

# Enforcement of Foreign Judgments

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Fundamental Principles [Korea, Republic of]

2020



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**I. RECOGNITION AND ENFORCEMENT OF A FOREIGN COURT DECISION  
(CIVIL AND COMMERCIAL MATTERS)**

**A. Ability to Apply for Recognition and Enforcement of a Court Judgment**

**1. Is it possible to apply for enforcement of a foreign court judgment in your country?**

**Answer:** Yes.

As a foreign court judgment should be enforced through a typical civil litigation proceeding in Korea, an applicant (i.e., plaintiff) is required to file a civil complaint for enforcement at a Korean court.

**B. Applicable Law: General Rules**

**1. Which laws are generally applicable to the enforcement of a foreign court judgment in your country?**

**Answer:** The Civil Execution Act of Korea (Articles 26 and 27) and the Civil Procedure Act (Articles 217 and 217-2) are generally applicable to the enforcement of a foreign court judgment in Korea.

**C. Special Rules: European Union**

**1. Are there any special rules regarding the enforcement of a foreign court judgment in your country?**

**Answer:** Not applicable

**2. Does the European Union have a special procedure to enforce court judgments coming from its member states?**

**Answer:** Not applicable

**D. Average Duration of Enforcement Procedure**

**1. What is the average length of time for this kind of procedure?**

**Answer:** Although it varies on a case by case basis (depending especially on whether the defendant actively resists enforcement), the average length of time for obtaining an enforcement judgment a foreign court judgment usually takes about four to six months (during the district court stage) after a plaintiff files a complaint.

## II. Denial of Recognition and Enforcement of a Foreign Court Judgment: Reasons

### A. Can a Court in your country deny recognition and enforcement of a foreign court judgment? If YES: what kind of reasons may justify denial?

**Answer:** Yes.

If the foreign court judgment does not satisfy the requirements required under the Civil Execution Act and the Civil Procedure Act, a court may deny recognition and enforcement. The requirements under the Civil Execution Act and the Civil Procedure Act are as follows:

- (a) The foreign court judgment at issue should be proven that it is final and non-appealable (Article 27(2)-1) of the Civil Execution Act);
- (b) Under the principle of determining international jurisdiction based on the treaties Korea has entered into or the laws of Korea, the foreign court which rendered the judgment at issue is acknowledged to have (international) jurisdiction over the case (Article 217(1)-1) of the Civil Procedure Act);
- (c) The (defeated) defendant has: (i) been served, by a lawful method and sufficiently in advance to defend itself in the proceedings, the relevant court documents (including the complaint and notice on hearing dates), or (ii) participated in the proceeding at issue, even when it was not properly served (Article 217(1)-2) of the Civil Procedure Act);
- (d) The recognition of the foreign court judgment at issue does not contravene the good morals or public policies of Korea (Article 217(1)-3) of the Civil Procedure Act); and
- (e) There exists reciprocity or mutuality between Korea and the foreign state (in which the foreign court judgment originates from), or the respective requirements for recognizing a foreign court judgment required in that foreign state are not significantly unbalanced and materially not different compared to the requirements of Korea ((Article 217(1)-4) of the Civil Procedure Act).

The Korean Courts also may deny the recognition of certain damages granted by the foreign court judgment at issue, if such damages result in substantially contravening the general principles recognized through international treaties Korea has entered into or the laws of Korea (such as punitive damages, which are not recognized in Korea)(Article 217-2 of the Civil Procedure Act).

**B. Costs and expenses**

**1. What kind of cost and expenses can a claimant expect in this enforcement procedure?**

**Answer:** The plaintiff filing a complaint for enforcement may expect to incur the following cost and expenses: (i) court fees (which include stamp fees and service fees payable to the court); (ii) legal fees (attorney fees, which will vary depending on the complexity of the matter and whether the procedure is challenged by the other party); (iii) fees for notarization of its Power of Attorney and Certificate of Corporate Nationality; (iv) fees for retaining an expert in foreign law (in cases where the matter involves issues relating to foreign law that should be explained to the Korean courts) and (v) translation fees (for translating the relevant documents, including the foreign court judgment at issue, into Korean language).

Costs and expenses relating to enforcing the foreign court judgment against the actual assets of the defendant (e.g., the actual compulsory execution stage) are regarded as separate.

**III. FORMAL REQUIREMENTS**

**A. Time limit**

**1. Is there a time limit to apply for enforcement of a foreign court judgment?**

**Answer:** No.

**B. Final and Definitive Court Judgment: Provisional Enforcement**

**1. Is it mandatory for the judgment to be a final and definitive court judgment?  
If NO: Are there any special requirements to provisionally enforce a court judgment which is not final and definitive?**

**Answer:** Yes.

**C. Necessary Requirements**

**1. What necessary requirements must the foreign court judgment fulfill to be recognised and enforced?**

**Answer:** Please refer to our answer to Part II.A above.

**D. Other Formal Requirements: Court Fees**

**1. Is it mandatory to pay court fees for this kind of application?**

**Answer:** Yes.

There will be a court fee payable when submitting a complaint for the enforcement of the foreign court judgment at issue, which includes stamp fees and service fees.

**E. Are there any other formal requirements in your country to enforce a court judgment?**

**Answer:** No.

**IV. PROCEDURE**

**A. Competent court**

**1. Which court or courts are competent to decide an enforcement application?**

**Answer:** The court which has jurisdiction over the defendant's address (or its principal office) has exclusive jurisdiction to review and render a judgment on the enforcement proceedings (Article 26(2) of the Civil Execution Act).

**B. Informational Requirements for the Application to Enforce a Foreign Court Judgment**

**1. What information must be contained in the enforcement application of a foreign court judgment?**

**Answer:** The following information would be typically included in the enforcement application:

- (i) The general information on the plaintiff and defendant (including the country of origin and what type of businesses the respective parties are engaged in);
- (ii) The relationship of the parties (including any contractual relationships and background facts leading up to the foreign court judgment);
- (iii) The details on the proceedings of the foreign court judgment (including the grounds for relief, whether the defendant was properly



served of the relevant court documents, and whether the foreign court judgment at issue is final and non-appealable); and

- (iv) Allegations that the foreign court at issue satisfies the requirements for being recognized and enforced in Korea under the relevant laws, and that there are otherwise no reasons for the foreign court judgment at issue to be denied enforcement.

**C. What documents must be included with/attached to the application to enforce a foreign court judgment?**

**Answer:** Documents which substantiate the information in the application (as can be seen in our answer to Part IV.B.1 above) should be included with, and attached to, the application. Specifically, (i) a notarized Power of Attorney and Certificate of Company Nationality of the plaintiff is required, along with its Korean translations, (ii) a copy of the corporate registry of the defendant (in cases where the defendant is a company), (iii) supporting exhibits and evidence on the background facts leading up to the foreign court judgment, and (iv) the foreign court judgment itself, along with its Korean translation, are required.

**D. Phases of the Procedure**

**1. What are the phases of the procedure to enforce a foreign court judgment?**

**Answer:** The plaintiff should file a complaint to enforce the foreign court judgment at issue at the Korean court. The court examines whether the foreign court judgment at issue meets the requirements required under the Korean law, but a substantive review on whether the judgment at issue is right or wrong is excluded (Article 27(1) of the Civil Execution Act). The courts are required to hold a hearing.

Once the plaintiff receives a judgment from the Korean court which allows the foreign court judgment to be enforced in Korea, the plaintiff is able to enforce the foreign court judgment against the assets of the defendant (which requires a separate compulsory execution proceeding under Korean law to be initiated by the plaintiff, in cases where the defendant does not voluntarily abide by the foreign court judgment).

**E. Opposition of the Defendant**

**1. Can a defendant oppose to this enforcement application?**

**Answer:** Yes.

**2. Are there a limited number of reasons for the defendant to oppose to the enforcement of the court judgment? If YES: what are those reasons?**

**Answer:** Yes.

When opposing, a defendant typically argues that the foreign court judgment at issue does not satisfy the requirements required under Korean law for it to be enforced in Korea (Articles 27 and 28 of the Civil Execution Act, and Articles 217 and 217-2 of the Civil Procedure Act).

## **F. Appeal and its Consequences in this Procedure**

### **1. Is it possible to appeal a court decision to recognise and enforce a foreign court decision?**

**Answer:** Yes.

### **2. Can this appeal suspend the enforcement?**

**Answer:** Yes.

A defendant can file an application for suspension of the enforcement when the defendant files an appeal against the Korean judgement. Generally, the Korean court suspends the enforcement on the condition that the defendant provides security to cover the loss of the plaintiff occurs due to the suspension of the enforcement.

## **G. Recovery of judicial costs and expenses**

### **1. Are there any rules concerning recovery of the judicial costs incurred as a result of the enforcement application?**

**Answer:** Similar to other jurisdictions, the costs of enforcement in Korea are generally borne by the defendant, unless the plaintiff's complaint for enforcement is not successful (in which case the plaintiff bears the costs). The court will also take into account the conduct of the parties when deciding who should pay what proportion of the costs of litigation. There is a certain limit/ceiling to the legal fees one may request to the other side.

## **V. RECOVERY OF THE DEBT**

### **A. Means of Enforcement**

#### **1. What types of assets are subject to enforcement of the court's judgment?**

**Answer:** In general, all available assets of the defendant are subject to enforcement of the court's judgment (except for assets which are not allowed to be enforced upon – such as those essential for the defendant to work/live). These include immovable real property, movable property, shares, account receivables and intellectual property rights, etc.

**VI. OTHER ISSUES OF INTEREST IN YOUR JURISDICTION**

**A. Any other issues of interest in your jurisdiction**

**Answer:** No.

***Submitted by***

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