



The Legal 500 Country Comparative Guides

South Korea LITIGATION

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

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SOUTH KOREA LITIGATION



1. What are the main methods of resolving disputes in your jurisdiction?

In Korea, most commercial disputes are resolved through civil lawsuits in court. However, in recent years, commercial arbitration has become popular as an alternative dispute resolution mechanism, especially in international disputes. This is due to the increase of Korean companies doing overseas businesses and the Korean government's efforts to revitalize international arbitration in Korea. In international transactions, arbitration is preferred over domestic litigation because the parties are not familiar with the legal system of the other party while at the same time concerned with a potential bias against a foreign entity in the jurisdiction. Korean court has taken a friendly approach towards arbitration when making a decision regarding arbitration agreement or enforcement of arbitral awards. Also, mediation is often used as an alternative dispute resolution mechanism. Korean court sometimes refers the pending litigation case to mediation to be conducted by a judge presiding over the litigation, or a party can apply for a mediation, which is conducted by a judge in charge of mediation or a full-time dedicated mediator or a mediation committee.

2. What are the main procedural rules governing litigation in your jurisdiction?

The main legislations governing the procedures of civil litigation in Korea are the Civil Procedure Act and the Civil Procedure Rules (the rules by the Supreme Court). The Civil Procedure Act provides rules for determining courts with jurisdiction over a case and challenging the judges, and procedural rules for conducting litigation proceedings such as initiating the lawsuit, submitting pleadings, examining written evidence and witnesses, conducting oral hearing, etc. The Civil Procedure Act also deals with multiple party litigation and intervention to the litigation, and procedural rules for appealing to the Court of Appeal and the Supreme Court.

3. What is the structure and organisation of local courts dealing with claims in your jurisdiction? What is the final court of appeal?

There are seven types of courts in Korea: the Supreme Court, High Court, District Court (and Branch Court), and specialized courts such as Patent Court, Family Court, Administrative Court and Rehabilitation Court.

The Korean judicial system is generally a three-tier system: Court of First Instance (District Courts), Court of Appeals (High Courts or appellate division in District Courts) and the Supreme Court. Unless the dispute is subject to the specialized courts, a civil lawsuit usually proceeds before a district court that has jurisdiction over the dispute.

When a complaint is filed before a district court, the claim amount will be used to determine the competent court and the number of judges (three judges or a single-judge), as follows:

1. If the claim amount is KRW 500 million (approximately USD 400,000) or less: the first instance case will be heard by a single judge, and the appeal will be heard by the appellate division of the District Court consisting of three judges.
2. If the claim amount is greater than KRW 500 million or unknown: a panel of three judges will hear the first instance case, and the appeal will be decided by a panel of three judges of the High Court.

When an appeal is made against the judgment of the first instance court, the appellate court (the High Court or the appellate division of the District Court) conducts the proceedings *de novo*. As the highest court, the Supreme Court has the power of final judicial review. However, the Supreme Court only accepts appeals against the judgment of the appellate court on questions of law – especially when there is a violation of the Constitution, laws, decrees or regulations in the

appellate court's judgment. If the Supreme Court finds that an appeal against the appellate court does not have such grounds, then the Supreme Court may dismiss the appeal without hearing the case within 4 months from the receipt of the case record. A panel of four Supreme Court Justices usually decides cases before the Supreme Court, but in exceptional cases, such as when there is a need to change an existing legal precedent, 13 Supreme Court Justices hear the case (en banc).

4. How long does it typically take from commencing proceedings to get to trial in your jurisdiction?

When a plaintiff files a complaint with the competent court, the court usually delivers a copy of the complaint to the defendant within a week or two. In principle, the defendant shall submit an answer within 30 days from receipt of the complaint, but the deadline for the answer may be extended at the request of the defendant. In general, if the defendant submits an answer, the court will set a date for the first hearing within one to three months and then proceed with the trial.

The Civil Procedure Act (Article 199) stipulates the periods for the judgment to be pronounced: the judgment of the first instance court is to be rendered within 5 months from the date the lawsuit is filed, and the appellate judgments to be made within 5 months from the date of receipt of the record by the appellate courts. However, these provisions are regarded as directory rules, and in most cases, it usually takes more than 5 months for the court to render a judgment.

The court has discretion in conducting the litigation proceedings, the length of the proceedings may vary depending on each case. Usually, the first instance court proceeding takes 8 to 16 months, the appellate court proceeding takes 6 to 12 months, and the Supreme Court proceeding takes up to 24 months (4 months in case of early dismissal without hearing the case). According to the statistics provided by Korean courts in year 2022, the average length of civil litigation was 12.1 months for the first instance case, 10.1 months for the appellate case, and 10.8 months for the Supreme Court case in 2022.

5. Are hearings held in public and are documents filed at court available to the public in your jurisdiction? Are there any exceptions?

In general, hearings are open to the public. But the court may decide not to open the hearing for public viewing

due to national security or public policy reasons (Article 57 of the Court Organization Act). The parties' written submissions are not publicly available. Only the parties to the litigation and the relevant third party with interest over the case can make the application to the court to obtain the court documents.

However, the status of the litigation proceedings, including the list of pleadings submitted by the parties to the court and the schedules for the hearing are available on the Supreme Court website ("Search for My Case"), which can be accessed only with the case number and the name of the parties.

The court judgments are, in principle, available to the public with certain personal information of the parties being redacted through the Supreme Court website and the court library. The court may decide not to disclose a judgment to the public, if (1) there is a risk of harming national security or violating public policy, or (2) the judgment may interfere with the social life of the parties involved or it contains trade secrets (Articles 163-2, 163 of the Civil Procedure Act).

6. What, if any, are the relevant limitation periods in your jurisdiction?

The general statute of limitations is 10 years (Article 162(1) of the Civil Code). However, shorter periods may apply in certain disputes, such as:

1. five years for monetary claims arising out of commercial transaction (Article 64 of the Commercial Code);
2. three years for interest, support fees, salaries, rent, and other claims based on the delivery of money or other things within one year (Article 163 of the Civil Code);
3. one year for room charges, admission fees, and the price for consumable items (Article 164 of the Civil Code);
4. three years for claims for insurance proceeds, the return of premiums or reserves (Article 662 of the Commercial Code); and
5. two years for claims for insurance premiums (Article 662 of the Commercial Code).

The statute of limitation period begins the day after the claim could have first been raised (i.e., the due date or, if the due date is not fixed, then the day when the claim can be made) (Article 166(1) of the Civil Code).

A tort claim should be brought within the earlier of the following periods: (1) within three years from the date on which the injured party or his/her legal representative becomes aware of such damage and of the identity of

the tortfeasor or (2) within 10 years from the time when the tort was committed or (3) If a minor has been subjected to sexual violence, sexual harassment, sexual harassment, or other sexual assault, the statute of limitations on the right to claim compensation for this shall not proceed until he or she reaches the age of majority (Articles 766(1), (2) and (3) of the Civil Code).

7. What, if any, are the pre-action conduct requirements in your jurisdiction and what, if any, are the consequences of non-compliance?

In general, there are no pre-action requirements in order to bring a lawsuit in Korea and, thus, there are no general laws or guidelines.

However, for certain litigation proceedings, specific actions prior to filing are required under the relevant laws and regulations. For example, under Securities-Related Class Action Act, the representative party must obtain court permission in order to proceed with a securities class action. The representative party must submit an application for the court permission together with the complaint (Article 7 of the Securities-Related Class Action Act). If the representative party fails to obtain such permission from the court, it will not be able to maintain a class action suit (Article 17 of the Securities-Related Class Action Act).

8. How are proceedings commenced in your jurisdiction? Is service necessary and, if so, is this done by the court (or its agent) or by the parties?

Commercial disputes become civil lawsuits when a complaint is filed with a court that has jurisdiction. Since Korean courts widely use an internet based electronic litigation systems for civil litigation, many civil lawsuits are filed online.

Representation by lawyers are not essential in civil lawsuits, and the parties can defend themselves in the civil proceedings. However, if a party decides to appoint a legal representative to act on his/her behalf, such legal representative must be an attorney qualified as a lawyer in Korea (Article 87 of the Civil Procedure Act).

After a complaint is filed, a copy of the complaint must be served on the defendant. In Korea, the service shall be done by the court ex officio (Article 174 of the Civil Procedure Act), and the court official or postman delivers the complaint and related documents directly to the defendant. Also, if the defendant's address is

unknown and there is no other way to complete service, the court may allow the document to be served through public notice.

Korea is the member state of the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters Convention (the Hague Convention). Thus, if the other party resides abroad in a Hague Convention member state, the documents will be served in accordance with the procedures of the Hague Convention. If the other party resides in a non-member state, then the service shall be done through diplomatic channels by a presiding judge as provided in the relevant Korean law (Act on International Judicial Mutual Assistance in Civil Matters).

9. How does the court determine whether it has jurisdiction over a claim in your jurisdiction?

Korean Civil Procedure Act provides how to determine which court has jurisdiction over a certain litigation. In principle, the court located in the area where the defendant's place of residence is located has general jurisdiction over the case (e.g., the place of residence for individuals, the principle place of business for corporations, Article 2 of the Civil Procedure Act).

In consideration of the plaintiff's convenience, however, additional jurisdiction is also allowed as special forum in the following cases:

1. In the case of a monetary claim, the competent court in the area where the creditor resides (Article 2 of the Civil Procedure Act);
2. In the case of a tort claim, the competent court of the place where the tort occurred (Article 18(2) of the Civil Procedure Act);
3. In the case of a real estate claim, the competent court where the real estate is located (Article 20 of the Civil Procedure Act).

If multiple claims are filed together in one lawsuit, the court with jurisdiction over at least one claim will also have jurisdiction over the remaining claims (Article 25(1) of the Civil Procedure Act). In addition, unless a certain court has an exclusive jurisdiction, the parties can agree upon which court has the jurisdiction over their case (Article 28 of the Civil Procedure Act), or when the plaintiff files a lawsuit with the court that has no jurisdiction, and the defendant has made his/her case on the merits without making an objection to the jurisdiction of the court, such court will then have jurisdiction (Article 29 of the Civil Procedure Act).

When determining whether the Korean court has an international jurisdiction over a case which has international elements, the Korean courts have considered the domestic rules on determining jurisdiction as prescribed in the Civil Procedure Act, and also reviewed whether the Korean court has a substantial relevance with the parties or to the dispute (Article 2 of the Act on Private International Law).

It is notable that the Act on Private International Law was entirely amended to provide detailed rules for the Korean courts to rely upon when deciding whether international jurisdiction exists, and the amended Act was enacted from July 2022. Among other things, the amended Act specifies the standard of “substantial relevance” and includes general provisions related to international jurisdiction such as (i) general jurisdiction, (ii) special jurisdiction, (iii) jurisdiction for counterclaims, (iv) jurisdiction by agreement and/or pleadings, and (v) exclusive jurisdiction.

10. How does the court determine which law governs the claims in your jurisdiction?

In Korea, the parties are free to choose the governing law. In cases with international elements, if the parties have not chosen the governing law, the Korean court will determine the governing law pursuant to the Act on Private International Law. The Act provides rules for determining the governing law based upon the nature and content of the claim/dispute.

For example, real property rights or rights subject to registration are subject to the *lex situs* of the subject matter (Article 33 of the Act on Private International Law), and as for the contractual claims, unless the parties reached an agreement, the laws of the country most closely related to such contract shall be the governing law (Articles 46 of the Act on Private International Law). In case of tort claims, it will be governed by the law of the country where tort or damage occurred (Article 52 of the Act on Private International Law).

11. In what circumstances, if any, can claims be disposed of without a full trial in your jurisdiction?

There is no procedures for summary trial or summary judgment in Korean civil lawsuits.

However, Article 219 of the Civil Procedure Act provides that if there are defects in litigation and such defects cannot be rectified, the court can dismiss the lawsuit with defects without holding a trial. Examples for

immediate dismissal by the Korean court are as below:

1. when the content of the lawsuit cannot be subject to a trial;
2. when the defendant or plaintiff is legally incapable of becoming a party to a lawsuit;
3. when the plaintiff has no benefit to be gained through the trial;
4. the period of filing a complaint has lapsed (i.e., time-barred);
5. the court has no jurisdiction over a claim; or
6. the lawsuit has been filed in duplicate in violation of Article 259 of the Civil Procedure Act.

12. What, if any, are the main types of interim remedies available in your jurisdiction?

The major schemes commonly used in Korea as temporary measures include (1) provisional seizure and (2) provisional disposition.

A party who intends to enforce monetary claims in the future may obtain a provisional seizure order to freeze the other party's property in advance (Article 276 of the Civil Execution Act). “Provisional seizure” means freezing the debtor's assets for the purpose of preserving the execution of monetary claims or any claims that can be converted into money (for example, sales, loan, bills, checks, collections, construction costs, wages, claims for damages, etc.) prior to obtaining a final judgment. The court's provisional seizure order freezes the debtor's assets and restrain the debtor from dissipating the assets in order to frustrate a potential judgment on the merits and enforcement thereafter.

A party who intends to enforce claims other than monetary claims may obtain an injunction to prohibit the other party's disposal of property or to enforce certain actions (Article 300 of the Civil Execution Act). “Provisional disposition” means preserving the status quo with regard to the object in dispute or fixing a temporary position with regards to the legal relationship/legal rights in dispute. Provisional disposition is often used in order to preserve the future execution of claims against objects or rights other than monetary claims, such as the right to request the transfer or cancellation of real estate ownership, the right to request the return of the property, the right to request delivery of the object of sale, and the right to request the delivery of the leased property.

In every case, a creditor who applies for an interim measure shall present before the court that a *prima facie* claim exists against a debtor and that the creditor

will suffer irreparable damage if such interim measure is not granted (i.e. without the interim measure, the final judgment will not be enforced and satisfied). The court orders an interim measure ex parte, but the debtor has a right to raise an objection pursuant to the relevant provisions in the Civil Execution Act. When ordering the interim measures, the court usually orders the creditor to place a security deposit in certain proportion of the claim amount or value of the attached assets.

13. After a claim has been commenced, what written documents must (or can) the parties submit in your jurisdiction? What is the usual timetable?

In principle, the defendant shall submit his/her answer within 30 days of receiving a copy of the complaint, but the deadline for the answer may be extended at the request of the defendant and at the discretion of the court. Subsequent written submissions do not have a fixed deadline, and the parties may submit briefs and evidence to demonstrate their claims during the course of proceedings until the hearing is closed. It is possible to submit a supplementary brief even after the hearing is closed until the court renders its judgment. However, the court may disregard any belated arguments/defenses made by the parties if such belated argument/defense is intentional or by gross negligence and it may delay the whole proceedings (Article 149 of the Civil Procedure Act).

In general, courts hold a series of hearings with the interval of every four to six weeks after the first pleading, and the number of hearings may vary depending on the size and complexity of the case. It is usually recommended (and often requested by the court) to submit any rebuttal pleadings before the subsequent hearings. After the hearing is closed, the ruling is usually made within two to six weeks, but this may also vary depending on the nature of the case.

14. What, if any, are the rules for disclosure of documents in your jurisdiction? Are there any exceptions (e.g. on grounds of privilege, confidentiality or public interest)?

In Korea, there is no pre-litigation evidence disclosure or exchange (so called 'discovery') procedure. In principle, there are no restrictions on the substance and/or format of the documents that are subject to submission during the trial.

However, a party may apply to the court for an order to

submit a specific document held by the other party or a third party (Article 345 of the Civil Procedure Act). In the following instances, the party receiving the order to submit the document from the court should provide the requested document (Article 344(1) of the Civil Procedure Act):

1. When the party possesses the document which has been cited during the lawsuit;
2. When the applicant is legally entitled to request the holder of the document to provide or make it available for inspection; or
3. When the document has been prepared for the benefit of the applicant, or prepared as to a legal relationship between the applicant and the holder of document.

In such cases, the disclosure of the requested document may be refused if (1) the requested document contains confidential information in connection with the duties of the President, a member of the National Assembly, or public official, (2) such disclosure may incriminate the person(s) receiving such request or their family/relatives, or (3) the requested document contains on-duty secrets of lawyer, doctor, or religious person, etc. and they are not exempted from their confidentiality obligation (Proviso of Article 344(1) of the Civil Procedure Act).

15. How is witness evidence dealt with in your jurisdiction (and in particular, do witnesses give oral and/or written evidence and what, if any, are the rules on cross-examination)? Are depositions permitted?

In principle, the parties are free to submit any written statement of relevant person(s) who has knowledge of the case and/or expert, but these statements are not regarded as written testimony of a factual witness or expert witness. The parties can call a witness for examination before a court. The court may examine any person as a witness except for certain public officials who are required to obtain consent from the relevant public office (Article 303 of the Civil Procedure Act). The court can also appoint an expert for expert examination (Article 335 of the Civil Procedure Act). The judge has the full discretion to evaluate the evidentiary value of the testimony of a witness or an expert, and oral evidence is not necessarily considered to be less or more valuable than the documentary evidence.

The party who applies for the witness examination shall submit the list of questions for witness examination to the court and to the opposing party in advance, and such party will do the direct examination first and then

the other party will do the cross-examination (Article 327 of the Civil Procedure Act). In principle, the cross-examination shall only be pertinent to the matters presented during or related to the direct examination, and leading questions are allowed during the cross examination unlike the direct examination (Articles 91(2) and 92 of the Civil Procedure Act).

In principle, once summoned, a witness should appear before the court and give oral evidence, but in exceptional circumstances, the court may allow that a witness statement (written testimony) be submitted in substitution of oral testimony (Article 310 of the Civil Procedure Act). Additionally, a witness may give testimony while referring to certain relevant documents if permitted by the presiding judge (Article 331 of the Civil Procedure Act).

However, there are no pre-trial questioning of adverse or third-party witnesses on the record, like a deposition, in Korea.

16. Is expert evidence permitted in your jurisdiction? If so, how is it dealt with (and in particular, are experts appointed by the court or the parties, and what duties do they owe)?

Yes. A court may appoint a person with necessary knowledge and experience for the case as an expert witness to provide opinion (Article 335 of the Civil Procedure Act). While a party may directly hire an expert and submit the expert's opinion as an exhibit or reference material, the court tends to take the evidentiary value of such opinion of the party-appointed expert less impartial and less valuable than that of a court-appointed expert witness.

The expert witness appointed by the court shall be impartial and independent, and take an oath to the effect that he/she will not give false opinion. An expert who gives a false opinion under oath shall be punishable under Criminal Code (Article 154 of the Criminal Code).

17. Can final and interim decisions be appealed in your jurisdiction? If so, to which court(s) and within what timescale?

As for the final decision of the first instance court, the losing party can make an appeal to the appellate court, and may present a new argument and submit new evidence as the appellate court will hear and review the case de novo.

An appeal can be made within two weeks from the date of the service of the first instance court judgment (Article 396 of the Civil Procedure Act), by filing a petition of appeal to the first instance court (Article 397 of the Civil Procedure Act). The competent court of appeals will vary depending on the type and monetary value (i.e., the claim amount) of the subject-matter of lawsuit.

An appeal to the Supreme Court can only be made if there are violations of the Constitution, statutes, orders or rules that have affected the appellate court's judgment (Articles 423, 424 of the Civil Procedure Act) and it should also be made within two weeks from the date of the service of the appellate court's decision (Articles 425, 396 of the Civil Procedure Act). Furthermore, the statements of grounds for final appeal to the Supreme Court should be submitted within 20 days from the date of notification from the court if the same has not been fully elaborated in the petition for appeal (Articles 427, 426 of the Civil Procedure Act). If failing to do so, the Supreme court will dismiss the appeal without reviewing the case. Furthermore, the Supreme court will only review on the matter of law, and if the Supreme court finds that the party's grounds for final appeal does not fall into the grounds prescribed in the Act on Special Cases Concerning Procedure for Trial by the Supreme court within 4 months of the receipt of the case record, the Supreme court may order a Discontinuance of the Trial dismissal.

As for the interim decision, the Korean court may render an interlocutory judgement under limited circumstance (Article 201 of the Civil Procedure Act) and the court has to make the final judgement based upon such interlocutory judgment. A partial judgment may be rendered if a trial on part of a lawsuit has been completed (Article 200(1) of the Civil Procedure Act). However, only the final judgement of the first instance court can be appealed to the appellate court.

On the other hand, the Korean court's decision on the interim measure (i.e. provisional attachment and/or provisional disposition) can be subject to a challenge and appeal pursuant to the Civil Execution Act.

18. What are the rules governing enforcement of foreign judgments in your jurisdiction?

A party seeking to enforce a foreign judgment shall obtain an enforcement judgement from the Korean court (Article 26 of the Civil Execution Act). A final judgement rendered by a foreign court can be recognized and enforced only when it satisfies all of the following

requirements (Article 217 of the Civil Procedure Act).

1. The foreign court which gave the judgment has the international jurisdiction under the principle of international jurisdiction pursuant to the Korean statutes or treaties.
2. The defendant was properly served with the complaint or any equivalent document, and summons or any orders in a lawful manner (other than the service by public notice or similar way) in advance so as to allow sufficient time to prepare a defence, or the defendant responded to the lawsuit without having been served such documents.
3. In light of the content of the foreign judgment and the judicial procedure, the recognition of such judgment does not violate the public policy of Korea.
4. There is a guarantee of reciprocity, or the requirements for recognition of foreign judgments in the same foreign country are not far off balance and have no substantial difference from those under the Korean law.

If a final judgment on compensation for damage violates Korean laws or international treaties that Korea has signed, a court may restrict the recognition and enforcement of such judgment (Article 217-2 of the Civil Procedure Act). Korean court may refuse to enforce a foreign judgment awarding punitive damage as it is not generally allowed in Korea except in certain areas where it is explicitly prescribed by the relevant legislations (i.e., Product Liability Act allowing triple damage).

19. Can the costs of litigation (e.g. court costs, as well as the parties' costs of instructing lawyers, experts and other professionals) be recovered from the other side in your jurisdiction?

In Korea, the court makes an order for the litigation costs in the judgment. In principle, the losing party shall bear the costs (Article 98 of the Civil Procedure Act), but a court may, at its discretion, allocate the costs between the parties (Articles 99 and 100 of the Civil Procedure Act).

The litigation costs generally consist of the stamp fees, service fees, witness travel expenses, expert examination and investigation costs, and attorney's fees. However, the attorney's fees to be recovered by the losing party shall not exceed the amount calculated by the Supreme Court Rules. Actual litigation costs are determined through a separate application process after the judgment becomes final and conclusive.

20. What, if any, are the collective redress (e.g. class action) mechanisms in your jurisdiction?

In Korea, class action suits are not generally allowed, and each individual who wishes to make a claim should file a separate action.

However, class actions are permitted for certain types of securities-related damages under the Securities-Related Class Action Act. In such cases, after obtaining permission from the court, some members of the relevant group may file a class action, and the members of the group shall be bound by the result of the lawsuit unless they explicitly withdraw (opt-out).

Recently, a bill for "Class Action Act" was proposed to expand the class action scheme to all areas of civil litigation, and public comments were received, but no actual legislation has been enacted yet. The Class Action Act intends to expand the application of class actions to all areas of the law (i.e., expand to all incidents with 50 or more victims).

Other noteworthy features in the Class Action Act bill are (i) the introduction of pre-litigation discovery, (ii) the implementation of evidence preservation and production orders and (iii) trial by jury. The current bill of the Class Action Act is designed to mitigate the burden of proof that is usually levied upon the damaged for the sake of efficient, prompt resolution of the dispute.

21. What, if any, are the mechanisms for joining third parties to ongoing proceedings and/or consolidating two sets of proceedings in your jurisdiction?

A third party can join or participate in a pending lawsuit if certain requirements under the Civil Procedure Act are satisfied. Depending on the case, a third party may (1) join as a co-litigant of the plaintiff or defendant (Article 78), (2) join as one of the parties to the third-party litigation (Article 79), or (3) participate as an intervening party to assist the plaintiff or defendant (Article 71).

In addition, if several related lawsuits are pending before the same court, the court may decide to consolidate these proceedings and resolve them as a single proceeding to avoid inconsistency among the judgments or rulings and procedural inefficiency. The court has full discretion as to how to consolidate and/or separate the relevant proceedings (Article 141 of the Civil Procedure Act).

22. Are third parties allowed to fund litigation in your jurisdiction? If so, are there any restrictions on this and can third party funders be made liable for the costs incurred by the other side?

There is no specific legal prohibition or regulation of third-party funding, whether in litigation or arbitration proceedings. Although, third-party litigation funding has been a subject of discussion among practitioners in Korea, its legality has not yet come before Korean courts for determination.

Article 6 of the Trust Act in Korea expressly prohibits any trust, the purpose of which is for the trustee to proceed with litigation. The issue of whether third-party litigation funding could be construed as constituting a litigation trust under the Trust Act would depend in large part on the structure and specific provisions of the litigation funding agreement. The Korean Supreme Court ruled (the Supreme Court Decision 2006Da463 rendered on 27 June 2006) that a transfer of credit, for the primary purpose of assigning a litigation case, was void because the same transfer and assignment was deemed as creating a litigation trust under the meaning of Article 6 of the Trust Act. Therefore, in accordance with the Supreme Court decision, although a funding arrangement may not be of itself viewed as constituting a trust that is prohibited under the Trust Act, if the funding arrangement in effect transfers credit to a third-party funder, then such arrangement could be viewed as constituting a prohibited trust.

Further Article 34(1) of the Attorney-at-Law Act prohibits non-attorneys from introducing, referring or enticing a party (engaged in an ongoing or potential litigation) to a specific attorney, in exchange for money or any other benefit. Moreover, under Article 34(5) of the Attorney-at-Law Act, no fees or other profits earned through services provided by attorneys can be shared with any person who is not an attorney. In effect, those provisions bar the solicitation of clients by non-lawyers. In other words, third-party funders approaching clients for litigation funding and encouraging them to initiate litigation for the purpose of eventual sharing of proceeds could be interpreted as falling within Article 34(1) of the Attorney-at-Law Act referred to above. The punishment for violation of Article 34 of the Attorney-at-Law Act may involve imprisonment with labour up to seven years or fine not exceeding 50 million won.

Considering the provisions of the Trust Act and the Attorney-at-Law Act discussed above, Korean courts may take a conservative approach toward third-party litigation funding given the lack of any specific legislation directly addressing its legality.

23. What has been the impact of the COVID-19 pandemic on litigation in your jurisdiction?

Like many courts around the world, Korean courts have adjourned and postponed the trials/hearings on several occasions to prevent the spread of the COVID-19. The increase in average length of civil litigation from 19.6 months in 2019 to 20.6 months in 2020 was likely (indirectly or directly) caused by the COVID-19.

However, electronic submissions and virtual (remote) hearings have alleviated the impact of the COVID-19 on the delays incurred to the Korean litigation proceedings. Electronic litigation systems are well established and widely used for civil cases in Korea, which enable submission of briefs and/or exhibits to the relevant court via the electrical means. Moreover, in order to facilitate and generalise the adoption of virtual hearings, the Civil Procedure Act and the Criminal Procedure Act were amended in August 2021 (and enacted in November 2021). These amendments were designed to permit and broaden the scope in which the virtual hearings may be implemented in civil and criminal litigation proceedings. Recently it is reported that there have been almost 1,500 virtual hearing cases for 6 months since the implementation of the amended Civil Procedure Act in November 2021.

24. What is the main advantage and the main disadvantage of litigating international commercial disputes in your jurisdiction?

Korea is a very stable country in terms of politics and economy, and has relatively predictable standards, especially in the legislative and judicial fields. Korea is investing in various commercial areas and international transactions, and actively introducing and adopting international standards and practices to resolve various disputes. Korean national courts, the Korean Commercial Arbitration Board, the sole arbitration institution in Korea, and law firms are equipped with world-class level of information and communication technology and legal services with competent personnel.

According to the research conducted by the World Bank, the Korean court system has earned an international reputation as one of the most efficient and cost-effective judiciaries in the world, and consistently maintains the pro-arbitration stance.

25. What is the most likely growth area for

commercial disputes in your jurisdiction for the next 5 years?

When the new legislation to expand the class action scheme across all areas of law in Korea is passed, class actions will become available for all types of civil claims.

Further, a proposed bill to amend the Korean Commercial Code has been introduced to include award of punitive damages for intentional or grossly negligent acts and to allow plaintiffs to collect punitive damages up to five times the damages sustained from the company's or business owner's (merchant's) intentional or grossly negligent conduct. Once the amended Commercial Code is enacted, punitive damages up to five times in all commercial causes of action will be viable, regardless of the industry or areas of law involved. Therefore, businesses, including manufacturing, financial, construction, and even the media, among others, would be subject to the proposed law. Currently, punitive damages are only available under specific causes of action, such as those under the Products Liability Act, the Personal Information

Protection Act and the Patent Act etc.

26. What, if any, will be the impact of technology on commercial litigation in your jurisdiction in the next 5 years?

Recently, AI-based platforms for searching lawyers and providing legal services that analyse data to draft simple legal documents or search for legal precedent are flourishing. Also, an introduction of Open AI's Chat GPT has created great sensation in Korean legal community, and these new advance technologies such as generative AI may change the way the lawyers work and certainly make it much easier for the potential users of the litigation to find the right lawyers, receive prompt and efficient legal advice, and commence and/or defend a litigation.

Also, it is expected that an implementation of virtual (remote) hearings will become a 'new normal' in Korea, although in-person trials will not be substituted or replaced entirely by virtual trials

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