Construction Law & Practice

Jurisdictional comparisons

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General Editors: Clive Lovatt and Edward Banyard Smith
Farrer & Co LLP
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South Korea

Kim & Chang  Byung-Woo Im & Joel E. Richardson

1. CONSTRUCTION INDUSTRY OVERVIEW FOR THE JURISDICTION

1.1 Comment on the size and importance of the construction industry (eg what is its size in relation to the GDP of the jurisdiction? How many people does the industry employ? Is the industry profitable?)
As of the second quarter of 2010, the construction industry in Korea constituted approximately 6.1 per cent of Korea’s gross domestic product. The industry employed 7.5 per cent of the gross working population. However, due to a decline in the housing market and large-scale civil works in 2009 and 2010, the volume of domestic construction projects decreased. This decrease consequently motivated numerous domestic construction companies to develop and participate in foreign markets.

1.2 Is it a local domestic industry? Does it have international reach? Do overseas contractors and professional consultants operate in the jurisdiction?
Korean construction companies entered foreign markets in the 1970s and have recently become more aggressive in entering foreign markets due to the slowdown in the domestic construction sector. As a result, for the first time in Korean history, the annual total value of construction orders received from abroad was reported to have exceeded $70 billion in 2010. While the expansion of construction companies was concentrated in the Middle East in the past, companies are now trying to pursue diversification by entering into the Southeast Asia, Central Asia, Africa, and Central and South America markets.

Foreign construction companies and professional consultants are participating in construction within Korea, generally on an individual project basis, and it is difficult to find cases where foreign construction companies or professional consultants have branches or offices established and permanently stationed within Korea.

1.3 What are the challenges to/difficulties experienced by construction clients seeking to undertake works in the jurisdiction?
There have been many cases where the site survey (which is conducted before entering into a building/civil engineering contract) is not performed in sufficient detail. This results in changes having to be made to the construction design during the construction period. Also, there are an increasing number of civil complaints filed against construction projects. Such circumstances are factors that increase the cost of construction. However, the majority of building/civil engineering contracts for domestic projects do not specify in detail which party bears the risk of such increase in cost. As a consequence,
such burden of risk is placed upon the contractors in accordance with the general principles established under the Korean Civil Code.

The increased cost of labour is also a consideration. During the past 10 years, Korea has been implementing the five-day working week on a gradual basis, starting with the largest companies. Currently, smaller companies with as few as 20 employees are bound to adhere to the five-day working week. Such changes have resulted in an increasingly expensive labour force, pushing up costs for the subcontractors and contractors. Further, using foreign labour for construction projects in Korea is increasing, which raises additional issues regarding site management.

1.4 What are the current trends in the industry?

Since the global credit crisis, and the decline in the domestic housing market and large-scale civil projects, which are supported by project financing (ie, public-private partnership projects), the domestic construction sector is currently quite stagnant. In addition, construction projects ordered by the government are mostly implemented on a competitive bid basis and thus profitability is not high. Moreover, turnkey-based projects, which are relatively high in profitability, are mostly undertaken by the top 10 largest construction companies, which aggravates the financial difficulties of medium-sized and small companies.

As an alternative to overcoming the difficulties in the domestic market, many construction companies are focusing their efforts on developing their business in foreign markets. While the focus in the past was mainly on construction of plants in the Middle East, companies are currently expanding to include construction of power plants, and large-scale civil construction and engineering. Additionally, as mentioned above, companies are also expanding into Southeast Asia, Central Asia, Africa, Central and South America, etc. The United Arab Emirates nuclear power plant project, for which the contract was obtained in 2010, is a typical example of this expansion.

1.5 What competition laws affect the industry? How are they enforced and is regulation effective?

The most significant effect of competition law (ie the Fair Trade Act) on the construction industry in Korea is through sanctions against cartels. Acts, such as price fixing or bid rigging, constitute violations of the Fair Trade Act, and potential sanctions include administrative fines, criminal fines and/or imprisonment. The employer can also file a civil claim for damages arising from such cartels. Further, if a cartel is found in public projects ordered by a governmental institution or local government, the companies participating in the cartel will be barred from future public bids for a certain period. Recently, the number of cases involving prosecution and punishment under the Fair Trade Act for bid rigging has steadily increased. It is believed that the above regulations are an effective means of restraining illegal cartels.

1.6 Does bribery, the making of ‘facilitation payments’ or other corruption exist in the industry? What bribery/anti-corruption laws
apply to the jurisdiction? How are those laws policed? Is this effective?
In Korea, competition amongst construction companies has been fierce, whereby in the past, the sector was often operated through corrupt practices, such as bribery and express charge payments. In this regard, in addition to the Criminal Code, which regulates corrupt practices such as bribery in general, other special laws, such as the Framework Act on Construction Industry, regulate corrupt practices in the construction industry. Under those laws, if an individual is found guilty of bribery or payment of an illegal express charge, a heavy punishment, such as confinement or imprisonment, etc is imposed. Additionally, the construction company to which the individual belongs is subjected to administrative punishment, such as suspension of business, debarment from future public bids, administrative fines and criminal penalties. Those measures are said to be effective, in that the past corrupt practices are being improved.

2. LEGAL OVERVIEW FOR THE JURISDICTION

2.1 Is the jurisdiction a ‘common law’ jurisdiction or is the law codified?
The Republic of Korea is a civil law jurisdiction.

2.2 Are there any specific construction laws or codes relating to the standards of design and work?
There are specific construction laws and codes that serve as standards for design and work. They include the Framework Act on Construction Industry, the Construction Technology Management Act, the Electric Construction Industry Act, and the Fire-Fighting System Installation Business Act.

2.3 What is the inter-relationship of statute/code and case law?
Like other civil law countries, statutes and codes are the primary source of law. Although case law may have persuasive value, it does not establish binding precedent in the same manner as in common law jurisdictions.

2.4 Is the national law subject to/influenced by any supervening authority (such as the European Union)?
There is no such supervening authority to which Korean law is subject.

2.5 In federal jurisdictions, what is the inter-relationship between state and federal laws?
The Republic of Korea is not a federation of states.

2.6 Are there registration or licence requirements for consultants or contractors carrying out business in the jurisdiction?
In order to carry out the construction business in Korea, one, in principle, must register with the Minister of Land, Transport and Maritime Affairs. On the other hand, if the business is a consulting business (eg an engineering firm), it, in principle, must report to the Minister of Knowledge Economy. Registration and reports will only be accepted if they meet certain requirements. In particular, one must pass an examination under the
Certified Architects Act in order to carry out a design or supervise a project under one’s own name.

2.7 Is there a specialist construction/civil engineering court and/or body of lawyers?
No.

2.8 Is there a limitation period (time limit) for claims arising from the design or construction of works?
A statute of limitations period of three years for general contract claims under the Korean Civil Code is generally applicable to claims arising from construction works. However, in the event of liability caused by defects in the constructed object, pursuant to the Framework Act on Construction Industry, a statute of limitations period ranging from one year to 10 years can be applied after taking into consideration the type of constructed object and the solidity thereof.

2.9 Are there any commonly used methods for contractors to manage risk (eg decennial insurance)?
Generally, contractors hold: (i) an industrial accident compensation insurance, which is mandated by law, which covers hazards of injury or death of workers on site during the construction period; (ii) an employer’s liability insurance which covers worker hazards not covered by the industrial accident compensation insurance; and (iii) a contractor’s all-risk insurance which covers any other hazards (eg hazard or danger as to the object of construction, risks against third parties, delay in construction work) during the construction period.

3. BUILDING AND CIVIL ENGINEERING PROCUREMENT STRATEGIES
3.1 What are the common methods of procurement (ie the structure of the contracts between all of the participants in a construction project) for the jurisdiction?
It has been common practice in the Korean construction industry that, in most construction projects, an employer separately enters into a build (construction) contract with a contractor and a design contract with a consultant (ie architect or engineer). However, the number of projects where design and building contracts or turnkey contracts are used is increasing, particularly in large-scale projects for plant or civil engineering or public-private partnership projects.

The methods of competitive bidding and private contract are mainly used to enter into construction contracts or sub-contracts. But among such methods, competitive bidding is more commonly used unless there are exceptional circumstances where the technical know-how or experience of a certain enterprise is necessary.

Unlike sub-contracts, construction contracts are more frequently entered into by a consortium consisting of several construction companies. In the
case of a consortium, regarding the liability against the client, there are two forms of contracts: one is a joint contract for joint performance, wherein all the members of the consortium bear joint and several liability with regard to the construction project as a whole; and the other is a joint contract for divided performance, wherein each member of the consortium only bears liability concerning a certain part of the work that it is responsible for. In either case, it is common practice to conclude a consortium agreement that regulates the rights and obligations among the consortium members.

3.2 What are the legal and commercial advantages and disadvantages of each method of procurement identified?
The legal and commercial advantages and disadvantages of the procurement methods discussed in 3.1 are similar to, if not the same as, those discussed in developed countries.

In addition, foreign bidders should consider that the bidding process has become quite complex in Korea, in an effort to prevent the collusive and anti-competitive behaviour that was prevalent in the past. Many projects also require that the bidder be licensed under the Framework Act on Construction Industry, and sometimes specifically demand past project experience in Korea. Such factors present special challenges to foreign bidders, making it difficult for them to participate directly in Korean projects alone. Given the complex legal and regulatory framework, foreign companies may wish to seek advice from experts or counsel with the relevant expertise in Korean projects.

3.3 What methods of procurement are most commonly adopted?
The most commonly adopted procurement method in construction projects is a build contract by competitive bidding. If the contract is a consortium, joint contracts for joint performance are mainly used.

3.4 Are early qualification or pre-qualification processes used in public and/or private construction projects? If so, describe how these work.
Article 13 of the Enforcement Decree of the Act on Contracts to Which the State is a Party mandates a pre-qualification review of the bidding participants for public construction projects. The review must consider the bidder’s capability to perform the contract, the level of difficulty in performing the contract, past record of performances, engineering capabilities, financial status, social credibility, sincerity in the performance of the contract, etc. Details regarding the pre-qualification review system are further explained in the Guidelines for Prior Review of Qualifications for Bidding, which are guidelines established by the Ministry of Strategy and Finance (please refer to www.mosf.go.kr).

Unlike public construction projects, a pre-qualification review system is not required as a matter of law in private construction projects. However, in many private construction projects, a pre-qualification review system is implemented by referring to and applying, a large portion of the
aforementioned guidelines. Thus, the pre-qualification reviews that are performed for private construction projects are in most cases similar to the public project pre-qualification reviews and have no significant difference.

3.5 How do contractors work (eg do they maintain a direct labour force and other in-house capability or is all work sub-contracted)?
In the past, construction companies performed construction projects directly through their own employees, but now the projects are performed mostly through sub-contracts.

4. BUILDING AND CIVIL ENGINEERING CONTRACTS/
FORMS OF APPOINTMENT
4.1 Are standard forms of building contract published? If so, by whom? What are they? How widely are they used?
If the government is a party to the contract (that is, the client), the General Terms and Conditions of Construction Contracts, a guideline established by the Ministry of Strategy and Finance (the GTC Guideline), are generally used as standard conditions for construction contracts, to which any special conditions addressing the specific needs of the individual construction project can be added. For building contracts awarded by local governments, the General Terms and Conditions of Construction Contracts with Local Governments, a guideline established by the Ministry of Public Administration and Security (please refer to www.mopas.go.kr), are also used as standard conditions, the terms of which are almost identical to those in the GTC Guideline.

The GTC Guideline is also widely used as standard conditions of contracts for private construction projects, in which case the general conditions are supplemented by adding special conditions that address the specific needs of the individual construction project.

However, for large-scale construction projects that involve foreign contractors or foreign lenders, an international standard form, such as the International Federation of Consulting Engineers (FIDIC), is occasionally used instead of the above guidelines.

4.2 Are standard forms of sub-contract published? If so, by whom? What are they? How widely are they used?
Various standard forms for sub-contracts, including the ‘standard form of sub-contract for construction business’ which was established by the Fair Trade Commission pursuant to the Fair Transactions in Subcontracting Act, are widely used (please refer to www.ftc.go.kr). In most cases, the standard form is not used as it is, but is used after modifying portions of the conditions to address the specific needs of the individual construction project.
4.3 What other standard form building and civil engineering documents (eg appointments and security documents) are published?

There are no other standard form contracts, aside from the aforementioned guidelines including the GTC Guideline, which are widely and commonly used. However, other form contracts in many cases include similar content which reflects the practices of the industry. In particular, various guarantees relating to construction/engineering contracts (eg advance payment guarantee, performance guarantee, etc), which are required by the Framework Act on Construction Industry, are generally issued by a small number of cooperatives established by construction companies or issued by the Seoul Guarantee Insurance Company. Thus, in practice, the forms set out by these cooperatives or Seoul Guarantee Insurance Company are used as standard forms.

5. ANATOMY OF A BUILDING/CIVIL ENGINEERING CONTRACT

5.1 What are the common constituent parts of a building or civil engineering contract?

The GTC Guideline includes terms and conditions for access to sites, supervision of works, commencement of works and report of progress, suspension of works, payment terms, design change, adjustment of contract sum, extension of time, liquidated damages, force majeure, inspection and completion of works, remedy of defects, various guarantees and insurance concerning the works, sub-contracting, termination of contracts, governing law, and a dispute resolution clause, etc.

Construction contracts generally consist of: (i) a simple one to two to page agreement which sets forth the parties, the project and price information and is sometimes called the ‘contract agreement’; (ii) special terms and conditions; (iii) general terms and conditions; (iv) drawings and technical specifications; and (v) other ancillary documentation such as the bill of quantities, instruction to bid, etc.

5.2 When and how does a contract become legally enforceable (ie how are contracts concluded)?

Under general principles of contract law in Korea, a contract is concluded and becomes valid when the intentions of the parties are in accord and the contract has a binding effect on the parties from the time of its conclusion, unless the parties attach a separate condition regarding the binding power of the contract. In addition, it is a general principle under Korean contract law that a contract need not be reduced to writing. Thus, the validity and binding power of a contract can be recognised through an oral agreement between the parties. However, in actual practice, it is usually perceived that an agreement between the parties is final and conclusive only when a contract is prepared in written form and the parties’ signatures and seals are affixed.

For building/civil engineering contracts, the parties are obligated to prepare a written contract pursuant to the Framework Act on Construction...
Industry. If the contract is not prepared in writing, an administrative fine will be imposed upon the parties.

5.3 What are the principal obligations of the client under a building/civil engineering contract (eg in relation to possession of the site, payment for the works, etc)?

The major obligations of the employer under the GTC Guideline are procurement and delivery of the site, approval of design change, payment for works, adjustment of contract sum or extension of time, inspection and takeover after completion of the project, etc.

5.4 What are the principal obligations of the contractor under a building/civil engineering contract (eg in relation to standard of performance, time for completion of the works, etc)?

According to the GTC Guideline, the contractor has a duty to complete the works by the stipulated completion date. Additionally, the contractor has the following obligations: provision of various guarantees (advance payment guarantee, performance guarantee, warranty, etc); provision of insurance against loss of construction; supply of construction materials; report on progress; notification to the employer if circumstances arise that require design change; payment of liquidated damages upon delay; and remedy of defects for a certain period after the completion of the works.

It is difficult to find standards for general performance in the GTC Guideline or other contracts used for domestic construction projects. However, the Framework Act on Construction Industry mandates the following general obligation: ‘A constructor shall observe the Acts and subordinate statutes on construction projects and construction services to ensure the quality and safety of installations, and shall perform his/her business faithfully in conformity with a design, specifications, and the relevant contract, etc’.

The time for completion of the works is in most cases specified in individual contracts.

5.5 Is it possible for the client to vary the works being undertaken? If so, how?

According to the GTC Guideline, design changes may be allowed if certain conditions are met, such as: (i) omission or inconsistency in the design; (ii) a discrepancy between the actual conditions of the site and that in the design; (iii) implementation of newly available construction methods that would allow for the shortening of the construction period or a decrease in costs; or (iv) in cases where the employer determines that a change in design is necessary and requests such a change. In general, design changes will occur upon the employer’s approval after receipt of the contractor’s written request. In the event the design change is made, the contract sum is adjusted according to a certain formula, however, such adjustment is technically not permitted if the changes are attributable to the negligence of the contractor.
5.6 What health and safety matters are addressed by the contract?
Most health and safety matters are generally dealt with in accordance with the relevant laws and codes as explained in section 9 below, rather than being included specifically in individual contracts. The relevant contents of the GTC Guideline are also limited, only including the following: (i) the report on commencement of work must include safety and environment management plan; (ii) the obligation to perform emergency measures to prevent disasters; and (iii) post-settlement of the national health insurance premium.

5.7 What insurances are required by law? Are any other insurances commonly required by the terms of building and civil engineering contracts?
Please refer to 2.9.

5.8 How does a building/civil engineering contract address the interests of third parties (such as banks providing funds for a project and occupiers of the completed project)?
Specific conditions regarding relationships with third parties are rarely included in domestic building/civil engineering contracts, and are also rarely included in the GTC Guideline. The GTC Guideline includes a general clause which states that damages incurred by a third party are, in principle, borne by the contractor, provided that the client bears responsibility in the event that such damages were not caused by the contractor. It is generally rare to find any stipulations that grant a type of direct agreement granting lenders the right to step in. If a civil complaint is filed by a third party, such as the occupiers of the completed project, there are very few cases where the building/civil engineering contracts obligate the employer to resolve such civil complaints. Also, in the absence of such specific provisions, it is generally the current practice for the contractor to deal with such civil complaints at its own cost.

5.9 Can a building/civil engineering contract be terminated before completion? If so, how?
According to the GTC Guideline, the employer can terminate the contract before the completion of the project by written notice to the contractor if certain conditions are met, eg: (i) where the construction cannot be completed due to a cause attributable to the contractor; (ii) where the liquidated damages amount to 10 per cent of the contract price; and (iii) where a tortious act, such as bribery, was committed in relation to performing the contract.

On the other hand, the contractor can terminate the relevant contract before the completion of the construction by written notice to the employer in the following cases: (i) where the initial contract amount has been reduced by 40 per cent or more due to the change in the design; or (ii) where the construction is suspended for a period of time that is 50 per cent or more of the entire construction period.
Upon termination of the contract, the contractor must immediately cease construction and evacuate the site. Meanwhile, the client must pay the contractor the progress payment for the portion of the works done until the date of termination, after deducting the advance payment that has not been returned by the contractor.

5.10 Is the law relating to sub-contracts different to that for the principal or head contract? If so, how?
In Korea, principal/head contracts are governed by the Framework Act on Construction Industry, the Construction Technology Management Act, and various laws which govern contracts to which the state is a party (in the case of contracts where a governmental institution is a party), etc. Sub-contracts are generally governed by Fair Transactions in Subcontracting Act, which is enforced by the Fair Trade Commission.

Pursuant to the Fair Transactions in Subcontracting Act, the terms and conditions of a sub-contract must be impartial for the purpose of protecting the sub-contractors. If there is a breach of the Act, the Fair Trade Commission may impose fines or seek criminal prosecution, etc. The main provisions of the Fair Transactions in Subcontracting Act are as follows: (i) prohibiting a sub-contract amount that is unreasonably low or discriminatory; (ii) prohibiting unreasonable coercion for provision of technical materials; (iii) the payment of a sub-contract payment guarantee to the sub-contractor; and (iv) granting the sub-contractor a right to directly claim against the employer for the payment of the sub-contract amount under special circumstances (eg in the event the contractor fails to pay the sub-contract amount on two or more occasions).

5.11 Are contractors fully responsible for the works and products of their sub-contractors and suppliers? Do clients have direct rights against sub-contractors and suppliers? Do sub-contractors and suppliers have direct rights against clients?
The basic principles of contract law in Korea are that the obligor bears all liabilities with respect to the acts conducted by the party assisting the obligor’s performance of its obligation, and this also applies to the acts of a sub-contractor or a supplier that assists the contractor in carrying out the construction works, unless otherwise agreed between the parties. Therefore, it is a principle that the contractor bears any and all liabilities concerning the construction works and equipment of sub-contractors and suppliers. According to Article 32(1) of the Framework Act on Construction Industry, a sub-contractor has the same obligation to the employer as the contractor does with respect to its sub-contracted construction work. Also, in the case of a supplier who supplied certain products, the supplier may be directly liable to the employer pursuant to the Product Liability Act. Accordingly, if the employer suffers damages due to the sub-contracted construction work or supplied products, it can be said that the employer can claim for damages directly against the sub-contractor and the supplier. On the other hand, if the sub-contractor and the supplier fall under the sub-contracting
prescribed in the Fair Transactions in Subcontracting Act, they can claim for sub-contract payment directly against the employer in certain circumstances (see 5.10).

6. ANATOMY OF AN APPOINTMENT OF A PROFESSIONAL CONSULTANT (ARCHITECTS, ENGINEERS, ETC)

6.1 What are the common constituent parts of a consultant’s appointment?

In the case of contracts to which a governmental institution is a party, each government authority drafts its own individual general terms and conditions based on the General Terms and Conditions on Service Contracts, a guideline established by the Ministry of Strategy and Finance (the GTCS Guideline). The contracts are executed by way of adding special conditions addressing the specific needs of the individual (construction) project to such general terms and conditions. In the case of a construction project awarded by a local government, the relevant local government authority drafts its own general terms and conditions based on the General Terms and Conditions of Service Contracts with Local Governments, a guideline established by the Ministry of Public Administration and Security.

Even in the case of private construction projects, the above GTCS Guideline is referred to when preparing the contracts. However, the GTCS Guideline is less widely used compared to the GTC Guideline in construction contracts, and the terms and conditions of service contract may be different depending on the individual project or the parties to the contract.

The GTCS Guideline includes terms and conditions for commencement of service and report of progress, suspension of service, payment terms, modifications to the details of the service, adjustment of the contract sum, extension of time, liquidated damages, force majeure, inspection and completion of service, various guarantees concerning the works, termination of contracts, governing law, and a dispute resolution clause, etc.

6.2 What are the principal obligations of the client under a consultant’s appointment (eg to provide information, to pay for the services, etc)?

The major obligations placed upon an employer under the GTCS Guideline are inspection and takeover after completion of the project, approval of extension of time under special circumstances (eg force majeure), and making payment for the service, etc.

6.3 What are the principal obligations of the consultant under a consultant’s appointment (eg the standard to which the services are provided, the timing of the performance of services, etc)?

According to the GTCS Guideline, the service provider (including consultants), in principle has a duty to complete the purpose of the relevant contract by the stipulated completion date. Additionally, the service provider is obligated to provide various guarantees (contract guarantee, performance guarantee, etc), report the progress of the works and pay
liquidated damages upon delay in the construction, etc.

It is difficult to find standards for general performance in the GTCS Guideline or other contracts used for domestic construction projects. However, the Construction Technology Management Act provides that a service provider relating to construction, including an engineer and architect, ‘shall perform its duty faithfully and justly in accordance with the relevant laws and regulations’.

The due date for completion is, in most cases, specified in the individual contracts.

6.4 Who owns the intellectual property (eg copyright) in the work of a designer?

Article 35 of the GTCS Guideline provides: ‘The employer can, for the sake of its interest, reproduce, use or disclose all or a portion of various reports, information and other materials submitted by the contractual counterparty pursuant to the provisions under the contract and the technical know-how obtained therefrom, after obtaining consent of the counterparty to the contract’. This provision is interpreted to be on the premise that the intellectual property right with respect to the design drawings, etc is with the counterparty to the contract and not the employer. However, in practice, there are an increasing number of cases where the parties, by mutual agreement, agree to have the employer hold such intellectual property rights.

6.5 What health and safety matters are addressed by a consultant’s appointment?

Most health and safety matters are generally dealt with in accordance with the relevant laws and codes as explained in 9 below, rather than being included specifically in individual contracts.

6.6 What insurances are required by law? Are any other insurances commonly required by the terms of a consultant’s appointment?

The requirements are similar to those concerning building/civil engineering contracts (see section 5.7). In the case of industrial accident insurance, it is not required for a consultant or engineer who provides services in his/her personal capacity only, but is required where the consultant or engineer provides services through a firm working in conjunction with other employees of such firm.

6.7 How does a consultant’s appointment address the interests of third parties?

The answer is similar to that of insurances concerning building/civil engineering contracts (see 5.8).

6.8 Can a consultant’s appointment be terminated before completion? If so, how?

The answer is similar to that of insurances concerning building/civil engineering contracts (see 5.9).
7. DISPUTES

7.1 How are disputes resolved? Are the principal dispute resolution methods effective (in terms of cost, time and providing access to justice)? Is there a system specifically for resolving construction disputes?

Construction disputes in Korea are resolved by: (i) negotiation among the parties; (ii) court litigation; (iii) mediation by the court; and (iv) arbitration. The frequency of resorting to the mediation (by private mediator)/arbitration system is comparatively lower than that of common law countries (eg the US, the UK, etc). The Framework Act on Construction Industry introduces a Construction Dispute Conciliation Committee, as a non-binding mediation body, however, it is not widely used in actual practice. Thus, construction disputes are usually resolved through court mediation or litigation if they are not settled by negotiation between the parties. In this case, there is no particular problem in terms of justice, since a judge, an independent and impartial third party, becomes involved in the resolution of the dispute. However, in terms of the specialty and efficiency in resolving construction disputes, there may be certain limitations.

7.2 Is Alternative Dispute Resolution (ADR) used? If so, identify any industry bodies promoting the use of ADR.

Although the industry often uses court mediation to resolve disputes, a Dispute Review Board and other ADR systems are not commonly used.

8. SECURITY DOCUMENTS

8.1 Identify the security documents which are common to construction and civil engineering projects. In relation to each form of security identify the party giving the security, the party receiving the benefit of the security and the purpose of the security.

Securities commonly used in building/civil engineering contracts are as follows:

- **Bid bond**: a security that is provided to the employer by the bidder. It is a guarantee of the bidder’s performance of its obligation to pay the deposit money for a bid that is borne by the bidders when participating in a bid. This is generally a requirement for public procurement. Also, it is to guarantee the successful bidder’s conclusion of a contract with the employer.

- **Contract guarantee or performance guarantee**: a security that is provided to the employer by the contractor in order to guarantee the performance of its obligations under the contract.

- **Warranty**: a security that is provided to the employer by the contractor in order to guarantee the performance of its obligation to remedy any defects that may occur after the completion of the construction works.

- **Advance payment guarantee**: a security that is provided to the employer by the contractor in order to guarantee the contractor’s obligation to return the advance payment it received at the initial stage of entering into the contract.
• Sub-contract performance guarantee: a security provided to the contractor by the sub-contractor in order to guarantee the performance of various obligations that the sub-contractor bears.
• Sub-contract payment guarantee: a security provided to the subcontractor by the contractor in order to guarantee payment of the sub-contract amount.

9. HEALTH AND SAFETY AND EMPLOYMENT LAW

9.1 What health and safety laws exist?
The Occupational Safety and Health Act, concerning provision of the work environment for workers’ health and the prevention of industrial accidents, and the Industrial Accident Compensation Insurance Act, concerning industrial accident compensation insurance, are laws that serve as the basis for the preservation of health and safety in construction works.

9.2 Is health and safety a significant issue for the industry?
If health and safety problems arise, risks as described in 9.3 below can occur. Also, the industrial accident rate is a criterion for assessment during the bid process for construction projects implemented by government and public agencies. Such rate is also considered in many bids for construction projects implemented by private parties. Therefore this is an important issue in the construction industry.

9.3 What risks does a client face in relation to health and safety?
A contractor can be subject to criminal punishment for the occurrence of an industrial accident if it failed to take measures under the Occupational Safety and Health Act as mentioned in 9.4 below, or the contractor may have to bear civil liability for damages. Furthermore, it may be subject to an administrative punishment of suspension of business if a serious industrial accident occurs.

9.4 What matters should a client address in relation to health and safety?
The major actions that a contractor must take in relation to health and safety under the Occupational Safety and Health Act are as listed below. However, the detailed scope of such measures may differ depending on the type or scale of the relevant construction work:
• appointment of a person in charge of safety and health management and establishment of an occupational safety and health committee;
• establishment of safety and health management regulations;
• measures to prevent risks when performing dangerous work;
• regular employee training regarding safety and health; and
• submission of progress safety reports and plans for prevention of harm and danger to the Minister of Labour.
9.5 Are workers in the construction industry generally members of trade unions? Do the unions effectively represent their members?
Although permitted under the laws and regulations, there are not many cases where such labour unions are formed at the construction site. Whether a labour union formed actually represents the workers who are the members of the union will depend on a case-by-case basis, and it is difficult to make generalisations.

9.6 What ‘employee burden’ do clients face (eg social costs and employment rights)?
There may have been some employee burdens in the construction industry such as employment rights or education/training, but it is understood that such burdens are not a serious problem, at least for now.

10. PUBLIC PROCUREMENT
10.1 What laws govern how public bodies choose their contractors and consultants?
When public bodies choose their contractors and consultants, the following are the general laws which govern government contracts and construction projects: the Act on Contracts to Which the State is a Party; the Act on Contracts to Which a Local Government is a Party; the Framework Act on Construction Industry; and the Construction Technology Management Act. The Ministry of Strategy and Finance or the Ministry of Public Administration and Security is delegated under such laws to be the competent authority to establish specific regulations and guidelines, such as the GTC Guideline and GTCS Guideline.

10.2 Are public construction works procured on standard industry forms or upon particular forms for government works?
For public construction projects, the GTC Guideline and the GTCS Guideline are commonly used. Such general conditions for contracts are also widely used in non-governmental construction works.

10.3 Is public procurement a significant source of work for the construction/civil engineering industry?
Public construction works have formed a substantial portion of the Korean construction industry. It is reported that in 2010, the value of public procurement in the construction industry was approximately KRW40 trillion, while that of private procurement was KRW70 trillion. Such figures are expected to be similar in 2011.

10.4 Are there particular or unusual issues in undertaking public procurement?
None.
11. OTHER JURISDICTION SPECIFIC MATTERS

11.1 Comment on any other matters of importance to the construction industry/construction law which are specific to your jurisdiction or which are not addressed under any other heading.

As in other civil law countries, except for a limited number of large construction companies that have gained experience in foreign countries, employers or contractors in Korea are not familiar with western-style construction contracts and the underlying legal principles. Thus, when a foreigner negotiates a construction contract with a Korean party, it is necessary to ensure that the parties have the same understanding.