Enforcement of arbitral awards in South Korea: overview

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ENFORCEMENT OF ARBITRAL AWARDS

Definitions and preliminary proceedings

1. What is the definition of an arbitral award in your jurisdiction for the purpose of enforcement proceedings?

Arbitration is defined as a procedure to settle any dispute in private law not through a court judgment but through the decision of an arbitrator as agreed to by the parties (Article 3, Korean Arbitration Act). An arbitral award refers to a judgment issued by an arbitrator.

2. Are decisions in preliminary/provisional proceedings recognised and enforceable?

Arbitral awards have the same legal effect as final and conclusive judgments (Article 35, Korean Arbitration Act (KAA)). The enforceability of an award, whether interim or partial, depends on whether the nature of the award constitutes a final decision by the arbitral tribunal, regardless of the label attached to the award. Partial awards that have conclusive effects are recognised and enforceable as the KAA allows an arbitral award to be enforced when it is final and conclusive. In comparison, interim awards or decisions in preliminary proceedings are not recognisable or enforceable as they are not final and conclusive.

Applicable conventions

3. What conventions is your jurisdiction a contracting party to?


Enforcing awards

4. What is the applicable statutory framework for enforcement of awards?

The applicable statutory framework for enforcement of awards is as follows:
- Where South Korea is the place of arbitration and an arbitral award is granted then Articles 36, 37 and 38 of the Korean Arbitration Act applies.
- The place of arbitration is in a country that adopted the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention) and an arbitral award is granted then the New York Convention applies.
- Where the place of arbitration is in a country not falling under the New York Convention then Article 217 of the Korean Civil Procedure Act and Article 26 (section 1) and Article 27 of the Korean Civil Execution Act apply.

For the applicability of the New York Convention, South Korea declared that the New York Convention only applies to arbitral awards that are granted in a foreign country party to the New York Convention and to commercial disputes as defined by the law.

5. What are the grounds for refusing enforcement?

Domestic awards

Domestic awards can be denied enforcement under Article 36 (section 2) of the Korean Arbitration Act (KAA), which is virtually identical to Article 36 of the UNCITRAL Model Law on International Commercial Arbitration and Article 5 of the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention).

An arbitral award can be set aside by the court in certain situations, for example (clause 1, section 2, Article 36, KAA):
- Where a party to an arbitration agreement was under some incapacity under the law applicable to him or the agreement is found to be invalid or inapplicable under the law to which the parties are subject.
- Where there was insufficiency of notice.
- Where there was a deficiency in the arbitral proceedings.
- Where the composition of the arbitral tribunal or arbitral proceedings were not in accordance with the agreement of the parties, so long as the agreement is consistent with KAA’s mandatory provisions.

Other allowable situations include situations where a court finds that the subject matter of dispute cannot be settled by arbitration under the law or where the court finds that the award is in conflict with morals and social order (clause 2, section 2, Article 36, KAA).

International awards

For arbitral awards falling under the New York Convention, Article 5 of the New York Convention applies.

For arbitral awards not subject to the New York Convention, Article 27 (section 2) of the Korean Civil Execution Act applies, holding that a claim for a judgment of execution will be dismissed when:
- The arbitral award was not shown to be final and conclusive.
- An arbitral award does not satisfy the four requirements under Article 217 of the Korean Civil Procedure Act, which stipulate that:
  - the arbitral tribunal must have “international jurisdiction”;
6. Is the enforcing court required to examine the refusal grounds during the enforcement proceedings ex officio?

With domestic awards, refusal grounds under Article 36 (clause 1, section 2) of the Korean Arbitration Act (KAA) must be claimed and proved by the party applying to set aside an award whereas grounds under Article 36 (clause 2, section 2) of the KAA are found ex officio.

With arbitral awards subject to the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention), refusal grounds under Article 5 (section 1) of the New York Convention must be claimed and proved by a party. Grounds under Article 36 (clause 2, section 2) of the KAA are found ex officio.

For arbitral awards not subject to the New York Convention, all requirements (except for the requirement that arbitral awards must be final and conclusive) are examined ex officio. However, in practice parties actively prove whether the requirements are met, and this is also often preferred by the court.

7. What is the effect of pending challenge proceedings in the foreign state where the decision is granted?

A court, though not required, can exercise discretion to suspend or allow the enforcement proceedings, if a challenge proceeding for the arbitral award is pending.

8. What types of arbitral awards are enforceable?

Money awards
Money awards are enforceable.

Awards containing injunctions ordering or prohibiting the doing of acts
An award ordering specific performance may be enforceable where the plaintiff or a third party is ordered to be able to perform the obligation in substitution of the defendant’s specific performance and it is so ordered at the defendant’s own expense. An award ordering a defendant to perform an obligation that cannot be performed by any other party is also enforceable, but only where the award requires the defendant to pay penalties in the form of monetary payments if he fails to comply with the order.

Decisions or awards by arbitral tribunals (including emergency arbitrators) granting provisional measures
Awards containing provisional measures are not enforceable. An enforcement judgment is restricted to final and conclusive arbitral awards.

Declaratory awards
Declaratory awards are subject to recognition but are not enforceable.

Other awards
All arbitral awards ordering specific performance and payment of money that are eligible for compulsory execution are enforceable. Other arbitral awards of a declaratory nature may be recognised but are not enforceable.

9. Can parties seek to enforce only part of the award?

If the award is divisible in nature, the plaintiff can obtain an enforcement judgment for part of the award sought.

10. Are any class of awards excluded from recognition and enforcement? If so, what types of awards?

All international awards are enforceable insofar as there is no class within this category of enforceable awards that is excluded from recognition and enforcement.

11. Will service that does not conform to the requirements of international treaties/regularations in force automatically result in a denial of the enforcement of an award?

If a party claims and demonstrates improper service, enforcement of an arbitral award may be rejected (clause 1(b), section 2, Article 36, Korean Arbitration Act; section 1(b), UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention); Article 5 and clause 2, section 1, Article 217, Korean Civil Procedure Act).

12. What methods of service are not acceptable against defendants domiciled in the state where enforcement is sought?

For enforcement judgments of international arbitral awards, service against defendants domiciled in South Korea must conform to lawful methods (Articles 174 to 197, Korean Civil Procedure Act).

13. Which country’s public policy applies? Does the court approach the issue differently depending on whether the award is a domestic or international award?

Domestic awards
Whether there is a violation of public policy is decided under Article 36 (clause 2(b), section 2) of the Korean Arbitration Act.

International awards
Public policy applies, but the standard is more relaxed than for domestic awards (Supreme Court of Korea Judgment 2006Da20290, 28 May 2009; Seoul Central District Court Judgment 2009Gahab136849, 9 July 2010). This approach aims to respect the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention) by facilitating recognition and enforcement in international arbitral awards.

14. In which cases and against which awards has the principle of public policy generally been applied?

To date, there has not been a case in South Korea where the recognition or enforcement of international awards was denied on the grounds that an international award violated public policy. There was a case where a claim was made on the basis of public policy because a 30-year period (the period prescribed by the statute of limitations in the law of Netherland Antilles, the governing law of the arbitral award) was longer than the five-year
period prescribed by the Commercial Act of Korea. However, this argument was not accepted by the court. (Supreme Court Judgment 93Da53054, 14 February 1999).

Punitive damages are not recognised under the law. Therefore, the courts restrict the scope of an award so as to eliminate punitive damages.

**ENFORCEMENT PROCEEDINGS**

**Procedure**

15. **What is the procedure for enforcing arbitral awards?**

**Domestic awards**

A party must file an application for a judgment of execution (Article 37, Korean Arbitration Act (KAA)).

**Ex parte or on notice.** The application requires notice as enforcement proceedings are adversarial. An application for an enforcement judgment follows the same procedure as for general civil lawsuits, so the opposing party is served with a petition and litigation documents.

**Applicable court.** An applicant can file a suit in a court (section 4, Article 7, KAA):

- Designated by arbitration agreement or that has jurisdiction over the place of arbitration.
- That has jurisdiction over the place where a respondent’s property is located.
- That has jurisdiction over a respondent’s domicile or place of business.

If domicile or place of business is unknown, an applicant can file a suit in the court that has jurisdiction over the respondent’s place of abode. If the respondent’s place of abode is unknown, the applicant can request a judgment of enforcement at a court that has jurisdiction over the respondent’s last known domicile or place of business.

**Limitation period.** Limitation periods apply to applications for enforcement judgments on domestic arbitral awards. An arbitral award is equivalent in effect to a final and conclusive judgment (Article 35, KAA). According to the Civil Act, the right to enforce has a lifespan of ten years from the date on which the judgment (or award) becomes conclusive. Therefore, the applicant must exercise this right before it becomes extinguished.

**Timing.** The duration of enforcement proceedings depends on the extent of a dispute around enforcement requirements. Proceedings at the first instance generally take six to ten months. Appeals proceedings at the High Court take a similar period of time. An appeal at the Supreme Court takes between two months and two years.

**Court fees.** For an application seeking an enforcement judgment, court fees are the same as for general civil litigation. For a claim for money payment, the fee is about 0.3% to 0.5% of half the judgment amount.

**Recourse.** Recourse is the same as for general civil litigation. The right of appeal is granted.

**International awards**

Arbitral awards subject to the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention) must conform to Article 3 of the New York Convention, which deems the awards as enforceable in accordance with the rules of procedure of the territory where the award is relied on. Therefore, the Korean Civil Procedure Act (CPA) and the Korean Civil Execution Act (CEA) apply. For awards not subject to the New York Convention, Article 217 of the CPA Article 26 (section 1) and Article 27 of the CEA apply *mutatis mutandis* under Article 39 (section 2) of the KAA.

**Ex parte or on notice.** An application seeking an enforcement judgment follows the same procedure as general lawsuits. Therefore, ex parte enforcement judgments are not allowed and the opposing party is served with a petition and litigation documents.

**Applicable court.** A competent court can rule on applications for enforcement judgments to execute international arbitral awards (section 4, Article 7, KAA). An applicant can choose to file an application at a court:

- Designated by an arbitration agreement.
- That has jurisdiction over the location where the defendant’s property is situated.
- That has jurisdiction over the respondent’s domicile or place of business of the respondent.

If none of those can be found, a court having jurisdiction over the place of abode can be selected. If the place of abode is unknown, a party can apply for an enforcement judgment at a court that has jurisdiction over the last known domicile or place of business.

**Limitation period.** Foreign limitation periods can apply as conditions for enforcement of international arbitral awards. If the defendant successfully argues that a foreign limitation period has elapsed, the application for enforcement is denied.

**Timing.** The length of time that enforcement proceedings take depends on the extent of the dispute about whether enforcement requirements are fulfilled or not. However, enforcement proceedings in the first instance generally take six to ten months. An appeal at the High Court takes a similar period of time. An appeal at the Supreme Court takes two months to two years.

**Court fees.** For an application seeking an enforcement judgment, payable court fees are the same as required for general civil litigation. For a claim for money payment, the fee is about 0.3% to 0.5% of half the award amount.

**Recourse.** Recourse is the same as in general civil litigation. The right of appeal is granted.

16. **Can the enforcing court review the foreign award if all formalities were complied with and if the award meets all requirements?**

Arbitral awards subject to the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention) cannot be reviewed by the enforcing court (Supreme Court of Korea Judgment 2006Da20290, 28 May 2009). Arbitral awards not subject to the New York Convention cannot be reviewed by the enforcing court. An enforcement judgment is made without making any examination as to whether the judgment is substantively correct (section 1, Article 27, Korean Civil Execution Act).

The courts do not review the substance of an international arbitral award. However, in practice, when the court examines public policy as a requirement for an enforcement judgment under Article 217 of the Korean Civil Procedure Act, the court can observe the substance of the award.

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Formalities

17. What are the documentary requirements for enforcement?

Documentary requirements for enforcement include the following:

- An application for an enforcement judgment.
- Copies of the arbitration agreement.
- The arbitral award.
- The power of attorney (if an attorney was appointed).
- Translations.

Authentication

A party must submit a duly authenticated original award or its certified copy (section 2, Article 37 and Article 4, UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention)). In practice, a submission of a duplicate copy is deemed sufficient if the opposing party acknowledges the document without objections (Supreme Court Judgment 2004Da20180, 10 December 2004).

18. Is it required to translate the award into the language of the state where enforcement is requested?

Translations

All documents submitted to the courts must be translated into Korean.

Other languages

Only Korean is recognised.

Certification

Arbitral awards or settlements in a foreign language must include properly certified translations (Article 37, Korean Arbitration Act) and a party must submit translations certified by an official or sworn translator, or by a diplomatic or consular agent (Article 4, UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention)). However, South Korea does not have an official translation regime. The Supreme Court held that a translation of an arbitral award is admissible if verified by an official or sworn translator or by a diplomatic or consular agent, even if they themselves did not translate. The verification simply attests that the arbitral award translation is genuine. The verifying agent does not need to either produce his signature or attest to the accuracy of the translation (Supreme Court Judgment 2004Da20180, 10 December 2004).

19. What is the format of the application for a declaration of enforceability?

The plaintiff must file a petition to the court in applying for an enforcement judgment. The following information must be included:

- The parties.
- Cause of action.
- Relief sought.

20. What information must be included in the application regarding the award, the claim as awarded in the award, the facts and legal grounds of the case, and that the judgment is no longer appealable?

Award

A copy of the award and its translation must be submitted. Depending on the nature of the arbitral award, any other information required for recognition and enforcement of the award must be provided.

Claim as awarded

Not applicable.

Facts and legal grounds

Not applicable.

Appeals

Not applicable.

21. Is it possible to request the enforcing court for provisional measures pending the enforcement proceedings?

A party can request a provisional measure while seeking an enforcement judgment, such as a provisional attachment order or a provisional injunction.

22. Is it required to convert the value of the award into the local currency?

No conversion of the value of the judgment into local currency is required. Once the enforcement judgment is issued and it is carried out through a writ of execution, the value of the judgment is converted into Korean won at the prevailing exchange rate at the time of the execution.

23. Can the enforcing court stay the enforcement proceedings pending the outcome of proceedings to set aside the award at the seat of arbitration? If so, will the court order the party seeking the stay to provide security?

Arbitral awards subject to the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention) are dealt with in accordance with Article 6 of the New York Convention, which holds that the authority before which the award is sought to be relied on can adjourn the decision on the enforcement. Awards not subject to the New York Convention are processed similarly.

ACTUAL ENFORCEMENT

24. What is the enforcement procedure when a declaration of enforceability is granted?

Once an enforcement judgment for an international arbitral award is obtained, the judgment creditor must obtain a writ of execution from a court clerk, which can then be submitted to an enforcement officer.
25. Can defendants oppose the actual enforcement procedure, and if so, on what grounds/defences?

A defendant cannot oppose an actual enforcement on the grounds that the enforcement judgment is wrong or unjustified. However, the defendant can oppose on various grounds following the conclusion of pleadings for enforcement judgment. For example, the enforcement can be opposed if a payment required by the judgment has already been made, or if the enforcement is being carried out improperly.

26. Are any changes to the law currently under consideration or being proposed?

Proposed amendments to the Korean Arbitration Act were introduced on 3 August 2015, which primarily focused on:

- Allowing an interim measure rendered by an arbitral tribunal to be enforceable through the courts without a separate application procedure.
- Simplifying the procedural requirements for enforcement of an arbitral award so that enforcement no longer requires a separate judgment rendered after a separate litigation, but rather a “decision”, which is a relatively simpler and more expeditious procedure compared to a “judgment”.

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**ONLINE RESOURCES**

**Statutes of the Republic of Korea**

**Description.** Official website (English legislation service operated by Korea Legislation Research Institute), which is up-to-date and provided in English.

**National Legal Service Centre**
[http://law.go.kr](http://law.go.kr)

**Description.** Official website (operated by the Ministry of Legislation), which is up-to-date. A few precedents are provided through court library website ([http://library.scourt.go.kr/jsp/judgment/eng_judg.jsp](http://library.scourt.go.kr/jsp/judgment/eng_judg.jsp)).

**Supreme Court of Korea**

**Description.** Website with South Korean court decisions in English.
Practical Law Contributor profiles

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Recent transactions
- Represented a French company against a major Korean construction company in a KCAB arbitration involving an infrastructure project in the Middle East.
- Represented a US company in a KCAB arbitration against a Korean company involving a breach of supply agreement claim.
- Represented a Saudi Arabian company against a major Korean construction company before the Korean district courts involving an infrastructure project in the Middle East.
- Represented Semi-Materials as co-counsel, together with a US firm, on its successful claim against MEMC in its case heard in Missouri.

Languages. Korean, English, Japanese
Professional associations/memberships. Panelist of the Korean Commercial Arbitration Board; Director of the Korean Arbitrators Association; Director of the Korean Association of Arbitration Studies; member of the Risk Management Committee of the Korea Foundation Fund; member of the Alternative Investment Committee of the National Pension Fund; member of the Investment Committee of Teachers’ Pension.
Publications. South Korea, Commercial Litigation: Jurisdictional Comparisons, Thomson Reuters, London 2011

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Areas of practice. International arbitration; cross-border commercial litigation; foreign and overseas investment; mergers and acquisitions; real estate.
Non-professional qualifications. JD, University of Pennsylvania Law School; AB, Harvard College

Recent transactions
- Represented David Garriott, together with US Counsel, in his significant claim against NC Soft, Korea’s largest gaming company, in a case heard in Texas.
- Represented Semi-Materials as co-counsel, together with a US firm, on its successful claim against MEMC in a case heard in Missouri.
- Acted as special strategic counsel to DuPont in its dispute with Kolon Industries.
- Over 100 international arbitration matters, either as an arbitrator or as counsel, including successes for companies such as IMG, Serco and Virasa Technologies.

Languages. English, French, Korean, Moderate Knowledge of Chinese Characters
Professional associations/memberships. Former Chairman, Asia-Pacific Council of American Chapters of Commerce; Former Vice Chairman and Special Advisor to the Board of the American Chamber of Commerce in Korea; Governor of the Canadian Chamber of Commerce; Special Advisor to the Kiwi Chamber of Commerce; active member of various European Chambers of Commerce (for example, France, Germany and Italy); Panelist of the Korean Commercial Arbitration Board; Panelist of the Hong Kong International Arbitration Centre; Panelist of the World Intellectual Property Organization; Panelist of the Kuala Lumpur Regional Centre for Arbitration.
Publications. Numerous speeches and articles on Korea-related legal and business issues in various publications and at a broad variety of venues throughout the world.

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**Recent transactions**
- Represented a Saudi Arabian company against a major Korean construction company before the Korean district courts involving a construction project in the Middle East.
- Represented Korea Professional Baseball Players Association involving infringement of the publicity rights of professional baseball players.
- Represented a major Korean company in connection with compensatory damages in a marine pollution case.

**Languages.** Korean, English

**Professional qualifications.** South Korea, Attorney, 2014

**Non-professional qualifications.** LLB, College of Law, Korea University; Korea University Law School

**Languages.** Korean, English