



**COUNTRY
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The Legal 500 Country Comparative Guides

South Korea CONSTRUCTION

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This country-specific Q&A provides an overview of construction laws and regulations applicable in South Korea.

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SOUTH KOREA CONSTRUCTION



1. Is your jurisdiction a common law or civil law jurisdiction?

- South Korea is a civil law jurisdiction. As such, it is based on codified laws, and does not strictly follow the principle of stare decisis, under which past judgments of the courts constitute binding precedent for lower courts. However, in practice, courts usually follow the decisions of higher courts, and in the case of Supreme Court decisions, rarely if ever deviate from them.
- The court system for civil cases consists of three tiers: district courts, high courts and the Supreme Court. There is also a Constitutional Court that operates on the same tier as the Supreme Court. District courts are the first instance courts for all civil disputes, regardless of the amount in dispute. Cases in the district court are heard by a panel of three judges, provided that the claim amount is greater than 200 million won. If the claim amount is less than 200 million won, a single judge will hear the case.
- The Korean legal system also has certain specialized courts, namely, the Patent Courts, the Administrative Courts, the Family Courts and the Bankruptcy Courts. Korea does not have separate federal and provincial court systems.

2. What are the key statutory/legislative obligations relevant to construction and engineering projects?

- Various statutes regulate different aspects of construction and engineering projects, and the industry in general.
- The Framework Act on the Construction Industry, the Framework Act on Building, the Construction Technology Promotion Act and the Certified Architects Act, together with certain other statutes, set standards that various participants in the construction

- industry – such as employers, contractors, construction managers and architectural design firms – must meet in order to engage in the industry. Other acts that fix standards for specific sectors of the construction industry include the Electric Construction Business Act, the Fire-Fighting System Installation Business Act, Engineering Industry Promotion Act, and the Information and Communications Construction Business Act.
- The Building Act sets the requirements that must be met for the construction of buildings. Its provisions are supplemented by local and municipal regulations providing detailed building codes.
- The Housing Act regulates construction, supply, management and transaction of the housing. As a related matter, the Housing Site Development Promotion Act stipulates special cases of the acquisition, development, supply, management of housing sites necessary for housing construction. Furthermore, the Act on the Improvement of Urban Areas and Residential Environments deals with improvement project of the urban areas and residential environments.
- The Overseas Construction Promotion Act prescribes matters related to Korean construction companies' overseas construction business.
- The Fair Transactions in Subcontracting Act (together with the aforementioned Framework Act on the Construction Industry) regulates subcontractor relationships in construction projects.
- The Serious Accidents Punishment Act (effective from 27 January 2022, for corporations with 50 or more employees and in cases of construction business, for construction works with construction cost of KRW five billion or more) imposes very broad health and safety obligations.
- General principles of contract are provided in the Civil Act, while matters such as

incorporation, partnerships and corporate governance are addressed in the Commercial Act.

3. Are there any specific requirements that parties should be aware of in relation to: (a) Health and safety; (b) Environmental; (c) Planning; (d) Employment; and (e) Anti-corruption and bribery.

The principal source of health and safety standards for construction projects is the Occupational Safety and Health Act.

The Housing Act, the Building Act, and the Framework Act on the Construction Industry (among various other statutes and local regulations) require construction projects to ensure compliance with applicable health and safety regulations, and may also impose additional requirements for specific types of projects.

The Serious Accidents Punishment Act came into force in 2022, and it imposes criminal liability on business owners, responsible managing officers, public officials and corporations responsible for “severe accidents” in violation of their duties to take safety and health measures. The Serious Accidents Punishment Act also imposes punitive damages of up to five times the amount of actual damages for willful misconduct or gross negligence.

A number of statutes apply to ensure environmental protection in the course of construction projects. These include:

- The Environmental Impact Assessment Act;
- The Clean Air Conservation Act;
- The Noise and Vibration Control Act;
- The Water Quality and Ecosystem Conservation Act;
- The Green Buildings Construction Support Act;
- The Construction Waste Recycling Promotion Act
- The Sewerage Act; and
- The Waste Control Act.

Sponsors of construction projects may be required to undertake environment impact assessments prior to commencement, in accordance with the requirements of the Environmental Impact Assessment Act.

When planning a construction and engineering project, parties should be aware of the planning requirements under various statutory regulations, including the

National Land Planning and Utilization Act and the Urban Development Act. Certain projects may also be subject to more specific planning laws. For example, projects in the Incheon Free Economic Zone may be subject to the Special Act on the Designation and Management of Free Economic Zones.

Employment in construction projects is regulated by the Labor Standards Act and the Minimum Wage Act. More specific aspects of labor law in relation to construction projects are covered by the Act on the Employment Improvement, etc. of Construction Workers.

As a related issue, the Industrial Accident Compensation Insurance Act regulates the compensation related to occupational accident and the protection of employees.

Korean law recognizes a constitutional right to unionize. Various construction labor unions exist under the Korean Federation of Construction Industry Trade Unions. Rights and obligations relating to labor unions are governed by the Trade Union and Labor Relations Adjustment Act.

Corruption and/or bribery involving public officials is prohibited under the Criminal Act. In general, directors and officers of public corporations and government-controlled entities are considered to be public officials. In 2016, Korea also promulgated the Improper Solicitation and Graft Act, which considerably broadened the scope of Korean anti-bribery laws.

Bribery among private individuals is also prohibited by the Criminal Act, which makes it a crime for a person to receive property or a pecuniary advantage from a third person in response to an illegal solicitation concerning his or her duty. For the construction industry in particular, Article 38-2 of the Framework Act on the Construction Industry prohibits bribery between the participants in a construction project.

In a similar vein, to ensure the fair performance of the public officials' duties and public trust in public institutions, the Act on the Prevention of Public Officials' Conflicts of Interests was newly enacted and came into force. Under the same act, the public officials at governments and state-run public corporations can be subject to criminal liability if they make personal gains by using insider information

4. What permits/licences and other documents do parties need before starting work, during work and after completion?

Are there any penalties for non-compliance?

Various permits must be obtained for different stages and aspects of construction projects. These include building permits, approval of construction plans, and use permits. Failure to comply with the relevant requirements can result in fines and the threat of imprisonment.

For example, in the case of the construction of buildings, before commencing construction, building permits must be obtained from the relevant administrative district as required under Article 11 of the Building Act, subject to any exceptions for particular types of construction, such as the ones listed in Article 14 of the Building Act (which include extensions, repairs, etc., of limited sizes, as well as the construction of buildings below a certain size in specially-zoned areas).

Once a building permit is issued, the sponsors of a project will have various reporting and inspection obligations as they commence and carry out construction.

Upon completion, a use permit/temporary use permit is required to use a building (Article 22 of the Building Act).

Changes in design or intended use could trigger an obligation to report the change or to obtain a permit, depending on the magnitude of the change (Article 19 of Building Act).

5. Is tort law or a law of extra contractual obligations recognised in your jurisdiction?

Tort law is recognized in South Korea. Chapter V (Articles 750-766) of the Civil Act provides the basis for most tort claims arising from construction and engineering disputes.

Among other claims in tort, Article 758 of the Civil Act stipulates that where any loss is caused to a third-party by reason of a defect in the construction or maintenance of a structure, the person with possession of the structure (typically the contractor where works are ongoing) will be liable to the third-party. However, where the person with possession of the structure can show that the loss occurred despite his or her exercise of due care to prevent the loss, the owner of the structure will be liable to the third-party.

The court can award a plaintiff remedies for both economic and non-economic damages (Article 751 of the Civil Act). As a general rule, punitive damages are not recognized under Korean tort law. However, certain

statutes do impose punitive damages in the form of treble damages for violations of specific provisions. For example, under the Fair Transactions in Subcontracting Act, fixing unreasonable remuneration for a subcontractor within the meaning of the Act, refusing acceptance of delivery without justification, reducing the contract price without justification, etc., may entitle the subcontractor to damages up to three times the loss suffered by the subcontractor

6. Who are the typical parties to a construction and engineering project?

The parties typically involved in a construction and engineering project will be the employer, lenders, the general contractor, subcontractors, architectural and engineering firms, construction managers and suppliers.

The employer is the sponsor and ultimate owner of the project. Employers may be private parties or governmental bodies. Private owners may fund their projects by obtaining financing from lenders. Depending on the nature of the financing, these lenders may remain involved in the construction and the operation of the project, to ensure that their investment is protected and the project proceeds in a sound manner.

The owner will often engage project management firms to administer the project on the owner's behalf. These firms will usually have a client/consultant relationship with the owner.

The owner will also often engage a general contractor to carry out the project. In most cases, a contractor will subcontract some portion of its work to subcontractors or suppliers. The owner may also engage a construction management firm that will serve only to manage the construction works, without actually carrying out any of the work itself.

Architectural and engineering firms may be hired by the owner, the contractor or both (depending on the project delivery method) to provide the design for a project.

When it comes to building and operating infrastructure, project financing plays an important role and the relevant parties (e.g. investors, concessionaire, trust company, etc.) are naturally involved.

In addition to the foregoing, various government agencies will play a central role in medium and large projects, ensuring compliance with government regulations and providing the necessary approvals and permits.

7. What are the most popular methods of procurement?

- In the past, the most common project delivery method in Korea had been traditional construction contracts, under which the employer would first engage a designer to prepare the project design, and then engage a construction contractor to build the project based on the design. For such contracting, it has been common to use lump-sum contracts with payments based on milestones or remeasurement. Cost-plus contracts have not been commonly used in Korea.
- Today, public entities frequently procure projects through design-build contracting, where the employer appoints a contractor who takes on the responsibility and liability for engineering, procurement and construction. The level of involvement in the contractor's works and the allocation of risk for specific aspects of the construction process differs from one project to another.
- In principle, public procurement contracts are required to be awarded through a competitive bidding process. Under the Act on Contracts to Which the State is a Party, any entities engaged in inappropriate business activities, such as engaging in collusive practices during a bidding process or offering a bribe to a public official, could be subject to an administrative sanction that prohibits such bidder from participating in public procurement bidding process up to two years.
- Construction management is also used to procure projects in some cases, both by government and private entities.
- Public-private-partnerships have been implemented for infrastructure works.

8. What are the most popular standard forms of contract? Do parties commonly amend these standard forms?

There are several standard forms of contract used for construction projects in South Korea. For construction contracts involving the government, which are governed by the Act on Contracts to Which the State is a Party, a standard form contract contained in the enforcement rules promulgated pursuant to the act is often used. If it is deemed impractical to use the standard form, the government party may elect to use a different contract form. A similar set of standard terms is also published for local governments pursuant to the enforcement rules of the Act on Contracts to which the Local Government is a

Party.

The Ministry of Land, Infrastructure and Transport issues a standard form contract for construction projects, for use between private sector parties. The Korea Fair Trade Commission also provides a standard form contract for subcontracting in the construction industry.

On larger projects, parties may amend these standard form contracts or use amended versions of international contracting forms such as the FIDIC suite of contracts.

9. Are there any restrictions or legislative regimes affecting procurement?

The Framework Act on the Construction Industry contains general standards for the procurement of construction projects.

Public procurement is governed by a number of statutes, including:

- The Government Procurement Act;
- The Act on Contracts to Which the State is a Party;
- The Act on Contracts to Which a Local Government is a Party; and
- The Act on the Management of Public Institutions.

Korea is a party to the Agreement on Government Procurement (a plurilateral agreement within the WTO framework) and a number of free trade agreements that contain obligations in relation to public procurement. Among other things, the foregoing laws ensure that public procurement is carried out in line with Korea's international obligations.

Laws relating to public procurement are applicable to public institutions, which include public companies, government-controlled companies and quasi-governmental entities, among other bodies. Public institutions are designated as such by the Minister of Strategy and Finance and may include the following types of bodies, among others:

- statutory corporations,
- institutions for which more than half of the total annual revenue is composed of government grants,
- companies in which the Government (possibly together with another public institution) holds at least 50 percent of the outstanding shares; and
- companies in which the Government (possibly together with another public institution) has

de facto control over decision-making through the exercise of the power to appoint executive officers, while also holding at least 30% of the outstanding shares.

For public private partnerships in particular, the Act on Public-Private Partnerships in Infrastructure applies. Furthermore, the Basic Plan for Public-Private Partnership Projects published by the Ministry of Strategy and Finance guides the relevant practice.

Subcontracting between private parties is regulated by the Fair Transactions in Subcontracting Act.

The Monopoly Regulation and Fair Trade Act prohibits collusive practices in procurement in the Korean construction industry. The Korea Fair Trade Commission actively monitors and penalizes such practices under the Act.

10. Do parties typically engage consultants? What forms are used?

Parties typically engage consultants in regard to construction execution, inspection and supervision. In many cases, parties may be obligated by law to hire such consultants.

The main types of consultants that are typically engaged in construction projects in Korea are (1) construction management consultants, who provide comprehensive supervisory services to employers in relation to all aspects of a project; (2) engineering consultants, who provide expertise in science and engineering to advise employers or contractors; and (3) architects, licensed under Article 2 of the Certified Architects Act, who provide consulting services for the design and planning of projects.

The Ministry of Land, Infrastructure and Transport provides a standard contract form for engaging consultants for construction supervision/inspection.

In addition, various industries or projects may require project sponsors or contractors to engage specific types of consultants for the purpose of certifying compliance with government regulations. For example, construction projects that undertake extensive excavation may wish to engage consultants to ensure compliance with Korean laws on the preservation of cultural or historical artifacts.

11. Is subcontracting permitted?

Subcontracting is permitted and utilized in most construction and engineering projects.

The Fair Transactions in Subcontracting Act regulates subcontracting with the aim of protecting subcontractors that, by virtue of being smaller enterprises, may otherwise be compelled to accept unfair contractual terms by a contractor. The act regulates unfair pricing, unreasonable contract terms, unjustified refusals to accept delivery, unjustified delay in payment, etc.

Certain types of subcontracting are prohibited. Article 29 (1) of the Framework Act on the Construction Industry prohibits a contractor from subcontracting the entirety or a major portion of its work to a single subcontractor (Article 31 of Enforcement Decree of the Act establishes the range of what is considered to be a major portion in such cases).

Article 29 (2) of the same Act prohibits a contractor from subcontracting a part of its work to a subcontractor that is registered to conduct the same business as the contractor, except where the employer has given its written consent to such subcontracting.

Article 29 (3) of the Framework Act on the Construction Industry also prohibits a subcontractor from further subcontracting its work, unless such subcontracting meets the very limited exception criteria set forth by the article, namely that such further subcontracting is done to carry out specialized work or is carried out in order to improve the quality or efficiency of the construction work, with prior approval from the contractor.

12. How are projects typically financed?

Private projects are typically financed by project owners through a combination of equity and lending (debt). Lending for such projects often includes bank loans or corporate bonds against the anticipated revenue from the project. Only a handful of enterprises finance projects entirely from their own funds.

The use of project financing has steadily increased in Korea since 1994, when an act to facilitate funding of infrastructure through private project financing was promulgated. While large corporations tend to rely more frequently on bank loans, smaller companies often seek and obtain financing from mutual-aid associations established pursuant to the Framework Act on the Construction Industry to provide various guarantees and loans necessary to operate such construction enterprises.

Corporations also finance projects through Asset Backed Securities (ABS) and Asset Backed Commercial Paper (ABCP).

13. What kind of security is available for employers, e.g. performance bonds, advance payment bonds, parent company guarantees? How long are these typically held for?

Korean construction projects will usually involve the employer requiring several types of security from contractors, usually in the form of on-demand bonds. These include:

1. Bid bonds guaranteeing that a successful bidder will enter a contract with the employer. These usually expire once the contract for the project is executed.
2. Performance bonds guaranteeing that the contractor will fulfil its obligation to progress and complete the construction. These usually expire after the completion of the project. In some cases, they may be extended in part to cover any punch-list items or defect liability periods.
3. Advance payment bonds issued by the contractor to the employer, to secure any cash payments made by the employer to the contractor as mobilization advance. These bonds are amortized to reflect the repayment of the advance through deductions from progress payments due to the contractor.
4. Maintenance bonds against guarantees that the contractor will repair any defects in the works after completion. Their duration often reflects the contractual defect liability period or the statutory liability periods.
5. Subcontractor's payment bonds that secure payments due to subcontractors in cases where a contractor cannot pay due to insolvency or other causes. (Article 34(2) of the Framework Act on the Construction Industry.)

14. Is there any specific legislation relating to payment in the industry?

Article 665 of the Civil Act, dealing with contracts for work, states that payment for the object of a work contract should be made simultaneously with the delivery of the object. However, the parties can, and often do, agree to different terms of payment.

Although parties can freely agree on payment periods, payment provisions between a contractor and its subcontractor may be regulated by the Fair Transactions in Subcontracting Act:

- The agreed date for payment by a contractor to a subcontractor should not be more than 60 days from the delivery of the work. Where the contractor and subcontractor have agreed to handle many frequent deliveries of work by issuing a combined invoice at regular monthly, weekly or other similar intervals, the agreed payment dates for the work included in each invoice should not be more than 60 days from the date of the invoice. This requirement may be deviated from where it is deemed that the parties fixed a longer period for payment on equal terms, or where an alternative date of payment is justified in light of the nature of the business and the attendant economic conditions.
- Additionally, a contractor must make payment to the subcontractor within 15 days from the date on which the contractor receives payment from the employer for the corresponding part of the work, unless the parties have agreed to a shorter period, in which case the payment must be made within such shorter period.

In certain cases, a subcontractor may raise claims directly against the employer under the Fair Transactions in Subcontracting Act or the Framework Act on the Construction Industry. In either case, circumstances that would justify a subcontractor claiming directly against an employer include the following: cases where the contractor is unable to pay the subcontract price due to suspension of payments, bankruptcy or other similar reasons; the cancellation of the contractor's construction business registration; or situations where the contractor has failed to pay the equivalent of two installments of the subcontract price when they have fallen due.

15. Are pay-when-paid clauses (i.e clauses permitting payment to be made by a contractor only when it has been paid by the employer) permitted? Are they commonly used?

While the issue of pay-when-paid clauses has not been addressed directly in any publicly available court judgment, the Fair Transactions in Subcontracting Act stipulates that the agreed payment date between a contractor and a subcontractor should not be more than 60 days from the delivery of the work, subject only to limited exceptions. Further, the act prohibits any special terms and conditions that unfairly violate or restrict a subcontractor's interests.

In light of this statute, the position of Korean law regarding pay-when-paid clauses remains unclear, and the standard forms of subcontract provided in various government regulations do not include such clauses. Consequently, cautious Korean contractors typically avoid using such clauses

16. Do your contracts contain retention provisions and, if so, how do they operate?

While there are no clear authorities on the validity of retention provisions, Korean contractors will often be wary of including retention provisions in their subcontracts in light of laws requiring payments to be made to subcontractors in time.

The standard form construction contract for the private sector published by the Ministry of Trade, Industry and Energy does not contain retention provisions. Instead, it stipulates the contractor's obligation to deposit a certain portion of the contract amount (or an equivalent warranty bond) as security for the contractor's warranty obligations.

17. Do contracts commonly contain delay liquidated damages provisions and are these upheld by the courts?

Yes, parties usually incorporate liquidated delay damages provisions in their contracts. Usually, provisions providing for such liquidated damages fix the rate of damages that would accrue for each day that the completion of the project or a milestone is delayed.

Although the courts generally accept the validity of such provisions, the courts can reduce the amount of liquidated damages agreed by the parties. Under Article 398(2) of the Civil Act, where the court finds that the amount of liquidated damages agreed by the parties is "unduly excessive", it may reduce the amount to a more reasonable and appropriate sum. In practice, the Korean courts often do exercise this authority to reduce the amount of liquidated damages. There is no specific test for determining when agreed liquidated damages may be considered "unreasonably excessive". The court has the discretion to determine when liquidated damages are unduly excessive and will consider the overall fairness of the contractually stipulated amount of liquidated damages having regard to factors such as (a) the status of the parties; (b) the purpose and contents of the contract, (c) the reason for pre-determining liquidated damages, (d) the ratio of the pre-determined liquidated damages to the contract price, and (e) the amount of estimated damages.

It is worth noting that since Korea is a civil law jurisdiction, delay in completion does not, in principle, result in strict liability for failing to meet the required completion date. It is only when the delay in completion has been caused by the fault of the contractor that liability for delay damages will arise. In practice, however, the burden of proving that the contractor was not at fault lies on the contractor and is not readily shifted. As a result, employers do not have to prove fault when raising claims. While parties may in principle agree to impose strict liability obligations in a contract (i.e., obligations whose breach does not have to arise out of fault in order to result in liability) the Korean courts will only read such an intention in the parties' contract when it is stated in clear and unequivocal terms, and in such cases are likely to interpret the relevant provisions strictly.

In addition, Korean law also recognizes party agreement as to penalties for failing to meet contractual obligations. These are generally distinguished from agreed liquidated damages on the basis that they are intended to secure performance of the contract, as opposed to providing a pre-agreed estimate of compensation due in case of a breach of contract.

Penalty provisions may be invalidated (either in full or in part) as contrary to public policy by the courts if the amount of the penalty is considered to be excessively burdensome as compared to the claimant's interest in compelling performance.

Where a penalty provision is upheld, payment of the penalty will be in addition to any compensation for damages, liquidated or otherwise.

Where it is unclear whether certain pre-agreed sums are intended to operate as a penalty or as liquidated damages, the courts will presume that the parties intended the sums to operate as liquidated damages.

18. Are the parties able to exclude or limit liability?

In principle, parties to a contract may exclude or limit their liability under contract or tort, provided that doing so is not contrary to any laws or public policy. By way of example, in the case of liability in tort, parties cannot agree to limit or exclude liability arising from intentional breach, wilful misconduct or gross negligence, as such agreement will be deemed contrary to public policy.

19. Are there any restrictions on termination? Can parties terminate for

convenience? Force majeure?

Parties may freely agree upon the terms of termination in their contracts. The level of detail in which the parties set out the grounds for termination in a contract will differ from case to case. The court will uphold most termination provisions, provided that they are equitable and not contrary to public policy. Therefore, in general, parties are free to agree on terms that allow the employer to terminate for convenience or that allow either party to terminate in the case of a prolonged force majeure situation.

In addition to any agreed terms for termination, the Civil Act also stipulates the circumstances where a party may terminate a contract. In general, where there is a delay in the performance of a contractual obligation which is not cured or which cannot be cured, the non-breaching party may terminate the contract.

In case of a construction contract the subject-matter of which is a building or any other structure on land, defects in the work do not give rise to a right of termination once the building or structure has been completed. In such cases, the contractor will only be liable for damages arising from the defects.

The Civil Act provides that if, through no fault of the parties, it has become impossible for the contractor to perform its work, the contractor will not be liable for a failure to perform the obligation in question and the employer will be excused from its obligation to make payment for the remaining work which has not been completed. In such a situation, the contractor will not be liable for damages arising from such a failure to perform. However, under Korean law, such impossibility does not necessarily give rise to a right of termination. In light of this, as well as the possibility of differences between situations of impossibility and situations that qualify as the more familiar contractual force majeure, it is advisable that parties expressly agree on a right to terminate in the case of prolonged force majeure situations, where such a right is desirable.

20. What rights are commonly granted to third parties (e.g. funders, purchasers, renters) and, if so, how is this achieved?

Third parties outside of a construction and engineering contract do not have any contractual rights in the contract, unless such a right for a third party is clearly specified in the contract and the third party expresses its intention to avail the right to the obligor. It is not very common for parties to provide specific rights for third parties in their contracts. Third parties may claim

damages in tort unless otherwise limited by statute.

Article 404 of the Civil Act sets forth the right of subrogation for a creditor. Funders, purchasers or renters may exercise such a right of subrogation to claim contractual rights under the contract on behalf of an employer or contractor. If the object of the exercise of such a right is monetary in nature, the subrogee may directly claim any payments under the subrogor's contract, and set them off against receivables due from the subrogor. However, the right of subrogation is not a security and no priority is established.

21. Do contracts typically contain strict provisions governing notices of claims for additional time and money which act as conditions precedent to bringing claims? Does your jurisdiction recognise such notices as conditions precedent?

Unlike the case of many international standard forms of construction contracts, it is not very common for Korean construction contracts to include provisions stipulating strict notification periods as conditions precedents to entitlement.

Claim notice requirements that include a time-bar element would generally be enforceable in principle; provided, however, that such provisions may be unenforceable if they are found to be contrary to Korean public policy. It is unclear how such provisions would be treated by the courts in practice, as there are no known cases dealing with the validity of such time-bar clauses.

22. What insurances are the parties required to hold? And how long for?

Parties are required to take out Industrial Accident Compensation Insurance under the Industrial Accident Compensation Insurance Act. In most cases, employers will also hold liability insurance to cover compensation liabilities exceeding the amount coverable by the Industrial Accident Compensation Insurance.

Other types of insurance that parties will typically obtain are:

- All risks insurance, which insures against physical damage to the works or materials;
- Cargo insurance, which insures against risks such as marine delay in relation to materials imported from overseas; Professional indemnity insurance, which insures against claims related to the design of the project;

- Workmen's Compensation Insurance, which compensates death or injury caused to workers to the extent not covered by the Industrial Accident Compensation Insurance;
- Package Insurance, which covers any potential business interruption risk; and
- Commercial general liability insurance, which covers damages to third parties.

23. How are construction and engineering disputes typically resolved in your jurisdiction (e.g. arbitration, litigation, adjudication)? What alternatives are available?

Currently, in South Korea, many of the domestic construction and engineering disputes are typically resolved through court litigation. Some district courts and high courts have specialized divisions for construction and engineering disputes.

Korean courts are considered to process construction and engineering disputes expeditiously. Owing to the existence of specialized court divisions dealing with construction and engineering matters, construction disputes are handled with relative sophistication and efficiency. A litigation relating to a construction and engineering project usually takes 12 – 18 months at the first instance court, but may in some cases take around 2 years.

Alternative dispute resolution methods provided for in various laws are also used to resolve construction disputes. For instance, Article 69 of the Framework Act on the Construction Industry establishes the Construction Dispute Mediation Committee where construction and engineering disputes can be resolved by mediation. Parties can also refer their disputes to court-administered mediation.

Local parties increasingly rely on arbitration as a means of dispute resolution. The Korean Commercial Arbitration Board (KCAB) frequently handles construction and engineering disputes, administering a sizable number of construction and engineering disputes through arbitration annually.

Korean construction companies that regularly participate in projects abroad are familiar with the use of arbitration for resolving construction disputes and will often arbitrate disputes of an international nature.

24. How supportive are the local courts of

arbitration (domestic and international)? How long does it typically take to enforce an award?

The Korean courts are considered to be very arbitration-friendly. The Korean Arbitration Act, enacted in 1966, has been periodically amended to be aligned with best international practices. The Korean Arbitration Act is consistent with the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration 1985, including its 2006 amendments. Korea has also enacted the Korean Arbitration Industry Promotion Act to establish and promote the arbitral ecosystem. Korean courts, in implementing the act, have consistently sought to do so in accordance with international best practices. Korean courts are therefore known for refusing to interfere with ongoing arbitrations and for enforcing arbitral awards in almost all cases.

The Korean Arbitration Act also empowers the Korean courts to enforce interim measures issued by arbitral tribunals seated in Korea. This offers a considerable benefit for disputes related to ongoing projects in Korea, as it means that any interim measures granted by a tribunal to secure the project site or to carry out certain works while the arbitration is pending can be enforced by court decree. Courts are also empowered by the Act to issue interim measures in aid of arbitrations, whether they are seated in Korea or abroad.

Furthermore, the Korean Arbitration Act also empowers the arbitral tribunals to request the Korean courts' assistance in taking of evidence. To be specific, the court may order persons to appear before the arbitral tribunal or submit necessary documents, following the arbitral tribunal's request for the Korean court's assistance in writing (Article 28(2) of the Korean Arbitration Act).

South Korea is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, also known as the "New York Convention". As such, a foreign arbitral award rendered in a New York Convention jurisdiction is readily enforceable in Korea, subject only to the very limited grounds for challenge set out in the New York Convention, such as the absence of due process or a failure to abide by the parties' arbitration agreement. Even these grounds for challenge have been interpreted narrowly by Korean courts.

Similarly, awards rendered in Korea are enforceable under the provisions of the Korean Arbitration Act, which in turn closely mirror the provisions of the UNCITRAL Model Law on International Commercial Arbitration and the New York Convention. The grounds for refusing enforcement of an award rendered in Korea or for setting

it aside are therefore as narrow as they are under the New York Convention.

A recent amendment to the Korean Arbitration Act in 2016 provides that arbitral awards can be enforced by a mere “decision” of the court, which does not require an in-person hearing, as opposed to a “judgment”, which requires an in-person hearing. As a result, the process for enforcement has become simpler and faster.

A decision granting enforcement is usually issued within 6 to 9 months from the application of a party to have an award recognized or enforced, unless strong grounds exist to resist enforcement of the award.

25. Are there any limitation periods for commencing disputes in your jurisdiction?

In principle, the limitation period for general civil claims is 10 years from the time when the right to bring the claim can be exercised. The limitation period for claims arising out of commercial activity, including construction projects, is 5 years, subject to any shorter periods that may be stipulated by law for any subcategory of claims. One example of this is the shorter limitation period of 3 years for claims arising from the rights of a contractor, architect or consultant pursuant to a construction contract.

For tort claims, the limitation period is (i) three years from the date on which the injured party becomes aware of the loss and of the identity of the person who caused it, or (ii) ten years from the date on which the wrongful act was committed and the loss was suffered by the victim, whichever is earlier.

In regard to defects, the Framework Act on the Construction Industry stipulates general warranty periods applicable to different structures and sub-parts of construction works ranging from 1 year (for paint) to 10 years (for, among other things, reinforced steel concrete parts of a bridge). This warranty period commences from (i) the completion date of the construction or (ii) the start date of use or management, whichever is earlier, subject to any other statutory provisions setting different warranty periods (such as the Housing Act). Any claims arising under such a warranty are subject to a limitation period of 5 years from the date on which they are discovered.

Under the Civil Act, a contractor continues to be liable for any defects or resulting damages in its works for a period of five years or (where the work is made of stone, limestone, brick, metal or any other similar material) for a period 10 years from the date of delivery.

26. How common are multi-party disputes? How is liability apportioned between multiple defendants? Does your jurisdiction recognise net contribution clauses (which limit the liability of a defaulting party to a “fair and reasonable” proportion of the innocent party’s losses), and are these commonly used?

Multi-party disputes are not uncommon in the Korean construction and engineering industry, considering the often complicated relationships involved in construction projects. For example, where a structure is defective, an employer may sue the construction contractor and the architect, who may be found to be jointly and severally liable towards the employer under contract.

Joint and several judgment debtors may apply to the court for a decision on their contribution ratio. While this will not affect their joint and several liability toward the judgment creditor, a judgment debtor who pays in excess of his or her contribution ratio may claim such excess from the other judgment debtors, up to the amount corresponding to each debtor’s contribution ratio.

As clauses limiting the liability of a particular party, net contribution clauses would, in principle, be enforceable under Korean law. However, there is no specific legal authority on the validity of net contribution clauses. The authors have not seen the use of net contribution clauses in contracts governed by Korean law.

27. What are the biggest challenges and opportunities facing the construction sector in your jurisdiction?

Investments in the Korean domestic construction sector have decreased in recent years after having seen a period of continuous growth from 2012 to 2017. This decrease in investments could make it difficult for major Korean contractors to offset possible losses in overseas projects against profits gained in more familiar and low-risk domestic projects, such as conventional housing projects.

The Korean construction industry continues to see increased competition from Chinese contractors that have achieved greater quality in recent years combined with more competitive pricing. At the same time, the other end of the construction and engineering services market continues to be dominated by top tier global contractors that enjoy a significant market position in terms of technology and management expertise.

Nonetheless, in order to remain competitive, Korean contractors have extended their area of business to higher value, more specialized services such as project management consulting, front-end engineering design and O&M services.

With sharp rises in raw material prices, the construction industry is concerned about the trend of rising construction cost. In connection therewith, the Korean government has introduced a mechanism of so-called "supply cost linkage system" through which increases in raw material prices could be automatically incorporated into construction costs. A bill to amend the Fair Transactions in Subcontracting Act, to implement the supply cost linkage system was recently passed to ease the burden on subcontractors, but the specific requirements and implementations are still to be seen.

28. What types of project are currently attracting the most investment in your jurisdiction (e.g. infrastructure, power, commercial property, offshore)?

While investment in traditional construction projects, including conventional civil infrastructure such as bridge and road projects, has been decreasing in recent years, the Korean government has increased spending on projects aimed at improving quality of life. Such projects include rehabilitation of cities, renovation of low-rent residences, and construction of public facilities such as libraries, sports centres, child care centres, disability care centres, community centres and museums. More recently, in line with a policy of the new government, Special Act on Maintenance and Support for Aging Planned Cities has been proposed by the Ministry of Land Infrastructure and Transport of Korea. This new legislation will facilitate renovation of dilapidated residential areas.

Following the 2022 presidential election, President Yoon vowed to reverse former President Moon's policy of phasing out nuclear power. In this respect, the government announced that it would restart construction on two nuclear reactors on the east coast and extend the life of those already in operation. In addition, the government is also keen to exporting nuclear reactors, presenting new opportunities for relevant contractors and subcontractors.

29. How do you envisage technology

affecting the construction and engineering industry in your jurisdiction over the next five years?

The continuous increase in digitization is expected to boost construction productivity. The Korean government has provided its strong support to such a trend. For example, in 2018, the Ministry of Land and Transportation of Korea announced a roadmap to boost smart construction technologies in Korea. Already, the use of UAVs (unmanned aerial vehicles) and radar to collect site, and the use of BIM (building information modelling) has become increasingly common for construction projects in Korea.

It is expected that notable current-day disruptor technologies, such as 3D printing, machine learning and advanced robotics will further change the construction industry over the coming years.

In 2020, the Ministry of Land, Infrastructure and Transport announced that South Korea has launched a smart building technology project to bring more innovation to construction sites with massive investment of 200 billion won (\$173 million) for the period of 2020 - 2025. The smart building technology development project focuses on automation of construction equipment and management system, smart building for road structure, smart integrated safety control technology, and digital platform and test bed.

More recently, with the emergence of artificial intelligence technology, Korean construction companies are actively adopting the new technology to improve their productivity.

30. What do you anticipate to be the impact from the COVID-19 pandemic over the coming year?

It is true that the COVID-19 pandemic has severely affected various industries and created challenges for the construction industry as well as businesses, governments, organizations, and societies around the world. However, even from as early as in 2021, the private sector as well as the public sectors have significantly increased the construction investment. Now with COVID-19 showing signs of waning into an endemic, the construction industry has revived itself and learned to adapt to the new challenges presented by the pandemic, such as the increase of material prices with the inflation.

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