

Part 2 - Standard Clauses "Boilerplate" agreement: South Korea

by Hee Chul Kang and Hyeon Hwa Shin, *Yulchon LLC*

Country Q&A | Law stated as at 30-Apr-2020 | South Korea

South Korea-specific information concerning the key legal and commercial issues to be considered when drafting standard "boilerplate clauses" for cross-border agreements.

This Q&A provides country-specific commentary on *Checklist, Boilerplate clauses: Cross-border*, and forms part of *Cross-border contracts and boilerplate clauses*.

See also *Country Q&A, Boilerplate Part 1: South Korea* and *Country Q&A, Boilerplate Part 3: South Korea* for more country-specific commentary.

Commencement and duration

1. Does the law in your jurisdiction provide for contracts to become effective immediately on signing? Are there any exceptions to this, for example if the parties have expressly agreed a different commencement date?

South Korean law does not expressly require that a contract become effective immediately on signing. The parties can agree to have the contract become effective on a date different from the signing date.

2. Does the law in your jurisdiction recognise the concept of condition precedent, that is, a clause in a contract that provides that the contract, or certain obligations under the contract (such as the buyer obtaining a letter of credit), will only come into force if and when certain conditions are met?

Yes, South Korean law recognises the concept of condition precedent. Such a condition may result in the contract not coming into effect until the condition(s) is met.

3. In your jurisdiction, if the parties agree, can a contract be deemed to be effective prior to the date on which it was signed? Is it a criminal offence to back date the agreement and provide a date of signature before the date on which it was actually signed?

If the parties agree, a contract can be deemed to be effective before the signing date. It is not a criminal offence to back date the agreement and provide a date of signature before the actual signing date, in and of itself.

4. Does any type of commercial agreement require approval or registration by a relevant authority before it can take effect in your jurisdiction? Is similar approval or registration required on renewal of the agreement too?

Yes. The Act on Report on Real Estate Transactions etc. provides that:

- Parties that enter into a purchase and sale contract concerning a real property must jointly report the transaction price and other relevant matters to the government within 60 days from the date of the contract (*Article 3*).
- Parties that enter into a transfer and certain other types of contract concerning land located within certain designated areas must jointly obtain permission from the government. A transfer or contract concluded without such permission will not take effect.
- The same rules also apply to any amendment made subsequent to the grant of the initial permission (*Article 11*).

In addition, the Monopoly Regulation and Fair Trade Act requires certain business combinations to be approved by the Fair Trade Commission before they can become effective.

Furthermore, the Foreign Exchange Management Act requires certain transactions involving foreign exchange transactions to clear the foreign exchange approval/report process before the agreement comes into effect.

Furthermore, many administrative statutes require advance reporting to, registration with, or approval of, the government for the transfer of licensed businesses, before the transfer contract becomes effective. Finally, there are other special statutes which require advance reporting to, registration with, or approval of, the government before a contract becomes effective, in certain areas such as defence and export of high technology.

5. If after expiry of a fixed term, the parties continue to act in accordance with the terms of the agreement, could the courts in your jurisdiction find that the parties intended the agreement to continue?

Yes, the courts could find that an implicit agreement exists between the parties to extend the contract term, if the relevant circumstances indicate this.

6. In your jurisdiction, can reasonable notice to terminate be implied by law for a fixed term or definite term contract?

Generally, no. However, there is court precedent (*Supreme Court Decision Case No. 2014Du45765, 10 November 2016*) that holds that notice can be implied in fixed-term or definite term contracts if they are renewed repeatedly and the other party expects that the contract will be renewed again. In such a case, the reasonable notice period will depend on the specific facts.

In addition, the Housing Lease Protection Act specifically provides: "If the lessor fails to notify the lessee of a refusal of the renewal, or to give notification to the lessee to the effect that he/she would not renew the contract without any change in the condition, no earlier than six months and no later than one month from expiry of the lease term, the lease shall be deemed to have been renewed under the same conditions as the former one at the time the term expires. The same shall apply to cases where the lessee has not notified by one month before the term of the lease expires" (*Article 6 (1)*). The Commercial Building Lease Protection Act also has similar provisions.

7. Are all the types of contract duration clauses included in *Standard clause, Commencement and duration: Cross-border: clause 2* recognised in your jurisdiction?

Yes.

Indemnity

8. Is the concept of indemnity recognised in your jurisdiction, that is, an express obligation to compensate for some defined loss or damage by making a payment? Are there any laws in your jurisdiction governing commercial indemnities?

Yes, the concept of indemnity is recognised in South Korea, but there is no law that specifically governs commercial indemnities. The Civil Code and the Commercial Code provide for the general principles applicable to indemnities in general and thus are not specifically suitable for consumer contracts.

On the other hand, the Act concerning Protection of Consumers in Electronic Trading Transactions limits the scope of indemnities that may be sought by the seller in an electronic trading transaction even if a contract for sale of goods, etc. is terminated due to a cause attributable to the consumer, and the Product Liability Act requires the manufacturer to bear damages not exceeding three times the loss incurred by a third party if the loss results from the manufacturer's failure to take necessary measures to fix a flaw despite the manufacturer's knowledge of such flaw.

9. In your jurisdiction, are any indemnities implied into certain types of contracts? Can indemnities be assigned in your jurisdiction? If so, can implied indemnities and assignment be restricted under the contract?

No indemnities are implied into any type of contracts.

Under South Korean law, a future claim may be assigned only if the claim may be specified and is expected to be likely to arise in the near future. Accordingly, we are of the view that an abstract right for indemnities would not be assignable prior to the occurrence of an event that gives a party a specific right to seek damages.

10. In your jurisdiction, are indemnities limited to specific categories of loss (as in English practice) or do they cover all contractual breaches (as in US practice)? Is there any wording that could be included to limit liability under the indemnity?

In South Korea, indemnities cover all contractual breaches. Therefore, *Standard clause, Indemnity: Cross-border: clause 1.2* will be recognised and effective as written. To limit liability under the indemnity, the clause may

specifically stipulate that certain types of damages (for example, indirect, special, or consequential damages) are excluded from the coverage.

11. Does the loss or damage need to be foreseeable (even if the express wording in the contractual indemnity doesn't state that it does)? Can an indemnity be unenforceable due to the remoteness of loss or damage sustained?

Yes, to be recoverable, the loss or damage must be proximately caused by the breach and therefore foreseeable. Damages arising from a breach of contract are limited to compensatory damages, which have been foreseen by a reasonable person as a probable result of a breach (*Article 393(1), Civil Code*). Special damages arising from particular circumstances are recoverable only if the breaching party knew or had reason to know of the particular circumstances at the time the breaching party was obligated to perform (*Article 393(2)*).

An indemnity can be unenforceable due to remoteness of loss or damage.

12. In your jurisdiction, can a party claim under an indemnity clause for damages or loss suffered as a result of their own negligence in the absence of express provision in the agreement to do so?

Yes. The wording in *Standard clause, Indemnity: Cross-border: clause 1.3* is suitable. However, the court may take the indemnity-seeking party's own negligence into account when determining the amount of the indemnity, regardless of the existence of a clause such as *clause 1.3*.

13. Is it permissible in your jurisdiction to make the indemnity conditional as set out in *Standard clause, Indemnity: Cross-border: clause 1.4*?

Yes.

14. Do the parties have a duty to take reasonable steps to mitigate their losses when seeking to rely on an indemnity in your jurisdiction?

No, the parties do not have a specific duty imposed by law to mitigate their losses. However, if the damage seeking party fails to mitigate its losses, this failure must be taken into account by the court when determining the amount of damages to be indemnified by the other party.

Interest

15. Please specify:

- a) If there is a rate of statutory interest in your jurisdiction and what it is;
- b) the usual rate of interest in commercial transactions where both parties are located in your jurisdiction;
- c) the usual rate of interest used in cross-border transactions involving a party located in your jurisdiction;
- d) the rate of interest that can be implied where no rate of interest is specified in the contract terms;
- e) any other interest that may be payable on any delay or non-payment.

Statutory interest rate

The statutory interest rate is 5% per annum under the Korean Civil Code and 6% per annum under the Korean Commercial Act.

Commercial transaction interest rate

The rate of interest in commercial transactions varies from 6% to 20%.

Rate of interest in cross-border transactions

The rate of interest in cross-border transactions where one party is located in South Korea varies from 6% to 20%.

Implied rate of interest

Unless otherwise agreed by the parties, the statutory interest rate on obligations arising out of commercial activities is 6% per annum (*Article 54, Commercial Act*).

Other interest

When a court makes a monetary award, statutory interest for damages is 12% per annum from the day following the day on which a written complaint demanding payment (or a similar document) is served on the obligor. However, this does not apply to claims seeking future performance.

16. In your jurisdiction, can contractual interest be payable from the date of default until an actual payment date that is after a court judgement has been obtained? Could a contractual interest rate that is too high be considered to be a penalty and therefore unenforceable?

Contractual interest is payable from the date of default until the date on which a written complaint demanding payment (or a similar document) is served on the obligor. Such contractual interest would be deemed to constitute "liquidated damages," which may be reduced by the court after taking into account all relevant circumstances (see [Question 20](#) and [Question 21](#)).

From the following day until the actual payment in full which takes place after a court judgement has been obtained, whichever is higher of the contractual interest and the interest rate that applies following a court imposed monetary award (12%) under the Act on Special Cases Concerning Expedition, etc. or Legal Proceedings, applies. Therefore, a double payment for interest is not available to the receiving party.

Set-off

17. Is set-off permitted in your jurisdiction, that is a right to allow a party to deduct one liability from the other, therefore avoiding a breach of contract for non-payment? If not, is there any concept which is broadly similar or equivalent and could be included?

Yes, set-off is generally permitted in South Korea. The wording of [Standard clause, Set-off: Cross-border](#) is suitable for use.

18. Does the law in your country provide any general rights of set-off? Do these rights exist even if there is no express provision in the contract?

Yes, there are general rights of set-off (*Articles 492 and 493, Civil Code*). The right exists even if there is no express provision in the contract. There is no limitation to general rights of set-off other than that the liability owed by the other person must be due, subject to certain exceptions such as prohibition for an employer setting off against a wage claim.

19. Does set-off against obligations in your local currency raise any foreign exchange control issues?

Yes. The Foreign Exchange Transactions Rules lists the instances where reporting is not required for set-off involving foreign exchange. If a set-off is not on the list, reporting to the head of a foreign exchange bank or the governor of the Bank of Korea is required.

Liquidated damages

20. Would *Standard clause, Liquidated damages: Cross-border* be permissible under the laws of your jurisdiction? If not, is there any other wording that could be used to specify the amount of damages payable in the event of a default/specified breach?

Yes, *Standard clause, Liquidated damages: Cross-border* would be permissible. The term "liquidated damages" is understood and specifically provided for in Article 398 of the Civil Code.

21. In your jurisdiction, can a party apply to the court to modify or vary the amount of liquidated damages set in the contract?

Yes, if the amount of the liquidated damages is excessive, the court can reduce it to a reasonable sum (*Article 398(2), Civil Code*).

22. Is a penalty clause, that is, a clause imposing an excessive or disproportionate payment of damages or compensation as a deterrent to breach, enforceable in your jurisdiction? Does any rule against penalties only apply where the trigger for payment is breach of contract?

Yes, a penalty clause is distinguished from a liquidated damages clause. However, in order to be treated as a valid penalty clause, the contract must clearly provide that the payment is a penalty payable in addition to the actual damages, since a general penalty clause is presumed to be a liquidated damages clause.

In principle, the court does not have authority to adjust the amount set by a penalty clause. However, the courts have held that if the penalty is found to be too severe compared to the benefit the other party would receive by enforcing the breaching party's performance, part or all of the penalty can be null and void for being contrary to public order and good morals (*Supreme Court Decision Case No. 2015Da239324, 28 January 2016*). This may effectively result in the court having the power to adjust the penalty amount in some exceptional circumstances.

The parties may agree the trigger for payment of penalties to be an event other than a breach of contract.

23. Are there any ways that the parties can draft their contract to get around any rule against penalties, for example:

- a) Could wording be included in the contract that limits the parties' remedies for breach of contract to a genuine pre-estimate of the loss?
- b) Could a bonus for early or enhanced performance rather than a penalty for late performance be valid and enforceable?
- c) Any other?

(a) Yes, such a clause is fully effective under the principle of freedom of contract, unless the contract itself is deemed null or void, or the clause is found to be contrary to good morals and the social order (*Article 103, Civil Code*).

(b) Yes, such a clause would be valid and enforceable.

(c) No other clause is typically used for such purposes. Please note that in general the parties can validly agree to penalties and there is no rule against penalties except that the court can adjust the amount in some exceptional circumstances as stated above. However, certain statutes, such as the Personal Information Protection Act and the Product Liability Act, provide for treble damages, which is a penalty in nature, and such treble damages cannot be got around by contract provisions.

Inadequacy of damages

24. Is *Standard clause, Inadequacy of damages: Cross-border* beneficial and recognised in your jurisdiction as an effective means to assist a non-defaulting party obtain alternative remedies to damages?

Yes, *Standard clause, Inadequacy of damages: Cross-border* is beneficial and recognised in South Korea as an effective means of assisting a non-defaulting party to obtain alternative remedies to damages. Available alternative remedies include injunctions and specific performance, although certain forms of specific performance are unavailable. Including this clause improves the chances of obtaining an order for the stated remedy, but does not guarantee it.

25. In your jurisdiction, is the term "equitable relief" understood as a concept that is a judicial remedy that is awarded at the discretion of the court on the basis of fairness and justice?

No, there is no such concept in South Korean law.

Termination

26. Is there a presumption in your jurisdiction that unless the agreement contains clear, express provisions to the contrary, a party cannot rely on its own breach of obligation to bring the agreement to an end, or to take advantage of its own breach as against the other party?

Yes, there is such a presumption in South Korea.

27. In your jurisdiction, can the parties terminate the agreement for all the reasons set out in *Standard clause, Termination: Cross-border: clause 1.1*; specifically, are the insolvency related events in *clauses 1.1(d)* and *1.1(e)* recognised in your jurisdiction? Are there any equivalent insolvency wording, triggers or processes in your jurisdiction that should be included instead or as well?

Yes, the parties can terminate the agreement for all the reasons set out in *Standard clause, Termination: Cross-border: clause 1.1*, and the insolvency related events in *clauses 1.1(d)* and *1.1(e)* are recognised in South Korea although corporate rehabilitation or workout may be included as well. However, the enforceability of provisions in *clauses 1.1(d)* and *1.1(e)* may be subject to the bankruptcy and insolvency laws applicable to creditors in general, which means that the court in charge of any bankruptcy or insolvency proceeding may prohibit termination of the agreement in accordance with the provisions of *clauses 1.1(d)* or *1.1(e)*.

28. In your jurisdiction, are there any non-contractual termination rights that arise in law that either party could seek to rely on? Can any such non-contractual termination rights be excluded expressly in the agreement between the parties?

There are non-contractual rescission rights that arise in law if there is an issue involving lack of capacity (*Articles 5 to 17, Civil Code*), misrepresentation (*Article 109, Civil Code*), or undue influence in relation to formation of the contract (*Article 110, Civil Code*). These rights, except for the right involving lack of capacity, cannot be excluded expressly because they are granted by mandatory provisions contained in the Civil Code. It is not common to specify such circumstances in contracts in South Korea.

In addition, the Civil Code, the Commercial Code and various statutes give one or both parties statutory termination rights with or without cause. For example, the Civil Code provides that a delegation agreement can be terminated any time by either party. Such non-contractual termination rights can or cannot be excluded, depending on whether such rights are mandatory or not.

29. How is the concept of material breach as set out in *Standard clause, Termination: Cross-border: clause 1.2* understood in your jurisdiction? Is there any other wording that would permit termination for a serious breach?

Yes, the concept of material breach, which is generally set out in line with *Standard clause, Termination: Cross-border: clause 1.2* is understood in South Korea. Often the term "material breach" is used without further explanation; it is not critically important to define this term unless the circumstances specifically require it.

30. Is breach of warranty recognised in your jurisdiction? Does a party have a right to terminate for breach of warranty if the contract expressly states that it can do so?

Yes, breach of warranty is recognised in South Korea. A party has a right to terminate for breach of warranty if the contract expressly states that it can do so.

31. Is termination for convenience (without cause) on written notice as set out in *Standard clause, Termination: Cross-border: clause 1.3* understood in your jurisdiction? Are there any special categories of contract in your jurisdiction where *Standard clause, Termination: Cross-border: clause 1.3* would not be permissible?

Yes, termination for convenience on written notice as set out in *Standard clause, Termination: Cross-border: clause 1.3* is understood in South Korea. Under the Labour Standards Act, "reasonable cause" is required to terminate an employment contract. In addition, the tenant protection statutes prohibit termination for convenience by the lessor.

Survival

32. In your jurisdiction, is it necessary to specifically state the contractual provisions that continue in force after termination of the agreement as in *Standard clause, Survival: Cross-border: clause 1.1*?

Yes, otherwise the entire contract would lose its effect retroactively and/or prospectively on termination.

33. In the absence of an express survival clause, what clauses will survive termination by implication and/or under your national laws and case law?

In the absence of an express survival clause, the court will determine whether a clause survives termination by implication or not, based on the parties' conduct, oral agreements and other relevant circumstances. There is no national legislation or established case law on this matter generally.

34. What consequences of termination may occur by operation of your national law?

If one of the parties terminates the contract retroactively, each party to the contract must put the other party(ies) in the position it would have been in had the contract not been formed (*Article 548, Civil Code*). This rule applies to terminations in general.

In relation to commercial agents, they can request compensation from the principal on termination, unless the reason for termination is attributable to the agent (*Article 92-2, Commercial Code*).

35. What steps with regard to government approvals, notifications or filings may need to be taken on termination of an agreement in your jurisdiction?

Generally, termination of a contract between private parties does not require government approvals, notifications or filings.

36. Where an agreement provides for certain obligations to be performed by the parties on termination and the agreement is silent as to who bears the costs of those obligations, who will bear those costs under the laws of your jurisdiction?

South Korean law is silent on this issue. The court will decide who bears the costs of performing those obligations, considering all relevant factors.

Costs

37. Is this *Standard clause, Costs: Cross-border* commonly used in your jurisdiction? Is it usual practice to state "costs and expenses"?

Yes, *Standard clause, Costs: Cross-border* is commonly used in South Korea. It is not unusual to state "costs and expenses".

38. If the agreement is silent as to costs, is the normal rule in your jurisdiction that each party will bear its own costs of negotiating, preparing and executing the agreement?

Yes, it is the normal rule in South Korea that each party will bear its own such costs if the agreement is silent on this.

39. In arbitration and litigation in your jurisdiction, is it usual for the court to order the losing party to pay the winner's costs?

Yes, it is usual for the court to order the losing party to pay the winner's costs if one party prevails in relation to all claims adjudicated by the court (*Article 98, Civil Procedure Act*). However, if the court finds partially in favour of one party, it has full discretion in determining an award for the litigation costs (*Article 101, Civil Procedure Act*). Note that, in practice, even the prevailing party cannot be awarded total litigation costs and expenses they have spent (especially attorney fees), due to limitations set by the Supreme Court Rules.

In arbitrations, the arbitration board determines the costs and expenses to be paid by either or both of the parties when giving its final decision.

40. If registration of the agreement is required in your jurisdiction, which party usually bears the cost of registration?

Registration of the agreement is not required in South Korea.

Waiver

41. In your jurisdiction, can a party indicate to another party that it does not intend to enforce its contractual rights or remedies? If so, is this recognised as a "waiver" of that party's rights?

Yes, a party can waive its rights unless the waiver is contrary to good morals and other social order rules (*Article 103, Civil Code*). The Supreme Court in South Korea has held that a waiver (or extinction of the other party's obligation) can be done not only by express manifestations but also by the obligee's conduct and/or other manifestations (*Supreme Court Decision Case No. 86Daka1907, 24 March 1987*).

42. Is a "no waiver" *Standard clause, Waiver: Cross-border* understood in your jurisdiction? If not, is there a similar or equivalent concept that it is common to include in contracts in your jurisdiction?

No waiver provisions such as those contained in *Standard clause, Waiver: Cross-border* are understood in South Korea.

43. Can it be difficult in your jurisdiction to rely on a no waiver clause if a party continued to perform its obligations under a contract for a significant period of time despite being aware of the other party's breach?

Yes. There is a principle of lost effect, which does not allow a party to exercise their rights after the other party reasonably came to believe that the first party would not do so because the first party has not exercised the right for an extended period of time. An innocent party does not have to protect its position by confirming in writing to the other party that it is reserving its rights as soon as it becomes aware of the breach, although doing so would be safer.

Rights and remedies

44. Is it common practice to include this *Standard clause, Rights and remedies: Cross border* in contracts in your jurisdiction to record the parties' intention that the rights and remedies set out in the agreement are in addition to those provided by general law?

Yes, it is not unusual practice to do so.

45. In your jurisdiction, what remedies will only be available to the extent that the parties have included them in the agreement (as opposed to being available under general law)?

There are no remedies that are only available if included in the agreement. However, there must be a written agreement for resorting to arbitration rather than litigation.

46. In your jurisdiction, is an express term in the agreement required to exclude contractual terms implied by law?

Yes, an express term in the agreement is required to exclude contractual terms implied by law.

Further assurance

47. Is this *Standard clause, Further Assurance: Cross-border* commonly used in your jurisdiction?

A further assurance clause such as *Standard clause, Further Assurance: Cross-border* is not commonly used.

48. In your jurisdiction, does this *Standard clause, Further Assurance: Cross-border*:

- a) seek to cover any omissions in the agreement that have not been noticed before signing and which would change the way the agreement was intended to work if they were not remedied?
And
- b) deal with a situation where completion of the entire transaction does not take place when the main agreement is signed?

In South Korea, a "further assurance" clause such as *Standard clause, Further Assurance: Cross-border* does not necessarily, but can, serve either or both of the above purposes.

49. In your jurisdiction, is "all reasonable endeavours" understood as a concept?

Yes, the term "all reasonable endeavours" is understood as a concept.

50. If under this clause a party is authorised to execute any documents or take any action that the other party fails or refuses to do, what are the execution formalities for a power of attorney in your jurisdiction?

The clause itself does not give a party the authority to execute any documents or take any actions on behalf of the other party in South Korea. As a result, it is advisable to include a power of attorney clause in the contract or attach a power of attorney to it.

There are no specific execution formalities for a power of attorney. However, a power of attorney is generally in writing and contains:

- The names of both parties.
- Who is delegating their power and who will be executing documents or taking actions on their behalf.
- The scope of work or power delegated.
- The signing date.
- Both parties' seals or signatures.

Time is of the essence

51. Is the concept of "Time is of the essence" understood and does *Standard clause, Time is of the essence: Cross-border: clause 1* have the necessary legal effect in your jurisdiction to give a party the right to terminate for delay?

Yes, the concept of "Time is of the essence" is understood in South Korea and *Standard clause, Time is of the essence: Cross-border: clause 1* has the necessary legal effect to give a party the right to terminate for delay.

There is a statutory right to terminate for delay without notice if the objective of the contract cannot be fulfilled due to the delay (*Article 545, Civil Code*). However, it is best practice in South Korea to expressly state a right to terminate for delay in the termination clause if the parties intend it.

52. If *Standard clause, Time is of the essence: Cross-border: clause 1* does have effect in your jurisdiction, are there any limitations to it?

Standard clause, Time is of the essence: Cross-border: clause 1 has effect in South Korea and there are no limitations to it.

53. For this clause to be effective in your jurisdiction, does the relevant time for performance need to be ascertainable?

A court would not hold that a time is of essence clause is invalid, as long as it finds that the relevant time can be or could have been reasonably ascertained by the parties.

Notices

54. Is service by email or other electronic means permitted in your jurisdiction? Is it common practice now for service of notices to be by email?

Yes, service of notice by email is permitted in South Korea. It is not uncommon for the service of notices to be done by email.

55. Is deemed receipt recognised in your jurisdiction so that the party serving the notice does not need to prove that the notice arrived or when it arrived (*Standard clause, Notices: Cross-border: clause 1.5*)?

Service of notice takes effect from the time it reaches the other party (*Article 111, Civil Code*). However, the parties can agree to deemed receipt; such agreement will have full effect because the law on service of notice is not a mandatory provision.

56. In your jurisdiction, if a change of address notice is quickly delivered and received, could it overtake and invalidate a notice already sent by a slower method to the previous address?

Service of notice takes effect from the time it reaches the other party, unless otherwise agreed by the parties in the contract (*Article 111, Civil Code*) (see [Question 54](#) and [Question 55](#)). Thus, if a change of address notice is delivered and received by the party before the slower notice by the party reaches the other party, the slower notice must be sent again to the new address in order for it to take effect.

57. In your jurisdiction, does the notice need to be in the local language in order for it to be valid? Does the notice need to be signed? Are there any other formalities with regards to the execution or delivery of the notice in your jurisdiction?

No, the notice does not need to be in Korean to be valid, and does not need to be signed. There are no specific formalities required for the execution or delivery of the notice but registered mail is frequently used because it is easy to prove that the notice is actually received by the recipient if in dispute.

[Joint and] Several liability

58. Are the following options (as set out in [Standard clause, Joint and several liability: Cross-border](#)) available in your jurisdiction for setting liability of parties who owe the same obligations:

- a) Joint where each party is fully liable for the performance of the relevant obligation.
- b) Several where two or more parties make separate promises to another.
- c) Joint and several where two or more persons jointly promise to do the same thing and also severally make separate promises to do the same thing.

- d) Any other?

Options (a), (b) and (c) above are available in South Korea (but see [Question 60](#) for *Bulgabun* liability).

However, some statutes provide for limitations applicable to certain types of consumer contracts. Under the Act concerning Protection of Consumers in Electronic Trading Transactions, the seller in an electronic trading transaction, the party that received the payment, and the party that entered into a contract for sale of goods in an electronic trading transaction are required to bear "joint and several" liability if they are not the same person or entity. Under the Product Liability Act, if two or more parties are liable for the same loss, they are held liable "jointly and severally."

Other options for setting the liability of parties who owe the same obligations are possible if agreed by the parties. However, such cases are very rare.

59. Where one of the contracting parties is an individual what is the effect on joint obligations in your jurisdiction on the death of that party:

- a) Joint
- b) Several
- c) Joint and several where two or more persons jointly promise to do the same thing and also severally make separate promises to do the same thing.
- d) Any other?

Whoever inherits the deceased party's estate becomes liable for that party's financial obligations as they were. If there is a single inheritor, the joint liability will continue. If there are multiple inheritors, they will be severally liable in proportion to their shares.

However, an inheritor can choose to perform the obligations only to the extent of the estate received (*Article 1028, Civil Code*). Note that any obligation that is entirely personal to the deceased party cannot be passed on to anyone.

60. Is joint liability common in your jurisdiction? Does your national legislation address enforcement of joint liability?

Joint liability is not commonly used in South Korea, but joint and several liability is very commonly used.

The concept of joint liability as understood under US or UK law is not recognised in South Korea. However, *Bulgabun* liability, meaning "indivisible" liability, is recognised by law. Under *Bulgabun* liability, the claimant may elect to demand performance, in whole or in part of the obligation, against one of the obligors or all of them simultaneously or in succession (*Articles 411 and 414, Civil Code*).

The South Korean courts will respect joint liability that has arisen under a foreign law.

61. If the contract is silent, what liability would apply in your jurisdiction:

- a) Joint where each party is fully liable for the performance of the relevant obligation.
- b) Several where two or more parties make separate promises to another.
- c) Joint and several where two or more persons jointly promise to do the same thing and also severally make separate promises to do the same thing.
- d) Any other?

Under the Civil Code, in principle, each of the co-obligors bears the equal portion of the relevant liability unless there is a specific expression of intention otherwise (*Article 408*).

However, each of the co-obligors may be deemed to bear all liability simultaneously if the court, taking into consideration all relevant circumstances, finds it reasonable to interpret that they agreed to bear *Bulgabun* liability. For example, the Supreme Court held that if the co-owners of a building lease it and receive a deposit, the obligation to return such deposit constitutes *Bulgabun* liability (*Supreme Court Decision Case No. 98Da43137, 8 December 1998*) (see [Question 60](#) for the effect of *Bulgabun* liability).

62. In your jurisdiction, if liability can be joint or joint and several, does releasing one co-obligor from performance release all the other co-obligors, unless the contract provides otherwise?

If the contract is silent, in the case of *Bulgabun* liability, releasing one co-obligor from performance does not release any other co-obligor, whereas, in the case of "joint and several" liability, releasing one co-obligor from performance releases all the other co-obligors to the extent of obligation of the obligor whose liability is exempted. For the avoidance of doubt, the contract may provide otherwise.

Contributor details

Hee Chul Kang, Partner

Yulchon LLC

E: hckang@yulchong.com

Areas of practice: M&A, corporate, securities and labour & employment.

Hyeon Hwa Shin, Partner

Yulchon LLC

E: hhshin@yulchon.com

Areas of practice: M&A, corporate, insurance.

END OF DOCUMENT