

Recognition and Enforcement of Foreign Judgments in South Korea

Let's say you obtained damages recovery judgment from a U.S. court against a Korean in the states. But soon after you got excited for the winning judgment, you found he has no assets in the states to fulfill your judgment. This could also happen in a litigation between U.S. citizens in a U.S. court where the losing defendant moved to South Korea and there are no assets left in the U.S. You might have spent quite large amount of legal fees to win the judgment already, but you think your judgment is now in great peril to be useless. This horrible situation might frustrate you.

But, don't worry too much. You can enforce your duly obtained U.S judgment in Korea. If you are sure the defendant has enough assets to cover your claims in the judgment and your legal fees, you can file for an enforcement order for foreign judgment to a Korean court.

According to Article 218 of Civil Procedure Act of South Korea, a final and conclusive judgement by a foreign court shall be recognized and enforceable in Korea, when all the following requirements are met:

1. *the foreign court which issued the judgment had a jurisdiction over the case consistent with the principles of jurisdiction under Korean law and relevant international treaty;*
2. *the defeated party received, in a timely manner, a service of complaint and summons by lawful method excluding a service by public notice, or that she responded to the lawsuit even without being duly served.*
3. *the foreign judgment does not violate good moral and social order of South Korea; and*
4. *there exists a mutual guarantee between South Korea and the foreign jurisdiction where the judgment was issued.*

As to the 3rd requirement above, please note that punitive damages award by a U.S. court is currently not recognized by Korean courts and therefore not fully enforceable in Korea. That is because the concept of punitive damages is not accepted by the Korean law and the court sees it violating the social order of South Korea. In torts law of Korea, the damages a plaintiff is entitled to is only *actual damages* which can be found legally and reasonably caused by the tortfeasor, which amount is eventually quite smaller than punitive damages. So, if you bring a punitive damages award from a U.S. court to a Korean court in order to get it recognized and enforced, the Korean court will reduce the amount of the award to the level where Korean law would find it consistent with Korean torts law.

As to the 4th requirement, the mutual guarantee which the act requires is similar to the concept of comity in U.S. Korean law requires the foreign jurisdiction where the judgment was issued has established the standard for recognition of a Korean judgement which should not be more difficult to be met when compared to the Korean legal standard. This is somewhat hard to grasp, but if your judgment came from U.S. court, you don't have to struggle, because Korean court has been ruling that there exists a mutual guarantee between Korea and U.S. Also the state of Ontario in Canada was declared to have a mutual guarantee with South Korea by the court.

If you have any question about the enforcement of foreign judgments in Korea, please visit our website at www.askkorealaw.com.

© 2012 Wonil Chung, an attorney at Chung & Partners. All rights reserved.

Because of the generality of this update, the information provided herein may or may not reflect the most current legal development at the time of view, nor is it applicable in all situations nor should be acted upon without specific legal advice based on particular situations.