I'm in Korea, I usually enlist the assistance of my assisting students in order to prepare this kind of documentation, but here I have to prepare my own--here, I have to prepare my own material, and that is why I made this kind of mistake.

Q. Professor Rho, is this part of the Majority Decision or not? "Yes" or "No."

A. Sir, that was what I was about to address. As the counsel is well-aware, the Supreme Court's en banc ruling has both a Majority Opinion and Dissenting Opinion. Here, "kwon li neung reok" is not "Dissenting Opinion." This simply indicates that the Justices of the Supreme Court with this Concurring Opinion took a different approach to reach the same conclusion as the Majority Opinion, so this simply shows that these Justices who set forth--who
set—who produced this Concurring Opinion took a different route to reach the same conclusion as the Majority Opinion.

Q. Professor Rho, for the interest of time, is this excerpt from the Majority Opinion or not? That's all I'm asking.

MR. KIM: Mr. President--

PRESIDENT SACHS: The translation, please.

THE WITNESS: The reason I considered this opinion as the opinion put forward by the Supreme Court is because, as you can find out from the middle part of the slide, this opinion confirmed--this opinion confirmed the legal precedents and previous case laws.

MR. HAN: Mr. Chairman, we should note that when Professor Rho was making statement based on the slide, he said "this has been made clear by a Concurring Opinion in the Supreme Court's en banc ruling." It's 141352.

MR. KIM: Mr. President, I put a very simple question to the expert, whether or not this excerpt is from the Majority Opinion or not. It's a very simple question.

PRESIDENT SACHS: And Professor Rho said it's a part--I understood you saying that it's part of a Concurring Opinion.

THE WITNESS: (In English) Yep.

PRESIDENT SACHS: So, that would mean it's not part of the Majority Opinion?
THE WITNESS: (In English) Yep.

PRESIDENT SACHS: So, that would be the short answer to the question.

THE WITNESS: Yes, I agree, Mr. President.

MR. KIM: My apologies. I thought I would be able to end that one in one question, but it took a little bit longer than I thought. I just have one last question on Slide 12 of the presentation this morning.

BY MR. KIM:

Q. Professor Rho--and I promise this will be the last question because I think it's quite easy--on the second line of the quoted excerpt, the words "to hold"--do you see that?--are included in that sentence.

A. Yes.

Q. In Korean, are the words "ownership" or in Korean "so you" used in this Article 311?

A. The word itself is not the same as "ownership."

MR. KIM: I have no further questions.

MR. HAN: Mr. Chair, thank you.

PRESIDENT SACHS: Redirect?

MR. HAN: Yes.

PRESIDENT SACHS: Okay.

MR. HAN: Before I begin, for the record, I would like to point out that R-25 is the exhibit produced by Claimant, not by Respondent.
PRESIDENT SACHS: Okay. Thank you.

REDIRECT EXAMINATION

BY MR. HAN:

Q. I would only ask three questions for redirect.

Professor, thank you for your effort.

Can you tell us about statutes governing the trading of Listed Securities, and can you also tell us how these statutes have an impact on share ownership and the Shareholder Registry?

A. In order to trade in Listed Securities, an individual has to open an account with a brokerage firm. And, in Korea, the use of real name is mandated in order to prevent money-laundering. And if an individual opens an account and trades Listed Securities, in that case, the titleholder is regarded as Shareholder.

And second, Listed Securities are traded on massive settlement systems. As I mentioned in my presentation, since it is impossible to identify and recognize the counter-party to the Transaction, it should be deemed that the titleholder is the Shareholder.

And third, the Shareholder listed in the trading account will be automatically entered into the real Shareholder Register. This prevents the possibility that--this prevents the possibility that a shareholder is not listed in the Shareholder Registry due to the person's
mistake or laziness. And all things are considered when it comes to Listed Securities, the shares that belong to the titleholder.

Q. May I point you to R-17. Allow me to draw your attention to 6-13.

A. Yes, I found it.

Q. In light of this provision, what impact would a misrepresentation in the application for Investment Registration bring? Would it still be possible for the individual to acquire shares from the beginning or would it be impossible for the individual to acquire shares at the beginning?

A. In principle, if the individual intentionally made misrepresentation in the application, the individual's ownership of the shares would be unlawful. Such a player would be banned from participating in the capital market.

And I have never--I have never encountered many cases where an individual is willing to risk--whether an individual is willing to take on such risk by making intentional misrepresentations in their application for Investment Registration.

Q. Could you please go to CLA-61 in the bundle in front of you.

MR. KIM: I don't believe I referred to this in cross-examination, Mr. President. This is redirect.
MR. HAN: Sir, we are referring to--sir, I'm trying to refer to the C exhibit that Claimant submitted, and also that issue I'm going to address was heavily discussed and disputed between the Expert and the Claimant during the cross.

PRESIDENT SACHS: I'm sorry, but, I mean, it's not on the screen and I don't find it in the volume here. Before we continue, I think we...

(Pause.)

MR. KIM: Will Respondent's counsel be putting it on the screen?

MR. HAN: I'm not tech-savvy, so I'm going to try anyway.

(Comment off microphone.)

BY MR. HAN:

Q. And as the Claimant submitted the CLA-61, the Claimant had chosen to translate only a portion of the document; and please understand that the page I am referencing, it has not been translated.

MR. KIM: Mr. President, I object to this. The part that was omitted in Respondent's exhibit that we referred to was later updated by Claimants, and then the translations were discussed between the Parties. And you will find the additional parts, English and Korean, in the Hearing Bundle.
What Respondent is trying to show here is that there are parts of the translation that are omitted, but nothing has been added to the record. And he is planning on reading, based on my understanding of what his statement was in Korean, parts of the Korean-language version from these Commentaries that have not been translated into English as part of this record in this arbitration, which is completely different than how the other exhibit, the R exhibit, was dealt with.

PRESIDENT SACHS: Counsel?

MR. HAN: Sir, this exhibit was submitted only two weeks before this Hearing. And also, as you can see, this Korean exhibit is almost 90 pages long, and so even the Respondent has submitted revised excerpt translation of this exhibit.

We didn't have any other option but to translate only some important parts we were going to refer to at the time. But now, during the cross-examination, the important issue on this page came up, so we are trying to confirm the meaning of this Korean language, which the Claimant submitted in the Professor Kwon's Reports.

MR. KIM: Mr. President, if I may, if that's the case, neither the Tribunal nor the English-speaking Parties in attendance today in these proceedings will be able to see what counsel plans or is referring to. He said what,
two weeks, three weeks ago that was submitted? This was in accordance with the Procedural Timetable. They had plenty of time to provide an English translation.

In fact, the English translation of the exhibit that we pointed out today, the Respondent's exhibit, was submitted a few days, as you may recall, by application prior to these proceedings. Yet, we provided an English translation of the portions that we thought were relevant, and we had--not only that, but we discussed with Respondent's counsel whether the translation--the respective translations were acceptable, and we agreed to not agree. And, therefore--in fact, we have two English translations of the additional part that was added.

So, to say that they didn't have enough time when they had this commentary three weeks ago to provide additional English translations, which they were free to do, and to complain about it now and to ask questions on redirect based on excerpts of a Korean Legal Authority for which an English translation has not been provided is not fair.

PRESIDENT SACHS: Well, there is a procedural problem here. We can't only--work only with the--this extract. I mean, we don't know what was omitted here, and so that would not be so helpful for the Tribunal.

MR. HAN: Okay. Thank you.
And then I'm going to ask one last question for my redirect.

PRESIDENT SACHS: Yes, please. Go ahead.

BY MR. HAN:

Q. Let me draw attention to R-14. Please take a look at Article 168.

A. Yes, I have found it.

ARBITRATOR GLOSTER: Excuse me, is there an English translation of it? I'm looking at R-14 electronically, and I don't seem to have an English translation.

Thank you. One is now on the screen.

PRESIDENT SACHS: Please proceed.

MR. HAN: So, the translation of R-14 has been submitted, and I think there must be a problem in putting those files into USB to the Tribunal?

MR. NYER: We have it on the screen now.

PRESIDENT SACHS: It's on the screen now.

BY MR. HAN:

Q. The Article 168 submitted as R-14, there is a provision on the acquisition of shares by foreigners and "foreign corporation, et cetera."

So, can you tell us why the wording is "foreign corporation, et cetera"?

A. It is very obvious. Foreign corporations refer to
organizations with legal personality.

   By attaching "et cetera," it is stipulated that
organizations without legal personality, such as funds and
associations, can also own shares.

   MR. HAN:  No further questions. Thank you.
   PRESIDENT SACHS:  Okay.

   QUESTIONS FROM THE TRIBUNAL

   ARBITRATOR GLOSTER:  Professor Rho, please, could
you look at Paragraph 11 of your expert opinion.

   THE WITNESS:  Yes, I'm on it, ma'am.

   ARBITRATOR GLOSTER:  You say you have a
relationship with the Parties to the Arbitration. Are you
referring there to an independent relationship with the
Respondent?

   THE WITNESS:  Yes. I participated in the
Commission aimed to make legislation such as the Commercial
Act, the Capital Markets Act, the Fair Trade Act, and
Electronic Securities Act. And due to the aforementioned
expertise, I participated in a number of projects dedicated
to interpretation of statutes.

   ARBITRATOR GLOSTER:  Just a second. My question
is: In your Paragraph 11, you refer to "conducting various
research assignments for the Respondent" and "working as an
advisory member of a research group."

   My question is: Are those assignments and
"working as an advisory member" paid assignments?

THE WITNESS: Yes. I was compensated, but my participation in those areas was conducted as part of academic activities. I would not characterize my research as the conduct of business.

ARBITRATOR GLOSTER: Can you tell me whether it was the Respondents who paid you for those various research assignments?

THE WITNESS: That is correct. Having said that, the level of compensation was reasonable.

ARBITRATOR GLOSTER: Thank you very much, indeed. I don't know whether counsel on either side wants to ask any questions arising from my question.

MR. KIM: No questions from Claimants' side.

MR. HAN: Just one minor point on that issue. In Korea, it's very common that Professors--

ARBITRATOR GLOSTER: No, no, I'm sorry. I asked if you wanted to ask the Expert a question, not to make a submission.

Could you please ask in English the question so it can get translated so I can understand it.

MR. HAN: Okay.

FURTHER REDIRECT EXAMINATION

BY MR. HAN:

Q. Professor Rho, can you briefly explain the
practice in Korea how many academic Professors are engaged in the academic research work by the Korea Minister of Justice and other Korean Government Ministries?

A. In Korea, Professors are actively participating in legislation activities and research assignments commissioned by the Government.

As with many other countries around the world, the budget assigned to such research activity is not as sufficient, so the budget for a typical Government project is usually set at a very low level. And I think participating in such projects can be viewed as a part of fulfilling social responsibility.

MR. HAN: Can I ask one more question?

ARBITRATOR GLOSTER: Thank you very much.

MR. HAN: Can I ask one question?

BY MR. HAN:

Q. Professor Kwon, do you have any--sorry.

Professor Rho, do you have any knowledge that Professor Kwon, the Claimants' Expert, has done any project for the Government?

A. I think I have to tread very carefully here, but I think Professor Kwon is in a similar position to mine.

MR. HAN: No further questions.

QUESTIONS FROM THE TRIBUNAL

ARBITRATOR MAYER: One question, Professor Rho:
You have been taken to Exhibit R-17 by both counsel and, in particular, to Article 613.

You can translate that already.

And the question by Respondent's counsel was what happens if the Governor rejects the application, and you answered. That's Paragraph 1 in Article 613.

Now, Paragraph 2 reads: "And the Governor may cancel the registration or suspend its validity in various cases." So that's at the moment after the investment, and the question is: What would be the consequences of such cancellation or suspension?

THE WITNESS: In principle, the owner of the share would not change, and the investor would not lose their shares. But, if the Applicant was not entitled to own shares in the first place and the Applicant ends up owning some shares, then the registration can be canceled followed by very serious corrective measures.

So, this case is much more serious than a simple misrepresentation regarding the executive officers of the organization in the application. And if it is found out that an organization which is not entitled to owning shares ends up owning the shares, the FSS would not allow that organization to continue to own the shares.

ARBITRATOR MAYER: But if it's not allowed to own the shares, what happens?
THE WITNESS: It is not that Korea's FSS orders the organization to--it is not that Korea's FSS orders the organization to dispose of the shares. Instead, the FSS would impose sanctions on the relevant brokerage firms and the relevant executive officers and employees. And setting a bad precedent is the last thing the FSS would do.

ARBITRATOR MAYER: Thank you.

PRESIDENT SACHS: All right. Thank you, Professor Rho, for your expert witness testimony. You're released as an expert.

(Witness steps down.)

MS. SALOMON: Mr. Chairman?

PRESIDENT SACHS: We are a bit behind schedule.

MS. SALOMON: We were wondering, while it is late and we're sure the Court Reporter would need a break, we would propose if the Tribunal would permit to have a later evening today so we could, indeed, finish the Korean Law issues and then perhaps start later tomorrow morning so that the closing can be dealt with in that time period, rather than having the Korean law experts continue in the morning and then have to address closing immediately thereafter.

(Pause.)

MR. FRIEDLAND: How about a compromised proposal? How about we do one hour--continue with one hour of
cross-examination of Professor Kwon now and then finish
with another hour tomorrow morning, and then take a break
and do the opening--closings?

PRESIDENT SACHS:  David, would that be all right?

MS. SALOMON:  From our perspective--we're off the
record?

THE COURT REPORTER:  No, you're back on.

MS. SALOMON:  With that proposal, we would, then,
rather just prefer to stop now and start the full
cross-examination in the morning.  Otherwise, we're in the
middle--

PRESIDENT SACHS:  If we move on, maybe you will
not need the full two hours, and maybe within--now we can
capture the--

MR. FRIEDLAND:  Well, it might be the case.  We
just spent a long time on our expert.  I think there's
going to be some parity by our Korean co-counsel.

PRESIDENT SACHS:  Sure.  I understand.

I think we should proceed for an hour, have a
break now, 10 minutes--or 15 minutes.

So let's resume at 5:35, and we will stop at
around 6:35.  All right?

Thank you very much, Professor Rho.

(Brief recess.)

PROFESSOR JAE YEOL KWON, CLAIMANTS' WITNESS, CALLED
PRESIDENT SACHS: So, good afternoon, Professor Kwon.

THE WITNESS: Yes, my name is Jae Yeol Kwon.

PRESIDENT SACHS: So, you are here as an expert witness on legal matters. You're a professor of law. Before you, in front of you is a statement that we ask you to read aloud, please.

THE WITNESS: Yes, I see it.

I solemnly declare upon my honor and conscience that my statement will be in accordance with my sincere belief.

PRESIDENT SACHS: Thank you very much, Professor Kwon.

And I now turn to you, Ms. Interpreter. Also you have in front of you a declaration, and would you please read it aloud.

THE INTERPRETER: I solemnly declare that I will interpret accurately, completely, impartially, and in accordance with my best skill and judgment.

PRESIDENT SACHS: Thank you very much.

What was the arrangement? Will there be any direct?

MR. KIM: Just a few introductory questions, if I may.

PRESIDENT SACHS: Okay.
DIRECT EXAMINATION

BY MR. KIM:

Q. Professor Kwon, for the purpose--for the benefit of the Tribunal, can you just give a brief explanation of your current position.

A. Currently, I am the Dean of the Law School of Kyung Hee University, which is located in Seoul, Korea; and also hold the position of Dean, as the Dean of the School of Law--Graduate School of Law from the same university.

I'm also active in several academic societies. For example, I'm currently the Vice President of the Korea Securities Law Association and also the Korea Business Law Association.

Q. Can you just briefly describe your expertise in Corporate Law?

A. After I graduated university in Korea, I graduate from the Graduate School at Yonsei University and obtained a Master's in Corporate Law, and then I went to study at Berkeley, where again I obtained a Master's in Corporate Law, and then I obtained my Ph.D. at Georgetown for Corporate Law as well.

So, personally I believe that I have expertise in Corporate Law.

MR. KIM: I have no further questions.

PRESIDENT SACHS: Thank you, Mr. Kim.
We will then proceed to the Respondent.

MR. HAN: Yes, thank you, Presiding Arbitrator.

CROSS-EXAMINATION

BY MR. HAN:

Q. Good afternoon, Professor Kwon.

A. Well, I've been sitting for such a long time that I'm not sure if it is such a good afternoon.

(Laughter.)

Q. I would like to ask a few questions regarding the Expert Opinion that you have drafted.

A. Okay.

Q. So, Professor Kwon, in the past you have conducted and participated in several government projects, including projects for the Ministry of Justice, for the Financial Supervisory Services, and the Financial Supervisory Board; is this correct?

A. Yes, that is correct.

Q. And you were compensated for all of them?

A. Yes, that is correct.

Q. Professor Kwon, do you have--are you a member of the Law Association and to work as an attorney in Korea?

A. No, I do not, but I have experience working for the Supreme Court in Korea.

Q. So, Professor Kwon, you do not have a Ph.D. on Korean Law; is that correct?
A. I think it would be a bit ambiguous to say that I do not have a Ph.D. on Korean law because the thesis I wrote when I was at Georgetown was the U.S. legal perspective on Korean chaebols.

Q. So, Professor Kwon, in your Opinion Report, you quote the Act on Private International Law quite frequently. Have you written any papers or books on the Act on Private International Law?

A. As I mentioned before, my main topic of interest is Corporate Law, but when it comes to specifically the Act on Private International Law pertaining to corporates or regulations as such, I have not written any papers or books on this specific topic.

I would also like to add one more thing, that I, however, do have experience in lecturing on International Transaction Law, which is included as part of the Act on Private International Law, and also upon the request of the Ministry of Justice, I was a member who drafted questions for the Bar Association on the topic of International Transaction Law.

Q. Pertaining to your opinion, you are of the view that when it comes to the rights of an organization, of a foreign organization, that it should be based on the establishment of the place that was established pertaining to Article 16; is this correct?
A. Yes, that is correct.

Q. If that is the case and you apply Article 16 of the Act on International Law pertaining to the legal capacity to have rights and the fact that this is based on the place of establishment, then you would also have to apply the same for Korea as well; in other words, if the entity does not--is not established based on the law in that country, that does not have legal capacity in Korea?

A. Yes, that is correct.

Q. Are there any other cases--for example, an entity may not have legal capacity based on the law of where it was established, but it does not--is not acknowledged in Korea or where vice versa, that it does not have the legal capacity according to its establishment, but it does have legal capacity in Korea?

A. Based on my scope of knowledge, I do not think there are such examples.

Q. Can you refer to Paragraph 28 in your opinion?

A. Yes.

Q. So, in Paragraph 28.

A. Yes, I see it.

Q. So, in the second line, you have written that the foreign corporation to broadly capture every possible foreign structure, et cetera, "under Korean Law but may have legal capacity under the laws of place of
establishment in order to achieve," and then it goes on.

Do you see that?

A. Yes, I see it.

Q. But when you testified, you mentioned that pursuant to Article 16 of the Act on Private International Law, that it should be based on the place of establishment, and that should apply in Korea as well?

A. Yes, that is correct.

Q. However, in this paragraph, you talk about a case where pursuant to the Korean Law, it does not have the legal capacity to have rights, but it does so have legal capacity to have rights based on the place of establishment.

So, you were talking about two different cases; is this correct?

A. That is correct.

Q. So, does that mean to say that you're acknowledging that when it comes to the legal capacity to hold rights that it can be different, depending on the place of establishment and Korean Law?

A. I think that maybe I was not very competent in expressing clearly what I was trying to convey. What I wanted to say in this paragraph was that, when we look at the purpose or the idea of the Capital Markets Act, that this can be considered--handled differently, and I think
that was what I was trying to express. I don't think I was trying to express specifically that legal capacity to have rights that did not exist can suddenly exist.

Q. So, based on your opinion, if the entity is legally--does not have legal capacity or legally--incapable in that place of establishment, that that would also be the case in Korea as well; is that correct?

A. I think when incompetency is referred to here, I think there can be incompetent in terms of the legal capacity to have rights, and also the incompetency in terms of the right to act, and I think it is very--it is unclear in this case. And if it is the latter where it is incompetent to act, then I think there is a way for protection pursuant to Article 15 of the Act on Private International Law.

Q. So, that means to say that what you're saying is that when it comes to the Act on Private International Law, Article 16, that this is applicable for the legal capacity to have rights, but not the legal capacity to act?

A. No, that is not the case. If I may ask to see on the screen Article 15-16 portion of the Act on Private International Law, please.

MR. KIM: Mr. President, if I may--and this is a request to counsel--when referring to specific statutes, I kindly ask that you refer to the CLA or R numbers so that
Professor Kwon can refer to them in the binder. I think he's having trouble locating them without those identification numbers.

    MR. HAN: Will do.

    BY MR. HAN:

    Q. Please refer to CLA-54, please.

Actually, I was not asking him to turn to CLA. He was asking to see the CLA.

A. Yes. I have to refer to the statutes in order to respond to the question. That is why.

I would like to talk about two aspects: First, as you are well-aware, when it comes to the civil act, there is no statute pertaining to the protection of the legal capacity to have rights. However, when we look at the Act on Private International Law Article 15, it refers to the incompetency to act, and it's a protection statute pursuant to the civil act. Therefore, I believe that this is not a statute pertaining or regulating the legal capacity--its statute on the legal capacity to have rights.

And the second thing that I would like to say is that is why I wanted to refer to the Korean statute. It is because when you look at the title of Chapter II, it cites "persons," and Article 11 to Article 15 refers to "persons" whereas Article 16 refers to "legal entity" or "organization." Therefore, I believe that we have to read
Article 16 to be— which is about organizations, and it was put there in order to apply Article 11 to 15 to organizations.

Q. So, I would like to ask a very simple question; and, due to time restraints, if I would appreciate if you could also respond simply as well.

So, in applying Article 16 of the Act on Private International Law, you are of the view that the legal capacity to have rights is different from the legal capacity to act; is this correct?

A. No. What I was saying is that Article 16, which I just stated, is a statute that was put in in order to apply Article 11 to 15 to organizations as well. And, therefore, I believe that it includes the legal capacity to have rights and the legal capacity to act as well.

And I would also like to point out secondly that there has been a Supreme Court case decision to this extent.

Q. I would like to ask a question that is directly related to this case.

So, when it comes to publicly listed shares, they are considered to be movable asset, it is regarded as a movable asset.

A. Yes.

Q. Samsung Shares are shares issued by a Korean
company, and also traded in Korea; correct?
   A. Yes, but there is one thing that I was not able to
   confirm, is whether, for example, if there is a certificate
   pertaining to the Samsung Shares, whether these such
   certificates can be traded overseas.
   Q. So, if you could refer to the Act on Private
   International Law, which is CLA-54, Article 19,
   Paragraph 1.
   A. Yes.
   Q. When you look at that paragraph, it cites that
   when it comes to the rights of movable assets, that it is
   governed by the location of the object asset.
   A. Yes.
   Q. So, I would like to give another example
   pertaining to the Act on Private International Law. Let's
   say that there is a company, a Cayman Islands company, and
   according to Cayman Law, let's assume that a woman
   representative of that company cannot own shares. If that
   company comes to Korea and acquires shares, who do--who
   does these shares belong to?
   A. You're talking about a case where a Cayman entity
   that does not have legal personality buy shares in Korea?
   Q. This is not--this does not have anything to do
   with the legal personality. What I'm asking is: If, let's
   say, there is a Cayman Law that states that if a woman is
the head of that company, that company cannot own shares.

Let's say this company comes to Korea and acquires shares. Then who does the attribution of these shares ownership go to? Who does it belong to?

A. Well, I believe in that case, that the Cayman company would be the acquirer of the shares, but the assumption here is that this is regardless of whether it has a legal capacity to hold rights or not.

Q. So, what you're saying, Professor, is that, although the Cayman--pursuant to the Cayman Law, that this company cannot acquire shares because their head is a woman, but then because they acquired their shares in Korea, then the ownership of this share belongs to the Cayman company.

A. That is not what I was trying to say. I don't know whether the head of an entity would determine whether shares can be acquired or not.

Q. What is relevant here is not whether the head or representative of the Company was a woman or not. Pursuant to the Cayman Law, the shares could not be acquired because this company had a head as a woman. However, when they came to Korea, they were able to acquire shares in Korea; therefore, these shares, ownership of the shares, belonged to the Cayman company. That's what you said; correct?

A. I don't know if I understood the question
incorrectly, but when I was hearing the question I thought
that the assumption was not whether the Cayman company had
legal personality or the issue of--had the legal capacity
to have rights was not an issue here.

And also when it comes to whether the Cayman
company can--and based on this assumption that that was not
of an issue, that they would be able to acquire shares in
Korea.

And also, I don't know how relevant the head or
representative of the Company is in determining the right
to acquire shares or not, specifically pertaining to what
we are discussing.

Q. Could you refer to Paragraph 32 in your opinion.
A. Yes.

Q. Here, you quote--you cite the act on corporate
tax; is that correct?
A. Yes, that is correct.

Q. In this Court Decision, they considered Cayman
Fund to be a legal entity and, therefore, imposed corporate
tax on this entity; is that correct?
A. No, that is not correct. That is not true.

Q. However, clearly, when we look at Paragraph 32, it
states, if it can be deemed a foreign entity based on the
Corporate Tax Act.

Do you see that?
A. So, which part are we talking about?

Q. So, towards the end of Paragraph 32 in your Opinion, you specifically cite this Court Decision.

A. I did cite this, but when we look at the Preamble of the Court Decision, what is discussed is that the assumption here is that the Cayman Fund that was established in the Cayman Islands does not have the legal capacity to have rights.

Q. My question regarding this Court Decision is not whether the fund that was established in the Cayman Islands is a legal entity pursuant to the Korean Law or not. What I'm saying is that the Court Decision states that the Cayman Fund is considered a legal entity and, therefore, subject to corporate tax.

A. Yes, however--yes, however, I think that the Court Decision--the reason for this Court Decision is simply that it was for taxation/administrative purposes that, in order to collect the corporate tax that it was considered as--viewed as a legal entity.

Q. Therefore, the Court found the Cayman Fund to be a foreign legal entity and, therefore, imposed the obligation to pay taxes?

A. Yes, but if I may add once more, that here the legal entity referred to here is different from a legal entity as to have legal capacity to have rights.
The reason this was viewed as a legal entity was for the purpose of imposing a corporate tax. I think this is how it should be understood.

Q. My question was: The Court--whether this Court Decision was deciding that the Cayman Islands needs to be imposed--have the obligation to pay taxes.

A. It's been a while since I have seen the full Transcript of this Court Decision, so I don't think I am aware of the facts very accurately, so I would like to take a look at the full Transcript of the Court Decision.

The reason why I say this is because this is the opinion that has been proposed by the Court. However, the facts may be different so that is why I would like to confirm the facts--the facts of this Decision.

Q. So, Professor Kwon, I will stop my questions pertaining to this Court Decision. I believe that through the Claimants' counsel that you may have an opportunity to answer any questions that he or she may have or maybe review this Decision.

A. Thank you.

Q. My next question is not related to the specific Court Decision that we just discussed, but is regarding Korean Law in general.

A. Okay.

Q. Well, if an entity is imposed of corporate tax,
this means that that entity carried out operations and also
engaged in profit; is that correct?

A. Yes, that is correct.

Q. Professor, in your Opinion, you cited that a
foreign fund or organization can be limited pursuant to the
Capital Markets Act; is this correct?

A. Yes, that is correct.

Q. Does that mean a foreign fund or entity can be
subject to obligations pursuant to the Capital Markets Act?

A. Yes, but there is an assumption I would like to
emphasize pursuant to the Capital Markets Act.

Q. Thank you.

So, pursuant to the Capital Markets Act, a foreign
dentity that does not have the legal capacity to have rights
may have an obligation but not legal capacity; is this
correct?

A. Pursuant to the Capital Markets Act is what
determines whether it can be considered to be a legal
dentity or not, and I think that it has to abide to the
purpose of the Capital Markets Act and what this law is
trying to achieve.

For example, if a legal entity does not have the
legal capacity to hold rights or a fund does not, then it
does not mean to say that this will not be considered a
legal entity unless it is within the purpose of this
administrative act that is stipulated.

If I may, I would like to add one more thing?

Q. I would like for you to ask—to listen carefully to my question and please respond to the question that I'm asking. In my question, I never referred to the word "legal entity."

A. I apologize. I think I'm still suffering from jetlag.

Q. So, Professor Kwon, you are continuing to—your view is—continues to be that an entity that does not have the legal capacity to have rights overseas can have legal right capacity to have rights in Korea; is that correct?

A. Yes, that's correct.

Q. And you also mentioned that by—in applying the Capital Markets Act, that a foreign entity that does not have the legal capacity to have rights is still subject to imposing of taxes or a tax obligation; is that correct?

A. Yes, it is correct.

Yes, but in imposing any obligations or rights, as I mentioned earlier, pursuant to the Capital Markets Act, Article 1, it should be within the purpose of promoting fair competition and protecting investors.

Q. Could you refer to R-16, Page 12.

A. Yes.

MR. HAN: Just for reference, it's Page 26 in the
THE WITNESS: Page 16?

BY MR. HAN:

Q. Yes, which would be Article 13.

When you look at Article 13, it cites a fund or an association and supervised or managed by a foreign government, a foreign local government, or a foreign public organization.

A. Yes, that is correct.

Q. And the Cayman Funds would be categorized as a foreign fund that is established pursuant to foreign law; is that correct?

A. Yes, it seems so.

Q. The Cayman Fund registered as a foreign investor, and this is based on the Capital Markets Act; is this correct?

A. Yes, that is correct.

Q. You, Professor Kwon, you mentioned that when it comes to Article 168 of the Capital Markets Act, that this is the statute that is trying to limit the ceiling for acquisition by a foreign entity and not a statute that is permissing such—or setting a level for allowing for such acquisition, and this is what you stated in Paragraph 26 of your Opinion; is that correct?

A. Yes, that is correct.
Q. And you also mentioned in the same paragraph, referring to Article 168, that when first acquiring listed shares, that this is to be registered to the Financial Supervisory Services, and that is the—the purpose of this regulation is for this; is this correct?

A. Yes, that is correct.

Q. So, based on these two facts, I think what you're saying is that, as pursuant to Article 168, that this is not a regulation that is trying to provide permission for foreign entities to acquire publicly listed shares, but at the same time, it does allow that this is possible.

A. Yes, that is correct.

Q. So, the purpose of the Capital Markets Act is to protect investors and also to regulate the capital market; is that correct?

A. Yes, that is my understanding.

Q. Professor Kwon, are you aware that nowhere in the Capital Markets Act or the Enforcement Decree is there any word such as the "legal capacity to have rights or legal personality"? Are you aware of this?

A. Yes, I am.

I also tried to look for it, but I was not able to find. However, when we look at the Capital Markets Act and the Enforcement Decree, there are many regulations that state "foreigners" or "foreign corporations" or "foreign
entities, et cetera."

Yes.

Q. Are you aware that the Cayman Fund acquired Shares in Samsung Electronics and Samsung C&T?
A. Yes.

Q. So, the Cayman Funds acquired Samsung's Shares in its name and also sold in its name; correct?
A. Yes.

Q. But you are of the view that the ownership of the Samsung Shares cannot be attributed to the Cayman Fund but rather it is attributed to some members?
A. Yes, I think so. The reason for this is that when we look at the Capital Markets Act Article 168 and its Enforcement Decree, it does not state anything pertaining to the ownership of shares or the attribution of a share ownership.

And if that is the case, I believe that it would be correct to resolve this through the Act on Private International Law.

Q. However, at any rate, the Cayman Fund sold off its Samsung Shares, but the person who acquired the Samsung Shares acquired them from a share ownership that did not belong to the Cayman Fund.
A. Yes.

Q. And you also mentioned in your opinion when
selling and buying shares for publicly listed companies on the Stock Market that it is determined based on just the price, and there is no way to know whether who the other Party is.

A. In principle, yes. If it's public purchase, it may be different.

Q. However, this case does not pertain to a public purchase; correct?

A. Yes.

Q. So, the entity or person that purchased the Samsung funds from the Cayman--Samsung Shares from the Cayman Funds was not aware that the seller was a Cayman Fund.

Furthermore, it purchased from a Cayman Fund which it did not have the ownership for the Samsung Shares.

A. Yes, that is correct.

PRESIDENT SACHS: Would this be a good moment to have our evening break?

MR. HAN: Yes.

PRESIDENT SACHS: Thank you very much.

Thank you, particularly David, for having assisted us so late in the afternoon, and thank you for a very clear translation. I don't speak Korean, but your English was very clear.

And thank you, Professor Kwon. Your testimony
will be carried over to tomorrow. We are sorry that you
had to wait a bit longer than we expected. This was due to
a longer examination of your colleague, and so we look
forward to seeing you again at 9:30 tomorrow morning here.

And now, off the record.

(Discussion off the record.)

(Whereupon, at 6:35 p.m., the Hearing was
adjourned until 9:30 a.m. the following day.)
CERTIFICATE OF REPORTER

I, David A. Kasdan, RDR-CRR, Court Reporter, do hereby certify that the foregoing proceedings were stenographically recorded by me and thereafter reduced to typewritten form by computer-assisted transcription under my direction and supervision; and that the foregoing transcript is a true and accurate record of the proceedings.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to this action in this proceeding, nor financially or otherwise interested in the outcome of this litigation.

DAVID A. KASDAN