# South Korea


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South Korea has not adopted a Uniform Commercial Code. Instead, most damages questions are governed by the Civil Act.

**A. Compensatory Damages**

**1. Damages For Tortious Acts**

Article 750 of the Civil Act establishes liability for damages generally arising from tortious acts. For liability to arise, the following conditions must be met:

(a) unlawfulness of the act;
(b) willfulness or negligence;
(c) damages; and
(d) causal connection between the act and the damage.

A victim who has suffered damage to their person, liberty or reputation may also recover non-economic damages from the person causing such injury.[1]

Pursuant to Article 752 of the Civil Act, a person who has caused the death of another person shall be liable for damages to the lineal ascendants, lineal descendants, and the spouse, even where no economic damages exist as a result thereof.[2]

### 2. Damages For Breach of Contract

If one party's breach of contract causes damage to the other party, the breaching party must compensate the non-breaching party for that damage. The scope of the compensation for a breach may be stipulated in the contract. In such case, the scope of damages will be governed by the provisions of the contract.

However, if the contract does not specify the obligation to compensate for damages or address the scope of the compensation in the event of damage, then liability for damages will be determined in accordance with the provisions of the Civil Act.

According to the Civil Act, the party in default is required to compensate for damages arising from non-performance of obligations.[3] Non-performance of obligations includes performance delay, impossibility of performance, and partial performance.

### 3. Scope of Compensation

Pursuant to the Civil Act, the scope of compensation for damages shall be limited to ordinary damages,[4] and the obligor is responsible for paying damages that have arisen through special circumstances only if the obligor had foreseen or could have foreseen such circumstances.[5]

Ordinary damages are damages that are generally considered to be those that typically arise from the type of breach of contract that occurred, based on general business practices or common experience in society, unless there are special circumstances.

## B. Consequential and Incidental Damages

The Civil Act contains no specific reference to “consequential” damages. However, damages that have arisen based on the individual and specific circumstances of the parties are referred to as special circumstances.[6] Damages that have

[1] Civil Act, art. 751.

[2] Civil Act, art. 752.

[3] Civil Act, art. 390.

[4] Civil Act, art. 393(1).

[5] *Id.* at (2).

[6] *See* Sup. Ct., Dec. 24, 2008, 2006Da25745; Sup. Ct., July 9, 2009, 2009Da24842.

arisen through special circumstances are the Korean equivalent of consequential and incidental damages.

## C. Punitive Damages[7]

Punitive damages clauses are permitted in Korea for the purpose of ensuring compliance with contractual obligations. Punitive damages may be claimed under such clauses when a breach of the contract occurs, regardless of whether there are actual damages.[8]

Unlike liquidated damages provisions, punitive penalties specified in a contract cannot be reduced under Article 398(2) of the Civil Act.[9] They can only be nullified wholly or partially when such punitive damages agreement is determined to be contrary to good morals and other social order under Article 103 of the Civil Act.

## D. Liquidated Damages

The main role of liquidated damages is to specify in advance the exact compensation sum a breaching party must pay in the event it is unable to fulfil its contractual obligations.

Unlike punitive penalties, excessive liquidated damages are subject to a reduction by the courts under Article 398(2) of the Civil Act.

## E. Pre- and Post-Judgment Interest

In Korea, prejudgment interest accrues from the date the payment becomes due. Unless an interest rate has been previously agreed upon by both parties the statutory interest arising out of commercial activities is 6% annually for commercial civil claims,[10] and 5% annually for most non-commercial civil claims, such as

[7] Punitive penalties exist and are applicable to breaches under Korean contract law. However, punitive damages/penalties are not recognized on Korean tort claims, unless a specific statute stipulates the contrary.

[8] In Korea, there have been a number of cases where the courts have debated whether certain unclear contract clauses were more properly considered to provide for recovery of punitive damages or of liquidated damages. When preparing a contract, making a clear distinction between liquidated damages and punitive penalties is important if the parties wish to ensure that they may recover punitive damages in the event of a breach.

[9] Sup. Ct., July 21, 2022, 2018Da248855.

[10] Commercial Act, art. 54.

claims arising out of contracts between individuals.[11]

In the event litigation is necessary to cause payment to occur, the governing statute for pre- and post-judgment Interest is the Act on Special Cases concerning Expedition of Legal Proceedings ("ACCE"). The aim of this act is to incentivize and expedite legal proceedings involving payment disputes by stipulating post-judgement interest rates that are quite high. In the event of a monetary judgement obtained through litigation, the interest rate in Korea is 12% annually, which accrues from the day after the complaint is served on the defendant. This amount will be added to a judgment, along with pre-judgment interest mentioned above from the date the payment became due to the day after the complaint was served on the defendant.

### F. Attorney's Fees

Pursuant to Article 98 of the Civil Procedure Act ("CPA"), the losing party should cover litigation of the costs incurred by the winning party. Article 109(1) of the CPA specifically states that a portion of the fees of the "winning party's attorney must be directly reimbursed by the losing party." However, attorney's fees are determined not based on the actual legal expenses incurred by the winning party but in accordance with the Supreme Court Rule regarding the Calculation of Legal Fees of Litigation Costs. Under the formula used therein, the attorney's fees that can be recovered by the winning party range from 0.2% to 10% of the litigation value, which is based on the amount requested by the plaintiff (Article 3).

### G. Reliance Damages

The Civil Act explicitly states that in cases of impossibility of performance, if a person enters into a contract knowing or being capable of knowing that its purpose is impossible to achieve, then that person must compensate the other party for the damages incurred if the other party relied on the contract's validity.[12]

However, the Supreme Court's stance on reliance damages remains somewhat unclear. The Supreme Court has held that when claiming contract damages due to non-performance, the general principle is to compensate for the plaintiff's expectation interest, which refers to the benefit the plaintiff would have received from the contract being

[11] Civil Act, art. 379. The term "commercial activities" refers to activities conducted as a part of business operations. Commercial Act, art. 46. Activities conducted by a merchant for the purpose of his/her business shall be deemed commercial activities. Commercial Act, art. 47(1). Any claims that do not arise from commercial activities generally would be considered non-commercial civil claims.

[12] Civil Act, art. 535(1).

performed.[13] However, the plaintiff may alternatively claim damages for its reliance interest, which includes expenses incurred in reliance on the contract being performed. Ordinary expenses typically incurred for contract formation, and performance are considered general damages and can be claimed regardless of whether the other party was aware or could have been aware of them. However, additional expenses beyond these ordinary costs constitute special damages and can only be claimed if the other party knew or should have known of the special circumstances. Reliance damages cannot exceed the expectation damages interest, in accordance with the principle that excessive compensation should be avoided.

**H. Unjust Enrichment**

In Korea, "unjust enrichment" and its consequences are defined under Article 741 of the Civil Act: "A person who without any legal ground derives a benefit from the property or services of another and thereby causes loss to the latter shall be bound to return such benefit." Amounts due as unjust enrichment amounts may be returned to the plaintiff in the following circumstances:

- if an enriched individual is unable to return the enriching object itself, they must return the value of the object;[14]
- if the enriched individual is unable to return the benefit themself, a third party who has gained benefits gratuitously from the enriched individual will be liable to return the benefits;[15]
- the enriched individual, if they have acted in bad faith, must return the benefits with interest, and if any damage was caused to the plaintiff, the enriched defendant must also compensate for such damages incurred;[16]
- if the enriched individual, after receiving the benefit, becomes aware that no legal ground existed for them to receive that benefit, then such individual is obliged to return the benefit as of that time and failure to do so from that point

[13] *See* Sup. Ct., April 28, 1992, 91Da29972; Sup. Ct., June 11, 2002, 2002Da2539.

[14] Civil Act, art. 747(1).

[15] *Id*. at (2).

[16] Civil Act, art. 748(2).

forward will be considered acting in bad faith;[17] and

- an individual enriched in good faith will, if they lose in a lawsuit, be deemed an individual enriched in bad faith from the moment the action was filed.[18]

## I. Unique Remedies

Korea has a procedure which enables a plaintiff to obtain a provisional attachment on the assets of a potential defendant before initiating litigation or an international arbitration action. This procedure is initiated by filing an application with a court and identifying assets owned by the potential defendant. Typically, attachable assets may consist of real estate, bank accounts, movable property, and/or intellectual property. Prior to the grant of provisional attachment, the court will require the plaintiff to deposit security with the court in the form of cash or a bond.

[17] Civil Act, art. 749(1).

[18] *Id.* at (2).