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Dispute management for Japanese companies in Korea

As economic exchange between South Korea and Japan continues to grow, Japanese companies are increasingly investing outbound into the republic through joint ventures (JVs), mergers and acquisitions (M&A) and similar transactions.

Yet while South Korea's judicial system shares certain similarities with that of Japan, there are notable differences in its institutional framework, procedural operation and the pace of proceedings. Recent judicial reforms have also introduced significant procedural changes.

Accordingly, a sound understanding of South Korea's current dispute resolution framework is essential for investing companies

This article outlines key features and procedures of South Korea's dispute resolution system, focusing on practical considerations and recent developments.

Key dispute resolution features

(1) Efficient proceedings driven by e-litigation. South Korea introduced an electronic litigation (e-litigation) system in the 2010s. In civil proceedings, key procedural steps including filings, service of documents and court notifications are generally conducted through an electronic platform.

The adoption of e-litigation has significantly enhanced efficiency across filings, service and hearing management, resulting in faster proceedings than in Japan.

Beginning in October 2025, e-litigation will be extended to criminal proceedings covering criminal trials, summary proceedings and warrant applications.

(2) Active use of litigation as a dispute resolution tool. Litigation remains the primary means of dispute resolution in South Korea. Although alternative dispute resolution (ADR) including arbitration and mediation is increasingly encouraged, litigation continues to be the most common method, including in commercial disputes.

Accordingly, companies frequently initiate civil actions and, in certain cases, file

criminal complaints as part of their overall dispute strategies.

In addition, court-led settlement efforts are commonly pursued during the course of litigation.

(3) Limited discovery and evidence collection mechanisms. Although discussions regarding the introduction of a discovery system are ongoing, South Korea has not adopted a US-style discovery regime. Unlike Japan's bar association inquiry system, there are no comparable mechanisms for collecting evidence outside of court-supervised procedures. Strict data protection regulations, including those under the Personal Information Protection Act, make it difficult to obtain materials containing personal data on a voluntary basis.

Accordingly, court-assisted measures such as document production orders and fact-finding requests remain the most effective means of evidence collection.

(4) Importance of regulatory authorities. Alongside the courts, administrative and regulatory authorities play a significant role in dispute resolution and enforcement.

A key example is the Korea Fair Trade Commission (KFTC), which exercises broad authority over areas such as cartels, monopolistic practices, merger control and agency relationships, including with respect to foreign companies operating in South Korea.

The KFTC has independent investigative powers and may impose sanctions directly, including corrective orders and administrative fines.

KFTC decisions are often comparable in effect to first-instance court judgments, making regulatory engagement strategically important.

Other authorities, such as the Ministry of Employment and Labour and the National Tax Service, also play important roles in labour and tax enforcement. Effective dispute management in South Korea therefore requires careful co-ordination in dealings with regulatory bodies.

(5) Role of the Constitutional Court.

Following the Ninth Constitutional Amendment, South Korea established a separate Constitutional Court in 1988. Unlike Japan, where the Supreme Court exercises constitutional review, this function in South Korea is vested in the Constitutional Court.

Constitutional review may be initiated through: (a) a court's request for constitutional adjudication; or (b) a constitutional complaint alleging infringement of fundamental rights.

In addition to constitutional review, the Constitutional Court has jurisdiction over impeachment proceedings, competence disputes, and the dissolution of political parties.

Notably, a recent amendment to the Constitutional Court Act, effective since 12 March 2026, introduced the ability to file constitutional complaints against court judgments. This potentially enables review even after a Supreme Court decision, in essence creating an additional review layer.

Although hundreds of constitutional complaints have been dismissed at the preliminary review stage since the amendment, attention is now focused on the forthcoming decision of the Constitutional Court of Korea, following the referral of the first such case for full adjudication on 28 April 2026.

Major DR procedures

(1) Civil litigation. South Korea's civil litigation system is structurally similar to that of Japan. In practice, plaintiffs often consider seeking provisional relief such as attachments or injunctions prior to initiating a lawsuit. Courts generally require the posting of security as a condition for granting such measures.

Once a complaint has been served, the defendant is, in principle, required to file a response within 30 days. Failure to do so may result in a default judgment. Where the defendant's address cannot be identified, service by public notice is available.

Following submission of the response,

proceedings continue through a series of hearings involving both written submissions and oral arguments. Evidence gathering (through mechanisms such as document production orders, fact-finding requests and expert appraisals) is a critical component of the proceedings.

Appeals are available against first-instance judgments, with appellate courts serving as the final fact-finding instance. Further appeals to the Supreme Court are generally limited to issues of law.

Following the recent amendment to the Constitutional Court Act, it is also possible to file a constitutional complaint against a Supreme Court judgment where a clear violation of fundamental rights is alleged.

Once a judgment becomes final and binding, enforcement proceedings may be initiated. Common enforcement methods include real estate auctions and the attachment of bank accounts.

Foreign judgments may also be enforced in South Korea through recognition proceedings, provided that certain requirements such as jurisdiction, proper service and reciprocity are satisfied.

(2) Investigation and criminal proceedings. South Korea's criminal justice system has undergone significant reforms since 2022. Prior to these reforms, prosecutors had the authority to direct police investigations and initiate prosecutions based on the results.

Under the revised framework, prosecutors retain investigative authority only over certain categories of crimes – such as corruption, economic crimes, offences involving public officials and election crimes – while authority over other crimes has been transferred to the police. Prosecutors' authority to direct police investigations has been abolished.

The police now conduct investigations and determine whether to refer cases for prosecution. Complainants may challenge any decision not to refer a case.

Building on these reforms, South Korea is moving towards a clearer institu-

tional separation between investigation and prosecution.

Legislative changes are expected to result in the abolition of the Prosecutors' Office by October 2026, alongside the establishment of a new Public Prosecution Service. Prosecutors will be responsible solely for prosecution and will belong either to this new body or to a newly established Serious Crimes Investigation Office.

Given the central role of police investigations, proactive engagement at the investigation stage is increasingly important.

Once an indictment is filed, courts conduct proceedings – including witness examination and evidence review – before rendering judgment.

Both the prosecution and defendant may appeal first-instance judgments. Appeals to the Supreme Court are limited to issues raised in appellate proceedings, and sentencing challenges are generally permitted only in cases involving severe penalties such as the death penalty, life imprisonment, or imprisonment of 10 years or more.

(3) Arbitration. Arbitration is a key form of alternative dispute resolution in which disputes are resolved by arbitrators rather than courts.

In South Korea, arbitration is governed by the Arbitration Act, and the Korean Commercial Arbitration Board (KCAB) is the leading institution.

To submit disputes to arbitration, parties must enter into a written arbitration agreement. Where such an agreement exists, courts must dismiss actions brought in violation of it.

Arbitral tribunals are typically composed of three arbitrators unless otherwise agreed. Parties have broad procedural autonomy, subject to statutory requirements.

Arbitral awards have the same effect as final court judgments. Challenges are permitted only on limited grounds, such as invalid arbitration agreements or procedural irregularities, and must be filed within three months.

Arbitral awards are enforceable in South Korea, and foreign awards are enforceable under the New York Convention or through recognition proceedings.

In practice, arbitration is widely used in international contracts, cross-border investments and construction disputes, where speed and expertise are valued.

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