

SOUTH KOREA

Global litigation guide



About

Welcome to The Global Litigation Guide (the **“Guide”**) which has been prepared by DLA Piper’s civil litigation experts around the world for the purpose of presenting key aspects of civil litigation in jurisdictions in which DLA Piper operates.

For each country, the Guide focuses on the following aspects:

- Overview of court system
- Limitation
- Procedural steps and timing
- Disclosure and discovery
- Default judgment
- Appeals
- Interim relief proceedings
- Prejudgment attachments and freezing
- Costs
- Class actions

This global Guide provides practitioners, in-house counsel and clients with a comparative source of reference that covers some of the intricacies of civil litigation in 30 jurisdictions worldwide. DLA Piper has prepared separate guides that deal with matters that are closely related to civil litigation, such as DLA Piper’s guide to [Legal Professional Privilege](#) and (coming soon) DLA Piper’s guide to Third Party Funding. Criminal or administrative litigation (as well as litigation relating to other specialist areas of law that require different procedures such as tax and employment) are outside the scope of the Guide.

The Guide is not a substitute for legal advice. Should you have a civil claim, or if you would like further information, please contact any of the individuals listed in the Guide.

About DLA Piper

DLA Piper is a global law firm with lawyers located in more than 40 countries throughout the Americas, Europe, the Middle East, Africa and Asia Pacific, positioning us to help clients with their legal needs around the world.

For further information visit www.dlapiper.com.

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South Korea

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Overview of court system

South Korea has a civil law system with procedures similar to those in other civil law jurisdictions such as Germany, France and Japan. In South Korea, the Constitution is the highest source of law, and the Korean Civil Code takes precedence over case law.

Lower courts are not bound by the decisions of higher courts but lower courts will follow the decisions of higher courts as long as the facts and issues are similar.

The sources of law in South Korea include the following:

- The Constitution;
- Statutes passed by the National Assembly;
- Presidential decrees; and
- Ordinances issued by the head of each executive ministry.

South Korea has a single judicial system with three levels:

- Courts of First Instance
- Appellate Courts; and
- The Supreme Court.

South Korea has various specialized courts that serve either as Courts of First Instance or Appellate Courts.

The Courts of First Instance include, *inter alia*, the:

- Family Court;
- Administrative Court; and
- Constitutional Court.

There are no specialized commercial courts in Korea, as commercial cases are treated as ordinary civil cases. To improve the efficiency of court proceedings, some courts have assigned panels of judges to manage complex disputes related to international transactions, securities, construction, human resources and the environment.

The appellate courts include, *inter alia*, the:

- Patent Court, which reviews decisions made by the Intellectual Property Trial Board; and
- High Court, which reviews decisions made by the Korean Fair Trade Commission.

All of the proceedings before the aforementioned courts are conducted in the Korean language.

Limitation

Under the Korean Civil Code, the general statute of limitations for civil claims is ten years. However, the Korean Commercial Code provides a shorter statute of limitations for claims that arise from commercial transactions (*i.e.*, five years in principle). Further, certain types of claims are subject to special statute of limitations as provided under other governing statutes.

The statute of limitations generally begins to run when the cause of action arises (*e.g.*, breach of agreement). For tort claims, actions must be brought within

- ten years of the date when the tort was committed; or
- three years of the date when the claimant became aware of the damages and the identity of the tortfeasor, whichever is earlier.

All civil claims must be brought before the civil court that has jurisdiction, except for disputes that must be heard by the Patent Court, the Family Court or the Administrative Court mentioned above.

Even in cases where either party or both parties are not domiciled in Korea or the subject of the action is located outside Korea, a Korean court may exercise jurisdiction under the Private International Law Act over any dispute as long as it has substantial *nexus* with South Korea. A South Korean court would have jurisdiction if:

- either party is domiciled or has residence in South Korea;
- either party has a principal place of business or operations in South Korea or was established or incorporated under the South Korean laws;
- either party has a place of business in South Korea, and the dispute relates to such business;
- either party engages in continuous and organized business activities in South Korea, that target South Korea or are directed toward South Korea, and the dispute relates to such business activities; or
- the subject of dispute involves assets in South Korea, or the defendant's assets to which the plaintiff may seek an attachment are located in South Korea.

A person who seeks to file a lawsuit with a civil court in South Korea must pay a filing fee and service of process fees. The cost of the filing fee will be calculated according to a formula set in the Supreme Court rules.

Procedural steps and timing

A civil action is initiated with the filing of a complaint. The complaint must clearly state the names of the plaintiff and the defendant(s), the address of each party, the claim, and the cause of action. However, the complaint can be amended during the proceedings through a written submission, if:

- the underlying factual basis remains unchanged;
- the amendments do not cause a significant delay to the proceedings;
- the amended claims do not fall under the exclusive jurisdiction of another court; and
- the hearings are not closed.

In South Korea, service of process is conducted by the court. Service of process is deemed complete when a court officer or courier directly serves the documents on the defendant. However, under certain circumstances, service of process can be completed by simply depositing or posting documents to the address that the documents must be served to. In cases where the service address is unknown or no other method of service is possible, service of process may be done through a public notice.

If a party lives outside of South Korea, the method of service depends on whether the party resides in a Member State of the Convention on the Service Abroad of Judicial and Extra Judicial Documents in Civil or Commercial Matters (the "Hague Service Convention"). If the party resides in a Member State, the process under the Hague Service Convention on Service would apply. If the party does not reside in

a Member State, the court may entrust the service documents to the Korean Ambassador, Minister, or Consul stationed in the foreign country or to the competent government authority in the foreign country pursuant to the International Judicial Cooperation for Civil Matters Act.

Upon service of the complaint, the defendant has 30 days from the date of service to submit an answer to the court, but this deadline may be extended. If the defendant fails to submit an answer within the deadline, the court may enter a default judgment without holding any hearing.

In South Korea, there is no substantive trial. Instead, the courts hold a series of separate hearings at regular intervals for case management, oral argument and witness examination. The number of hearings will depend *inter alia* on the complexity of the issues and the number of witnesses to be examined. The court will close the hearings for deliberation, after it has determined that the relevant issues have been fully addressed.

In contrast to jurisdictions such as the U.S., dispositive motions (e.g., motion for summary judgment), designed to dismiss some or all of the claims without further review by the court, are rarely filed or granted in South Korea. Instead, courts issue their judgment on all of the claims after completing the hearings process. While every case is different, first instance court proceedings generally take 12-18 months before the first instance court issues its judgment.

Disclosure and discovery

All forms of discovery are conducted by and are under the direct supervision of the court. In other words, a party cannot directly ask the other party to produce documents or witnesses. All requests for discovery must be made to the court and must be approved by the court. The scope of discovery in South Korea is limited compared to discovery in some common law jurisdictions.

When the counterparty possesses relevant documents, the requesting party may request the court to issue a document production order. The request to the court must clearly identify:

- the document requested;
- contents of the requested document;
- identity of the document holder;
- facts to be proved by the document; and
- the grounds for requesting a document production order.

If the court issues a document production order, the document holder must submit the requested document to the court absent of any justifiable reason such as a privilege. The court has discretion to review any document withheld from production in private and decide whether it should be produced. If the document holder fails to comply with the court's order without any justifiable reason, the court may accept the allegations of the other party as to the content of the document.

If a third party is in possession of relevant evidence, the court may issue a document production order against the third party. However, before determining whether to issue the order, the court must question the third party. For example, asking the third party to confirm whether it has possession of the requested documents and where they are stored. If the third party fails to comply with the court's document production order, the third party may be subject to an administrative fine.

In addition to document production orders, a party may request the court to issue a clarification order against the counterparty on factual or legal issues. The requested party is obliged to respond and submit supporting evidence, if any.

Default judgment

As noted in the section regarding [Procedural steps and timing](#), if a defendant fails to submit an answer to the complaint within the deadline, the court may deem that the defendant has admitted the facts and claims alleged in the complaint and enter a default judgment against the defendant. However, if the defendant submits an answer before a default judgment is rendered, the court cannot issue a default judgment.

After a default judgment is issued, the defendant may challenge the default judgment in accordance with the general method of appeal. That is, the defendant must submit a written notice of appeal to the lower court within two weeks of being served with the default judgment of the lower court.

Appeals

To appeal a decision of the Court of First Instance, the appellant must file a written notice of appeal to the lower court within two weeks of being served with the decision of the lower court. The grounds for appeal to the High Court may be on a legal or factual basis. High Court proceedings are similar to lower court proceedings in that the High Court holds a series of separate hearings at regular intervals to hear oral arguments and examine witnesses.

To appeal a High Court decision, the appellant must file a notice of appeal within two weeks of being served with the decision of the High Court. It generally takes less time to obtain a decision from the High Court than from the Courts of First Instance.

The High Court will review a decision of the first instance court *de novo*, regardless of which party appeals. A decision of the High Court may be appealed to the Supreme Court by either party, but appeals to the Supreme Court are limited to questions of law.

Supreme Court proceedings rarely involve hearings. The Supreme Court generally issues its decision after reviewing the parties' submissions and the court record. A decision from the Supreme Court can take anywhere from four months to several years after the date of the appeal. In fact, if the Supreme Court deems that the appeal is groundless, it will not review the appeal further and will dismiss it within four months of the date that it received the court record.

When the Court of First Instance or the High Court issues a judgment, it generally includes a provision that allows for provisional enforcement of the judgment. Thus, a party appealing that judgment or decision should file an application to stay the judgment while the appeal is pending.

Interim relief proceedings

In South Korea, interim relief may be sought by filing a petition for preliminary attachment or provisional injunction together with the main action. To obtain such relief, the applicant must demonstrate a *prima facie* case that it will be irreparably harmed if the requested relief is not granted.

A preliminary attachment preserves and freezes the property or assets of a debtor. The courts generally allow preliminary attachment if the requesting party can establish:

- the need to preserve assets;
- the claim has merit; and
- the assets are owned by the debtor.

The courts generally issue a preliminary attachment order on an *ex parte* basis, within two to three weeks from receiving the request.

There are two types of provisional injunction in South Korea:

- injunction to temporarily prohibit the debtor from disposing of the property that is the subject of the dispute.
- injunction to temporarily preserve the disputed rights.

The courts generally decide on a preliminary injunction application within one month of the date of filing, which may be prolonged if the courts hold a preliminary injunction hearing. The courts rule on provisional injunction requests after the respondent is afforded an opportunity to object.

The party seeking injunctive relief is responsible for any damages suffered by the respondent if the respondent prevails in the main action. Thus, the courts may order the party seeking injunctive relief to provide adequate security to cover such damages.

Prejudgment attachments and freezing orders

For information on prejudgment attachments and freezing orders reference is made to the section regarding interim relief proceedings.

Costs

In South Korea, the winning party is generally entitled to a recovery of costs. The costs mainly consist of stamp taxes (i.e., filing fees), service of process fees, out-of-pocket expenses, and a portion of attorneys' fees. Attorneys' fees are reimbursed only to the extent permitted by the Supreme Court rules. A full recovery of attorneys' fees is not possible. The final judgment of a court includes a decision on the allocation of costs of the proceedings.

Class actions

South Korea does not have a class action system, so each claimant seeking relief must file an individual action. The sole exception is the Securities-Related Class Action Act, which permits a class action to be filed by one or more class members after obtaining Permission for Class Action from the court.

The court will permit a class action if:

- the suit involves 50 or more class members;
- the total number of securities held by the class members is at least 1/10,000 of the total number of securities issued by the defendant company as of the time of the act that gave rise to the claim;
- the claims of the class members have common questions of law and/or fact; and
- the suit is an appropriate and effective means of realizing the rights of the class members or protecting their interests.

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