
THE DISPUTE RESOLUTION REVIEW

SEVENTH EDITION

EDITOR
JONATHAN COTTON

LAW BUSINESS RESEARCH

THE DISPUTE RESOLUTION REVIEW

The Dispute Resolution Review
Reproduced with permission from Law Business Research Ltd.

This article was first published in The Dispute Resolution Review - Edition 7
(published in February 2015 – editor Jonathan Cotton).

For further information please email
Nick.Barette@lbresearch.com

THE DISPUTE RESOLUTION REVIEW

Seventh Edition

Editor
JONATHAN COTTON

LAW BUSINESS RESEARCH LTD

THE LAW REVIEWS

THE MERGERS AND ACQUISITIONS REVIEW

THE RESTRUCTURING REVIEW

THE PRIVATE COMPETITION ENFORCEMENT REVIEW

THE DISPUTE RESOLUTION REVIEW

THE EMPLOYMENT LAW REVIEW

THE PUBLIC COMPETITION ENFORCEMENT REVIEW

THE BANKING REGULATION REVIEW

THE INTERNATIONAL ARBITRATION REVIEW

THE MERGER CONTROL REVIEW

THE TECHNOLOGY, MEDIA AND
TELECOMMUNICATIONS REVIEW

THE INWARD INVESTMENT AND
INTERNATIONAL TAXATION REVIEW

THE CORPORATE GOVERNANCE REVIEW

THE CORPORATE IMMIGRATION REVIEW

THE INTERNATIONAL INVESTIGATIONS REVIEW

THE PROJECTS AND CONSTRUCTION REVIEW

THE INTERNATIONAL CAPITAL MARKETS REVIEW

THE REAL ESTATE LAW REVIEW

THE PRIVATE EQUITY REVIEW

THE ENERGY REGULATION AND MARKETS REVIEW

THE INTELLECTUAL PROPERTY REVIEW

THE ASSET MANAGEMENT REVIEW

THE PRIVATE WEALTH AND PRIVATE CLIENT REVIEW

THE MINING LAW REVIEW

THE EXECUTIVE REMUNERATION REVIEW

THE ANTI-BRIBERY AND ANTI-CORRUPTION REVIEW

THE CARTELS AND LENIENCY REVIEW

THE TAX DISPUTES AND LITIGATION REVIEW

THE LIFE SCIENCES LAW REVIEW

THE INSURANCE AND REINSURANCE LAW REVIEW

THE GOVERNMENT PROCUREMENT REVIEW

THE DOMINANCE AND MONOPOLIES REVIEW

THE AVIATION LAW REVIEW

THE FOREIGN INVESTMENT REGULATION REVIEW

THE ASSET TRACING AND RECOVERY REVIEW

THE INTERNATIONAL INSOLVENCY REVIEW

THE OIL AND GAS LAW REVIEW

THE FRANCHISE LAW REVIEW

THE PRODUCT REGULATION AND LIABILITY REVIEW

THE SHIPPING LAW REVIEW

THE ACQUISITION AND LEVERAGED FINANCE REVIEW

THE PRIVACY, DATA PROTECTION AND CYBERSECURITY LAW REVIEW

PUBLISHER
Gideon Robertson

BUSINESS DEVELOPMENT MANAGER
Nick Barette

SENIOR ACCOUNT MANAGERS
Katherine Jablonowska, Thomas Lee

ACCOUNT MANAGER
Felicity Bown

PUBLISHING COORDINATOR
Lucy Brewer

MARKETING ASSISTANT
Dominique Destrée

EDITORIAL COORDINATOR
Shani Bans

HEAD OF PRODUCTION
Adam Myers

PRODUCTION EDITORS
Matthew Hopkins, Robbie Kelly, Joanne Morley

SUBEDITOR
Jonathan Allen

MANAGING DIRECTOR
Richard Davey

Published in the United Kingdom
by Law Business Research Ltd, London
87 Lancaster Road, London, W11 1QQ, UK
© 2015 Law Business Research Ltd
www.TheLawReviews.co.uk

No photocopying: copyright licences do not apply.

The information provided in this publication is general and may not apply in a specific situation, nor does it necessarily represent the views of authors' firms or their clients.

Legal advice should always be sought before taking any legal action based on the information provided. The publishers accept no responsibility for any acts or omissions contained herein. Although the information provided is accurate as of February 2015, be advised that this is a developing area.

Enquiries concerning reproduction should be sent to Law Business Research, at the address above. Enquiries concerning editorial content should be directed to the Publisher – gideon.roberton@lbresearch.com

ISBN 978-1-909830-37-0

Printed in Great Britain by
Encompass Print Solutions, Derbyshire
Tel: 0844 2480 112

ACKNOWLEDGEMENTS

The publisher acknowledges and thanks the following law firms for their learned assistance throughout the preparation of this book:

ARTHUR COX
ARZINGER LAW OFFICE
ATTIAS & LEVY
AZB & PARTNERS
BAKER & PARTNERS
BONELLI EREDE PAPPALARDO
BREDIN PRAT
BUFETE HERNÁNDEZ ROMO
CONSULEGIS ABOGADOS
CRAVATH, SWAINE & MOORE LLP
DITTMAR & INDRENIUS
HENGELER MUELLER
HERGÜNER BILGEN ÖZEKE ATTORNEY PARTNERSHIP
JUN HE LAW OFFICES
KBH KAAUNUN
KYRIAKIDES GEORGOPOULOS LAW FIRM
LLOREDA CAMACHO & CO
LS HORIZON LIMITED
MANNHEIMER SWARTLING ADVOKATBYRÅ AB
MAPLES AND CALDER

MIYAKE & YAMAZAKI
MOHAMMED AL-GHAMDI LAW FIRM IN ASSOCIATION WITH
NORTON ROSE FULBRIGHT US LLP
MOLITOR AVOCATS À LA COUR
MOTIEKA & AUDZEVIČIUS
NIEDERER KRAFT & FREY
OSLER, HOSKIN & HARCOURT LLP
PATRIKIOS PAVLOU & ASSOCIATES LLC
PINHEIRO NETO ADVOGADOS
PIPER ALDERMAN
PLESNER LAW FIRM
SCHRECK LAW OFFICES
SHALAKANY LAW OFFICE
SHIN & KIM
SLAUGHTER AND MAY
SOFUNDE, OSAKWE, OGUNDIPE & BELGORE
STRELIA
SZECSKAY ATTORNEYS AT LAW
TSMP LAW CORPORATION
ȚUCA ZBÂRCEA & ASOCIAȚII
URÍA MENÉNDEZ
UTEEM CHAMBERS
WOLFF GSTOEHL BRUCKSCHWEIGER ADVOKATURBÜRO
WOLF THEISS RECHTSANWÄLTE GMBH & CO KG
YOUNG CONAWAY STARGATT & TAYLOR, LLP

CONTENTS

Editor's Prefacevii
	<i>Jonathan Cotton</i>
Chapter 1	AUSTRALIA.....1
	<i>Malcolm Quirey and Gordon Grieve</i>
Chapter 2	AUSTRIA38
	<i>Bettina Knötzl</i>
Chapter 3	BAHRAIN51
	<i>Haifa Khunji and Natalia Kumar</i>
Chapter 4	BELGIUM.....63
	<i>Jean-Pierre Fierens and Joanna Kolber</i>
Chapter 5	BRAZIL76
	<i>Gilberto Giusti and Ricardo Dalmaso Marques</i>
Chapter 6	BRITISH VIRGIN ISLANDS91
	<i>Arabella di Iorio and Brian Lacy</i>
Chapter 7	CANADA112
	<i>David Morrith and Eric Morgan</i>
Chapter 8	CAYMAN ISLANDS.....126
	<i>Aristos Galatopoulos and Luke Stockdale</i>
Chapter 9	CHINA.....139
	<i>Xiao Wei, Zou Weining and Stanley Xing Wan</i>
Chapter 10	COLOMBIA.....150
	<i>Gustavo Tamayo and Natalia Caroprese</i>

Chapter 11	CYPRUS	162
	<i>Eleana Christofi and Katerina Philippidou</i>	
Chapter 12	DENMARK.....	174
	<i>Peter Schradieck and Peter Fogh</i>	
Chapter 13	ECUADOR	186
	<i>Xavier Castro-Muñoz and Fabrizio Peralta-Díaz</i>	
Chapter 14	EGYPT	195
	<i>Khaled El Shalakany</i>	
Chapter 15	ENGLAND & WALES	200
	<i>Jonathan Cotton and Damian Taylor</i>	
Chapter 16	FINLAND	224
	<i>Jussi Lehtinen and Heidi Yildiz</i>	
Chapter 17	FRANCE	237
	<i>Tim Portwood</i>	
Chapter 18	GERMANY	253
	<i>Henning Bälz and Carsten van de Sande</i>	
Chapter 19	GIBRALTAR.....	271
	<i>Stephen V Catania</i>	
Chapter 20	GREECE	281
	<i>John Kyriakides and Harry Karampelis</i>	
Chapter 21	HONG KONG	293
	<i>Mark Hughes</i>	
Chapter 22	HUNGARY	317
	<i>Dávid Kerpel</i>	
Chapter 23	INDIA	331
	<i>Zia Mody and Aditya Vikram Bhat</i>	

Chapter 24	IRELAND.....346 <i>Andy Lenny and Peter Woods</i>
Chapter 25	ISRAEL.....362 <i>Shraga Schreck</i>
Chapter 26	ITALY393 <i>Monica Iacoviello, Vittorio Allavena, Paolo Di Giovanni and Tommaso Faelli</i>
Chapter 27	JAPAN415 <i>Tatsuki Nakayama</i>
Chapter 28	JERSEY.....429 <i>William Redgrave and Charles Sorensen</i>
Chapter 29	KOREA.....443 <i>Hyun-Jeong Kang</i>
Chapter 30	LIECHTENSTEIN455 <i>Christoph Bruckschweiger</i>
Chapter 31	LITHUANIA.....465 <i>Ramūnas Audzevičius and Mantas Juozaitis</i>
Chapter 32	LUXEMBOURG480 <i>Michel Molitor</i>
Chapter 33	MAURITIUS.....492 <i>Muhammad R C Uteem</i>
Chapter 34	MEXICO508 <i>Miguel Angel Hernández-Romo Valencia</i>
Chapter 35	NIGERIA.....524 <i>Babajide Ogundipe and Lateef Omoyemi Akangbe</i>
Chapter 36	PORTUGAL.....539 <i>Francisco Proença de Carvalho and Tatiana Lisboa Padrão</i>

Chapter 37	ROMANIA.....551 <i>Levana Zigmund</i>
Chapter 38	SAUDI ARABIA.....564 <i>Mohammed Al-Ghamdi and Paul J Neufeld</i>
Chapter 39	SINGAPORE584 <i>Thio Shen Yi, Freddie Lim and Hannah Tjoa</i>
Chapter 40	SPAIN.....599 <i>Ángel Pérez Pardo de Vera and Francisco Javier Rodríguez Ramos</i>
Chapter 41	SWEDEN619 <i>Jakob Ragnvaldh and Niklas Åstenius</i>
Chapter 42	SWITZERLAND631 <i>Peter Honegger, Daniel Eisele, Tamir Livschitz</i>
Chapter 43	THAILAND649 <i>Lersak Kancvalskul, Prechaya Ebrahim, Wanchai Yiamsamatha and Oranat Chantara-opakorn</i>
Chapter 44	TURKEY659 <i>H Tolga Danişman</i>
Chapter 45	UKRAINE678 <i>Sergiy Shklyar and Markian Malskyy</i>
Chapter 46	UNITED ARAB EMIRATES.....690 <i>D K Singh</i>
Chapter 47	UNITED STATES701 <i>Nina M Dillon and Timothy G Cameron</i>
Chapter 48	UNITED STATES: DELAWARE719 <i>Elena C Norman and Lakshmi A Muthu</i>
Appendix 1	ABOUT THE AUTHORS.....739
Appendix 2	CONTRIBUTING LAW FIRMS' CONTACT DETAILS ...769

EDITOR'S PREFACE

The Dispute Resolution Review covers 48 countries and territories. Disputes have never respected national boundaries and the continued globalisation of business in the 21st century means that it is more important than ever before that clients and lawyers look beyond the horizon of their home jurisdiction.

The Dispute Resolution Review is an excellent resource, written by leading practitioners across the globe. It provides an easily accessible guide to the key aspects of each jurisdiction's dispute resolution rules and practice, and developments over the past 12 months. It is written with both in-house and private legal practitioners in mind, as well as the large number of other professionals and businesspeople whose working lives bring them into contact with disputes in jurisdictions around the world.

This Review is testament to the fact that jurisdictions face common problems. Whether the issue is how to control the costs of litigation, which documents litigants are entitled to demand from their opponents, or whether a court should enforce a judgment from another jurisdiction, it is fascinating to see the different ways in which different jurisdictions have grappled with these issues and, in some cases, worked together to produce a harmonised solution to international challenges. We can all learn something from the approaches taken by the 48 jurisdictions set out in this book.

A feature of some of the prefaces to previous editions has been the impact that the turbulent economic times were having in the world of dispute resolution. Although at the time of writing the worst of the global recession that gripped many of the world's economies has largely passed, it has left its mark. Old and new challenges and risks remain in many parts of the world such as renewed speculation on the future of the eurozone, the sanctions imposed on Russia, and falls in the price of oil. In some regions, the 'green shoots' of recovery have blossomed while in others they continue to need careful nurturing. Both situations bring their different challenges for those involved in disputes and, while the boom in insolvency-related disputes and frauds unearthed in the recession remain, the coming year could see an increase in investment and acquisitions with a subsequent focus on disputes concerning the contracts governing those investments.

I would like to express my gratitude to all of the contributors from all of the jurisdictions represented in *The Dispute Resolution Review*. Their biographies start at p. 739 and highlight the wealth of experience and learning from which we are fortunate enough to benefit. I would also like to thank the whole team at Law Business Research, in particular Nick Barette, Eve Ryle-Hodges and Shani Bans, who have impressed once again in managing a project of this size and scope, and in adding a professional look and finish to the contributions.

Jonathan Cotton

Slaughter and May

London

February 2015

Chapter 29

KOREA

*Hyun-Jeong Kang*¹

I INTRODUCTION TO DISPUTE RESOLUTION FRAMEWORK

i The judicial system

The Korean judicial system is based on a three-instance trial system, which encompasses district courts (trial court), high courts (appellate court) and the Supreme Court. Other courts exercise specialised functions, with the Patent Court at the same level as the district courts.

The Korean court system is centralised, and the Supreme Court of Korea is the highest appellate court. All claims, except for those worth less than 20 million Korean won, can be appealed to a high court and then to the Supreme Court. Claims worth less than 100 million won or claims for the enforcement of promissory notes or cheques are heard by a single judge at the district court. Appeals from such cases are heard by the appellate division of the district court. Claims worth more than 100 million Korean won are heard by a three-judge tribunal at first instance, which can then be appealed to a high court (appellate court).

ii ADR procedures

Arbitration, mediation and settlement are becoming more common forms of dispute resolution in Korea. Recently, there has been a shift in practice from focusing on traditional litigation to encouraging ADR, as discussed in more detail in Section VI, *infra*).

II THE YEAR IN REVIEW

Article 163-2 of the amended Civil Procedure Act became effective on 1 January 2015, and allows the public to access court decisions that are final and conclusive via the

¹ Hyun-Jeong Kang is a partner at Shin & Kim.

internet and other electronic data processing systems, and to make copies of them. It is expected that the new rule will further the principle of an open judiciary by making court records more accessible.

III COURT PROCEDURE

i Overview of court procedure

There are three major types of procedure available in civil proceedings: a ‘judgment procedure’ to determine the rights of the parties; an ‘interim measure’ such as a provisional attachment or injunction to protect the interests of the parties during the pendency of the litigation; and an ‘enforcement procedure’ to satisfy the rights of the parties. The judgment procedure is governed by the Civil Procedure Act and interim measures are governed by the Civil Execution Act.²

ii Procedures and time frames

Generally, a civil case proceeds as follows. First, the plaintiff or its legal representative files a complaint with the competent court, either by sending hard copies of the complaint to the court or doing so electronically. Second, the judge will review whether the complaint is well argued, and determine the amount of the filing fees. The complaint is then delivered to the defendant, who has 30 days to file its response. Upon the receipt of the response, the court will schedule a hearing either for a preliminary conference or to hear the merits of the case. In principle, a court must render this decision within two weeks of the closing of the hearing or the examination of evidence.

The decision-making process for the district courts, the high courts and the Supreme Court is each limited to five months under the court guidelines,³ but these guidelines are not legally binding as such. It is, therefore, common for a proceeding to take longer than five months, making it difficult to predict the possible duration of legal proceedings in practice.

The most important purpose of interim measures is to protect the interests of the parties while litigation is pending and, therefore, requires the court to take actions within a shorter time frame. Generally, a decision on any interim measures may be made without a hearing,⁴ but a decision on a provisional attachment must be preceded by a hearing.⁵ To ensure an expeditious delivery of justice, the execution of a judgment on a provisional seizure must take place within two weeks of the date of notifying the creditor of such judgment.⁶

2 The English version of most Korean laws including the Civil Procedure Act and the Civil Execution Act can be found online at <http://elaw.klri.re.kr>.

3 Article 199 of the Civil Procedure Act.

4 Articles 280(1) and 301 of the Civil Execution Act.

5 Article 304 of the Civil Execution Act.

6 Articles 292 and 301 of the Civil Execution Act.

iii Class actions

There is no general rule under the Korean Civil Procedure Act that governs class actions; instead, class actions are governed under specific laws. Class actions are not common in Korea due to the court approval requirements related to the party representative and the filing of a class action.

Under the Securities-Related Class Action Act, a party representative – defined as one or more class members, appointed with the court’s approval, who file a securities-related action on behalf of the class members – may bring a claim for compensation for loss incurred in relation to the purchase, sale and other transactions concerning securities. A class action under this Act allows an individual to file an opt-out notice, but unless such notice is filed with the court, the decision by the court is effective for all members of the class.

Under the Framework Act on Consumers, if an enterprise⁷ infringes directly on the rights and interests of consumers relating to their lives, bodies or property, and if such infringement continues, consumers may file a class action with a court to prohibit and suspend the infringement of consumers’ rights and interests.⁸ Unlike securities-related class actions, consumer class actions are not led by party representatives but by consumer organisations, which are allowed by law to file actions on behalf of the consumers or the public at large. A consumer organisation that seeks to institute a class action must submit an application to a court for permission for such action.⁹ The consumer class action system in Korea is similar to those in Germany and Japan.

The Personal Information Protection Act allows the bringing of a class action in court seeking prohibition or suspension of an infringement of rights in the event that a personal information manager rejects mediation of a collective dispute under Article 49 of the same Act, which mandates mediation of collective disputes.¹⁰

iv Representation in proceedings

The Civil Procedure Act recognises the legal capacity of either a juristic person or a corporation to become a party to a lawsuit. A foreigner can also become a party to a lawsuit under the Korean law.¹¹ A corporation can become a party to a lawsuit regardless of whether it is a domestic or foreign corporation, a profit or non-profit organisation, or a private corporation or foundation. An association or foundation other than a juristic person may, in a case where it has a representative or administrator, become a party to a lawsuit in the name of such association or foundation.¹²

7 Defined as a party that manufactures (including processing or packing), imports or sells goods, or furnishes services.

8 Articles 70 and 76 of the Framework Act on Consumer.

9 Article 73 of the Framework Act on Consumer.

10 Articles 52 and 58 of the Personal Information Protection Act.

11 Article 57 of the Civil Procedure Act.

12 Article 52 of the Civil Procedure Act.

Under Korean law, a party is not required to appoint a legal representative and may defend itself in a lawsuit, except for in class actions and constitutional cases.¹³ If, however, a party chooses legal representation, only lawyers may act in this capacity,¹⁴ except in other limited circumstances.¹⁵

v Service outside of the jurisdiction

Service to be effected in a foreign country is entrusted by the presiding judge to the Korean ambassador, minister or consul stationed therein or the competent government authorities of such country.¹⁶

The Act on International Judicial Mutual Assistance in Civil Matters provides the necessary procedures for judicial assistance and cooperation in civil matters. Treaties also oblige signatory states to cooperate in resolving judicial matters.

vi Enforcement of foreign judgments

A final and conclusive judgment by a foreign court will be acknowledged to be valid only upon satisfaction of each of the following requirements:

- a* The international jurisdiction of such foreign court is recognised in the principles of international jurisdiction pursuant to the acts and subordinate statutes of the Republic of Korea, or relevant treaties.
- b* The unsuccessful defendant received, by a lawful method, service of a summons or a document equivalent thereto, and a notice of date or an order, with sufficient time to defend it (excluding cases pursuant to service by public notice or similar), or that it responded to the lawsuit even without being served.
- c* Such judgment does not violate good morals and other social order of Korea.
- d* A mutual guarantee exists.¹⁷

The judgment of a foreign court is enforceable if its legality is declared by means of a judgment of execution, which is a declaration that a foreign judgment is enforceable. A judgment of execution is rendered where the foreign judgement is final and conclusive, and meets the requirements under Article 217 of the Civil Procedure Act, without making any further examination as to whether the foreign judgment is right or wrong.¹⁸ The Civil Procedure Act also applies in a lawsuit requesting a judgment of execution.

13 Article 282 of the Criminal Procedure Act provides that ‘the court may not sit without the defence counsel’ for cases in which (1) the charge allows a heavy sentence if found guilty, (2) the court finds that the defendant cannot sufficiently defend his or her rights, or (3) the court deems it necessary to protect the rights of the defendant.

14 Article 87 of the Civil Procedure Act.

15 For example, the captain of a ship or a person who acts on behalf of the state in litigation (Articles 11 and 749 of the Commercial Act).

16 Article 191 of the Civil Procedure Act.

17 Article 217 of the Civil Procedure Act.

18 Articles 26 and 27 of the Civil Execution Act.

vii Assistance to foreign courts

The Republic of Korea is a signatory to the Hague Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters and the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, and has executed bilateral treaties with Australia, China, Mongolia and Uzbekistan. Generally, the procedure for judicial assistance for foreign courts and request for judicial assistance is governed by the Act on International Judicial Mutual Assistance in Civil Matters.

A request for judicial cooperation by a foreign country may be given only when it conforms to the following requirements:¹⁹

- a* A judicial cooperation treaty has been concluded with the country of the requesting court, or there is a guarantee, as provided in Article 4.
- b* It will not be detrimental to public peace and order and good morals in the Republic of Korea.
- c* The request is made through diplomatic channels.
- d* The request for service is made in writing, specifying the name, nationality, address or residence of the person to be served.
- e* A request for the examination of evidence is made in writing specifying the party, and giving a summary of the case, methods of evidence or the name, nationality, address or residence of the person to be examined and matters to be examined in a case of a witness examination.
- f* A translation into the Korean language is appended.
- g* The country of the requesting court guarantees the payment of any expenses needed for implementing the entrusted matters.

viii Access to court files

A party to a case or interested third parties may file a request with a court officer for inspection and copying of court records, as prescribed by the Supreme Court Regulations.²⁰ Anyone may apply to inspect the court record of a final and conclusive judgment for the purposes of relief of right, academic research or the public interest, except for the records of cases that are statutorily prohibited from being disclosed to the public.²¹ The court officer must take the necessary steps to make sure that any personal information, including the names of the parties, is not disclosed in the inspection or the copying of the court record.

For cases in which the parties agree to use the Electronic Case Filing System, they or their legal representatives seeking to inspect, copy or reproduce court records, pursuant to Article 162(1) of the Civil Procedure Act, may access the records online and print or download them to personal electronic devices.²² Parties that have not agreed to use the Electronic Case Filing System are only allowed to inspect electronic records using

19 Article 12 of the Act on International Judicial Mutual Assistance in Civil Matters.

20 Article 162(1) of the Civil Procedure Act.

21 Article 162(2) of the Civil Procedure Act.

22 Article 38(1) of the Act on the Use, etc. of Electronic Documents in Civil Litigation, etc.

the computer located at the court, and to make copies or request that a court officer make copies.²³

ix Litigation funding

A court may grant litigation aid, either *ex officio* or upon request of a person who cannot pay the costs of lawsuit, except for cases in which it is obvious that the lawsuit will fail.²⁴ A 'person who cannot pay the costs of lawsuit' refers to a person who is economically compromised and cannot pay the costs of lawsuit without adversely affecting the everyday life of his or her family, or to a corporation or other association that cannot pay the costs of lawsuit without undermining the business.

IV LEGAL PRACTICE

i Conflicts of interest and Chinese walls

No attorney-at-law is allowed to provide any services with respect to a case that falls into any of the following circumstances:

- a* The attorney-at-law has already been consulted and has agreed to represent one party, and the opposing party approaches to request services on the same case.
- b* The opposing party in a case requests services with respect to another case.
- c* The attorney-at-law handles or has come to handle the case as a public official, mediator or arbitrator.

In the case of (b) above, should the opposing party request services with respect to another case, and the client consents to such representation, the attorney-at-law may represent the opposing party in a different case.²⁵

Any judges, prosecutors, military judicial officers or other attorneys-at-law that have held office as public officials are prohibited from accepting cases handled within a year of their retirement from a state agency, such as a court, prosecutor's office, military court, Financial Services Commission, Fair Trade Commission or police office (including the courts of each level).²⁶

Any law office is deemed as one attorney-at law for the purposes of the regulation, even if it is not a law firm, limited liability law firm or partnership law firm (where two or more attorneys-at-law jointly accept or handle cases, or conduct the duties of attorney-at-law and share their profits and expenses between themselves). Therefore, if one attorney-at-law at a law office accepts a case or already represents a party, other attorneys-at-law at the same law office cannot represent the opposing party of the case in any case.²⁷

23 Article 38(2) of the Act on the Use, etc. of Electronic Documents in Civil Litigation, etc.

24 Article 128(1) of the Civil Procedure Act.

25 Article 31(1) of the Attorney-At-Law Act.

26 Article 31(3) of the Attorney-At-Law Act.

27 Article 31(1) and (2) of the Attorney-At-Law Act.

No attorney-at-law is allowed to become the assignee of any right in dispute. Any person violating this provision is subject to punishment by imprisonment of up to three years or a maximum fine of 20 million Korean won.²⁸

ii Money laundering, proceeds of crime and funds related to terrorism

Korea signed the International Convention for the Suppression of the Financing of Terrorism on 9 October 2001 and ratified it on 17 February 2004. Thereafter, the Act on Prohibition against the Financing of Terrorism was enacted on and has been enforced since 22 December 2008. The country also became a full member of the Financial Action Task Force (or FATF) in October 2009.

The Act on Prohibition against the Financing of Terrorism was enacted to implement the International Convention for the Suppression of the Financing of Terrorism and UN Security Council's Resolution on Preventing Proliferation of Weapons of Mass Destruction. The Act prohibits providing, collecting, transporting or holding funds or assets for an individual, entity or organisation directly or through a third party for its benefit, while knowing that such intends to engage in a terrorist activity.

Under the Act on Real Name Financial Transactions and Confidentiality, a person who hides assets acquired illegally or undertakes in a transaction under another's name with an illegal purpose such as money laundering is subject to maximum of five years' imprisonment. In order to prevent money laundering, the Act on Reporting and Using Specified Financial Transaction Information requires financial companies to report any transactions suspected as involving illegal assets or large amount of cash transactions.

Although there are no specific provisions in Korea that state the duties of attorney-at-law with respect to money laundering and financing of terrorism, attorneys-at-law are generally expected not to engage in such illegal activities based on the following provisions: 'the mission of any attorney-at-law shall be to defend fundamental human rights and realise social justice'²⁹ and 'each attorney-at-law shall faithfully perform his or her duties and work to maintain social order and improve the legal system in accordance with his or her mission'.³⁰

iii Data protection

If a party's important private information is documented in the litigation records, and allowing a third party to access the portions containing such secrets may impair that party's quality of life, or if trade secrets of a party are documented in the litigation records, the court may order that only involved parties may access and make copies of the litigation records and can apply for original, certified or redacted copies of the portions containing the sensitive information in the court records or reports.³¹

28 Articles 32 and 112 of the Attorney-At-Law Act.

29 Article 1(1) of the Attorney-At-Law Act.

30 Article 1(2) of the Attorney-At-Law Act.

31 Article 163(1) of the Civil Procedure Act.

V DOCUMENTS AND THE PROTECTION OF PRIVILEGE

i Privilege

Current or former attorneys-at-law, patent attorneys or similar may resist seizure of articles held in their custody or possession during the course of their profession that relate to the secrets of others, except in situations where the owner of the article consents to the seizure, or the seizure is necessary in the public interest.³² The same applies to any facts learned during the course of their profession relating to clients' secrets.³³

Current or former attorneys-at-law are also prohibited from disclosing any confidential information that they learned in the course of performing work duties, except in cases where such disclosure is required under special provisions of law.³⁴

A high court previously held that a legal opinion containing information of a confidential nature between a client and attorney, for the purposes of obtaining legal advice, is privileged, so the client may refuse its disclosure and the opinion cannot be used as evidence.³⁵ The Supreme Court held that although the high court's exclusion of such evidence based on attorney–client privilege was incorrect, if the client refuses to testify and the attorney who drafted the opinion also refuses to testify based on Article 149 of the Criminal Procedure Act, the evidence must be excluded under the hearsay rule.³⁶

ii Production of documents

Under the Civil Procedure Act, plaintiffs and defendants must submit their claims or defence strategies in a timely manner.³⁷ The presiding judge may, upon hearing the opinions of the parties, set a period within which to apply for the examination of evidence and refuse to accept any application filed after the deadline.³⁸ Any request for evidence may be withdrawn before the discovery process begins,³⁹ but once both parties start conducting discovery, one party's request for evidence can be withdrawn only with the consent of the other, as the evidence may be advantageous to the other party, and after the discovery period is over, neither party can withdraw its request for evidence. Once an original copy of documentary evidence is submitted to the court and read by a judge, the discovery period ends and the parties can no longer withdraw their requests for evidence.

The Civil Procedure Act includes an obligation to produce documents requested, under which the holder of a document must produce the document in the following situations:

32 Article 112 of the Criminal Procedure Act.

33 Article 149 of the Criminal Procedure Act.

34 Article 26 of the Attorney-At-Law Act.

35 Seoul High Court decision, 26 June 2009.

36 Supreme Court *en banc*, 17 May 2012.

37 Article 146 of the Civil Procedure Act, Principle of Timely Submission.

38 Article 147 of the Civil Procedure Act, Restriction on Period.

39 Supreme Court decision, 23 March 1971.

- a* The document held by the holder is cited in a lawsuit.
- b* The person requesting the document has a judicial right to ask the holder to transfer or show the document.
- c* The document has been prepared for the benefit of the person requesting the document, or prepared in relation to the legal relationship between the requesting person and the holder.⁴⁰

However, production of the following documents may be refused: (1) documents kept or held by a current or former public officials in connection with their duties; (2) documents containing information that may incriminate or cause disgrace to the holders or the holders' relatives, or trade secrets for which the confidentiality requirement has not been waived; or (3) documents solely for the holders' use.⁴¹

The scope of discovery rules in Korea is not as broad as the scope in some other jurisdictions because a person requesting documentary evidence must first specify the documents requested and show that such documents actually exist, and the other party may refuse to produce them for various reasons such as claiming that they contain trade secrets.

In litigation relating to infringement of a patent or exclusive licence, the court may, upon request of one party, order that the other party submit the documents necessary for the assessment of losses caused by the infringement.⁴² In practice, however, this provision is not very effective because it also provides that the person in possession of the documents can refuse to submit them if there is a justifiable reason to do so.

When a request for production of document is made to a public institution, the Official Information Disclosure Act applies, which is a special provision under Article 344(2) of the Civil Procedure Act. As such, current or former public officials cannot refuse to produce documents simply on the basis that they have kept or held documents in connection with their duties, unless it contains confidential information or disclosure of the information may seriously undermine national interests.

A document is presumed to be an authentic official document if it is recognised as having been prepared by a foreign public institution in the carrying out of its official duties.⁴³ The authenticity of a private document must be attested to, and must bear the signature, seal or thumbprint of the principal or of his representative.⁴⁴

VI ALTERNATIVES TO LITIGATION

i Overview of alternatives to litigation

Traditionally, litigation has been the preferred method of conflict resolution, but there has been an emphasis on ADR in recent years, such as the attempt to encourage mediation

40 Article 344 (1) of the Civil Procedure Act.

41 Article 344 (2) of the Civil Procedure Act.

42 Article 132 of the Patent Act.

43 Article 356 of the Civil Procedure Act.

44 Articles 357 and 358 of the Civil Procedure Act.

through the courts or various administrative committees, amendment of the Judicial Conciliation of Civil Disputes Act (the Civil Disputes Act), the court's recommendation on reconciliation, and the newly adopted civil reconciliation system in criminal cases. Although the number of cases resolved through judicial reconciliation mediation is still low compared with some other countries, the trend towards mediation is clear; the 'early mediation system', modelled on that of the US courts, has been implemented, in which the defendant's answer is sent to the mediation committee within two months of submission, in an attempt to resolve the matter through mediation. Further, the Arbitration Act was completely overhauled in 1999, which made it possible to resolve international trade disputes using arbitration.

ii Arbitration

The Arbitration Act of the Republic of Korea had been abolished before it was re-enacted in 1996 and then completely overhauled in 1999 to substantially adopt the UNCITRAL Model Law on International Commercial Arbitration of 1985. The main focus of the Act was to enable arbitration to be used as a method of resolving legal issues that arose in commercial activities, especially international trade disputes.

The Korean Commercial Arbitration Board (KCAB) is the entity established in accordance with the Act, and the KCAB has its own commercial arbitration rules. The parties in international cases may choose to use the International Chamber of the International Court of Arbitration (ICA), the American Arbitration Association (AAA) or the London Court of International Arbitration (LCIA) as the arbitral institution to resolve their disputes. In 2013, the Seoul International Dispute Resolution Centre was also established, in furtherance of the use of arbitration in Korea.

Korea is the signatory of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards since 1973. Accordingly, a foreign arbitral award from a jurisdiction that is also a signatory to the Convention may be enforced in Korea if an enforcement order is given by a Korean court.

iii Mediation

There are two types of mediation in the courts: mediation by the family courts, and mediation by the civil courts under the Civil Disputes Act. The Civil Disputes Act applies to all civil disputes including collective disputes, regardless of the amount in dispute. In 2009, the system of 'standing mediation committees' was introduced through a partial amendment of the Civil Disputes Act. Under this system, a licensed attorney appointed by the Minister of the National Court Administration has the same authority as a judge while in charge of mediation during the course of mediation and may serve as the chair of the mediation committee. The parties may apply for mediation, and the process begins by the judge's order for mediation while litigation is in process.

Private mediation (early court-connected mediation) is a system that has been implemented by Seoul Central District Court since March 2010, under which private entities designated by Seoul Central District Court, such as the KCAB, Seoul Bar Association and the Korea Consumer Agency, engage in mediation before actual litigation begins. If mediation by a mediation committee of the designated entity is successful, this is reported to the judge exclusively in charge of mediation, who renders

a 'substitute decision for mediation'. Alternatively, if mediation fails, the case then proceeds to litigation.

The number of cases that have undertaken mediation has increased every year in recent times: 13,600 cases in 2009; 16,372 cases in 2010; 17,338 cases in 2011; 23,490 cases in 2012; and 40,860 cases in 2013.⁴⁵

iv Other forms of alternative dispute resolution

Unlike an extrajudicial reconciliation, a consent judgment has the same effect as a final and conclusive judgment because the court must be involved in the process.⁴⁶ In order to encourage parties to compromise, a written compromise⁴⁷ and ruling for recommendation of compromise⁴⁸ are introduced under the Civil Procedure Act, and the civil reconciliation system has recently been adopted in criminal cases,⁴⁹ which has the same effect as a consent judgment.

Pre-litigation reconciliation is a procedure that enables the parties to compromise before a judge in order to prevent the dispute proceeding to litigation. If pre-litigation reconciliation is established when the parties execute an agreement, the non-breaching party can enforce the reconciliation process against the breaching party without having to file for a lawsuit. This is often used by landlords against tenants in lease agreements as a way of resolving disputes when evicting tenants. The number of cases filed has been increasing each year, except for 2013 when the number was 11,998 cases, a slight fall from the 12,483 cases in 2012, and this is the only year it has shown a decrease since 2004.

VII OUTLOOK AND CONCLUSIONS

The Supreme Court of Korea has broadly taken a position of recognising the jurisdiction of international judgments. In recent cases between two Korean nationals residing in Japan, involving three claims for the repayment of loans, the Supreme Court decided that the Republic of Korea had an interest in the outcome of the case and thus recognised the Korean courts' jurisdiction over the case. This was because one of the loans in dispute was to be used as investment funds for a land development project in Korea, the second involved a recipient of a loan in Korea who withdrew the loan in Korean won to be used in Korea. The court held that the Korean courts had jurisdiction over both these claims because they had a direct and actual relationship with Korea. The third claim was not directly related to Korea, but the court accepted that the claim be heard in Korea as defendant failed to raise an objection to the lack of jurisdiction.⁵⁰

45 2014 Supreme Court Yearbook.

46 Article 220 of the Civil Procedure Act.

47 Article 148(3) of the Civil Procedure Act.

48 Article 225 of the Civil Procedure Act.

49 Article 36(5) of the Litigation Act on Special Cases Concerning Expedition, etc.

50 Supreme Court decision, 10 April 2014 (2012 Da 7571)

With respect to the requirements in enforcing judgments by foreign courts, the Supreme Court has held that the approval of a final decision by a foreign court should not be against public morals or social order of the Republic of Korea, but has been broadly recognising foreign decisions by limiting the scope of what constitutes 'a case that violates the public order and good morals'. In a recent case, in recognising the approval of a decision by the Oregon state court, the Supreme Court concluded that the requirements for a mutual guarantee under Article 217(4) of the Civil Procedure Act were satisfied, despite the fact that the state of Oregon and Korea have not entered into any treaty for mutual guarantee, and there has not been a case in which the Oregon state court has approved the same type of decision by a Korean court. The Supreme Court's reasoning was that, under the principle of comity, the state of Oregon has recognised decisions by foreign courts if such courts have jurisdiction over the case, the decision was not based on fraud, processed through appropriate measures of delivery and interrogation, and does not disturb the public order of the state of Oregon. As the factors taken into consideration by the state of Oregon in recognising decisions by foreign courts are similar to the requirements under the Civil Procedure Act in Korea, the Supreme Court expected that the same type of decision in Korea would be recognised in Oregon.⁵¹

Class actions such as collective consumer action or representative action by personal information organisations for securities-related issues were introduced in the early 2000s, and the Electronic Case Filing System has been in use since 2011. We expect there will be an increase in the number of class actions.

The interest in utilising ADR is on the rise and ADR has been in practice through individual regulations, but the enactment of a comprehensive framework law that covers reconciliation, facilitation and mediation is expected to take place in the near future, which would further encourage the use of ADR and the development of private ADR rather than ADR through courts or administrative agencies.

Other litigation involving financial transactions, international IP and trade secrets are becoming more and more common these days. As the number and scope of international litigations continue to increase and expand, more attention is being paid to international civil litigation, and efforts have been made to build an international system of cooperation.

51 Supreme Court decision, 15 February 2013.

Appendix 1

ABOUT THE AUTHORS

HYUN-JEONG KANG

Shin & Kim

Hyun-Jeong Kang is a partner at Shin & Kim. Her practice focuses on litigation involving securities, derivative products, real estate, real estate investment trusts and project finance. Ms Kang has great experience relating to derivative products. Her main areas of practice also include IT-related issues, including the protection of personal information and information security. She has served as legal counsel in litigation and has provided advice to numerous clients in connection with a wide range of issues and cases.

SHIN & KIM

State Tower Namsan, 8th Floor

100 Toegye-ro, Jung-gu

Seoul 100-052

Korea

Tel: +82 2 316 4114

Fax: +82 2 756 6226

hjkang@shinkim.com

www.shinkim.com