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Enforcement of Judgments 2023

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South Korea: Law & Practice

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SOUTH KOREA



Law and Practice

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Bae, Kim & Lee LLC (BKL) was founded in 1980 and is a premier full-service law firm in South Korea. As one of the largest law firms in Korea, BKL is comprised of approximately 750 legal professionals, including lawyers qualified in Korea and foreign jurisdictions, accountants, patent attorneys and other qualified specialists and consultants. Headquartered in Seoul, BKL has overseas offices in Beijing, Shanghai, Hong Kong, Hanoi, Ho Chi Minh City, Yangon, Singapore and Jakarta.

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1. Identifying Assets in the Jurisdiction

1.1 Options to Identify Another Party's Asset Position

Publicly Available Information

In South Korea, there is no centralised publicly available database containing information about a party's asset position. Such information, albeit limited, can however be gathered through sources that are accessible to the wider public. In particular, South Korea has a real estate registry system, which contains registration documents that have information about the current and previous owner(s) of real estate, history of previous transactions, mortgages and liens that are associated with the real estate. In addition to real estate, there are other types of assets that are subject to a publicly accessible registry system, which can be a source of information for the asset in question. These include:

- land and building registration;
- companies and business registration;
- intellectual property (patents and trademarks) registration;
- securities registration;
- vehicle, vessel and airplane registration; and
- factory estate and mine estate registry.

Request for Specification of Property

Once a judgment is rendered, a judgment creditor may file a request for the specification (ie, identification) of a judgment debtor's property with the court in the location of the judgment debtor's general forum. Such requests may be made pursuant to Article 61 of the Civil Execution Act. The court may then order the judgment debtor to submit a list of its properties. If the court holds a hearing for purposes of specifying the debtor's property, the debtor is required to confirm, under oath, that its list of properties in question is true. Should the debtor fail to appear at the hearing in breach of the court order, or refuse to submit the list of properties or take an oath, the court may issue sanctions in the form of court-ordered confinement (which is an administrative (non-criminal) sanction) for up to 20 days. Submitting a false list of properties is an offence punishable by up to three years' imprisonment or a fine of KRW5 million.

Enquiry About Property

The judgment creditor may file a request to the court for enquiry into the judgment debtor's property in specific circumstances set out in Article 74 of the Civil Execution Act. Such circumstances are as follows:

- if the judgment creditor fails to correctly identify the judgment debtor's address after the court's order to correct his or her address;
- the properties on the debtor's list of properties are insufficient to satisfy the claims acknowledged in the judgment;
- if there are causes for which the debtor would be subject to court-ordered confinement of up to 20 days (see "Request for Specification of Property" above); or
- if the debtor makes false representation regarding the list of properties.

If the court accepts the request, it may then enquire about the debtor's properties via the public agencies, financial institutions, organisations, etc, which manage and oversee the electronic repository of information relating to properties and the creditworthiness of individuals. Article 74(4) of the Civil Execution Act prescribes that public agencies, financial institutions, organisations, etc, cannot refuse the court's enquiry without good cause.

2. Domestic Judgments

2.1 Types of Domestic Judgments

Judgment for Performance

This is a judgment ordering a debtor to perform certain obligations. The most common type of judgment for performance is a judgment ordering payment of money (ie, monetary judgment). Other types of judgment for performance include a judgment ordering specific performance at the debtor's cost or by ordering a monetary penalty on the debtor if he or she fails to comply with the judgment.

Declaratory Judgment and Formative Judgment

Declaratory judgments confirm the existence of rights or obligations between parties. Declaratory judgments are not allowed if judgments for performance are available to the plaintiff, in the absence of special circumstances. Unlike judgments for performance, declaratory judgments cannot be enforced: declaratory judgments do not require the judgment debtor to carry out any obligations and thus no compulsory execution is deemed necessary. Formative judgments create or form rights and obligations between the parties. The effect of formative judgments is that legal relationships are deemed to be irrevocably formed or established immediately upon issuance of the judgment. Therefore, as with declaratory judgments, formative judgments are not a type of judgment that is subject to an enforcement order or procedure.

Interlocutory Judgment

Under Article 201 of the Civil Procedure Act, the parties may request the court to decide on an interlocutory issue prior to the main merits proceedings by rendering an interlocutory judgment. An interlocutory issue may relate to preliminary issues for the final determination of the merits or independent methods of attack or defence in support of each party's case. However, although interlocutory judgment is available as a matter of principle, it is rarely rendered by the courts. Interlocutory judgments cannot be independently enforced.

Default Judgment

Default judgments (which are rendered in default of appearance by a party to a proceeding) are enforceable. However, judgments rendered without valid notice to the party subject to the judgment are not deemed proper and valid judgments, and therefore cannot be enforced in principle.

Provisional Orders

Provisional attachment and/or provisional injunctions are widely used in relation to court proceedings in Korea. The essential ground for provisional measures is the existence of irreparable harm as recognised in many other jurisdictions.

2.2 Enforcement of Domestic Judgments

Provisional Attachment and Provisional Injunction

Before a judgment on the merits is made, a creditor can apply for a provisional attachment or an injunction to the court to enhance the effectiveness of the judgment. A provisional attachment or an injunction can be granted on an ex parte basis, and within a relatively short period of time (eg, within a week).

Commencement of Enforcement

Once a judgment is rendered and becomes final and conclusive, a judgment creditor needs to obtain a writ of execution from the court clerk to commence the compulsory execution procedure. The judgment creditor can then submit the writ of execution to an enforcement officer.

Methods of enforcement include seizure and sale of assets, garnishee orders, among others.

Enforcement Against Immovable Assets

Under Article 78 of the Civil Execution Act, there are two enforcement procedures against immovable assets: (i) compulsory auction; and (ii) compulsory administration. Under a compulsory auction procedure, a judgment creditor's claims are satisfied through the auction. Under a compulsory administration procedure, the judgment creditor's monetary claims are satisfied through the proceeds generated through the administration of the property.

Enforcement Against Receivables

Enforcement against a judgment debtor's claim for receivables (from a third party) commences with an order of seizure issued by the court of execution. A creditor may then request the issuance of a collection order or an assignment order against the seized monetary claim.

Enforcement Based on the Non-Monetary Judgment

Monetary judgments can be enforced against any type of assets of the judgment debtor. However, if the enforcement is based on non-monetary judgments (eg, a judgment ordering the transfer of specific assets, a judgment ordering certain obligations, etc), the subject and method of execution can be limited. Typically, the enforcement officer will undertake to execute specific acts as ordered in the judgment. For negative obligations and irreplaceable positive obligations, as such obligations are specific to the judgment debtor and can only be performed by the judgment debtor itself, the court may order indirect compulsory performance pursuant to Article 261 of the Civil Execution Act.

2.3 Costs and Time Taken to Enforce Domestic Judgments

Because the time and costs required to enforce domestic judgments can vary depending on the subject matter, the method of execution and any objections that may be raised by the opposing party, it is difficult to provide a general guideline on the costs and time involved in enforcement proceedings. In general, Korea's judicial process is known to be relatively swift and efficient, including on enforcement matters.

As a broad guideline, enforcement of domestic judgments may typically take three to ten months, if there are no appeals, and the costs involved are relatively low. Appeals to the High Court (the first appellate court) may take about six to ten months, and appeals to the Supreme Court (the final appellate court) can take anywhere between a few months to several years.

2.4 Post-judgment Procedures for Determining Defendants' Assets

As stated in **1.1 Options to Identify Another Party's Asset Position**, once a judgment is rendered, a judgment creditor may file an application to the court for the identification of the judgment debtors' assets. In this process, the court would examine the circumstances of the judgment debtor and identify the location of the debtor's assets. If the judgment debtor provides false information, such conduct may be sanctioned through criminal punishment. Also, a judgment creditor may ask the court (through a separate court application) to conduct an inquiry about the relevant assets to trace and discover the judgment debtors' assets held by third parties, such as banks.

2.5 Challenging Enforcement of Domestic Judgments

Lawsuit of Demurrer Against Claims

Under Article 44 of the Civil Execution Act, a judgment debtor may file a demurrer against the claims subject to enforcement to argue that there are new legal and/or factual grounds that have arisen after the close of pleadings that render the judgment unenforceable. Filing the demurrer against claims does not automatically stay the enforcement proceedings as stipulated under Article 46 (1) of the Civil Execution Act. However, the court may, at the applicant's request, consider the relevant circumstances and provisionally stay the enforcement proceedings with or without having the security furnished in accordance with Article 46(2) of the Civil Execution Act.

Lawsuit of Demurrer by the Third Party

If a third party claims ownership of the object of enforcement or seeks to prevent a transfer or delivery of the object subject to enforcement, the third party may file a demurrer against the judgment creditor in the enforcement proceedings, pursuant to Article 48 of the Civil Execution Act. A demurrer by a third party is only available while the compulsory execution proceedings are ongoing. As with a demurrer filed by a judgment debtor, a demurrer filed by a third party does not have any staying effect on enforcement, but the court may provisionally grant the stay at the request of the applicant, with or without having the security furnished.

Mandatory Suspension or Restriction of Enforcement

In specific circumstances, the enforcement shall be mandatorily suspended or restricted. Article 49 of the Civil Execution Act prescribes the following five circumstances where such suspension or restriction may occur:

- a certified copy of a judgment revoking the judgment to be executed or a judgment suspending, revoking, or disallowing compulsory execution;
- a document attesting that security has been furnished in order to avert the execution of a judgment;
- a deed stating that the judgment creditor has been repaid or the judgment debtor's performance of obligations may be deferred;
- a certified copy of a protocol or a certificate prepared by a junior administrative officer of the court that proves that the judgment has become void; or
- a notarial deed or a settlement record stating that compulsory execution shall not be concluded, or that the request for or entrustment for compulsory execution has been withdrawn.

Objections Against Execution

To the extent there are defects in the enforcement procedure conducted by an enforcement institution (eg, enforcement court, enforcement officer), any interested parties may file objections against execution pursuant to Article 16 of the Civil Execution Act. Substantive grounds (such as those relating to the substance of the original claims subject to enforcement) that are outside the scope of the enforcement institution's powers during the enforcement process cannot be grounds for an objection against execution, but can be raised in the lawsuit of demurrer against claims by a judgment debtor or lawsuit of demurrer by a third party.

2.6 Unenforceable Domestic Judgments

As explained above in **2.1 Types of Domestic Judgments**, declaratory judgments and formative judgments are not subject to enforcement. Additionally, a judgment cannot be enforced if the enforcement violates public policy.

2.7 Register of Domestic Judgments

Not all judgments are made available to the public in Korea. In general, the courts have discretion to publish their judgments. Consequently, there is no central register of all judgments.

However, a list of defaulting parties is issued to financial institutions and can be accessed by the public. In particular, if the judgment debtor fails to perform its monetary obligations within six months or refuses to comply with an order to specify his or her property, the judgment creditor may file a request to the court so that the judgment debtor can be added to the defaulters' list under Article 70 of the Civil Execution Act. Once the judgment debtor has paid and the monetary obligations are fully satisfied, the judgment debtor may request the court to remove it from the defaulters' list pursuant to Article 73(1) of the Civil Execution Act.

3. Foreign Judgments

3.1 Legal Issues Concerning Enforcement of Foreign Judgments

Korea is not a party to the HCCH Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters 1971 (Hague Foreign Judgments Convention).

The Civil Procedure Act regulates the recognition and enforcement of foreign judgments. Article 217 of the Civil Procedure Act provides the following requirements for the enforcement of foreign judgments:

- the judgment is final and conclusive;
- the jurisdiction of the foreign court is recognised under the principles of international jurisdiction under Korean law;
- the defeated party was properly served with the complaint or summons in advance so that the party had sufficient time to defend the case, or the defeated party voluntarily responded to the lawsuit without having been served;
- the foreign judgment, in substance and procedure, does not undermine the public policy of Korea; and
- there is a mutual guarantee or substantial equivalence between Korea and the foreign country in which the foreign judgment was rendered.

In addition, the Korean Supreme Court has entered into Memorandums with Guidance with the Dubai International Financial Centre and the Supreme People's Court of the People's Republic of China. Even though these memorandums have no binding force, they are in support of the respective state party's obligations in enforcing their respective judgments.

3.2 Variations in Approach to Enforcement of Foreign Judgments

South Korea's approach to enforcement of types of foreign judgments is largely similar to enforcement of domestic judgments (see **2.1 Types of Domestic Judgments** and **2.6 Unenforceable Domestic Judgments**).

3.3 Categories of Foreign Judgments Not Enforced

As stated in **3.1 Legal Issues Concerning Enforcement of Foreign Judgments**, foreign judgments are not recognised if they do not satisfy the requirements in Article 217 of the Civil Procedure Act. For example, if a foreign court rendered a judgment on a matter of divorce between two Koreans, such judgment cannot be enforced in Korea because it was made with-

out lawful international jurisdiction in violation of Article 217(1) of the Civil Procedure Act.

Furthermore, the following types of foreign judgments are specifically deemed to be unenforceable:

- foreign judgments or other decisions granting provisional measures;
- foreign enforcement orders; and
- pre-judgment attachment orders or awards.

A foreign judgment ordering punitive damages can be enforced in specific circumstances. Article 217-2(1) of the Civil Procedure Act grants the courts authority to make a partial recognition of a foreign judgment awarding punitive damages that exceed the amount of compensatory damages. However, in light of the enactment in Korea of specific legislation allowing treble damages, the Supreme Court recently held that enforcement of a foreign judgment awarding punitive damages can also be allowed in specific circumstances where damages are permitted under Korean law. Thus, although the Supreme Court has recently acknowledged the possibility of recognising foreign judgments granting punitive damages, a foreign judgment granting punitive damages in an area where Korean law does not provide for punitive damages may not be recognised or enforced in Korea.

3.4 Process of Enforcing Foreign Judgments

A foreign judgment must be final and conclusive, and satisfy the requirements for recognition under Article 217 of the Civil Procedure Act in order to be recognised and enforced in Korea, as stated in **3.1 Legal Issues Concerning Enforcement of Foreign Judgments**.

Pursuant to Article 26 of the Civil Execution Act, a judgment of execution by a Korean court should be obtained in order to commence the enforcement of a foreign judgment. Once the judgment of execution is issued, the enforcement procedure for foreign judgments follows the procedures for enforcing domestic judgments, as described in **2.2 Enforcement of Domestic Judgments**.

3.5 Costs and Time Taken to Enforce Foreign Judgments

The time and cost for recognition and enforcement of a foreign judgment vary significantly depending on the issues, ranging from less than three months to more than a year at the first instance court. Appeals to the High Court (first appellate court) may take about three months to more than a year, and appeals to the Supreme Court (final appellate court) can take anywhere between a few months to several years.

Upon the issuance of an execution decision, the costs and time to enforce that decision would be similar to those enforcing a domestic judgment (see **2.3 Costs and Time Taken to Enforce Domestic Judgments**).

3.6 Challenging Enforcement of Foreign Judgments

As mentioned in **3.1 Legal Issues Concerning Enforcement of Foreign Judgments**, the domestic enforcement of foreign judgments in South Korea follows the provisions of Article 217 of the Civil Procedure Act. The merits of the case cannot be revisited in an enforcement proceeding unless there are special circumstances that would render recognition of the judgment contrary to Korean public policy.

Methods of challenging enforcement of domestic judgments can also apply mutatis mutan-

dis to foreign judgments: see **2.5 Challenging Enforcement of Domestic Judgments**.

4. Arbitral Awards

4.1 Legal Issues Concerning Enforcement of Arbitral Awards

Domestic Awards

According to Article 37 of the Korean Arbitration Act (the "KAA"), domestic arbitration awards are recognised unless there are grounds for refusal under Article 38 of the KAA. Article 36 provides the grounds for setting aside domestic arbitral awards, and Article 38 provides the grounds for refusing the enforcement of arbitral awards. The statutory grounds for setting aside domestic awards and/or refusing the enforcement of domestic awards are almost identical to Article 5 of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention").

Foreign Awards

Under Article 39 of the KAA, Korean courts apply the provisions of the New York Convention to arbitral awards rendered in states that are parties to the New York Convention. Korea has been a signatory to the New York Convention since 1973 and has adopted the text of the Convention such that its provisions apply directly to awards made in states that are also parties to the New York Convention.

An arbitral award rendered in a non-signatory state to the New York Convention can be recognised and enforced by analogical application of the Korean Civil Procedure Act and Korean Civil Execution Act, which contain provisions on the recognition and enforcement of foreign judgments.

4.2 Variations in Approach to Enforcement of Arbitral Awards

Under Korean law, the enforcement of arbitral awards does not vary depending on the types of arbitral awards. An arbitral award that has become final and conclusive in resolving a dispute on the merits can be recognised and enforced. To the extent that a partial award finally resolves a part of the dispute on the merits, such partial award can also be recognised. The KAA has been amended to allow courts to recognise and enforce interim measures issued by an arbitral tribunal (see Article 18-7(1) of the KAA).

Foreign awards not subject to the New York Convention are recognised and enforced by analogical application of enforcement of foreign judgments, pursuant to Article 39(2) of the KAA (see **3.1 Legal Issues Concerning Enforcement of Foreign Judgments** and **3.4 Process of Enforcing Foreign Judgments**).

However, if there are other treaties that specify the procedures for recognition and enforcement, these treaties will be considered as lex specialis and take precedence over the procedures specified in the KAA. For example, South Korea is a signatory to the International Centre for Settlement of Investment Disputes (ICSID) Convention, and Korean courts will treat the ICSID awards as final domestic judgments pursuant to Articles 53 and 54 of the ICSID Convention.

4.3 Categories of Arbitral Awards Not Enforced

Domestic Awards

Under Article 38 of the KAA, domestic arbitration awards are recognised and enforced by default, unless a party opposing such recognition and enforcement furnishes proof of the following:

- that one of the grounds for setting aside an award under Article 36 of the KAA exists;
- that the arbitral award has no binding power over a party; and
- that the arbitral award has been set aside by a court.

The grounds for a setting aside action under Article 36 of the KAA are substantially similar to the grounds set forth in Article V of the New York Convention and are listed below:

- a party to the arbitration agreement was under some incapacity under the law applicable to them, or the said agreement is not valid under the law to which the parties have subjected it, or failing any indication thereon, under the law of the Republic of Korea;
- the party pursuing the action for setting aside was not given proper notice of the appointment of the arbitrator or arbitrators or of the arbitral proceedings or was otherwise unable to present its case;
- the arbitral award deals with a dispute not falling within the terms of the submission to arbitration or contains decisions on matters beyond the scope of the submission to arbitration (provided that the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award that contains decisions on matters not submitted to arbitration may be set aside);
- the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, which was not in conflict with a mandatory provision of this Act, or, failing such agreement, was not in accordance with this Act;
- the subject matter of the dispute is not capable of settlement by arbitration under the law of the Republic of Korea; or
- the award is in conflict with the good morals and other forms of social order of the Republic of Korea.

Foreign Awards

Korea is a signatory to the New York Convention, but has a reciprocity reservation and a commercial reservation. Article 39 of the KAA provides that the grounds for refusing enforcement of foreign New York Convention awards are governed by the New York Convention. Article V-1 of the New York Convention sets out the following grounds for refusal of recognition and enforcement:

- invalidity of the arbitration agreement;
- improper notice of appointment of an arbitrator or of the arbitration proceedings leading to the respondent not being given a chance to present his or her case;
- improper notice of appointment of an arbitrator or of the arbitration proceedings leading to the respondent not being given a chance to present his or her case;
- decision on matters beyond the scope of the submission to arbitration; or
- composition of the arbitral tribunal or arbitral procedure not in accordance with the agreement of the parties, or not in accordance with the law of the country where the arbitration took place.

For foreign arbitral awards not subject to the New York Convention, enforcement is subject to Article 217 of the Civil Procedure Act, and Articles 26 and 27(1) of the Civil Execution Act. Those requirements are as follows:

- the international jurisdiction of the arbitral tribunal is recognised under the principle of international jurisdiction pursuant to statutes or treaties of Korea;

- the respondent was properly served, allowing it sufficient time to defend, or the respondent voluntarily participated in the proceeding even though there was no proper service;
- the recognition of the final award does not undermine the public policy or other social orders of Korea; and
- the reciprocal guarantee of recognition exists.

4.4 Process of Enforcing Arbitral Awards

Arbitral awards cannot be enforced independently and enforcement can only be made upon the court's issuance of an enforcement decision at the request of a party. Typically, a party may file a single petition with the court for the recognition and enforcement of an arbitral award. Previously, recognition of arbitral awards was made in the form of a judgment. However, the KAA was amended in 2016, and recognition of arbitral awards by the Korean court is now made in the form of a "decision" (which is distinct from a "judgment" in the sense that the court has discretion as to whether to hold a hearing before rendering a decision, and the procedure for rendering the decision is simpler). Based on this reform, recognition of arbitral awards proceeds more quickly compared to ordinary court proceedings.

The KAA has simplified the requirements stipulated under the New York Convention, including the documents to be submitted when applying for enforcement. The party applying for enforcement will need to submit the following documents:

- a plain copy of the arbitral award (authentication/certification not necessary); and
- a translation of the award if it is not in Korean (certification not necessary).

4.5 Costs and Time Taken to Enforce Arbitral Awards

While the length of the enforcement proceedings to obtain recognition and enforcement decision of an award largely depends on the nature of the dispute and whether the enforcement requirements are fulfilled, in general, enforcement proceedings in the first instance court take six to twelve months. An appeal to the High Court also takes between six to ten months, and an appeal to the Supreme Court may last anywhere between four months and several years.

The enforcement process can be accelerated if the evidence and necessary documents are provided early in the proceeding. Still, there is no provision under Korean law that allows an expedited process for enforcing arbitral awards.

Upon the issuance of the recognition and enforcement decision of the arbitral award, costs and time required to conduct compulsory execution of such decision against the award debtor's assets will be similar to those stated in **2.3 Costs and Time Taken to Enforce Arbitral Awards**.

4.6 Challenging Enforcement of Arbitral Awards

The only recourse to challenging an arbitral award is a lawsuit for setting aside the award. As to the grounds for setting aside an award under the KAA, please see **4.1 Legal Issues Concerning Enforcement of Arbitral Awards** and **4.3 Categories of Arbitral Awards Not Enforced**. However, South Korea endorses a pro-arbitration policy and Korean courts rarely set aside (or refuse enforcement of) an arbitral award.

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