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South Korea: A Dispute Resolution: Litigation Overview



Overview of the Korean Judicial System and Civil Litigation

The Republic of Korea operates under a civil law system, similar to those in Germany and Japan. Accordingly, judicial decisions in civil cases are primarily grounded in codified statutes, and courts render judgments by applying the black letter of the law to the facts as formally established during the proceedings. Unlike common law jurisdictions, civil jury trials do not exist in Korea. Judges are therefore responsible for both determining the relevant facts and applying the law. Civil litigation in Korea follows a three-tier court structure – a court of first instance (trial court), an appellate court (high court), and a court of final appeal (the Supreme Court).

Civil Litigation Procedure in Korea

Civil litigation in Korea is initiated when the plaintiff files a complaint with the court. As a general rule, the defendant is required to submit a written answer within 30 days from the date on which the complaint is formally served. However, there is no material adverse effect for submitting the answer after the 30-day period. The first oral hearing typically takes place approximately four months after the filing of the complaint. If a lawsuit is filed by a foreign plaintiff, the defendant may request that the court order the plaintiff to post security for litigation costs, which is intended to cover potential court costs and other expenses (eg, attorney’s fees) in the event the foreign plaintiff does not prevail.

Court hearings in civil cases involve a combination of written submissions and oral argument. Traditionally, parties relied heavily on pre-hearing written briefs, and oral argument was relatively brief. In recent years, however, Korean courts have placed increasing emphasis on oral advocacy, and it has become more common for counsel to present oral arguments supported by prepared in-court presentations. Most civil cases proceed through multiple submissions followed by hearings held at intervals of approximately six weeks, during which the court reviews the issues in dispute.

Korea does not provide for broad pre-trial discovery compared to that of other jurisdictions, such as the United States. Nevertheless, where deemed necessary, the court may, upon a party’s request, issue an order compelling the submission of specific documents. If a party fails to comply with such a document production order without justifiable reasons, the court may impose sanctions, including accepting the opposing party’s factual assertions as true (ie, adverse inference) or imposing administrative fines.

In the past, the parties were allowed to introduce new evidence and/or arguments on appeal to the high court (appellate court). However, the high court has recently been requiring the party introducing new evidence to explain why the evidence was not entered during the trial of first instance and has been taking a more restrictive approach to granting requests to call witnesses. The Supreme Court continues to only hear appeals for errors in the application of the law by the lower courts.

Litigation Costs and Attorneys’ Fees

Under Korean civil procedure, the losing party is, in principle, responsible for litigation costs, including attorneys’ fees. However, recoverable attorneys’ fees are not based on the actual legal fees incurred by the prevailing party. Instead, only the statutory amount calculated according to rules established by the Supreme Court of Korea is recognised as recoverable litigation costs. In practice, the amount recoverable under these rules is significantly lower than the actual attorney’s fees typically paid. Consequently, even the prevailing party is generally required to bear a substantial portion of its own legal fees, and recovery of attorney’s fees from the opposing party is limited. That said, in cases involving clearly unjustified initiation or defence of litigation, recovery of attorney’s fees in excess of the statutory cap, if deemed reasonable, can be sought through a separate damages action.

Provisional Remedies: Attachment and Preliminary Injunctions

Korean law provides provisional remedies separate from the main action on the merits. These remedies are designed to prevent a party’s rights from being irreparably harmed or rendered unenforceable before a final judgment is issued. The two main types of provisional relief under Korean law are: (i) pre-judgment attachment and (ii) preliminary injunctions. Pre-judgment attachment is a procedure by which the court restricts a debtor from disposing of specific assets before a final judgment is issued. By contrast, a preliminary injunction is intended either to maintain the status quo of a right or legal relationship or to establish a temporary legal position with respect to a disputed right.

Applications for pre-judgment attachment, which is ex parte in nature, or preliminary injunction are generally decided quickly, often within one to two weeks of filing. However, where a preliminary injunction seeks to establish a temporary legal status, the court is required to conduct a hearing, and the process may therefore take several months. As a condition for granting provisional relief, the applicant is required to provide security, typically in the form of insurance and/or a cash deposit.

Recognition and Enforcement of Foreign Judgments

In order for a final and conclusive judgment rendered by a foreign court to receive recognition and compulsory enforcement in the Republic of Korea, the prevailing party must first obtain an enforcement judgment from a Korean court. When deciding whether to grant enforcement, Korean courts do not review the merits of the foreign judgment or re-examine the foreign court’s findings of fact. Rather, their review is limited to whether the foreign judgment meets the requirements set forth in Article 217 of the Civil Procedure Act, namely:

- International jurisdiction of the foreign court must be recognised in the Republic of Korea.

Contributors:



[Sookmi Lee](#)
[View profile](#)



[Tai Heon Ha](#)
[View profile](#)



WL

Won Lee



SHB

Sang Hyun Baek



[Kye Choi](#)
[View profile](#)

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- The losing defendant must have been properly served with the complaint with sufficient time to prepare a defence or must have responded to the proceedings.
- Recognition of the foreign judgment must not violate the good morals or social order of the Republic of Korea.
- Reciprocity must be assured, or the requirements for recognition of final judgments in the Republic of Korea and in the foreign court's jurisdiction must not be materially imbalanced and do not differ in any significant respect.

Once an enforcement judgment recognising the foreign judgment becomes final and binding in the Republic of Korea, the prevailing party may proceed with compulsory enforcement measures based on the recognised foreign judgment.

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Address

165 Fleet Street
London
United Kingdom
EC4A 2AE

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