

Recognition and enforcement of foreign judgments

By Alice Miller

Anybody who has received a judgment from a foreign court in favour of him against a Defendant having assets in Korea shall get the Korean Court's approval, "Enforcement Judgment," to enforce the judgment.

To seek an Enforcement Judgment one has to file a suit against the Defendant in the court having jurisdiction over the Defendant. The foreign judgments must meet requirements provided in the Civil Enforcement Act. To enforce the foreign judgment the Plaintiff shall authorise the enforcement to the court's executor.

Requirements

The foreign judgment shall be final and conclusive and it has to meet requirements provided in Art 217 of the Civil Procedure Act. A foreign judgment that can be recognised and enforced must be finally judicially decided on its merits. As such, preliminary measures including injunctions are not recognised. In addition, the foreign judgment shall be a ruling ordering the Defendant to fulfill its obligation regardless of whether it is performance or non-performance.

The foreign court holding the judgment of which recognition and enforcement is sought shall have jurisdiction over the case according to the principle on the international jurisdiction under Korean rules of law or international treaties. The court which has a substantial relationship with parties or subject matter has jurisdiction under the International Private Act. Substantial relationship will be decided considering all the matters concerning the subject case comprehensively. If the foreign country is the place where either of the parties has its office or assets, or shall perform its obligation, the foreign country is reasonably related to the subject matter, thus the designated foreign court would have jurisdiction under its county's law.

The party against whom the judgment is invoked shall be given a petition or legitimate notice of court proceedings, not a public announcement or notice, unless the defendant answers the suit voluntarily.

The foreign country where recognition and enforcement of its judgment is sought is supposed to recognise and enforce Korean courts' judgment in the equivalent manner as Korean courts

Public Policy and Reciprocity

The recognition and enforcement of the judgment shall not be contrary to public policy, which is not a domestic public policy but rather an international public policy, whereby connection stability of the international trade shall be taken into consideration to decide whether the recognition and enforcement of the judgment is contrary to public policy. A mere breach of mandatory law does not mean the breach of international public policy. International public policy consists of the substantive public policy and the procedural public policy. Thus, the international public policy covers fundamental principles of law and justice in substantive as well as procedural respects. Instances such as corruption, bribery, fraud or similar serious cases would constitute grounds for refusing recognition and enforcement of foreign judgments.

In a case seeking recognition and enforcement of a Minnesota (US) court's judgment of \$500,000 for punitive damages, the Seoul Eastern District Court recognised only 50 percent of the punitive damages holding that punitive damages greater than the maximum allowable amount for compensatory damages in Korea violates public policy.

The foreign country where recognition and enforcement of its judgment is sought is supposed to recognise and enforce Korean courts' judgment in the equivalent manner as Korean courts. The Korean Supreme Court (2002da74213) held that if requirements for recognition and enforcement of foreign judgments in a country are neither stricter than nor substantially different from those of Korea, in the same subject matter judgment, the reciprocity requirement is fulfilled.

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