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# Insurance Litigation 2024

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## **South Korea: Law and Practice & Trends and Developments**

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# SOUTH KOREA

## Law and Practice

### Contributed by:

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**Dentons Lee** is a South Korean law firm that has evolved since its inception in 1961 from an intellectual property-focused services firm into a full-services law firm with 60-plus lawyers based in Seoul who complement the Dentons global network of officers and legal professionals. The firm has a diverse roster of exceptional attorneys and other legal professionals to represent and advise clients in complex disputes in South Korea and abroad in litigation cases as

well as arbitration proceedings. In addition, the firm is well positioned to provide comprehensive legal services with key strategies and creative solutions leading to victories, settlements and favourable outcomes. Thanks to its connection with Dentons, Dentons Lee is part of a global network with offices in major commercial hubs around the world, enabling it to engage in concerted prosecutions and defences in both civil and criminal disputes in most jurisdictions.

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# SOUTH KOREA LAW AND PRACTICE

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## 1. Rules Governing Insurer Disputes

### 1.1 Statutory and Procedural Regime Litigation

South Korea is a civil law, as opposed to a common law, jurisdiction. The resolution of disputes is primarily based on general and special laws and regulations with the judges in South Korean courts interpreting these in each case. Changes to the law are decided by the national assembly, which is the legislative body in South Korea. By contrast, common law is based on judicial decisions and legal precedents, and judges play a significant role in shaping the laws of the country through binding precedents.

As a civil law jurisdiction, the courts of South Korea rely primarily on codified statutes and the legal framework as their main source of authority. However, in resolving disputes, particularly when statutory law does not provide clear guidance, the courts may also consider judicial precedents. In such instances, decisions from other jurisdictions, notably Germany, the United Kingdom and the United States – where insurance law is more deeply developed – may be cited and argued by litigants. While these foreign precedents are not binding, South Korean courts may find them persuasive when determining their own rulings.

#### *Legislation and court proceedings*

The Court Procedure Act, for claims for damages and equitable relief, and the Criminal Procedure Act, for claims with a criminal component, govern the manner in which disputes proceed in the South Korean courts, which generally involves the submission of pleadings with the formal submission of a petition and reply, a sequence of hearings administered by the court (which may also be done remotely), preparation and filing of pleadings and replies, the submission of evi-

dence, the taking of witness statements, and the valuation of damages followed by closing remarks (if elected). Those who are interested third parties also have a right to intervene in the case in order to protect their interests and make arguments on their own behalf.

The court may recommend and administer settlement procedures for both parties in court and may also accept and approve a party-initiated settlement outside of court.

### Alternatives to Litigation

#### *Arbitration*

Arbitration is an alternative to litigation in the South Korean courts, subject to the agreement of both parties, and has become more prevalent in cross-border agreements. In South Korea, the local arbitration institution is the Korean Commercial Arbitration Board (KCAB). Other arbitration institutions are also frequently selected, such as the Singapore International Arbitration Centre, the International Commercial Court and the Hong Kong International Arbitration Centre, among others, all of which utilise their own respective arbitration rules. The appeal to selecting arbitration over a court procedure in South Korea is highlighted by a number of factors such as the ability to fix a seat in a neutral venue, the ability to select experts on an arbitration panel, the ability to select the language for the dispute which may make the dispute resolution more cost-effective (South Korean courts require all submissions to be made in Korean), and the chance to avoid the rotation of judges which occurs annually in the South Korean courts, among others.

#### *Mediation and administrative proceedings*

Disputes involving insurance matters may also be resolved through mediation either by contract or pursuant to the administration of a

South Korean court. Claims which are lodged by insureds as consumers may also be heard through an administrative proceeding under a regulatory authority such as the Financial Supervisory Service or the Korea Fair Trade Commission (KFTC).

## 1.2 Litigation Process and Rules on Limitation

South Korea has three levels of judicial review:

- a trial at the court of first instance or the district court;
- an appeal which may be reviewed de novo at the court of second instance or a high court; and
- the court of last resort in the third instance which is the Supreme Court of South Korea.

The adversarial nature of litigation in South Korean courts involves a single judge for disputes for claims less than KRW200 million; however, for claims in excess of KRW200 million, a dispute will be reviewed by a panel of three judges (a presiding judge and two associate judges).

As in other jurisdictions with a similar judicial system, a petition will be lodged by a plaintiff to the district court where the key issues of facts and arguments in law are made to the judges, but the case will only proceed subject to the prescribed limitation in years, based on the subject matter and grounds for the dispute.

There are no specific rules of evidence from a procedural and evidentiary perspective; however, a judge will consider any evidence offered by a party while reserving the right to determine its value, veracity and relevance as well as its admissibility into the record. The litigation proceeding in the trial involves the submission of briefs and replies, and the introduction of evi-

dence, including the taking of testimony from witnesses. Appeals are available to non-prevailing parties upon the issuance of a decision at the district court, and then again at the high court for a final appeal at the Supreme Court.

The statute of limitations for commercial contractual disputes in South Korea is generally five years. The limitation on ordinary contracts is ten years. Insurance claims are subject to a three-year limitation from the date a claimant becomes aware of the accident, loss or damages, which is generally the “date of the loss” as reported by the insured and acknowledged by the insurer. South Korean law does not allow for the waiver of an applicable statute of limitation; moreover, it cannot be raised as a defence to the claim.

## 1.3 Alternative Dispute Resolution (ADR)

It has become more common for parties to a contract to include resolution through amicable discussions prior to any formal dispute resolution being exercised by one party against the other. In lieu of litigation and arbitration, alternative dispute resolution (ADR) mechanisms also exist in South Korea as effective means to resolve disputes on a voluntary basis through mutual agreement before a neutral mediator. The method of conciliation is also used in South Korea and supported by the Civil Conciliation Act which sets out a procedural framework for commercial parties to follow during the dispute resolution process.

## 2. Jurisdiction and Choice of Law

### 2.1 Rules Governing Insurance Disputes

Choice of law and dispute resolution clauses are commonly included in insurance contracts with respect to the manner in which a dispute is to be resolved and under which particular law a



contract is to be interpreted. Generally, South Korean courts will uphold such clauses as valid and enforceable pursuant to the agreement of the parties. However, challenges may be made by a party against another party:

- should there be a tenuous or lack of nexus with the venue and/or law;
- should the clause be unconscionable, oppressive or excessively burdensome to a party;
- should the clause be against public policy or morality;
- should the law and/or venue conflict with the local laws/regulations of South Korea; or
- should there be an absence of consent or agreement.

Moreover, a choice of law provision will generally be upheld by the South Korean courts pursuant to Article 25 of the Conflict of Laws Act allowing for the application of either South Korean law or foreign law to govern the contract interpretation or the dispute according to the *lex loci* of the contract. However, certain laws are mandatory and will apply irrespective of a governing law clause that designates the law of a foreign country to a particular issue (eg, antitrust and competition law) in accordance with Article 7 of the Conflict of Laws Act. Notably, a choice of law clause will still be enforceable even in the event that another set of laws exists in another jurisdiction with a more significant nexus to the subject matter of the dispute, pursuant to Article 8 of the Conflict of Laws Act.

## 2.2 Enforcement of Foreign Judgments

In order to enforce a foreign judgment against a defendant such as a local insurer in South Korea, a petition must be made to the South Korean court that has jurisdiction over the matter, in accordance with the Civil Procedure Act as well

as international treaties on reciprocity such as the Hague Convention.

The prerequisites for an enforcement order to be commenced are:

- a final and binding foreign judgment with no further right to appeal the decision;
- the original jurisdiction of the parties and subject matter of the dispute in question was proper and legal;
- the existence of reciprocal agreements with South Korea for the enforcement of foreign judgments;
- the judgment does not violate the public policy, laws or other moral standards of South Korea, otherwise, the foreign judgment may not be enforced by the South Korean court; and
- a certified translation in Korean must be submitted with the petition so that it can be confirmed that all the terms and conditions and the decision are fully understood by all the parties.

It is cautioned that administrative rulings, criminal matters and other non-commercial judgments or rulings may be subject to additional scrutiny by a South Korean court hearing the enforcement proceeding.

## 2.3 Unique Features of Litigation Procedure

As prefaced above, South Korea is a civil law jurisdiction where the judicial review of claims is based on written laws and regulations rather than relying upon and referring to case precedents.

### Costs Owed by Foreign Litigants

As in other countries, if a foreign litigant files a petition against a local South Korean defend-



ant with a Korean court, the litigant must pay certain court fees for the administration of litigation. In addition, the foreign litigant must pay a stamp duty to the South Korean court, as well as security costs, which is to ensure that claims are made in good faith and to promote an equitable dispute resolution procedure. The costs are calculated as attorneys' fees based on a formula in consideration of the claim amount made in the petition to the court.

## Limited Discovery and Pre-trial Procedures

South Korea has limited discovery and pre-trial procedures for the disclosure and collection of evidence in relation to a litigation which is silent in the Civil Procedure Act. The litigants may present evidence directly to the court where the judge(s) will determine its admissibility. If admissible, they will then consider the evidence for relevance and value. Generally, any requests for witness testimony or document requests are made to the South Korean court which will then direct the same and/or compel the other litigant to comply with the court's order (failure to comply may lead to court-imposed fines).

## Class Actions

The concept or the procedure to bring a class action in the South Korean courts is not well developed. However, collective actions may be brought in certain areas where plaintiffs who have similar claims may appoint a representative to act on behalf of the claimants. The procedure for class actions was implemented in the Securities-Related Class Action Act as a special act that is a companion to the Civil Procedure Act, which came into effect in 2005 in response to the conduct of large companies in South Korea to the detriment of consumers and investors. In order to be certified as a class action, there must be a minimum number of plaintiffs and an objective threshold for having an interest in the dispute

(eg, the total affected shares as a proportion of all outstanding shares of the litigants). Subsequently, the national assembly pushed forward the Act on the Class Action for the Protection of the Public Interest in 2016, which is a broader law that aims to allow a large number of injured persons to form and be certified as a class, such as in consumer claims in health-related litigation and environmental issues, as well as for welfare issues in South Korea.

## Rotation of Judges

The South Korean courts also have a judicial rotation system where judges are assigned to different panels at the Korean courts from year to year in an effort to provide a diversity of cases for judicial review and to promote neutrality and fairness in the litigation process. Each judicial panel, whether comprised of one judge or three judges (see **1.2 Litigation Process and Rules on Limitation**), will be subject to rotation in February of each year depending on the number of years spent in such judicial panel. As a result, a litigation case that spans a number of years may be reviewed by different judges and the judge(s) who heard the case at the commencement of the litigation may not be the same judge(s) at the time the judgment is rendered. The continuity of a single case being heard by different judges due to rotation is maintained in the court record.

## Official Language in Court

The official language of South Korea is Korean and this is also the official language of the South Korean court system. Therefore, all cases lodged and heard by the judges in the South Korean courts are administered in Korean. In turn, all oral arguments, pleadings, evidence, requests, closing arguments and all notices and judgments are in the Korean language. Therefore, parties to a contract should consider the efficiency, speed and costs when litigating in

Korean in the South Korean courts, as opposed to fixing the language in an arbitration clause and proceeding under the rules of an international arbitration institute.

## 3. Arbitration and Insurance Disputes

### 3.1 Enforcement of Arbitration Provisions in Commercial Contracts

A South Korean court will hold that an arbitration agreement is valid and enforceable subject to the general requirements set forth in the Arbitration Act of South Korea. In enforcing an arbitration agreement, a South Korean court will look at the intent and desire to arbitrate a dispute arising under a contract and the mere existence of an arbitration agreement, although “pathological”, will be upheld as the original intent of the parties, and the manner in which a “pathological” arbitration clause is enforced may default to the Arbitration Act of South Korea. Therefore, parties to a contract should carefully consider and draft an arbitration clause if it is their respective intent to arbitrate disputes, and this should cover the seat and venue of the arbitration, the rules of arbitration to be applied, the number of arbitrators, the language to be used, etc.

### 3.2 The New York Convention

South Korea agreed to the New York Convention in 1973 in order to have reciprocal arrangements and to establish the country as a commercial hub for foreign investors into South Korea, as well as to provide comfort and clarity on the rule of law and enforcement of judgments for South Korean investors in other countries through the promotion of international arbitration.

South Korean courts will generally enforce foreign arbitral awards in accordance with the New

York Convention, unless it is found that enforcement of the judgment violates public policy or there are procedural issues that would make enforcement inappropriate. Enforcement actions continue in the South Korean courts and notably, a number of foreign judgments were ruled unenforceable over the past year, in particular where enforcement of interim measures conflicted with local laws or rules, including the Arbitration Act.

### 3.3 The Use of Arbitration for Insurance Dispute Resolution

The preferred dispute resolution method in South Korea remains litigation in the courts, especially between insureds and insurers. However, arbitration agreements have been negotiated and made part of reinsurance agreements, slips, etc, especially between local South Korean insurers and foreign reinsurers. Given this change in contract drafting with respect to dispute resolution, a number of insurer-reinsurer disputes have taken place or are pending at this time over both coverage matters as well as other technical aspects in dispute.

The rise of arbitration cases to resolve insurance and reinsurance disputes is attributable to a number of reasons:

- reinsurance contracts are often concluded on a cross-border basis;
- one party wishes to resolve the dispute in a foreign language other than Korean and/or to use a more universal language and/or to avoid costly charges for translation and interpretation; and
- the parties wish to present and argue the merits of the case before an expert panel of arbitrators with significant history and experience in the insurance industry or with technical/scientific backgrounds.

As a result, while many arbitrations involve insurer-reinsurer disputes, those that are arbitrated often involve complex coverage disputes in property insurance falling under the local “Package Insurance Policy”, engineering claims, professional liability and others. However, many claims relating to the foregoing continue to be litigated in the South Korean courts.

In insurance and reinsurance disputes, the parties frequently refer to and select the rules of leading arbitration institutes such as the Singapore International Arbitration Centre, the International Commercial Court and the Korean Commercial Arbitration Board.

Arbitral awards are binding, final and confidential.

## 4. Coverage Disputes

### 4.1 Implied Terms

Pursuant to the Korea Commercial Code (KCC), certain terms and conditions may be implicitly read into an insurance contract, especially when the insured is a consumer for whom the terms cannot be altered or modified to the detriment of the insured. Additionally, the Financial Consumer Protection Act and the Standardised Contracts Regulation Act serve as critical sources of insurance law, which imposes various obligations on insurers to ensure fairness in the execution and application of insurance contract terms and conditions.

In the event that an insurer receives a portion or all of the insurance premium at the time an insurance application is provided by a policyholder/insured, the insurer must notify the applicant of its underwriting decision to accept or reject the risk within 30 days (unless otherwise agreed). In

addition, if the insurer fails to provide a response within this period, the insurer is deemed to have accepted the insurance risk as provided for in the application.

Once a policyholder has entered into an insurance contract with an insurer, the policyholder must pay the insurance premium (either the total insurance premium payable or as a first instalment) without delay. In the event that a policyholder fails to pay the premium and does not remedy the failure within two months from the date of the insurance contract, the contract will be deemed to have been cancelled (unless otherwise agreed by the parties).

In addition, if a policyholder or an insured fails to disclose any material facts, intentionally makes misrepresentations at the time the insurance policy is executed, or engages in acts of gross negligence, the insurer can terminate the insurance contract within one month from the date on which the insurer becomes aware of such facts, or three years from the execution date of the insurance contract.

During the insured period, a policyholder/insured must immediately notify the insurer of any material changes to any risk they become aware of, or the occurrence of an accident. Otherwise, the insurer may terminate the insurance contract within one month from the day on which the insurer becomes aware of such fact.

At the inception of the insurance contract, the insurer must explain important clauses of the insurance contract (eg, insuring clauses, exclusions and termination provisions); otherwise, such clauses may be deemed unenforceable against the insurer. This requirement applies equally to insurers transacting with corporate insureds and individual insureds. South Korean

courts frequently apply the rule of *contra proferentem* in disputes against insurers when policy wording is unclear and/or ambiguous in favour of the insured.

Under the Standardised Contracts Regulations Act (SCRA), a standard form contract must:

- be construed impartially in accordance with the principles of trust and good faith;
- not be construed differently for different customers who are similarly situated; and
- be construed in favour of the customer if the wording of the contract is unclear or ambiguous.

## 4.2 Rights of Insurers

There are a number of protections afforded to insurers during the solicitation, application and underwriting phases. According to the KCC, certain circumstances may render an insurance contract void from inception; that is, void *ab initio*.

As explained in Article 644 of the KCC, in the event that the occurrence of an accident is based on a risk or that which is incapable of materialising, the insurance contract will be null and void based on the fundamental and universal requirement of any insurance product (Article 644 of the KCC). Additionally, where there is no insurable risk at the time of execution of the insurance contract, then it will also be viewed as null and void. However, this rule is inapplicable if the insurer and the insured are unaware of the foregoing facts and/or circumstances. Additionally, where a loss occurs prior to the effective date of the insurance contract, then the insurance contract will not cover the loss and the insurer has no liability to the insured.

Pursuant to Article 669 of the KCC, if insurance premiums are substantially more than the amount of risk insured (ie, expansive, unnecessary or duplicate coverage) as a result of fraud by, or intentional misconduct on the part of, the insurer or its agent, the insurance contract will be considered void.

In addition to the exceptions listed above, Article 103 of the Civil Act may also render an insurance contract void. Previously, a Korean court ruled that if an insured entered into several insurance contracts intending to receive multiple payments from insurance proceeds for the same single loss, this constituted fraud with an element of unjust enrichment.

Consequently, insurers have protection under the KCC to void insurance contracts entered into based on fraud, incomplete information and non-disclosure.

## 4.3 Significant Trends in Policy Coverage Disputes

In 2023 and 2024, a number of trends materialised in relation to coverage matters which may lead to disputes between and among insureds, insurers and reinsurers, as well as third parties.

Recently, several large claims arising from incidents such as fires, explosions, natural disasters, flooding, product recalls and product liability, and other significant accidents have led to disputes in South Korea such as the following:

- differences in the scope of coverage, which also relate to the interpretation of the insuring clauses and exclusions;
- questions surrounding the cause of the alleged accident leading to the acceptance or rejection of a claim;

- application of “other insurance” provisions and determination where other insurance exists and should be applied, or to exhaust any other coverage that may exist, or be primary to other existing insurance;
- the exhaustion of primary coverage or other layers of liability before seeking indemnification;
- scrutinisation of the insurable interest relating to the loss being claimed;
- the method of dispute resolution;
- inadequate notification to insurers/reinsurers and the timing thereof; and
- coverage disputes due to difference in contracts where the insurance and reinsurance may not be “back to back” in terms of terms and conditions.

## 4.4 Resolution of Insurance Coverage Disputes

There are number of methods for the resolution of original insurance coverage disputes in South Korea.

Original insurers will engage in direct negotiations with insureds as a preliminary procedure for the resolution of a coverage and claim dispute. The Financial Supervisory Service is also authorised and has a complaints procedure, as well as mediation as a method of dispute resolution, which will generally involve consumer-facing claims and those of smaller claim amounts, but in any event this is non-binding. The Korea Insurance Development Institute (KIDI) also has an arbitration system for insurance claims related to technical matters, as well as those relating to actuarial issues. Nevertheless, the most common dispute resolution forum in an adversarial proceeding is the Korean court.

In regard to disputes between original insurers and reinsurers, the parties will make attempts to

resolve the dispute outside of a formal dispute resolution procedure. Historically, most insurer-reinsurer disputes were brought to the South Korean courts with the original insurers making demands to have all disputes brought before the court. However, there is now a trend where insurers and reinsurers resort to arbitration, especially where a local insurer and a foreign reinsurer in South Korea are involved, or a dispute has arisen pursuant to a cross-border reinsurance transaction.

See also **1.1 Statutory and Procedural Regime** and **1.3 Alternative Dispute Resolution (ADR)**.

## 4.5 Position If Insured Party Is Viewed as a Consumer

### Consumer Protection

Generally, South Korea has a strong emphasis on consumer protection across all financial services, including insurance. The government has established robust consumer protection laws concerning the solicitation and sale of insurance products. An example of the degree to which the South Korean government seeks to protect its citizens as consumers is evident in the SCRA, which ensures the fairness and suitability of standard insurance contracts. In addition, the recent Financial Consumer Protection Act (FCPA) introduces further protections for consumers and is designed to protect the rights and interests of financial consumers by following principles and obligations under the FCPA such as: the principle of suitability and appropriateness; the duty to explain important terms and conditions; prohibition of unfair business practices, unlawful solicitation activities, and false and misleading advertising; and the provision of all relevant financial product documents, among others.

It is also noted that an original insurer may be viewed as a “consumer” of reinsurance, which also provides protection to the insurer from any improper conduct that disadvantages or harms the insurer. However, there is some ambiguity in the application and criticism thereto as a transaction between an insurer and a reinsurer is viewed to be between sophisticated companies that do not warrant the protection afforded under the FCPA.

## Remedies

Individual consumers who have purchased personal lines insurance such as life, automobile, or certain health insurance, have the right to seek remedies under their insurance contracts through the civil courts in South Korea. In addition to litigation, consumers may file grievances and claims directly with the Financial Supervisory Service as in **4.4 Resolution of Insurance Coverage Disputes**. Consumers may also file grievances and claims with the KFTC.

## 4.6 Third-Party Enforcement of Insurance Contracts

### Statutory Right of Direct Action

#### *Against an insurer*

Pursuant to the KCC, third parties have a statutory right to pursue direct actions against an insurer without first filing a claim against the insured. However, when calculating the quantum of damages in a third-party claim, the court does not take into account the terms of the insurance contract between the insurer and the insured. As clarified by the Supreme Court of South Korea, an insurer may still assert any defences against a third-party claimant that the insurer would have had against the insured under the terms of the insurance contract. This statutory right of direct action promotes fairness, efficiency and convenience for individuals who have suffered property damage or personal injuries caused by

the insured through a procedural mechanism for insured parties to seek redress directly against and from the insurer.

#### *Against a reinsurer*

In South Korea, an insured generally does not have the same direct right of action against a reinsurer as it does against an insurer, unless there is a specific arrangement or agreement (eg, a cut-through clause) that provides for such right in the reinsurance contract. A cut-through clause allows the insured to directly make a claim against the reinsurer if the primary insurer becomes insolvent or fails to meet its obligations. Such clauses are uncommon in standard reinsurance contracts, which typically bind only the insurer and the reinsurer. In the absence of a cut-through clause, there is no privity (direct legal relationship) between the insured and the reinsurer, thereby prohibiting any direct action by an insured directly against a reinsurer.

The reinsurance framework in South Korea follows global standards where the reinsurer’s obligations are primarily to the insurer, and not to the insured, unless a special arrangement (cut-through clause) is made. Courts and regulations in South Korea reinforce this principle, emphasising the contractual nature of the reinsurance relationship.

If exploring a specific scenario where this might come into play, it would depend on the terms of the reinsurance agreement and any relevant case law on the matter in South Korea.

## 4.7 The Concept of Bad Faith

In South Korea, the legal concept of “bad faith” does not exist in law as it does in other countries; however, according to the Civil Act, the concept of “bad faith” is often raised in the context of obligations and contracts. While the term itself



may not be explicitly stated in any statute, the principle can be found in various articles related to contracts and obligations to be performed by a party. There is no clear definition of “bad faith” in law; however, reference is made to Article 748 of the Civil Act which provides that where a person is enriched through their bad faith, then they must return the benefits received by them together with interest, and if another party suffers any damages as a result of said bad faith, then compensatory damages must be paid to that party as well.

In general litigation, when bad faith actions and conduct are introduced in court, these may influence the court and its ruling. South Korean courts are conscious of and will consider any acts of dishonestly or abuse when ruling on a case, which may affect damages, remedies or even the validity of certain claims.

#### **4.8 Penalties for Late Payment of Claims**

As a matter of general application, a statutory interest of 5% per annum accrues on a simple basis for the period during which the claim remains unpaid, starting from the date the claim was submitted to the insurer until the date the payment is made. Unlike other jurisdictions where insurers may remain “off the hook” for late payment interest if a reasonable amount of time is taken to conduct loss adjustment, there are no similar rules under South Korean law that apply specifically in determining liability for interest accrued on payment of insurance proceeds. Even if there is any policy wording which may provide for a reasonable period of loss adjustment during which no interest will accrue until the time where the final amount due has been determined, it is advisable for insurers to still make payment of the minimum amount payable under the prevailing circumstances, notwith-

standing the validity and application of any such contractual provisions.

Therefore, the customary practice in South Korea for claims processing and payment of insurance proceeds is for the insurers to make an initial payment of a non-controversial amount that they are comfortable with (together with statutory interest) to at least stop the clock on interest over a significant portion of the total claim that the insurers might ultimately agree they are liable for, followed by an upward adjustment once the loss adjustors’ final report has been issued and the amount is conclusively determined.

#### **4.9 Representations Made by Brokers**

In South Korea, insurance brokers are typically appointed by insureds seeking coverage for their business. The relationship between the broker and the insured is governed by the terms of the broker agreement and the broker owes a duty of loyalty to its client as an insured of an insurer. In cases where representations made by the broker are false, mistaken or inaccurate, it is not common for the insured to pursue a claim against its broker for professional liability on the grounds that an error and/or omission has occurred. The concept of errors and omissions is not widely recognised in the insurance industry and marketplace in South Korea and such claims are therefore infrequent.

#### **4.10 Delegated Underwriting or Claims Handling Authority Arrangements**

In South Korea, claims handling is considered a “core function” of a licensed insurer and reinsurer which must be performed by the insurer or reinsurer itself. In principle, the claims-handling function should not be delegated to a third party, although a licensed attorney is permitted to handle claims in South Korea on behalf of an insurer. However, any delegation or outsourcing



of the claims function would be in violation of the Insurance Business Act, as the licensed insurer or reinsurer should handle claims in its own right, as well as a violation of the Attorney Act for the unlawful practice of law.

Nevertheless, insurers (and reinsurers) may utilise the services of a claims adjuster or a loss adjuster to assist in the investigation of a claim. It may also review the coverage terms and conditions and make findings and conclusions to the claim. However, the claims decision – as to whether to accept or reject the claim, as well as to make a decision on the amount and payment of the claim – must only be made by the insurer (or reinsurer).

## **5. Claims Against Insureds**

### **5.1 Main Areas of Claims Where Insurers Fund the Defence of Insureds**

As a preliminary matter, an insurer must defend a claim in accordance with Article 720 of the Commercial Code of South Korea and the obligations under a liability insurance policy. The duty to defend is triggered by the filing of a claim for the insured or it may be made by a third party against the insurer, which requires the insurer to provide a defence by covering the costs for attorneys' fees, court costs, stamp duties and all other related costs typically known as loss adjustment expenses. Insurance cases in which an insurer is required to defend its insured often arises in third-party claims against the insured for property damage and personal injuries.

In South Korea, the duty to defend requires payment based on law and, in contract, it frequently involves property claims.

### **5.2 Likely Changes in the Future**

The number of disputes is increasing, despite the fact that many disputes are not initiated by claimants for various reasons, including the decision not to pursue litigation or other dispute resolution options. Against this backdrop, third-party funding (TPF) may be a way to pursue remedies and damages for claimants while minimising the financial burdens and risks involved when engaging in disputes.

TPF in disputes refers to a third party providing financial support to a party involved in a legal dispute or litigation. The third party receives a portion of the awarded damages or settlement if the case is successful. However, if the case is unsuccessful, the third party loses its money. In this sense, TPF reduces the financial burden on the parties involved and enables them to commence or resolve legal disputes.

There is no framework for TPF mechanisms in South Korea; however, TPF does exist, even though it is not frequently utilised. One of the main reasons for the lack of clarity and ability to utilise TPF is due to the application of the Attorney Act of Korea which prohibits the receipt of legal fees and awards for damages by non-lawyers. On the other hand, there is a movement to systemise and create a framework, including a body of law, to govern TPF in South Korea. This is driven by the desire to create an international hub in Northeast Asia utilising the Korea Commercial Arbitration Centre to help facilitate the administration of cross-border disputes and keep pace with global trends, as countries such as Singapore, Hong Kong and the UK already have a more active TPF market. Given the foregoing, there may be further discussions and debates in South Korea relating to TPF from a judicial, legislative and political perspective.

## **5.3 Trends in the Cost or Complexity of Litigation**

Claims litigation costs have increased, driven by expenses related to attorneys, investigations, experts, appraisers and other considerations. However, the total costs for claims handling, including attorneys' fees in relation to the defence and other disputes involving insureds, insurers and reinsurers, have increased overall in the last year. Technology, financial and cyber-related claims have all increased, as have motor claim expenses due to the rise in the number of automobiles purchased in the past year. Moreover, claims disputes now require additional costs and expenses related to confirming or negating cause, interpretation of policy wording such as insuring clauses and exclusions, and other novel issues, such as number of occurrences (ie, one occurrence versus multiple occurrences), etc. In addition, increased claims costs are also attributable to the recently implemented accounting standards under IFRS 17 and K-IFRS in 2023, requiring more market-consistent valuations and affecting how insurers calculate their liabilities, which has led to stricter accounting practices and claims-handling practices for insurers.

## **5.4 Protection Against Costs Risks**

Protection for defence costs, legal expenses and similar costs is permitted in South Korea; however, this is not widely used and the penetration rate for such cover remains low. The specific product for such protection is known as legal expense insurance (LEI).

LEI covers the cost of legal advice, representation and litigation, and is designed to protect individuals and businesses from the high costs associated with and incurred in legal disputes for both plaintiffs and defendants. In particular, LEI provides cover for court costs, attorneys' fees, expert witness fees, and other litigation-related

expenses, regardless of whether the insured is prosecuting or defending the case.

Judgment preservation insurance has also been introduced into the South Korean market. This is a specialised insurance product that protects the value of a judgment rendered by a court or a settlement by the parties in favour of a plaintiff. The insurance product is typically purchased personally by individuals or by companies that have won a dispute pursuant to an order or an award and wish to preserve the value of the award, and ensure that it is not reversed, reduced or modified. It is understood that judgment preservation insurance is sold on a cross-border basis.

## **6. Insurers' Recovery Rights**

### **6.1 Right of Action to Recover Sums From Third Parties**

Paying a claim pursuant to an insurance contract gives the insurer subrogation rights to make a claim against a third party. Rights in subrogation automatically arise in favour of an insurer by operation of law and no formal assignment or agreement is necessary to claim them. However, in the event that an insurer does not pay the full amount of the claim to the insured, any rights the insured holds against the third party will take precedence over any subrogation rights in favour of the insurer.

### **6.2 Legal Provisions Setting Out Insurers' Rights to Pursue Third Parties**

The right to subrogation exists in Article 682 of the Commercial Act, which states that "in the event that a loss has occurred due to actions by a third party, an insurer which has paid the insured amount shall acquire, to the extent of the amount paid to the insured. Also, the rights of the insured against a third party; provided,

however, that if the insurer has paid the insured amount as insurance proceeds in part, then the insurer may exercise such rights in so far as the rights of the insured are not prejudiced.”

## 7. Impact of Macroeconomic Factors

### 7.1 Type and Amount of Litigation

In South Korea, several factors have affected insurance-related litigation in recent times. The post COVID-19 pandemic period has seen an increase in insurance claims related to business interruption as well as business failures, health insurance, and travel disruptions. Many companies commenced or defended disputes over coverage and claims, as insurers and insureds argued over the interpretation of policy terms and coverage limits. Additionally, the pandemic brought about an increase in employment-related disputes due to furloughs, lay-offs, and changes in working conditions. As a result, insurers have plans to add “infectious diseases” as a business interruption cover to compensate for losses.

Other global economic challenges and fluctuations, exacerbated by the pandemic and geopolitical tensions, have impacted litigation especially in commercial insurance sectors for both insurers and insureds. The global supply chain disruptions due to geopolitical events have led to an increase in disputes over contractual breaches and insurance claims related to cargo and logistics in the face of political unrest around the world, sanctions and other consequences. Additionally, the rise of digital technologies has also influenced litigation, with new products and technologies putting contract wording to the test, as underwriters and claims professionals did not anticipate including claims related to

cybersecurity, data breaches, and infringement or misappropriation of intellectual property.

At the same time, property claims have become more frequent, with larger losses due to natural disasters, floods, fires, etc. The large number of claims has forced insurers to consider the ongoing offering of certain types of coverage for property insurance.

### 7.2 Forecast for the Next 12 Months

The frequency and cost of claims continue to increase due to political, economic, social and environmental factors.

However, insurers have not been significantly or negatively impacted by recent events in South Korea; rather, the insurance industry has remained strong without any decrease in premiums. Brokers as well as agents have made adjustments to leverage alternative insurance distribution channels, including through innovative insurtech products, websites, mobile apps, and other digital platforms. As a result, the insurance industry in South Korea has largely managed to sustain and mitigate the potential adverse effects of recent events around the world.

Additionally, increasing focus on digital products, new investment opportunities, environmental sustainability and climate change will likely lead to more litigation related to environmental regulations, insurance claims for climate-related damages, and corporate responsibility issues.

### 7.3 Coverage Issues and Test Cases

The defence to the performance of a contract for *force majeure* with respect to indemnity was tested in the South Korean courts, but no legal precedents resulted in new legal standards. In

respect to COVID-19 death claims, the South Korean courts did clarify that the pandemic did not result in an “accident” covered by a personal accident insurance contract. Moreover, no business interruption claims involving COVID-19 were confirmed.

## 7.4 Scope of Insurance Cover and Appetite for Risk

In particular with property claims in the South Korean insurance market, the severity, volume and amount of damages related to property claims in 2023 and 2024 forced insurers to cease the sale of property insurance products, which has impacted some of the leading insurers in the South Korean market. However, other insurers have made the decision to broaden coverage with higher premiums, introduce new insurance products and to aggressively market alternative insurance products for protection.

## 8. Emerging Risks

### 8.1 Impact of ESG on Underwriting and Litigating Insurance Risks

In response to the increasing frequency of disaster risks, including pandemics, cyber-attacks and climate change, there have been ongoing discussions involving the insurance industry, non-government organisations, and the South Korean government. These discussions are focused on addressing the need for insurance coverage to manage unforeseen risks and gaps.

#### Environmental Impairment Liability Insurance

South Korea is currently among the ten worst countries in terms of carbon dioxide emissions, contributing significantly to the global carbon footprint. In response to government mandates, environmental impairment liability insurance has been mandatory for applicable businesses since

1 July 2016. This coverage addresses most pollution-related risks but has not been thoroughly tested concerning commercial activities linked to carbon emissions and the greenhouse effect, due in part to a lack of conclusive scientific evidence and specific fault attributable to individual insured parties. As the debate over global warming continues on the global stage, it is anticipated that claims will eventually be made against large companies that contribute to climate change, especially in light of South Korea’s commitment to achieving net-zero emissions by 2050 under the Framework Act on Low Carbon Green Growth.

#### ESG-Related Insurance

As part of South Korea’s environmental, social, and governance (ESG) agenda, insurers have taken preliminary steps to address climate control issues from the boardroom to their underwriting practices.

For example, many South Korean insurers have introduced eco-friendly car insurance included in the Electric Vehicle Battery Guarantee programme, which guarantees the amount of depreciation that comes at a great cost to consumers in the case of damage to the battery of an electric vehicle, and the Electric Vehicle Self-Accident Guarantee, which guarantees injuries sustained by the insured due to electric shock and fire accidents. KB Sonbo has developed the “Step Discount Special”, an eco-friendly health-care special offer that takes into account the health and environmental protection of customers and offers a 3% discount on auto-insurance premiums for a limited number of insured persons who have achieved their daily goal through a step measurement programme recognised by the insurance company, within 90 days of the date of the insurance subscription. The special agreement is that it has met the needs of con-

sumers who have reduced their use of public transportation due to COVID-19. Other local South Korean insurers have also created new insurance programmes for ESG-related risks.

## 8.2 Data Protection Laws

Data protection laws continue to be strict and stringent, and local insurers and reinsurers are marketing cybersecurity insurance policies. However, this insurance product has not been purchased widely and even when procured has not been tested, despite the risks and vulnerabilities in South Korea with respect to data breaches, cyber-attacks, ransomware, etc. In fact, certain local insurers have made management decisions to reduce capacity or withdraw the sale of cybersecurity insurance policies in South Korea. In addition, with the growing AI industry around the world, new and varied risks will arise challenging underwriters, as well as claims personnel, to deal with novel claims that may alter policy wording as well as premiums.

Over the course of 2023–2024, a number of cyber-related incidents occurred such as:

- ongoing ChatGPT phishing scams;
- an alleged North Korean cyber-attack on the Korean Internet & Security Agency (KISA);
- ransomware attacks on hospitals across the country;
- data breaches at various local banks;
- acts of cyber-espionage involving South Korean military defence contractors; and
- disruption of online classes due to cyber-attacks at universities.

It is inevitable that the recent events cited will force insurers and their underwriters to re-design insurance policies to address the changing risks.

## 9. Significant Legislative and Regulatory Developments

### 9.1 Developments Affecting Insurance Coverage and Insurance Litigation

A number of current events and developments have led to changes in laws and regulations in South Korea. Some of the new legislation that will impact insurance coverage and potential claims disputes is set out below.

#### Tax Reform Legislation

On 31 December 2023, South Korea enacted the 2024 Tax Reform legislative bill effective on 1 January 2024. This comprehensive tax reform introduced updates to international tax compliance requirements aligned with the OECD Guidelines; adjustments for entities involved in overseas expansion and investments; and new regulations for stock-based compensation filings for corporations. The contingent risk exposure raises issues with respect to potential D&O claims made by shareholders against directors and officers of companies who may engage in poor management and bad decision-making in relation to overseas expansion and investments. It may also expose insurers to claims for warranty and indemnity insurance for unknown or undisclosed tax liabilities subsequent to the closing of a cross-border transaction.

#### Personal Information Protection Act (PIPA)

South Korea has also enacted significant amendments to the Personal Information Protection Act (PIPA), effective 15 March 2024. The revisions introduced stricter consent requirements for personal data collection, a mandatory 72-hour breach notification, and expanded individual rights such as data portability. They also impose more severe penalties for non-compliance and enhanced guidelines for cross-border data transfers, while introducing new rights for data

subjects, stricter requirements for Chief Privacy Officers (CPOs), and enhanced obligations for data processors regarding overseas transfers and liability insurance. In the event of wrongful disclosures of personal information and/or subsequent data breaches, the underwriting of cybersecurity policies as well as any liability insurance may be re-defined according to the amendments to PIPA.

## Recent Regulatory Developments Introduced by the FSC

In addition, recent regulatory developments on network separation deregulation in the financial services sector, introduced by the Financial Services Commission (FSC) in August 2024 (as discussed in **8.2 Data Protection Laws**) will have a profound impact on insurance coverage, litigation and claims. The introduction of the regulatory sandbox for Generative AI and cloud-based applications (“SaaS”), alongside the processing of pseudonymised personal information, provides insurers with opportunities to adopt innovative technologies in the claims handling and underwriting process. However, this also introduces new types of risks and liabilities, and insurance coverage may need to evolve to address potential issues including cybersecurity, data breaches or system failures. Insurers may face claims related to the performance or shortcomings of AI systems and cloud-based services, which will affect coverage and litigation strategies. In the event that, as planned by the FSC, regulatory exceptions are expanded to per-

mit the direct processing of non-pseudonymised personal credit information in the coming year, insurers will be required to implement additional security measures. This transition could result in significant changes to data management and risk assessment processes, increasing demand for coverage related to sensitive credit information, including data breach and cybersecurity insurance. Insurers may also encounter legal challenges concerning the adequacy of security measures, potentially leading to disputes over compliance with evolving regulations. Insurers may face claims related to the performance or shortcomings of AI systems and cloud-based services, which will affect coverage and litigation strategies.

## ESG Regulations

In regard to environmental and other ESG regulations, the Ministry of Environment and the FSC have launched ESG initiatives aimed at strengthening regulations around sustainable practices and addressing greenwashing. The government is considering mandating companies to disclose corporate governance reports and sustainability reports, which is planned to be implemented sequentially starting in 2026 (the exact timeline is still undecided). It is expected that non-compliance could result in D&O claims lodged by shareholders against corporate leaders, including directors and officers, for failing to meet ESG compliance standards and making poor governance decisions.



## Trends and Developments

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Dentons Lee

**Dentons Lee** is a South Korean law firm that has evolved since its inception in 1961 from an intellectual property-focused services firm into a full-services law firm with 60-plus lawyers based in Seoul who complement the Dentons global network of officers and legal professionals. The firm has a diverse roster of exceptional attorneys and other legal professionals to represent and advise clients in complex disputes in South Korea and abroad in litigation cases as

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# SOUTH KOREA TRENDS AND DEVELOPMENTS

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## Introduction

The insurance industry in South Korea, as with all other major global insurance markets, remains in the “hard market” cycle which has persisted for several years. While there is speculation that a “soft market” is looming, this may not take full effect in 2025. This is evident with local insurers and global reinsurers in the insurance market who have strengthened and tightened underwriting practices and standards with increasing premiums and reduction in capacity, resulting in a less competitive environment and fewer discounts, benefits or other financial incentives for those who purchase insurance, both for commercial and personal reasons, as it correlates with higher frequency of claims, reduced profits and other external political, economic and social factors – all of which are also currently true in South Korea.

As mentioned above and in this background to 2024, there are a number of trends in relation to contentious matters involving insurers, reinsurers, policyholders and insureds, as well as third-party claimants, that occur in the South Korean insurance market. The following are a number of significant trends and developments that have recently come to the fore in South Korea.

## Increase in Property and Casualty Claims

The increase in the number of insurance claims is symptomatic of all insurance markets, and South Korea is no exception. In South Korea, insurers have experienced rising claims across all lines of business with the key metric of the “loss ratio” increasing, based on higher amounts of claims paid with adjustment expenses against premiums earned.

The Financial Supervisory Service (FSS) which acts as the “executive arm” of the Financial Services Commission in South Korea also monitors

claims activities for all licensed insurers and has stated that the number of insurance claims has gradually increased in recent years across all insurance product types. The number of life insurance claims, as well as those arising under health and accident insurance policies, has also steadily increased in recent years according to the FSS. The Korea Insurance Development Institute (KIDI) has also compiled data that translates into an annual increase in claims volume of 8% to 10% per annum in key insurance products in South Korea.

Given the rise in insurance claims, insurers have considered and continue to consider the rising claims per line of business, which has led to some insurers reducing capacity, reducing underwriting or withdrawing from certain lines of business as a countermeasure.

## Electric Vehicles and Lithium Ion Batteries

The modern-day boom of electric vehicles (EVs), given state-of-the-art technology and increasing consumer and commercial consciousness of the environment and the need to reduce the global carbon footprint of traditional automobiles, has also led to an increased number of fires or thermal events occurring in vehicles. In turn, the insurance industry has responded to numerous claims under property insurance policies, product recall insurance policies, electrical energy storage system insurance policies and others.

EV owners in South Korea have also experienced dangerous thermal events across the country. In particular, approximately 77,000 Hyundai Kona EVs were recalled globally and in South Korea so that the lithium ion battery packs could have battery management system updates and software updates. Hyundai Automobile and LG Chem along with LG Energy Solution investigated these thermal events. In addition, similar “ther-

mal events” have occurred and been reported in the General Motors Bolt make and model. Fires have also been reported in other EVs, such as Tesla’s Model S and Model X electric vehicles, which experienced “thermal runaway” events due to rapid heating within the batteries. Most recently, in August 2024, a Mercedes-Benz EQE sedan which was parked and in idle mode exploded in an underground parking lot in the city of Incheon, leading to a fire that damaged an additional 140 vehicles with 40 of them completely burned as a total loss. The explosion and subsequent fire also caused a power outage for approximately 480 households in neighbouring apartment buildings, and 23 people were hospitalised due to smoke inhalation, including children and firefighters. Mercedes-Benz and the local South Korean authorities are investigating the event, which involved an EV with batteries manufactured in China by Contemporary Amperex Technology Co, Ltd.

The lithium ion battery market in South Korea is comprised of three leading manufacturers – LG Chemical and now LG Energy Solution (a spin-off of LG Chem), Samsung SDI and SK On. In response to these fire events, lithium ion battery manufacturers continue their respective research and development into lithium ion battery cells, electric vehicle battery packs, the operation of EVs, etc. Currently, the cause of the fires (known as thermal events and thermal runaway events) has still to be confirmed, with disputes arising between and among EV owners, EV manufacturers and their insurers and reinsurers.

Fires have also ensued in electrical energy storage facilities in South Korea. In response, the insurance industry has developed and now offers electrical energy storage systems coverage and products (“EESS Insurance”). EESS Insurance provides protection to facilities that store energy

for later use, in particular with renewable energy applications, to address the supply and demand for energy. Generally, EESS Insurance is comprised of coverage components for property damage, business interruption, liability insurance and cybersecurity insurance. Similarly, the fire events in electrical energy storage facilities have been investigated, but questions remain as to the cause of the fires occurring at such facilities. The demand for clean energy will continue to grow and the insurance market continues to offer coverage options, while also managing the claims that have been made.

## Directors’ and Officers’ Liability

Over the course of the past few years through to 2024, directors’ and officers’ insurance claims have been covered under the financial lines insurance products, which is attributable to a number of factors.

Firstly, there is increased and heightened “shareholder activism”, from ordinary shareholders through to institutional investors, holding corporate leaders and management accountable for decisions made in relation to corporate governance, environmental issues, as well as mergers and acquisitions. A number of factors have contributed to this heightened awareness and aggression on the part of investors. Secondly, the South Korean government has strengthened its regulatory oversight over large conglomerates commonly referred to in Korean as “chaebol” companies, targeting non-compliance with laws and regulations as well as acts of malfeasance in the business practices and decisions made by directors and officers of the company. Thirdly, as in many other countries, investors now demand that the board of a company places key decisions on environment, social and governance (ESG) matters at the company on the agenda of meetings. In doing so, shareholders’ suits also

reflect the trend that South Korean companies must implement and at least keep pace with the rest of the world with respect to ESG activities, including management of climate-change risks, non-compliance with environmental laws/regulations, and issues that involve employee labour disputes.

A number of key directors and officers (D&O) claims have materialised and been lodged against insurers. A data centre owned and operated by Kakao suffered from a large fire in 2022 leading to countrywide service outages on multiple Kakao platforms, including KakaoTalk (the messaging app), KakaoPay (the payment services app) and others, which in turn created critical interruptions for many South Koreans.

A D&O claim was lodged against the directors and officers of Kakao alleging negligence in their corporate fiduciary duties by failing to implement and operate proper back-up systems, disaster recovery protocol and mitigation procedures. The underlying claims leading to the D&O claim were the result of damages suffered by users and third parties made against Kakao. In another case, as a consequence of the merger between Korean Air and Asiana Airlines, the directors of Hanjin Group (the parent company of Korean Air) faced controversy, criticism and a host of lawsuits claiming that competition would be reduced due to the merger of the two large commercial and passenger airlines, to the detriment of consumers. Allegations were also made against the directors of Korean Air for poor decision-making and mismanagement, and they attracted a fierce regulatory review by the Korea Fair Trade Commission, as well as strong opposition from international stakeholders. It is believed that their D&O insurance will need to cover legal expenses and liabilities amounting to tens of millions of dollars.

Along with other D&O claims being made by investors and shareholders with subsequent claims being made to D&O insurance carriers, other broader implications may follow. It is inevitable that there will be heightened regulatory scrutiny of corporate governance, especially for those companies engaging in energy, infrastructure, technology and other industries with a broad reach in the public sector, in addition to having a direct impact on the private sector. Moreover, with the increase of D&O claims and the impact and severity of same, regulatory reform and legislation will continue to keep regulatory authorities and lawmakers active in addressing such issues in South Korea.

## Warranty and Indemnity Insurance Claims

Insurance brokers and insurers have faced challenges in the sale of warranty and indemnity (W&I) insurance in South Korea due to the lack of deals, the lack of awareness of sellers and buyers on the benefits and protection of W&I insurance coverage, and the local commercial culture of securing indemnities in lieu of insurance to cover breaches of representations and warranties in stock purchase agreements. However, the market has further developed, with many transactions looking to W&I insurance to smooth out deals and to provide post-closing protection to buyers based on such representations and warranties. The leading brokers for W&I insurance have recently reported that there have been more M&A transactions in 2024 as compared to 2023. In addition, a number of claims have been made against insurers for losses under W&I insurance contracts. One emerging trend due to failed acquisitions by South Korean investors, has been a more cautious approach to M&A on a cross-border basis due to risks, such as capital costs, economic uncertainties and geopolitics, while inbound investments by minority interests have noticeably increased.

## Coverage Interpretation in Differences in Contract

In South Korea, disputes may arise due to the interpretation of policy wording in reinsurance contracts which, in principle, should be “back-to-back” with the underlying insurance contract. However, certain contributing factors have led to disputes over differences in contract, also known as “DIC”.

One of the unique challenges faced by foreign reinsurers in South Korea is cultural and language issues. Insurance contracts, claims information and documents, as well as claims reports, adjuster’s reports, and investigative reports including government documents are typically prepared in the Korean language with another version of the same document in English or other foreign languages of countries that have a globalised economy such as that of South Korea. Ultimately, DIC and disputes will arise due to policy wording leading to misunderstandings and misinterpretations where terms are “lost in translation”. As a result, a growing number of insurance contracts, reinsurance contracts, reinsurance slips, etc, are prepared in English to avoid disputes regarding the original intent of the parties.

The main guidance in interpreting insurance contracts is provided in the Insurance Business Act and the Civil Act which are also supported and confirmed by judicial decisions in South Korea. The principles of contract law apply to insurance contracts. The laws stipulate that the parties to a contract, including insurance contracts, must act in good faith and deal fairly with one another, and judges will seek to apply the literal and/or plain meaning interpretive principles based on the express language of an insurance contract. Moreover, the courts will seek to broaden coverage in favour of the policyholder or insured on

the basis that the insurance was procured and purchased for the benefit of insurance coverage, without unfair and undue disadvantages being imposed by insurers. The foregoing rules continue to be cited and followed by the courts in South Korea in 2024.

## Reinsurance Claims and Disputes

Jurisprudence in South Korea recognises the principles of “follow the fortunes” or “follow the settlement” in which a reinsurer is liable to the ceding insurer for reinsurance proceeds as long as the underlying insurance claim was paid within the “four corners” of the insurance contract. Nevertheless, challenges to the foregoing may be made by the reinsurer and upheld by a court or an arbitration panel if the insurance proceeds were paid outside of the insurance contract, for bad faith, fraud, where an ex gratia payment was made or where there are violations or breaches pursuant to the reinsurance arrangement and other special facts or circumstances. There is a history of cases in South Korea where the courts have ruled in favour of the insurer based on the foregoing rules and principles, which are consistently applied in insurer and reinsurer disputes.

Presently, there are a number of such disputes which challenge the “follow the fortunes” and “follow the settlement” principles as interpreted and enforced by the South Korean courts, which may or may not lead to a different interpretation and application of same, especially when a large portion of the ultimate financial responsibility is with the reinsurer and not the insurer. For example, there are ongoing differences in opinion in the interpretation of claims co-operation clauses in reinsurance contracts and to what extent and degree “co-operation” is necessitated for compliance with the obligations to perform under the contract.

Notably, it is also evident that arbitration dispute resolution mechanisms have been more prevalent given the rise of insurer-reinsurer disputes with international arbitration institutions. This is likely the result of foreign counterparties such as reinsurers seeking an allegedly more neutral venue, having a panel of insurance and industry experts, avoiding voluminous and arduous translation work should the language of the dispute resolution be fixed (eg, English), seeking a speedier resolution as opposed to a long drawn-out trial in the courts, as well as cost savings, since all evidence must be submitted in Korean in the South Korean courts.

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