

Korea litigation guide



By Hou Man
Shin & Kim

Tel: +82 2 316 4114 Fax: +82 2 756 6226 Website: www.shinkim.com

SHIN&KIM

Civil law system

Korea follows the civil law tradition and its legal system is similar to Germany and Japan. Recently, Korea has been greatly influenced by the common law system.

Court & Constitutional Court

The judicial power in Korea is exercised separately by trial and appellate courts and the Constitutional Court.

The trial and appellate courts deal with ordinary litigations including civil, criminal, administrative and family matters. The Supreme Court is the highest court to address appeals from lower courts.

The Constitutional Court is responsible for constitutional issues, such as constitutional review of statutes, impeachment, dissolution of political parties and constitutional petition.

Korea also has made great advancements in its court system. The nation's civil and criminal procedures have been substantially overhauled by recent amendments to the Civil Procedure Act and the Criminal Procedure Act – much of which was influenced by legal procedures in the US.

Korean courts are viewed to be politically independent and not discriminatory against foreign nationals. There is a prevalent understanding among Korean people that an independent and fair exercise of judicial power is indispensable to the rule of law and democracy. Koreans further believe that the existence of an independent judiciary is necessary to the nation's economy by making foreign investors feel more comfortable investing in Korea.

Civil procedure

Korea has a three-level court system for civil cases. Civil litigation is formally commenced by the plaintiff filing a complaint with the court of first instance (trial court).

Filing a civil suit requires the payment of stamp duty. The stamp duty amount increases in proportion to the amount of relief (e.g., damages) sought by the plaintiff. Plaintiffs who are not lawful residents of Korea may also be required to provide a deposit with the court in an amount based on the value of their claim.

Since the Korean Civil Procedure Act does not provide for mandatory representation by a lawyer, the parties may represent themselves in court. However, cases involving larger stakes and/or companies are customarily handled by experienced lawyers. Lawyers licensed in jurisdictions outside of Korea are prohibited under the Attorney Act from representing others in a Korean court (however, they may represent themselves).

Korea does not adopt pre-trial discovery procedures, such as deposi-

tions or interrogatories, although a court may order production of documents upon a litigant's request. In principle, evidence should be collected by the parties outside of legal proceedings. Moreover, all evidence is admissible as the court focuses on the weight of the evidence.

A jury trial system similar to the US was introduced as a pilot project for criminal cases. The jury's decision is only advisory as the judge may or may not accept the jury's findings of fact and application of relevant laws. There is no jury system in civil cases.

Compared to other countries, Korean courts tend to be quicker in rendering decisions in civil cases. Litigation costs, including attorneys' fees, are borne by the losing party; however, recoverable attorneys' fees are relatively small under Supreme Court Regulation.

Court mediation

Recently, Korean judges are actively and fully utilising court mediation regardless of the parties' respective nationalities.

During litigation, court mediation may be commenced upon the court's exercise of its own authority or a party's application. The judge may mediate the dispute alone or with the assistance of mediators. The mediation judge is often the same judge responsible for the litigation proceeding.

An agreement reached between the parties by court mediation has the same effect as a final judgment. If the parties cannot reach an agreement, the case will revert back to the court litigation procedure unless the mediation judge imposes a compulsory mediation decision. This is unique to Korea. In many cases, such a decision turns out to be similar to the judgment in a court litigation. Any party dissatisfied with a compulsory mediation decision may file a formal objection to invalidate such a decision. Once invalidated, the case will revert back to the litigation procedure.

Law school

To become a judge, public prosecutor or attorney, the prior requirement was that the applicant had to pass the National Bar exam and, thereafter, complete the mandatory two years of training courses at the Judicial Research & Training Institute (JRTI). No formal education was required to take the National Bar exam. This was pursuant to the tradition of civil laws.

Recently, Korea adopted a graduate-level law school system similar to the US. Under this system, only graduates from law schools are eligible to apply for the Bar exam. The mandatory JRTI training was also abolished and, instead, similar courses were implemented into the law school curriculum. The nation's law schools will turn out their first graduates in 2012.