



Cross-Border Insolvency: Implications of the Hanjin Shipping Bankruptcy

Seoul, Korea

Tuesday, April 24, 2018

Presented by:

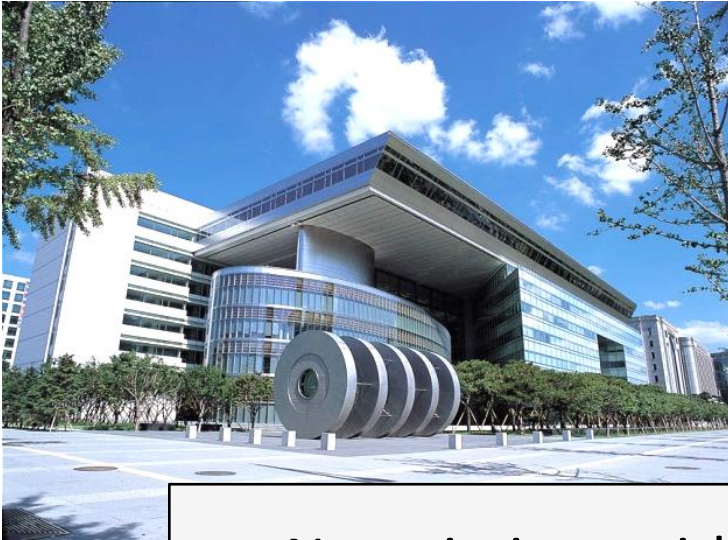
Mark Bloom, Greenberg Traurig, P.A., Miami. Moderator

Chief Judge Cecelia G. Morris, United States Bankruptcy Court, Southern District of New York

Chief Presiding Judge June Young Chung, Seoul Bankruptcy Court

Sy Nae Kim, Yulchon, Seoul

Background on Hanjin Situation



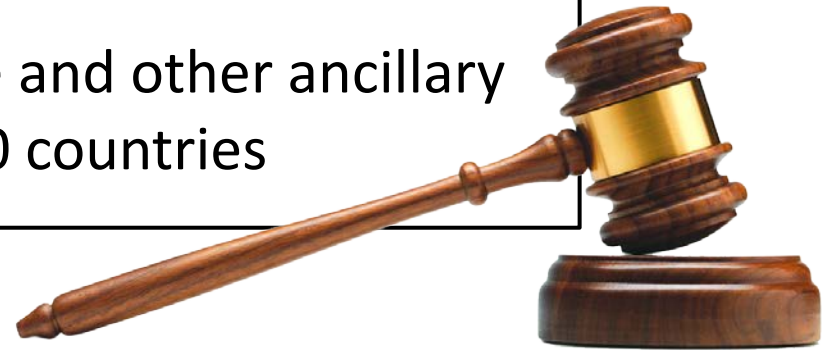
- ❖ Negotiations with existing and potential lenders and Korea Development Bank
- ❖ Commencement of receivership/rehabilitation proceeding in Korea

Korean Rehabilitation Scheme as Updated by the Revised DRBA

- ❖ Overview of Korean rehabilitation scheme
- ❖ Updated by revised DRBA
- ❖ Similarities and differences to U.S. Chapter 11
 - Scope of stay and lien enforcement rights of secured creditors
 - Ability to obtain financing for operations in course of rehabilitation proceeding v. Chapter 11
 - Financial reporting and “transparency”

Hanjin Rehabilitation Proceeding

- ❖ Initial proceedings before Korean court
- ❖ Efforts to obtain funding from various sources
- ❖ Filing of U.S. Chapter 15 case and other ancillary proceedings in as many as 40 countries



Overview of UNCITRAL Model Law

- ❖ Codified as Chapter 15 of U.S. Bankruptcy Code
- ❖ Objectives and basic procedures
 - Recognition and relief
 - Foreign main v. foreign non-main proceeding
 - COMI
- ❖ Availability of Chapter 7 or 11 in event greater relief than available in Chapter 15 is needed

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Objectives and Perspectives in Korea and U.S. Proceedings

- ❖ Different case objectives
- ❖ Different parties in interest
 - Financial interests of creditors in Korea
 - Strategic interests of contract parties and maritime creditors in U.S.
 - Different objectives
- ❖ Issues faced in each proceeding
 - “Seasonal urgency” in U.S.
 - Transparency and availability of financial and other information

Perspective of U.S. Maritime Lawyer

- ❖ Right of maritime lienholders to relief notwithstanding commencement of Chapter 15 case
- ❖ Scope and effect of stay
- ❖ Exercise of remedies
 - Arrest of ships
 - Detention of ships in port to preserve maritime lien rights

Outcomes in Korea and U.S. Proceedings

❖ Korea

- Rehabilitation to liquidation
- Administration and payment of all claims;

❖ United States

- Provisional relief to facilitate delivery of goods and release of ships to sea
- Recognition of Korean proceeding

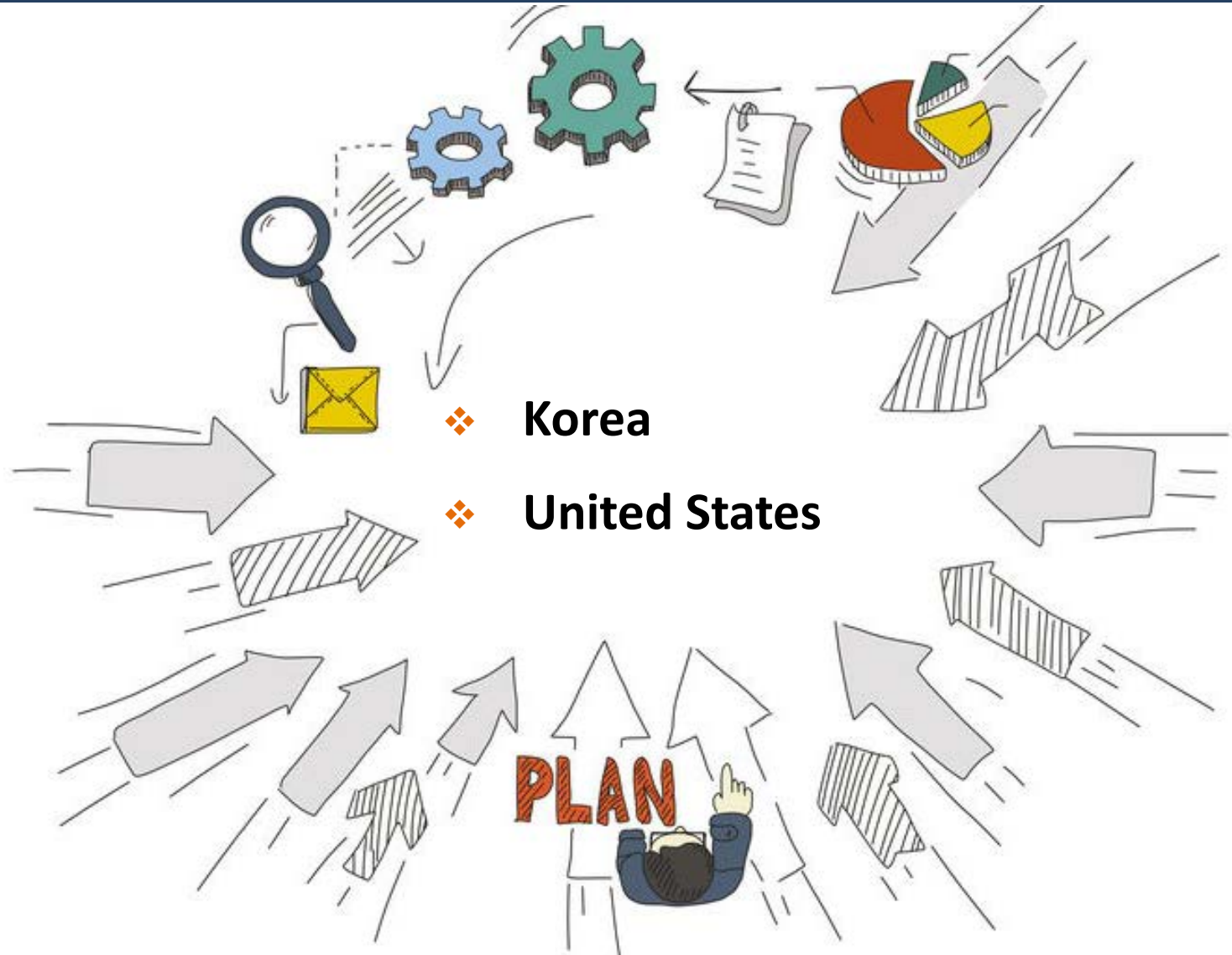
❖ Overall benefit of Korean and ancillary proceedings to facilitate delivery of goods in transit worldwide

Communication and Use of Court-to-Court Protocols

- ❖ Use and availability
- ❖ Potential benefits in case like Hanjin
- ❖ Judicial Insolvency Guidelines



Lessons Learned from Hanjin Experience



Questions From Audience



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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY
HONORABLE JOHN K. SHERWOOD
CASE NO. 16-27041 (JKS)
Chapter 15

In re:

HANJIN SHIPPING CO., LTD.,¹

Debtor in a Foreign
Proceeding.

**DECLARATION OF WAN SHIK LEE
NAM IN SUPPORT OF VERIFIED
CHAPTER 15 PETITION FOR
RECOGNITION OF FOREIGN MAIN
PROCEEDING**

I, Wan Shik Lee, pursuant to 28 U.S.C. § 1746, hereby submit this declaration (the “Declaration”) under penalty of perjury under the laws of the United States as follows:

1. I am an attorney licensed, and in good standing, to practice in the Republic of Korea. I am a member of the law firm of Lee & Ko, which is located in the Republic of Korea.
2. Lee & Ko has been retained by Hanjin Shipping Co., Ltd. (“Hanjin,” the “Company” or the “Debtor”) with the authorization of the Korean Bankruptcy Court (as defined below), to represent the Company as its primary counsel in its Korean rehabilitation proceeding

¹ The last four digits of Hanjin Shipping Co., Ltd.’s Business Registration Number are 1835. The Debtor’s main corporate and mailing address is Hanjin Shipping Bldg., 25 Gukjegeumyung-Ro 2-Gil, Yeongdeungpo-Gu, Seoul 07327, Korea.

and as Korean counsel in connection with this Chapter 15 case.

3. I have been practicing law in Korea for 6 years. The focus of my practice is litigation, bankruptcy, and corporate restructuring. I was educated in Korean law at Seoul National University. I graduated in 1988 with a bachelor's degree in law. I have extensive experience with bankruptcy and corporate restructuring cases in Korea.

4. This declaration is comprised of matters that are statements of legal opinion and/or statements of fact. Where the matters stated in this declaration are statements of legal opinion, such statements reflect Korean law based on my education and years of experience practicing Korean law in Korea. Where the matters stated in this declaration are statements of fact, they are either: (i) based on my personal knowledge, and are known to me to be true and accurate, or (ii) if not within my personal knowledge, are derived from documents and/or information supplied to me by or on behalf of the Petitioner Tai-Soo Suk ("Petitioner" or the "Foreign Representative"), an inside director and duly authorized foreign representative of the Company, and are true to the best of my knowledge, information, and belief.

5. I submit this declaration in support of the petition for recognition of a foreign main proceeding and related relief made pursuant to chapter 15 of title 11 of the United States Code (the "Bankruptcy Code").

6. The Company is a Korean Composite Stock Price Index (KOSPI)-listed company established in Korea. It is involved in shipping, port operating system development, harbor loading, unloading services, and other related services.

7. It is currently the largest shipping company in Korea, operating approximately 60 regular lines worldwide, with 140 container or bulk vessels. It is ranked as the world's ninth largest container shipping company, transporting over 100 million tons of

cargo per year. It also operates 13 terminals specialized for containers, two distribution centers and six Off Dock Container Yards (ODCY) in major ports and inland areas around the world. The Company is a member of “CKYHE,” a global shipping conference and also a partner of “The Alliance,” another global shipping conference to be launched in April 2017. The company’s website is <http://www.hanjin.com>.

The Korean Bankruptcy Proceeding

8. On August 31, 2016, the Company filed an application (the “Application”) under Korea’s Debtor Rehabilitation and Bankruptcy Act (as amended, the “HDRBA”). A copy of the Application is attached as **Exhibit A**.

9. The 6th Bankruptcy Division of the Seoul Central District Court (the “Korean Bankruptcy Court”) received the Application and on the same day entered provisional orders granting a general injunction and the preservation of disposition of the Company’s assets (the “Stay Order”). A copy of the Stay Order and English translation are attached as **Exhibit B**.

10. The Stay Order was effective pending the Korean Bankruptcy Court’s entry of the order commencing the rehabilitation proceeding with respect to the Company (“Commencement Order”), which was issued on September 1, 2016. The Commencement Order appointed the Authorized Representative to act as the Company’s custodian. A certified copy of the Commencement Order and English translation are attached as **Exhibit C**.

11. Upon entry of the Commencement Order, and in accordance with Article 74(3), 74(4) and 640 of the DRBA, Petitioner, as custodian, has the power to conduct all of the Company’s business, manage all of its property, and carry out relevant activities overseas for Korean bankruptcy purposes and procedures - all under the conditions prescribed by the relevant foreign legislation, subject to the Korean Bankruptcy Court’s supervision. Accordingly, the

Petitioner is authorized to act as “foreign representative” of the Company in this chapter 15 case.

Reasons for Korean Bankruptcy Filing

12. After the global recession and financial crisis following the subprime crisis in the United States in 2008, the global shipping business experienced a drastic decrease of transported goods. The subsequent recession in Europe and the economic slowdown in China prolonged the decrease in global shipping business.

13. Since 2012, the financial issues facing the global shipping industry were exaggerated by the excess supply in vessels that greatly exceeded the need for transported goods. These factors contributed to the Company’s poor financial performance.

14. Facing a liquidity crisis, the Debtor pursued negotiations with the council of creditor banks, including Korea Industrial Bank, the main creditor. The Debtor proposed a memorandum of understanding whereby the creditors would agree to suspend the exercise of their rights for three months, during which time the Debtor would propose a management recovery plan.

15. The Debtor, in negotiations with the creditors, agreed to form “The Alliance” and submitted a self-rescue plan providing for 400 billion KRW (\$1=1,1515 KRW) by liquidating terminals and company buildings and selling its trademarks, while continuing to negotiate reduction in freight charges.

16. Nevertheless, on August 30, 2016, the banks advised the Debtor of their decision to reject future financing. This ended the negotiations.

17. Accordingly, on August 31, 2016, the Debtor applied to the Korean Bankruptcy Court for the commencement of rehabilitation. On the same day, it requested and

was granted a general injunction and the preservation of disposition of the Company's assets.

The Court's decision to commence the rehabilitation was made on September 1, 2016.

Overview of Rehabilitation Proceedings under Korean Law

18. This section sets forth the parts of the DRBA that govern the Company's Korean rehabilitation filing and related rehabilitation proceeding. Under Article 34 of the DRBA,² the debtor company may file an application for commencement of a rehabilitation proceeding under the following circumstances: (i) such debtor cannot repay its debts as they come due without significantly burdening its business operations, or (ii) there is a likelihood that an event which may cause the debtor to become insolvent may occur. For circumstance (ii) above, a creditor or creditors holding claims amounting to ten percent (10%) or more of the company's paid-in capital or shareholders holding ten percent (10%) or more of the debtor company's total issued and outstanding shares also may file the application for commencement of a rehabilitation proceeding.

19. Upon commencement of the rehabilitation proceeding, new attachments by creditors of a debtor company's property are prohibited. DRBA Art. 58(1). Additionally, all current attachments by creditors on the debtor company's property are suspended. DRBA Art. 58(2). Also, upon commencement of the rehabilitation proceeding, litigation procedures against the debtor's assets shall be suspended. DRB Art. 59(1).

20. Upon commencement of the rehabilitation proceeding, in principle, the court will appoint a custodian. DRBA Art. 50. The court-appointed trustee is required to occupy, obtain, and manage the property belonging to the debtor company. DRBA Art. 89.

² The references cited herein are reference to the DRBA, an English translation of which is attached hereto as Exhibit D.

Generally, the rehabilitation trustee exercises discretion in managing and administering the debtor company's property. DRBA Arts. 56, 61, 89.

21. The creditors of a debtor subject to a rehabilitation proceeding are required to assert their claims in that proceeding. DRBA Arts. 147, 148. More specifically, upon the commencement of the rehabilitation proceeding, the trustee will prepare a list of the creditors' claims. If the claims are correctly specified in such list, the filing of proofs of claims will not be required. However, if the claims are not specified or specified incorrectly, the creditors must file their claims and proofs of claims within a period of time designated by the court. Thereafter, the trustee, the debtor and/or the rehabilitation creditors are entitled to inspect the existence, context and cause of filed and specified claims within a timeframe set by the court (the "Inspection Period"). If the trustee, the debtor, or a rehabilitation creditor does not accept the filing of a claim, the subject creditor must file an application for confirmatory action within one month from the last day of the Inspection Period. DRBA Art. 170(2).

22. Once a confirmatory action is filed, the court reviews the filing and gives its decision. Any party that objects to the court's decision may file an objection within one month from receipt of the decision, following which the case is moved to the ordinary court and is reviewed in accordance with ordinary civil procedure.

23. After a draft of rehabilitation plan is prepared and submitted by the trustee and/or rehabilitation creditors to the court, the interested parties meet to review the plan. Finally, the interested parties meet again to vote on the rehabilitation plan.

24. A rehabilitation plan may call for rescheduling of the debtor's debt over a period not to exceed, in principle, ten years, except when corporate debentures are issued pursuant to the rehabilitation plan. Any secured rehabilitation claims and unsecured

irrevocably extinguished even if the rehabilitation proceeding is subsequently terminated by the court.

25. In practice, if a debtor company completes the performance of its obligations under the rehabilitation proceeding or the court deems that the debtor company will perform its obligations without any problems, the court may terminate the rehabilitation proceeding with respect to the company at which point the company will no longer be subject to the proceeding. However, if the rehabilitation proceeding is discontinued due to the company's failure to comply with the rehabilitation plan and the grounds for bankruptcy exist, the court will terminate the rehabilitation plan and the grounds for bankruptcy exist, the court will terminate the rehabilitation proceeding and declare the company bankrupt.

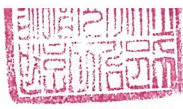
26. Generally, companies in rehabilitation under the DRBA have an opportunity to achieve a collective outcome that is generally beneficial to company stakeholders such as creditors, customers and employees.

27. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed at Seoul, Republic of Korea on September 2, 2016



Wan Shik Lee
Attorney at Law, Partner at Lee & Ko



[제41호 서식]

Registered No. 2017 - 313

NOTARIAL CERTIFICATE

KYUNG HYANG LAW NOTARY OFFICE
(2ga, Myung-Dong)64,Namdaemun-ro,
Jung-Ku, Seoul, Korea



TEL:(02) 752-4280

FAX:(02) 752-7815

**Seoul Central District Court
Bankruptcy Court (6th Division)
Decision**



Case No.: 2017 HaHap 15 Bankruptcy

Applicant and Debtor: Hanjin Shipping Co., Ltd.
659, Gonghang-daero, Gangseo-gu, Seoul, Republic of Korea
Legal Administrator: Suk Tai Soo

Date of Decision 2017. 2. 17. 09:40

Main Decision

1. This Court declares the Debtor bankrupt.
2. This Court appoints lawyer Jin Han Kim (Birth Date: July 8, 1956; Address: 11th Floor, 317, Teheran-ro, Gangnam-gu, Seoul, Republic of Korea) as the Trustee for the Debtor.
3. The term of office for the Trustee shall be until June 30, 2019.
4. The reporting period for the creditors' claims shall be until May 1, 2017.
5. The first creditors' meeting and the investigation for the claims shall be held on June 1, 2017 at 14:00 at the 1st court room located in Seoul Central District Court Complex, Annex 3.
6. The amount to be determined by this Court according to the proviso of Article 492 of the Debtors' Rehabilitation and Bankruptcy Act shall be KRW3 million.

Reason

1. Admitted facts

Based on the records relating to this case, it is hereby admitted that:

- A. The Debtor is a listed company mainly engaged in container shipping, bulk shipping, and terminal transportation. In the market where there was increasing price competition, the Debtor suffered from lack of liquidity due to the contraction in demand for shipping and oversupply of vessels;

The Debtor applied for voluntary creditor restructuring to KDB Bank, the principal creditor bank of the Debtor, on April 25, 2016, and the committee of creditor financial institutions resolved on May 4, 2016 to initiate the voluntary creditor restructuring procedures for the Debtor. However, the committee of creditor financial institutions informed the Debtor on August 30, 2016 that further support will be impossible, and that the voluntary creditor restructuring procedure was thereby suspended. Accordingly, the Debtor has reached financial default due to serious lack of liquidity. Thereafter, on August 31, the Debtor applied for commencement of rehabilitation proceedings, and this Court rendered the commencement order on September 1, 2016;

- B. According to the investigation report of the inspector dated December 13, 2016, while the liquidation value of the Debtor amounts to KRW1,798,000,000,000, its going concern value is impossible to calculate since it was uncertain whether the Debtor could continue its business;
- C. Therefore, this Court thereby rendered a decision on February 2, 2017 to discontinue the rehabilitation proceedings for the Debtor pursuant to Article 286(2) of the Debtor Rehabilitation and Bankruptcy Act which decision was finally confirmed on February 17, 2017.

2. Judgment and conclusion

According to the admitted facts above, as the Debtor is in a state where the Debtor would not be able to repay its debts, and the total amount of its liabilities exceeds the total value of its assets, and considering the possibility of the Debtor's survival as a normal company, delays in the payment of debts and potential unfair distribution among the interested parties including the creditors if private liquidation procedure is to be pursued, this Court has decided to declare the Debtor bankrupt pursuant to Articles 6(2)ii, 305, and 306 of the Debtor Rehabilitation and Bankruptcy Act. Further, this Court appoints lawyer Jin Han Kim as the Trustee for the Debtor pursuant to Article 355 and sets the date of the first creditors' meeting and the investigation for the claims pursuant to Article 312. In addition, this Court sets the standard amount applicable to acts subject to this Court's approval pursuant to the proviso of Article 492 as stated in the Main Decision.

Presiding Judge

Judge

Jun Young Jung

Judge

Tae Kyu Shim

Judge

Seung Hwan Cha



서울중앙지방법원

제 6 파 산 부

결 정

정본입니다.

2017. 02. 17.

법원주사 박길철



사 건 2017하합15 파산선고
 신청인겸 채무자 주식회사 한진해운
 서울 강서구 공항대로 659 (염창동, 도레미빌딩)
 관리인 석태수
 선고일시 2017. 2. 17. 09:40



주 문

1. 채무자 주식회사 한진해운에 대하여 파산을 선고한다.
2. 변호사 김진한[1956. 7. 8.생, 서울 강남구 테헤란로 317, 11층 (역삼동, 동훈타워)]을 파산관재인으로 선임한다.
3. 파산관재인의 임기를 2019. 6. 30.까지로 한다.
4. 채권신고기간을 2017. 5. 1.까지로 한다.
5. 제1회 채권자집회와 채권조사의 기일 및 장소를 2017. 6. 1. 14:00 서울법원종합청사 3별관 제1호 법정으로 한다.
6. 채무자 회생 및 파산에 관한 법률 제492조 단서의 금액을 300만 원으로 한다.

이 유

1. 인정사실

이 사건 기록에 의하면, 다음 사실이 인정된다.

가. 채무자는 컨테이너선을 통한 운송사업, 벌크선을 통한 운송사업 및 터미널 운영

※ 각 법원 민원실에 설치된 사건검색 컴퓨터의 발급번호조회 메뉴를 이용하거나, 담당 재판부에 대한 문의를 통하여 이 문서 하단에 표시된 발급번호를 조회하시면, 문서의 위, 변조 여부를 확인하실 수 있습니다.



사업을 주로 영위하는 상장회사로서 해운업계 전체의 운임경쟁이 격화되는 과정에서 해운 수요의 위축과 선박 공급과잉에 따른 영업실적 악화로 인하여 유동성 부족이 심화되었다.

채무자는 2016. 4. 25. 주채권은행인 한국산업은행에 자율협약절차를 신청하였고, 채권금융기관협의회가 2016. 5. 4. 자율협약절차를 진행하기로 의결하여 자율협약절차가 진행되었는데, 채권금융기관협의회가 2016. 8. 30. 채무자에 대한 지원이 불가능하다는 결정을 통보함에 따라 자율협약절차가 중단되었고, 이로써 채무자는 심각한 유동성 부족으로 재정적 파탄에 이르게 되었다. 이에 채무자는 2016. 8. 31. 회생절차개시신청을 하여 2016. 9. 1. 회생절차개시결정을 받았다.

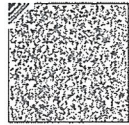
나. 조사위원의 2016. 12. 13.자 조사보고서의 기재에 의하면, 채무자의 청산가치는 1조 7,980억 원인 반면, 계속기업가치는 계속기업의 가능성이 불확실하여 산정할 수 없는 것으로 나타나고 있다.

다. 이에 이 법원은 2017. 2. 2. 채무자 회생 및 파산에 관한 법률 제286조 제2항에 의하여 회생절차를 폐지하는 결정을 하였고, 위 결정은 2017. 2. 17. 확정되었다.

2. 판단 및 결론

위 인정사실에 의하면 채무자에게는 지급불능 및 부채 초과와 파산원인 사실이 있고 이 사건 기록에 의하여 드러난 채무자의 업무 현황, 정상기업으로서의 존속 가능성, 사적 청산절차에 의할 경우 예상되는 채권회수의 지연과 채권자 등 이해관계인들 사이에 발생할 수 있는 불공정한 배분결과 등 여러 사정 등을 종합적으로 고려하여 채무자에 대하여 채무자 회생 및 파산에 관한 법률 제6조 제2항 제2호, 제305조, 제306조를 적용하여 파산을 선고하기로 하고, 파산관재인을 선임하는 것은 같은 법 제355조를 적용하여 변호사 김진한을 선임하며, 채권신고기간·제1회 채권자집회의 기일 및 채권조사 기일에 관하여는 같은 법 제312조를, 법원의 허가대상행위의 기준금액에 대하여는 같은 법 제492조 단서를 각 적용하여 주문과 같이 결정한다.





재판장

판사

정준영



판사

심태규



판사

차승환




위 번역문은 원문과 상위 없음을
서약합니다.

I swear that the attached translation
is true to the original.

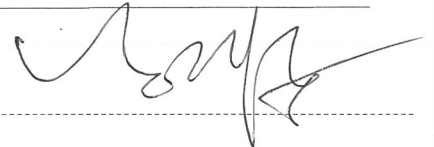
2017. 02. 21.

2017. 02. 21.

서약인

남기돈 

Signature



등부 2017년 제 313호

Registered No. 2017 - 313

인 증

Notarial Certificate

위 남기돈은

NAM, GIDON

본 공증인의 면전에서 위 번역문이
원문과 상위 없음을 확인하고
서명 날인하였다.

personally appeared before me,
confirmed that the attached
translation is true to the original
and subscribed his(her) name.

2017년 02월 21일

This is hereby attested on this
21 day of Feb., 2017
at this office

이 사무소에서 위 인증한다.

공증인가 경향합동법률사무소
소 속 서울중앙지방검찰청

**KYUNG HYANG
LAW NOTARY OFFICE**
Belong to the Seoul Central District
Prosecutor's Office

서울 · 중구 남대문로 64 (명동2가)

(2ga, Myung-Dong)64, Namdaemun-ro,
Jung-Ku, Seoul, Korea

공증담당변호사

Signature of the Notary Public

KIM MOON SU

This office has been authorized by
the Minister of Justice, the Republic
of Korea, to act as Notary Public
Since 1st day June, 1979. under
Law No.2254

Korean Corporate Rehabilitation Proceedings and Cross-Border Insolvency

- From the Perspective of the Hanjin Shipping Bankruptcy Case

June Young Chung,¹ Sy Nae Kim²

I. Introduction

The 1997 Financial Crisis in South Korea brought a significant increase in the number of insolvent businesses and individuals seeking court assistance to restructure their debt or to liquidate. At the time, provisions governing corporate restructuring, individual restructuring, and liquidation were scattered in separate laws with different scope of applicability, bringing rise to confusion and inefficiency. Also, although more and more insolvency cases involved foreign proceedings, parties, and/or assets, the laws and practices relating to cross-border insolvency were outdated and insufficient to deal with the issues arising therefrom. Realizing the need for a new, consolidated insolvency law, the Debtor Rehabilitation and Bankruptcy Act (“DRBA”) was enacted and promulgated in 2005, to take effect in 2006. The new DRBA combined separate insolvency laws and merged different reorganization proceedings into one. The liquidation proceeding was updated, and new sections on individual rehabilitation (debt restructuring for natural persons with a regular income) and cross-border insolvency were added.

The reorganization proceeding under the DRBA, also known as the “rehabilitation proceeding,” was modeled after the U.S. Chapter 11 proceeding. The concept of “debtor-in-possession” (“DIP”) was adopted, and since then the court’s appointment of a third party administrator to run the debtor’s business became an exception rather than the rule. Over time, this section was further amended to include additional features, many of which come from the U.S. Chapter 11 proceedings as adjusted to the Korean insolvency regime.

The new section on cross-border insolvency that was included in the DRBA is South Korea’s adoption of the UNCITRAL Model Law on Cross-border Insolvency (“Model Law”). With this development and the court’s accumulated experience in cross-border insolvency matters, the Korean bankruptcy court is becoming more capable of dealing with insolvency cases involving businesses with a global outreach.

The Hanjin Shipping (“Hanjin”) Case is a good example of a cross-border insolvency case, where the Korean bankruptcy court, as the originating court, coordinated with foreign courts in an effort to centralize the insolvency proceedings in one court. In Hanjin, the original petition was for the commencement of a rehabilitation proceeding, which the court granted the very next day with a view to expedite recognition proceedings in other countries.

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Petitions for recognition of the Korean insolvency proceeding were filed in foreign courts and many of those courts, including the U.S. Bankruptcy Court for the District of New Jersey, granted prompt recognition. However, the court-appointed examiner was doubtful that Hanjin could have much value as a going concern, and the court eventually dismissed the rehabilitation proceeding and converted the case to a liquidation proceeding pursuant to Article 6(2)(ii) of the DRBA.

Hanjin's liquidation proceeding is currently pending with the Seoul Bankruptcy Court.

II. Corporate Rehabilitation Proceeding

1. Legislative History

As mentioned above, before the enactment of the DRBA, Korean insolvency law consisted of separate laws governing different aspects of the insolvency proceedings. The concept of DIP was unfamiliar to most people and in practice, the court would always appoint a third party administrator over the debtor company. While the Bankruptcy Administrative Commission (the Korean equivalent of the U.S. Bankruptcy Administrator established in Alabama and North Carolina, in very broad terms) existed, creditors' committees were practically non-existent. The new DRBA changed all of this and much more as the law was amended from time to time to adapt to new developments in the legal and socioeconomic environment. The bankruptcy courts also took an active role in adopting new methodologies and updating internal guidelines to improve relevant court practices, especially to "keep the debtor alive on the operating table." Some of the important amendments to the law and related practices are highlighted below in chronological order.

In 2006 the new DRBA came into effect. DIP became the rule and the court's appointment of third party administrators occurred in exceptional cases only. The new law also encouraged the participation of the creditors' committee, but the lawmakers' intentions were not realized in this regard.

In 2009 the DRBA was amended in order to prioritize the claims of the lender injecting new funds in the debtor after commencement of the rehabilitation proceedings. This amendment was intended to encourage DIP financing for the debtor company, but due to other reasons, such as financial regulatory restrictions on commercial banks when they lend money to a rehabilitation debtor, DIP financing is yet to be made readily available to distressed businesses.

In 2011 the Bankruptcy Division of the Seoul Central District Court, adopted the "Fast-Track Business Reorganization" process to (i) reduce the effect of bankruptcy stigma, (ii) increase the possibility of success in rehabilitation, and (iii) maximize the payment to creditors. By encouraging the parties to move as quickly as possible before plan confirmation and then allowing the bankruptcy judge to close the case at the earliest possible date after plan confirmation, businesses could return to its ordinary course of business much sooner. As the process began to move at a faster rate, creditors started to become more engaged and in some

cases, the creditors' committee became notably active. The court also encouraged debtor companies to engage a chief restructuring officer ("CRO") to assist in making financial decisions and to add more integrity and credibility to the rehabilitation process.

In 2015 the DRBA was amended to provide for more simplified rehabilitation procedures for small businesses, which often cannot afford to hire sophisticated lawyers and other professionals to deal with a full-blown rehabilitation proceeding.

In 2016 the "pre-packaged plan" or "P-Plan," as it is called by the Korean bankruptcy courts and the Korean Financial Services Commission, was introduced in the DRBA. The P-Plan provides for early submission of a rehabilitation plan, which shortens the rehabilitation proceeding significantly, as (i) the debtor is required to submit a rehabilitation plan and a list of creditors together with or after the petition but before the commencement and (ii) the creditors may go ahead and file their proofs of claim with the bankruptcy court immediately after commencement.

In 2017 the Seoul Bankruptcy Court was established to replace the Bankruptcy Division of the Seoul Central District Court. As of now, the Seoul Bankruptcy Court is the first and only specialized bankruptcy court in Korea. Similar bankruptcy courts may be established in other parts of Korea in the future, but until then, local district courts will continue to oversee bankruptcy cases in their respective jurisdictions. The establishment of a specialized court with jurisdiction over insolvency cases allows the judges presiding over insolvency proceedings to gain more expertise and to establish uniform court practices.

2. General Overview of a Corporate Rehabilitation Proceeding

A rehabilitation proceeding is a court-administered reorganization proceeding which seeks to restructure debt while allowing the debtors to continue their business as a going concern. A formal rehabilitation proceeding commences with the filing of a petition and the court's order to commence the proceeding in response to that petition. Below are some of the notable features and important processes in corporate rehabilitation proceedings.

Petition for commencement of the rehabilitation proceeding

The debtor and the creditor, whose total amount of claims equal or exceed 1/10th of the debtor's capital, may file a petition for commencement of a rehabilitation proceeding. A shareholder(s) who owns more than 1/10th of the debtor's capital is also eligible for filing the petition.

In order for the rehabilitation proceeding to be commenced, either (i) the debtor must not be able to repay a matured debt without causing significant encumbrance to the continuation of its business, or (ii) there must be a concern that a cause for bankruptcy may arise with the debtor. A cause for bankruptcy exists when (a) the debtor is unable to repay its debts as it comes due, or (b) the debtor's liabilities exceed its assets. (☞ DRBA Article 34)

Provisional orders to preserve debtor's assets and to stay enforcement actions

In a U.S. Chapter 11 proceeding, the automatic stay takes effect immediately when a petition is filed, thereby preserving the debtor's assets from dissipation and preventing creditors from racing to the courthouse to enforce their claims. In a Korean rehabilitation proceeding, there is no automatic stay that takes effect upon filing of the petition. Instead, the petitioner usually files an application, in conjunction with the filing of the petition, for the court's order to preserve the debtor's assets and to stay all enforcement actions. The bankruptcy court is usually very prompt in granting such applications. Sometimes, even if the petitioner did not file such applications, the court may on its own motion issue such orders if the court deems it necessary. (☞ DRBA Articles 43-47)

Effect of the court's decision to commence the rehabilitation proceeding

When there is a decision to commence the rehabilitation proceeding, all enforcement actions are automatically stayed and the debtor's assets provided as security cannot be subject to a sale by a secured creditor without court order. Furthermore, all claims, both secured and unsecured, can only be repaid as set out in the payment schedule of the confirmed rehabilitation plan.

The court's decision to commence the proceeding or dismiss the petition must be made within one month from the date of the petition. When the court issues a decision to commence the rehabilitation proceedings, the court must, after consultations with the Bankruptcy Administrative Commission and the creditors' committee, appoint an administrator to take charge of the management and disposition of the debtor's assets. Since 2011, the court usually issues an order not to appoint an administrator, in which case the representative of the debtor company (DIP) is regarded as the administrator. However, in very exceptional cases where the corporate representative was the cause of the debtor company's financial deterioration, the court appoints the administrator from outside of the debtor's organization. (☞ DRBA Articles 49-50, 58-59, 74)

Classification of claims

In a rehabilitation proceeding, a creditor's claim would fall under the category of (i) an unsecured claim, (ii) a secured claim, or (iii) a priority claim. Unsecured claims are pre-commencement claims, i.e., arising from causes that existed before commencement of the rehabilitation proceeding. Secured claims are pre-commencement claims secured by an asset of the debtor. Secured and unsecured claims are usually prevented from repayment until a rehabilitation plan is confirmed. After plan confirmation the claims are paid out as adjusted by the payment schedule in the plan. Priority claims, however, are usually paid on a rolling basis, regardless of the rehabilitation plan. The DRBA in Article 179 specifically provides for claims that would be treated as a priority claim. One such example would be claims regarding post-commencement debt incurred by the administrator on behalf of the debtor with court approval. Unless otherwise specified, reference to "claims" in a rehabilitation proceeding are usually relevant to secured and unsecured claims. (☞ DRBA Articles 118, 141, 179)

Executory contracts and ipso facto clauses

An executory contract under the DRBA refers to an agreement where neither party had performed its obligation in full at the commencement of the rehabilitation proceeding. Executory contracts receive special treatment in that the administrator has the choice of either cancelling (terminating) or assuming (performing) such contracts. There is however a deadline in exercising such right of choice, which is until the closing of the creditors' meeting held in order to review the proposed rehabilitation plan (normally the second creditors' meeting).

In order to resolve the uncertainty faced by the counterparty to such contracts, the DRBA allows the counterparty to send a notice to the administrator requesting the administrator to exercise his/her right of choice. If the administrator fails to notify the counterparty of his/her choice within 30 days from receipt of the counterparty's request, the contract is deemed as assumed.

If the administrator assumes the contract, the obligation of the debtor becomes a priority claim. If the administrator cancels, the counterparty's claim for damages arising from such cancellation will be treated as an unsecured claim.

The DRBA does not provide for the validity or invalidity of ipso facto clauses. However, among insolvency practitioners in Korea, it had often been construed that in order to protect the administrator's right of choice, ipso facto clauses that allow for termination of the contract in an event of insolvency should be deemed invalid. The mainstream of Korean court precedents appear to follow this position as well. However, it should be noted that the court from time to time had ruled that ipso facto clauses can be valid in contracts which require mutual trust. (☞ DRBA Articles 119, 121)

Investigation and allowance of claims

At the commencement of a rehabilitation proceeding, the court orders the administrator to submit a list of creditors. Separately, each creditor may also file proofs of claim with the court within the reporting period, as set by the court. Filing proofs of claim after the reporting period has lapsed is not allowed in principle. However, if the creditor was not notified of the proceeding and the creditor did not become aware of the rehabilitation proceeding in any other way, the creditor may file the proofs of claim even after the reporting period had lapsed, but no later than at the creditors' meeting to review the proposed rehabilitation plan. When the proofs of claim are filed, the administrator or other stakeholders (i.e., other creditors) may object to that claim. When there is an objection, the creditor whose claim is contested may file an application with the bankruptcy court for allowance of that claim.

If a claim is not included in the creditors' list and the proofs of claim were not filed by the creditor, the claim will likely be excluded from the rehabilitation plan and such claims are discharged upon confirmation of the plan. (☞ DRBA Articles 147-149, 153, 161, 170)

Set-off

Even after a rehabilitation proceeding is commenced, creditors may offset their claims (receivables) with their debt (payables) if at least the creditor's claim comes due before expiration of the claim reporting period. When exercising this right, the set-off notice must be made to the administrator and not the debtor. Set-off is not permitted in circumstances where allowing the set-off would result in unfair satisfaction of claims for the creditor, such as when the creditor incurs new debt (payables) against the debtor after commencement of the rehabilitation proceeding. (DRBA Articles 144-145)

Rehabilitation plan

A rehabilitation plan typically lays out the basic scheme of how the debtor will reorganize its debt in order to continue its business as a going concern and manage its cash flows to maximize the amount of repayment to its creditors. The plan usually includes items such as adjustment of claims, repayment methods, adjustment of shareholder rights, matters regarding M&A, and revisions to the debtor company's articles of incorporation.

After commencement of the rehabilitation proceeding, the court generally appoints an examiner, usually an accounting firm, to assess the overall status of the debtor's assets, the liquidation value, and the going concern value. In practice, the administrator usually prepares and proposes a rehabilitation plan based on the examiner's report. After the administrator submits a proposed plan, it is reviewed at the creditors' meeting and voted upon. The plan is passed by a quorum of (i) 3/4 or more of the total amount of secured claims; (ii) 2/3 or more of the total amount of unsecured claims; and (iii) 1/2 or more of the total number of shares voting at the meeting (provided that if the total amount of debt exceeds the total amount of assets on the date of commencement, the shareholders lose their right to vote).

Once a plan is passed at the creditors' meeting, the court may confirm such plan. When the plan is passed by only one of the two or more classes of creditors, the court may "cram down" and confirm the plan in accordance with the DRBA. (DRBA Articles 193, 220, 223, 232, 237, 242-244)

Implementation of the plan and final decree to close the rehabilitation proceeding

When a rehabilitation plan is confirmed, the rights of creditors and shareholders are adjusted in accordance with the plan. As mentioned before, secured and unsecured claims not included in the confirmed plan shall be discharged.

If a rehabilitation plan is carried out in full, or if there is no foreseeable obstacles in carrying out the plan, then the court issues a final decree to close the case and allow the debtor to exit the rehabilitation proceedings. Once the court issues the final decree, the debtor shall regain control of its assets and business. (DRBA Articles 251, 283)

Dismissal of the rehabilitation proceeding

If during the course of the rehabilitation proceeding (i) a rehabilitation plan is not proposed;

or (ii) the rehabilitation plan is not confirmed at the creditors' meeting, the court shall dismiss the proceeding. The court may dismiss the proceeding if (iii) the court finds that the liquidation value of the debtor clearly exceeds the going concern value.

The court shall order a dismissal if the court finds that the debtor cannot carry out the rehabilitation plan post-confirmation. In this case, since the debtor would have a cause for bankruptcy, the court must convert the case to liquidation. (DRBA Articles 286, 288)

III. Hanjin Shipping Bankruptcy Case

1. Chronology of Main Events

Hanjin Shipping was one of the world's largest container carriers and terminal operators, with a capital of KRW 1.23 trillion at one point after merging with other shipping companies.

Since the global financial crisis around 2008-9, there was an economic downturn and the global container market was faced with overcapacity in container vessels (overflow of supply) and not enough increase in freight volume (lack of demand). To make matters worse, Korean shipping companies entered into many long-term charterparties right before the global financial crisis hit, in anticipation of continued increase in demand. Therefore, at the sudden economic downturn, shipping companies like Hanjin were left with a high cost, low income structure, paying as hires sums of money that could be higher than what could be earned from the chartered vessels. Unable to sustain itself with the increasing amount of losses, Hanjin first applied for a corporate workout with the Korea Development Bank ("KDB"), its major creditor, on April 25, 2016. This out-of-court restructuring process was approved on May 4, 2016, and lasted until August 30, 2016. In August 2016 however, KDB decided that it can no longer support Hanjin. Without the support from KDB, and with no one else to turn to for new funds necessary to continue its business, Hanjin filed the petition for commencement of a rehabilitation proceeding with the Bankruptcy Division of the Seoul Central District Court (now the Seoul Bankruptcy Court) on August 31, 2016.

The court understood that it must act quickly for Hanjin's vessels to continue its operations without the risk of arrest or attachment. Therefore the court responded immediately and promptly issued an order to commence the rehabilitation proceedings. Recognition in various countries followed. However, when the examiner, after investigation, reported that Hanjin's value as a going concern cannot be assessed due to the uncertainty of whether the debtor can continue its business, the rehabilitation proceeding was dismissed, and subsequently converted into a liquidation proceeding on February 17, 2017.

In the liquidation proceeding, which is governed by a separate chapter in the DRBA, the court appointed a lawyer as the bankruptcy trustee, as is the usual case in liquidation proceedings. The bar date for submission of bankruptcy claims lapsed as of May 1, 2017, and on June 1 and July 20, 2017, the first and second creditors' meetings were held respectively.

The bankruptcy trustee is now managing and liquidating the assets of the debtor, in order to liquidate remaining assets and ultimately distributing them to the creditors.

As of now, the bankruptcy estate is estimated at approximately KRW 32.2 billion, and is anticipated to be expanded approximately up to KRW 280 billion, excluding the assets pledged for the secured creditors.

2. Some observations regarding the Hanjin case

Rehabilitation, unlike voluntary corporate workouts, is a court administered proceeding which becomes binding on all creditors. Rehabilitation proceedings had been known to take years for the debtor to exit in the past. However, since the introduction of the Fast Track Program the process has become much faster, with plans being confirmed in a matter of months from commencement. Moreover, with the recent introduction of the P-Plan, debtors can now negotiate with its major creditors before it files for rehabilitation and then propose a plan which will quickly become final and binding on all creditors.

Of course, the specific situation of companies in distress are not the same and the potential debtor must carefully consider all aspects of corporate workouts, rehabilitation proceedings and other available choices when choosing a rescue plan. That said, in Hanjin's case, with the benefit of hindsight, one cannot help wonder what would have happened if Hanjin had filed for rehabilitation proceeding earlier, after which Hanjin could have restructured its debt and avoided a complete depletion in operational funds. Then there is the issue of DIP financing, as injection of new funds is usually required in order for the debtor to come up with a viable plan that major creditors would support, and at the same time, keep the debtor afloat during the relatively short term it must remain in rehabilitation. Unfortunately, DIP financing in Korea does not appear to be as readily available as would be in some other countries.

An issue that arose in relation to the Korean rehabilitation proceeding and the foreign courts that recognized the Korean proceeding was the scope of assets that were subject to the recognizing court's stay order. In Korea, it is generally understood that the assets that are preserved and protected from individual creditor actions are those owned by the debtor. In the United States and other common law countries, the assets of the debtor appears to be understood in more broader terms, allowing room for chartered or leased vessels to be subject to a bankruptcy stay.

In case of bareboat charter hire purchase contracts ("BBC/HP"s) the issue becomes more complicated. There has been a long debate among Korean bankruptcy practitioners regarding whether these BBC/HPs should be considered as "liens" or as "executory contracts." If they are understood as liens, or security to the financial institutions that funded shipbuilding projects, the vessels should be treated as part of the debtor's assets and thus fall within the scope of protection against enforcement by creditors, including maritime lien creditors. If they are understood as executory contracts, the vessels are not assets of the debtor (as they are usually owned by SPCs that are supposed to be shielded from the debtor's insolvency) and thus unprotected, but the administrator has the power to cancel the contracts,

thereby avoiding the expensive charter hires and treating them as unsecured claims that would be paid in terms of cents on the dollar.

Before Hanjin, the prevailing view among insolvency practitioners was that the court had taken the view that BBC/HPs are executory contracts and allowed the administrators to cancel them if they were not beneficial to the debtor. Changwon District Court's holding in the Hanjin Xiamen Case appears to reflect that position, as it had been held that the vessel, which was subject to a BBC/HP contract with Hanjin Shipping, fell outside the scope of the stay that was in place due to Hanjin's bankruptcy. This begs the question of whether the court recognizing a foreign insolvency proceeding can grant broader protection to the debtor under its laws than would be available to the debtor under the laws of the country where the insolvency proceeding was commenced.

As this issue continues to be the subject of heated discussions among lawyers in the insolvency and maritime sectors, it would be interesting to see if this issue can be resolved in a way that would bring the most benefit to all parties concerned.

IV. Cross-Border Insolvency in Korea

The DRBA has incorporated the Model Law. In addition, the DRBA is premised upon the idea that the rehabilitation proceeding has universal effect, reaching beyond the borders of Korea. In practice however, in order for the Korean rehabilitation proceeding to be effective in a foreign country, the administrator, as a representative of the Korean rehabilitation proceeding, must file a petition with the court of that foreign country for recognition of the Korean proceeding and seek the court's assistance.

Since adoption of the Model Law, many rehabilitation proceedings have been commenced for shipping companies in Korea. These rehabilitation proceedings were recognized in many countries, preventing creditors from arresting ships that sail all around the world and providing a breathing spell for the debtor while the debtor negotiated with its major creditors for a workable debt restructuring plan. Hanjin would have been one of such cases, were it not for the early dismissal and conversion to liquidation.

Similarly, the representative of a foreign insolvency proceeding may file a petition for recognition of the foreign proceeding with the Seoul Bankruptcy Court, which has exclusive jurisdiction over inbound cross-border insolvency proceedings in Korea. In conjunction with this filing the foreign representative may seek provisional reliefs which is usually granted within a matter of days. Once the recognition is granted, the representative may seek further assistance of the Korean court in order to preserve and liquidate the debtor's assets in Korea.

Recently the Seoul Bankruptcy Court issued an order recognizing a U.S. Chapter 11 proceeding regarding a Singaporean company, finding that (i) the debtor company had made a significant number of management decisions in the U.S. and (ii) a considerable portion of the debtor company's corporate books and records were in the U.S., where the debtor

company's parent company was located. Based on these facts, the Seoul Bankruptcy Court found that the debtor's place of business, office, or domicile was in the U.S., despite the fact that the debtor's registered office was in Singapore. That said, as the DRBA does not distinguish between a foreign main proceeding and a foreign non-main proceeding, the "center of main interest (COMI)" was not a decisive factor in the court's decision to recognize the foreign proceeding. The more interesting aspect of this case is that although the foreign representative did not apply for provisional assistance in conjunction with its filing of the petition, the Seoul Bankruptcy Court, on its own motion, granted a provisional stay in order to preserve the debtor's assets before it issued the recognition order.

In another recent case where the Seoul Bankruptcy Court recognized a U.S. Chapter 11 proceeding, a situation similar to that of the recognition proceeding in the U.S. Bankruptcy Court regarding the Hanjin case arose. The foreign representative asked the Seoul Bankruptcy Court for repatriation of funds to the U.S. Chapter 11 plan administrator through cooperation between the Korean court and the U.S. Bankruptcy Court for the Eastern District of Virginia. Seoul Bankruptcy Court granted the request after confirming that creditors in Korea had been notified of the proceeding and were provided with a fair chance to participate in the U.S. proceedings.

DEBTOR REHABILITATION AND BANKRUPTCY ACT

Act No. 14472, Dec. 27, 2016

Article 3 (Jurisdiction)

(1) Rehabilitation cases, simplified rehabilitation cases and bankruptcy cases, or individual rehabilitation cases shall be placed under the exclusive jurisdiction of the rehabilitation court having jurisdiction over any of the following places: *<Amended by Act No. 12595, May 20, 2014; Act No. 12892, Dec. 30, 2014; Act No. 14472, Dec. 27, 2016>*

1. The general jurisdiction of the debtor;
2. The place where the debtor's principal office or place of business is located, or the place where an office or place of business at which the debtor is continuously employed is located;
3. The location of the debtor's property (in the case of a claim, referring to the place in which a judicial claim may be filed), where any place falling under subparagraph 1 or 2 is unascertainable.

(2) Notwithstanding paragraph (1), a petition for rehabilitation or bankruptcy may be filed with the rehabilitation court in the city in which is located the high court having jurisdiction over the location of the debtor's principal office or place of business. *<Amended by Act No. 12595, May 20, 2014; Act No. 14472, Dec. 27, 2016>*

(3) Notwithstanding paragraph (1), any of the following petitions may be filed with the rehabilitation court in the following classifications: *<Amended by Act No. 12595, May 20, 2014; Act No. 12892, Dec. 30, 2014; Act No. 14472, Dec. 27, 2016>*

1. Where a rehabilitation case or

bankruptcy case involving any affiliated company under subparagraph 3 of Article 2 of the Monopoly Regulation and Fair Trade Act is pending, an application for the commencement of rehabilitation procedures or the commencement of simplified rehabilitation procedures, or a petition for bankruptcy for another affiliated company: the rehabilitation court in which the rehabilitation case or bankruptcy case concerning the former affiliated company is pending;

2. Where a rehabilitation case or bankruptcy case involving any corporation is pending, either an application for the commencement of rehabilitation procedures or the commencement of simplified rehabilitation procedures, or a petition for bankruptcy against the representative of such corporation: the rehabilitation court in which the rehabilitation case or bankruptcy case of that corporation is pending;
3. Where a rehabilitation case, bankruptcy case, or individual rehabilitation case for any of the following persons is pending, either an application for the commencement of rehabilitation procedures, a petition for bankruptcy or the commencement of simplified rehabilitation procedures, or an application for commencement of individual rehabilitation procedures for any other person provided for in the relevant item: the rehabilitation court in which the rehabilitation, bankruptcy or individual rehabilitation case is pending:
 - (a) The principal debtor and his/her guarantor;
 - (b) A debtor and the person who is jointly liable with the debtor;
 - (c) A debtor and his/her spouse.

(4) Notwithstanding paragraph (1), rehabilitation cases and bankruptcy cases involving corporations which have at least 300 creditors and are liable for a debt amount above the amount prescribed by Presidential Decree may be filed also with the Seoul Rehabilitation Court. <Newly Inserted by Act No. 14177, May 29, 2016; Act No. 14472, Dec. 27, 2016>

(5) A rehabilitation or bankruptcy case concerning the debtor who is not an individual shall be placed under the exclusive jurisdiction of the collegiate division of the rehabilitation court under paragraphs (1) through (4). <Amended by Act No. 12595, May 20, 2014; Act No. 14177, May 29, 2016; Act No. 14472, Dec. 27, 2016>

(6) A bankruptcy case concerning any inherited estate shall be placed under the exclusive jurisdiction of the rehabilitation court having jurisdiction over the place where the inheritance of such property commences. <Amended by Act No. 12595, May 20, 2014; Act No. 14177, May 29, 2016; Act No. 14472, Dec. 27, 2016>

(7) A bankruptcy case concerning any property which belongs to a limited-liability trust (hereinafter referred to as "limited-liability trust property"), which is created pursuant to Article 114 of the Trust Act, shall be placed under the exclusive jurisdiction of the rehabilitation court having jurisdiction over the general jurisdiction of the trustor (where at least two trustors exist, it refers to the general jurisdictional location of any one such person). <Newly Inserted by Act No. 11828, May 28, 2013; Act No. 12595, May 20, 2014; Act No. 14177, May 29, 2016; Act No. 14472, Dec. 27, 2016>

(8) Where no competent court prescribed under paragraph (7) exists, the bankruptcy case shall be placed under the exclusive jurisdiction of the rehabilitation court having jurisdiction over the location of the limited liability trust property (in the case of a claim, the place in which a judicial claim may be filed shall be

deemed such location). <Newly Inserted by Act No. 11828, May 28, 2013; Act No. 12595, May 20, 2014; Act No. 14177, May 29, 2016; Act No. 14472, Dec. 27, 2016>

(9) Deleted. <by Act No. 14472, Dec. 27, 2016>

(10) Notwithstanding paragraph (1), where the general jurisdictional location of an individual debtor under subparagraph 1 of Article 579, is Gangneung-si, Donghae-si, Samcheok-si, Sokcho-si, Yangyang-gun, or Goseong-gun, a petition for a bankruptcy declaration for the individual debtor or an application for commencement of an individual rehabilitation procedure may be filed with the Gangneung branch of the Chuncheon District Court. <Newly Inserted by Act No. 12595, May 20, 2014; Act No. 14177, May 29, 2016>

Article 20 (Composition of Creditors' Consultative Council)

(1) The Custodial Committee (referring to the court when the Custodial Committee is not constituted; hereafter in this Article the same shall apply) shall establish a creditors' consultative council composed of major creditors of the debtor after an application for commencement of rehabilitation procedures an application for commencement of simplified rehabilitation procedures or a petition for bankruptcy is filed: Provided, That when the debtor is an individual or a small and medium business entrepreneur under Article 2 (1) of the Framework Act on Small and Medium Enterprises (hereinafter referred to as "small and medium business entrepreneurs"), the Custodial Committee may elect not to set up such creditors' consultative council. <Amended by Act No. 12892, Dec. 30, 2014>

(2) The creditors' consultative council shall be composed of not more than 10 persons.

(3) When it is deemed necessary, the Custodial Committee may cause any minority creditor to participate in the creditors' consultative council as its member.

(4) In cases falling under paragraph (1), major creditors of each debtor may propose opinions on the composition of the creditors' consultative council to the Custodial Committee. <Newly Inserted by Act No. 14177, May 29, 2016>

Article 22-2 (Right of Lenders of New Funds to Propose Opinions and Provision of Materials Thereon)

(1) Any rehabilitation creditor who lends a fund under Article 179 (1) 5 and 12 may conduct the following acts:

1. Proposing an opinion on the takeover of the whole or important parts of debtor's business;
2. Proposing an opinion on draft rehabilitation plans;
3. Proposing an opinion on the discontinuation or termination of rehabilitation procedures.

(2) Any rehabilitation creditor who has lent a fund under Article 179 (1) 5 and 12 may request the custodian to provide necessary materials as prescribed by the rules of the Supreme Court. In such cases, the custodian shall provide the materials, as prescribed by the rules of the Supreme Court.

Article 34 (Application Filed for Commencing Rehabilitation Procedures)

(1) In a case falling under any of the following subparagraphs, the debtor may file an application with the court for commencing the rehabilitation procedures:

1. Where the debtor finds it impossible to repay his/her obligations due and payable without any serious hinderance to the continuation of his/her business;
2. Where facts leading to bankruptcy are likely to arise with respect to the debtor.

(2) In cases falling under paragraph (1) 2, the person prescribed in each item of the relevant subparagraph may also file an application for

commencement of rehabilitation procedures according to the classification of each of the following subparagraphs:

1. When the debtor is a stock company or a limited-liability company:
 - (a) A creditor who holds a claim equivalent to not less than 1/10 of the capital;
 - (b) A shareholder or the equity right holder who holds the share or the equity share equivalent to not less than 1/10 of the capital;
2. When the debtor is not a stock company or a limited-liability company:
 - (a) A creditor who holds a claim equivalent to not less than 50 million won;
 - (b) An equity right-holder who holds an equity share of not less than 1/10 of the total amount of investment of any unlimited partnership, any limited partnership, any corporation or anyone equivalent thereto.

(3) The court may, when any creditor, any shareholder or any equity right holder files an application for commencement of rehabilitation procedures pursuant to the provisions of paragraph (2), order the debtor to submit materials concerning the management of his/her business and the current state of his/her property.

Article 39-2 (Court Supervision, etc. over Progress of Rehabilitation Procedures)

(1) A court shall conduct rehabilitation procedures in a rapid, fair and efficient manner, to the extent not impairing the interests of the creditors in general and the possibility of rehabilitation of debtors.

(2) A court may, if deemed necessary, take any of the following measures at the request of an interested person or ex officio: <Amended by Act No. 14177, May 29, 2016>

1. Consultation with the interested person

- on the progress of rehabilitation procedures;
2. Preparation and operation of a timetable concerning the progress of rehabilitation procedures;
 3. Request to a debtor, custodian or protective custodian for making a report on those matters falling under each of the following items or submitting materials relating thereto:
 - (a) Current situation of the management of business affairs and property of a debtor;
 - (b) The progress of rehabilitation procedures;
 - (c) Where the purpose of use of the fund borrowed under Article 179 (1) 5 and 12 is determined, the execution of the fund;
 - (d) Other matters necessary for the debtor's rehabilitation;
 4. Consolidation of assemblies of related persons;
 5. Order to hold an explanatory meeting for interested persons under Article 98-2;
 6. Other measures necessary for the debtor's rehabilitation.

Article 43 (Provisional Seizure, Preliminary Injunction and Other Preservative Measures)

- (1) When an application is filed for commencing rehabilitation procedures, the court may, at the request of an interested person or ex officio, grant an order of provisional seizure and preliminary injunction on the debtor's business and properties or other disposition necessary to preserve the debtor's business and properties until a decision is made on the application for commencement of rehabilitation procedures. In this case, the court shall hear the opinion of the Custodial Committee.
- (2) When any interested person files an

application for a preservative measure referred to in the provisions of paragraph (1), the court shall determine whether to take the preservative measure within seven days from the date of the application.

- (3) When it is deemed necessary in addition to the preservative measure referred to in the provisions of paragraph (1), the court may order management by a protective custodian after hearing the opinion of the Custodial Committee. In this case, the court shall appoint one or multiple protective custodians.
- (4) The court may alter or rescind the preservative measure referred to in the provisions of paragraph (1) or the preservation and management order referred to in the provisions of paragraph (3) after hearing the opinion of the Custodial Committee.
- (5) The judgment as well as the judgment on the dismissal of the application therefor provided for in the provisions of paragraphs (1) (3) and (4) shall be made by decision.
- (6) An immediate appeal may be filed against the decision made pursuant to the provisions of paragraph (5).
- (7) The immediate appeal referred to in the provisions of paragraph (6) shall not have the effect of suspending any execution.
- (8) When the court issues the preservation and management orders referred to in the provisions of paragraph (3) or changes or rescinds such order, it shall publicly notify such measures.

Article 44 (Stay Order, etc. of Other Procedures)

- (1) Where an application is filed for the commencement of rehabilitation procedures, if deemed necessary, the court may, at the request of an interested person or ex officio, issue an order for the suspension of any of the following procedures until the decision on that application for commencement of the rehabilitation procedures is made: Provided,

That in the case of the procedure referred to in subparagraph 2, the same shall not apply if such procedure is likely to do undue damage to any rehabilitation creditor or rehabilitation secured creditor who is the applicant for that procedure: <Amended by Act No. 10219, Mar. 31, 2010; Act No. 14476, Dec. 27, 2016>

1. Any bankruptcy procedure for the debtor;
 2. Any auction procedure for compulsory execution, provisional seizure, preliminary injunction, or the exercise of security right (hereinafter referred to as "compulsory execution, etc. based on any rehabilitation claim or rehabilitation security right") on the basis of a rehabilitation claim or rehabilitation security right, which has already been in progress with respect to any property of the debtor;
 3. Any litigation procedure with respect to any property of the debtor;
 4. Any procedure pending in an administrative agency with respect to any property of the debtor;
 5. Any disposition on default in accordance with the National Tax Collection Act or the Local Tax Collection Act, disposition on default according to the examples of national tax collection (including the examples of disposition on default of national taxes or local taxes; hereinafter the same shall apply), or the disposal of any goods which are offered as a guarantee for tax liability. In such cases, the opinion of a person who is authorized to collect taxes shall be heard.
- (2) Prescription shall not run during the period of suspending a disposition under paragraph (1) 5.
- (3) A court may alter or rescind a stay order prescribed in the provisions of paragraph (1).
- (4) If deemed particularly necessary for the

rehabilitation of a debtor, a court may, at the request of the debtor (referring to a protective custodian, if appointed) or ex officio, issue an order for cancelling the suspension of compulsory execution, etc. based on a rehabilitation claim or rehabilitation security right. In such cases, the court may require the offering of a security.

Article 45 (General Order Given to Prohibit Compulsory Execution, etc. Based on Rehabilitation Claims and Rehabilitation Security Rights)

- (1) When it is recognized that special circumstances are likely to prevent satisfaction of the purposes of the rehabilitation procedures by the stay order provided for in the provisions of Article 44 (1) after receiving an application for commencement of rehabilitation procedures, the court may, at the request of an interested person or ex officio, make order prohibiting all rehabilitation creditors and rehabilitation secured creditors from conducting compulsory execution, etc. based on their rehabilitation claims or their rehabilitation security rights by the time a determination is made on the application filed for commencing rehabilitation procedures.
- (2) The prohibition order referred to in paragraph (1) (hereinafter referred to as "general prohibition order") shall be limited to cases where any measure or order falling under either of the following subparagraphs is already taken or given with respect to the debtor's major properties or any general prohibition order, measure or order falling under either of the following subparagraphs is given, taken or given:
1. The preservative measure provided for in the provisions of Article 43 (1);
 2. The preservation and management order provided for in the provisions of Article 43 (3).
- (3) When any general prohibition order is

given, the compulsory execution, etc. based on any rehabilitation claim or any rehabilitation security right that has already been enforced against the debtor's property shall be suspended.

(4) The court may alter or rescind the general prohibition order.

(5) When it is deemed particularly necessary to continue the debtor's business, the court may order the rescission of the compulsory execution based on any rehabilitation claim or any rehabilitation security right that has been suspended pursuant to the provisions of paragraph (3) at the request of the debtor (referring to the protective custodian when he/she is appointed). In this case, the court may require security to be furnished.

(6) An appeal may be immediately filed against the general prohibition order, the decision referred to in the provisions of paragraph (4) and the cancellation order referred to in the provisions of paragraph (5).

(7) The immediate appeal referred to in paragraph (6) shall not have the effect of suspending any execution.

(8) When the general prohibition order is given, the prescription of the rehabilitation claim and the rehabilitation security right shall not expire until the day on which two months have lapsed from the day following the day on which the effect of such order ceases.

Article 46 (Public Notice and Service, etc. of General Prohibition Order)

(1) When a general prohibition order is granted or a decision to alter or rescind such order, the court shall publicly notify such decision and serve a written decision on the relevant debtor (referring to the protective custodian if such protective custodian is appointed) and the relevant applicant, respectively, and also serve a written statement setting out the operative part of the decision on such rehabilitation creditors, rehabilitation secured creditors and

the debtor (referring to the protective custodian when he/she is appointed) as are known to the court.

(2) The general prohibition order and a decision to change or revoke the general prohibition order shall take effect from the time when a written decision is delivered to the debtor (referring to the protective custodian when he/she is appointed).

(3) When a judgment (excluding any decision to alter or rescind the general prohibition order) is granted against the cancellation order provided for in the provisions of Article 45 (5) and the immediate appeal provided for in the provisions of paragraph (6) of the same Article, the court shall serve a written judgment on each of the parties thereto. In this case, the provisions of Articles 10 and 11 shall not apply thereto.

Article 47 (Exclusion of Application of General Prohibition Order)

(1) Where a general prohibition order is given and when it is recognized that the general prohibition order is likely to inflict undue damage on the rehabilitation creditor or the rehabilitation secured creditor who is the applicant for the compulsory execution, etc. based on the rehabilitation claim or the rehabilitation security right, the court may, at the request of the rehabilitation creditor or the rehabilitation secured creditor or ex officio, exclude the application of the general prohibition order on the rehabilitation creditor or the rehabilitation secured creditor. In this case, the rehabilitation creditor or the rehabilitation secured creditor may enforce the compulsory execution, etc. against the debtor's properties based on the rehabilitation claim or the rehabilitation security right, and the procedures for compulsory execution based on the rehabilitation claim or the rehabilitation security right that is exercised by the rehabilitation creditor or the rehabilitation

secured creditor before the general prohibition order is given may continue.

(2) When the provisions of Article 45 (8) apply to anyone who is subject to the decision referred to in the provisions of paragraph (1), the "date on which the effect of the order ceases" in Article 45 (8) shall be deemed the "date on which the decision provided for in the provisions of Article 47 (1) is made."

(3) An immediate appeal may be filed against the judgment that is issued on the application filed pursuant to the provisions of paragraph (1).

(4) The immediate appeal referred to in paragraph (3) shall not have the effect of suspending any execution.

(5) When a judgment is issued on the application referred to in paragraph (1) and a judgment is issued on the immediate appeal referred to in paragraph (3), the court shall serve its written decision on each of the parties. In this case, the provisions of Article 10 shall not apply thereto.

Article 49 (Decision on Commencement of Rehabilitation Procedures)

(1) When the debtor files an application for commencement of rehabilitation procedures, the court shall determine whether to commence such rehabilitation procedures within one month from the date such application is filed for commencement of rehabilitation procedures.

(2) The date and the time of the decision shall be indicated on a written decision on the commencement of rehabilitation procedures.

(3) The effect of the decision on the commencement of rehabilitation procedures shall arise from the time such decision is made.

Article 50 (Matters that Must Be Prescribed When Decision Made on Commencement of Rehabilitation Procedures)

(1) When rendering a decision on

commencement of rehabilitation procedures, the court shall appoint one or multiple custodians after hearing the opinions of the Custodial Committee and the Creditors' Consultative Council and prescribe the following matters: *<Amended by Act No. 12892, Dec. 30, 2014; Act No. 14177, May 29, 2016>*

1. A period during which custodians are required to prepare and submit the list provided for in Article 147 (1) (excluding cases where a list prescribed in Article 223 (4) is submitted). In such cases, the period shall be at least two weeks but not more than two months following the date of the decision on commencement of rehabilitation procedures;
2. A reporting period of rehabilitation claims, rehabilitation security rights, stocks or investment equities (hereinafter in this Part referred to as the "reporting period"). In such cases, the reporting period shall be at least one week but not more than one month following the last date of the submission period determined in accordance with subparagraph 1 (where a list prescribed in Article 223 (4) is submitted, the date a decision on the commencement of rehabilitation procedures is rendered);
3. An inspection period of the rehabilitation claims and rehabilitation security rights entered in the list or reported (hereinafter referred to as the "inspection period" in this Part). In such cases the inspection period shall be at least one week but not more than one month following the last date of the reporting period;
4. A submission period of a rehabilitation plan. In such cases, the submission period shall be not more than four months following the last date (where a draft rehabilitation plan prescribed in

Article 223 (1) is submitted, the date a decision on the commencement of rehabilitation procedures is rendered) of the inspection period (not more than two months following the last day of the inspection period, where the debtor is an individual);

(2) A court may in special circumstances delay the dates or extend the periods under paragraph (1) 1 through 3. <Amended by Act No. 12892, Dec. 30, 2014>

(3) A court may, at the request of an interested person or ex officio, extend the period under paragraph (1) 1 by up to two months: Provided, That the extension shall in no case exceed one month if the debtor is an individual or a small and medium business entrepreneur. <Newly Inserted by Act No. 12892, Dec. 30, 2014>

Article 58 (Suspension, etc. of Other Procedures)

(1) Where a decision to commence rehabilitation procedures is made, any of the following acts shall be prohibited:

1. A petition for bankruptcy or an application for the commencement of rehabilitation procedures;
2. Compulsory execution, etc. based on any rehabilitation claim or rehabilitation security right;
3. Any disposition on default, based on any claims by which taxes are to be collected according to the example of collecting a national tax and which do not take priority over general rehabilitation claims in collection.

(2) Where the commencement of rehabilitation procedures has been decided, any of the following procedures shall be suspended:

1. The bankruptcy procedure;
2. Compulsory execution, etc. based on any rehabilitation claim or rehabilitation security right;
3. Disposition on default, based on any

claims by which taxes are to be collected according to the example of collecting a national tax and which do not take priority over general rehabilitation claims in collection.

(3) Where the commencement of rehabilitation procedures has been decided, any disposition on default against the debtor's property based on any rehabilitation claim or rehabilitation security right pursuant to the National Tax Collection Act or the Local Tax Collection Act, any disposition on default based on any claims by which taxes are to be collected according to the example of collecting a national tax and which take priority over general rehabilitation claims in collection, and any disposal of the goods which are offered as a guarantee for tax liability shall not be taken, and dispositions which have already been taken shall be suspended. In such cases, if deemed necessary, the court may, at the request of a custodian or ex officio, extend the period by up to one year: <Amended by Act No. 10219, Mar. 31, 2010; Act No. 14476, Dec. 27, 2016>

1. A period from the date on which the commencement of rehabilitation procedures has been decided until the date on which the rehabilitation plan is authorized;
2. A period from the date on the commencement of rehabilitation procedures has been decided until the date on which the rehabilitation procedures are completed;
3. A period from the date on which the commencement of rehabilitation procedures has been decided until the date on which two years lapse thereafter.

(4) Prescription shall not run during the period when the disposition may not be taken or is under suspension pursuant to the provisions of paragraph (3).

(5) Where it is deemed that the rehabilitation is not likely to be obstructed, the court may, at

the request of a custodian or a person who is authorized to collect taxes with respect to any claim provided for in Article 140 (2), or ex officio, order the continuation of the procedure or disposition which is suspended pursuant to the provisions of paragraph (2), and where deemed necessary for rehabilitation, the court may, at the request of a custodian or ex officio, order the cancellation of the procedure or disposition which is suspended pursuant to the provisions of paragraph (2), with or without any security required to be offered: Provided, That the same shall not apply to bankruptcy procedures.

(6) Claims for expenses against the debtor with respect to the procedures or dispositions which continue pursuant to the provisions of paragraph (5) shall constitute priority claims.

Article 59 (Suspension, etc. of Litigation Procedures)

(1) When it is decided to commence rehabilitation procedures, litigation procedures on the debtor's properties shall be suspended.

(2) Any custodian or any other party may subrogate any litigation procedures that are unrelated to the rehabilitation claim or the rehabilitation security right among those litigation procedures suspended pursuant to the provisions of paragraph (1). In this case, the claim for litigation expenses on the debtor shall constitute priority claims.

(3) When the rehabilitation procedures are completed prior to the subrogation referred to in the provisions of paragraph (2), the debtor shall naturally subrogate the litigation procedures.

(4) When the rehabilitation procedures are completed after the subrogation is made pursuant to the provisions of paragraph (2), the litigation procedures shall be suspended. In this case, the debtor shall subrogate the litigation procedures.

(5) In cases falling under paragraph (4), any

other party may also subrogate the litigation procedures.

(6) The provisions of paragraphs (1) through (5) shall apply mutatis mutandis to cases involving the debtor's property that are pending in the administrative agencies at the time that rehabilitation procedures commence.

Article 74 (Selection and Appointment of Custodians)

(1) The court shall appoint persons who are fully qualified to perform duties as custodians after hearing the opinions of the Custodial Committee and the creditors' consultative council.

(2) The court shall appoint individual debtors and debtors' non-individual representatives as custodians with the exception of the following instances:

1. When the debtor's financial distress is caused either by misappropriation or concealment of properties by any of the following persons or by poor management substantially attributable to such person:
 - (a) An individual debtor;
 - (b) The director of a non-individual debtor;
 - (c) The manager of the debtor;
2. When the request from the Creditors' Consultative Council has any justifiable grounds;
3. When the debtor's rehabilitation is necessary.

(3) Notwithstanding paragraph (1), where the debtor is an individual, a small and medium business entrepreneur and any person who is prescribed by the rules of the Supreme Court, the court may elect not to appoint any custodian: Provided, That where it is recognized that the grounds referred to in any subparagraph of paragraph (2) exist at the time the rehabilitation procedures are pending, a custodian may be appointed.

(4) Where no custodian is appointed, the debtor (referring to the debtor's representative where the debtor is not an individual) shall be deemed the custodian provided for in the provisions of this Part.

(5) Where any custodian is appointed, the court shall examine the debtor or the debtor's representative, except in urgent circumstances.

(6) Any corporation may become a custodian. In this case, such corporation shall nominate a person from among its directors to perform the duties of the custodian, and make a report thereon to the court.

(7) Where a creditors' consultative council falls under any subparagraph of paragraph (2), it may recommend a candidate for custodian to the court. *<Newly Inserted by Act No. 14177, May 29, 2016>*

Article 87 (Inspectors)

(1) When it is deemed necessary, the court may appoint one or multiple inspectors after hearing the opinion of the creditors' consultative council and Custodial Committee. *<Amended by Act No. 14177, May 29, 2016>*

(2) The inspectors shall be appointed from among persons who have knowledge and experience necessary to perform inspection but no interest in the rehabilitation procedures.

(3) When the court appoints inspectors, it may require such inspectors to inspect the matters provided for in the provisions of Articles 90 through 92 for a fixed period and ask them to present their opinions as to whether it is appropriate to continue the rehabilitation procedures.

(4) When it is deemed necessary, the court may require the inspectors to inspect other matters than those referred to in the provisions of paragraph (3) and to report the result of such inspection.

(5) The court may, at the request of an interested person or ex officio, dismiss any inspector if good cause exists. In this case, the

court shall examine the relevant inspector.

(6) Where a person who intends to lend a fund to a debtor after the commencement of rehabilitation procedures requests materials on the business, property, debts, and other financial standing of the debtor, and if it is deemed that the borrowing of money is necessary for the continuation of the business of the debtor and the request for materials is well-grounded, the court may have inspectors inspect and report on matters related to the request and may provide the person requesting the materials with the results of the inspection in whole or in part within the scope necessary for the borrowing of fund. *<Newly Inserted by Act No. 14177, May 29, 2016>*

Article 118 (Rehabilitation Claims)

Claims falling under any of the following subparagraphs shall constitute rehabilitation claims:

1. Property claims based on grounds that arise before the rehabilitation procedures commence for the debtor;
2. Interest that accrues after rehabilitation procedures commence;
3. Compensatory damages and penalties incurred by non-performance after rehabilitation procedures commence;
4. Costs incurred from participating in rehabilitation procedures.

Article 119 (Options when Both Parties Fail to Fulfill Bilateral Contract)

(1) When the debtor and the other party to a bilateral contract have yet to complete performance of the contract at the time rehabilitation procedures commence, any custodian may cancel or terminate such bilateral contract and request the debtor to meet his/her obligations and require the other party to fulfill his/her obligations: Provided, That the custodian shall not cancel or terminate the bilateral contract after the

assembly of related persons held to deliberate on a rehabilitation proposal or a decision is made to pass a written resolution on any case pursuant to the provisions of Article 240.

(2) In cases falling under paragraph (1), the other party may send to the custodian a preemptory notice demanding a definitive answer as to whether the bilateral contract is to be cancelled, terminated or upheld. In such cases, when the custodian fails to provide a definitive answer within 30 days from the date on which he/she is so notified, the custodian shall be deemed to have relinquished his/her right to cancel or to terminate a right referred to in the provisions of paragraph (1).

(3) The court may, at the request of the custodian or the other party or ex officio, extend or shorten the period referred to in the provisions of paragraph (2).

(4) The provisions of paragraphs (1) through (3) shall not apply to any collective agreement.

(5) Where the custodian cancels or terminates a contract to which the State is a party, concerning a project for improvement of defense capability under Article 3 of the Defense Acquisition Program Act, pursuant to paragraph (1), he/she shall consult with the Administrator of the Defense Acquisition Program Administration. *<Newly Inserted by Act No. 12595, May 20, 2014>*

Article 121 (Cancellation and Termination of Bilateral Contracts Unfulfilled by Both Parties)

(1) When any contract is canceled or terminated pursuant to the provisions of Article 119, the other party may exercise his/her right as a rehabilitation creditor on the compensation for damage.

(2) Where any contract is cancelled or terminated pursuant to the provisions of paragraph (1), when any benefit in return that is paid to the debtor exists among the debtor's properties, the other party may claim the

refund of such benefit in return and where such benefit in return does not exist among debtor's properties, the other party may exercise his/her right as a priority creditor to claim the refund of the value thereof.

Article 132 (Permission to Repay Rehabilitation Claims)

(1) When a small and medium business entrepreneur who is a transaction partner of the debtor is likely to face hardship in the continuation of his/her business unless he/she receives the repayment of a small-sum claim that he/she holds, the court may grant permission to pay back the whole or part of such small-sum claim to him/her at the request of any custodian, any protective custodian or the debtor even before it decides to authorize a confirmation of the rehabilitation plan. *<Amended by Act No. 14177, May 29, 2016>*

(2) When it is recognized that the repayment of rehabilitation claims is necessary for the rehabilitation of the debtor, the court may permit the payment of the whole or part of such rehabilitation claims at the request of any custodian, any protective custodian or the debtor even before it is decided to authorize a confirmation of the rehabilitation plan. *<Amended by Act No. 14177, May 29, 2016>*

(3) When the court intends to grant the permission referred to in paragraphs (1) and (2), it shall hear the opinions of the Custodial Committee and the creditors' consultative council and take into account all circumstances including current transactions between the debtor and the creditors, the debtor's current properties and the interests, etc. of interested persons.

Article 141 (Rights of Rehabilitation Secured Creditors)

(1) A rehabilitation claim or a claim for any property against a person other than the debtors resulting from any cause arising before

the rehabilitation procedure commences, which is secured by any such lien, pledge, mortgage, right to property transferred for security, right of provisional registered security, security right under the Act on Security over Movable Property, Claims, Etc., right to lease on a deposit basis, or preferential right, as exists on the debtor's property at the time the rehabilitation procedure is commenced, shall be deemed a rehabilitation security right: Provided, That with respect to claims for any interest, or any damages or penalties caused by the failure to comply with any obligation, this shall only apply to the claims arising until one day before the commencement of the rehabilitation procedure is determined. <Amended by Act No. 10366, Jun. 10, 2010>

(2) The provisions of Articles 126 through 131, and 139 shall apply mutatis mutandis to rehabilitation security rights.

(3) A rehabilitation secured creditor may participate in the rehabilitation procedure, based on his/her rehabilitation security rights.

(4) A rehabilitation secured creditor may participate in the rehabilitation procedure as a rehabilitation creditor with respect to the portion in excess of the value (where any other senior security right exists, it refers to the amount calculated by deducting the amount of the claim secured by that senior security right from the value of the subject matter of his/her security right; hereafter the same shall apply in this Article) of the subject matter of his/her security right, among the amount of his/her claim.

(5) A rehabilitation secured creditor shall have voting rights in proportion to the value of the subject matter of his/her security right: Provided, That where the amount of any secured claim of any rehabilitation secured creditor is less than the value of the subject matter of his/her security right, he/she shall have voting rights in proportion to the value of

that secured claim.

(6) The provisions of Articles 133 (2), and 134 through 138 shall apply mutatis mutandis to the voting rights of rehabilitation secured creditors.

Article 144 (Right of Offset)

(1) Where any rehabilitation creditor or any rehabilitation secured creditor bears obligations for the debtor at the time that rehabilitation procedures commence, when both of the claims and the obligations can be offset against each other prior to the expiration of the reporting period, the relevant rehabilitation creditor or the relevant rehabilitation secured creditor may perform such offset without resorting to the rehabilitation procedures only within such reporting period. The same shall apply where the obligations are time-fixed.

(2) The rent obligations of the current term and the following term after the rehabilitation procedures of any rehabilitation creditor and any rehabilitation secured creditor commence may be offset against each other pursuant to the provisions of paragraph (1): Provided, That when there is any security deposit, any rent obligation may be offset against each other thereafter.

(3) The provisions of paragraph (2) shall apply mutatis mutandis to land rents.

Article 145 (Prohibition on Offset)

In any of the following cases, the offset shall be prohibited from being performed:

1. Where any rehabilitation creditor or any rehabilitation secured creditor bears obligations for the debtor after the rehabilitation procedures commence;
2. Where any rehabilitation creditor or any rehabilitation secured creditor bears obligations for the debtor with knowledge of the fact that an application is filed for commencing rehabilitation

procedures or a petition for bankruptcy is filed: Provided, That the same shall not apply to the instances falling under any of the following items:

- (a) When such obligations are borne on grounds prescribed by Acts;
 - (b) When such obligations that are borne on grounds that arise before any rehabilitation creditor or any rehabilitation secured creditor becomes aware of the fact that the payment is suspended, an application is filed for commencement of rehabilitation procedures or a petition for bankruptcy is filed;
 - (c) When such obligations are borne on grounds that arise not more than one year prior to the earliest of the time when rehabilitation procedures commence, and the time when bankruptcy is declared;
3. When debtors of the debtor, for whom rehabilitation procedures commence, acquires any rehabilitation claim or any rehabilitation security right that is held by any other person after such rehabilitation procedures commence;
 4. When debtors of the debtor, for whom rehabilitation procedures commence, acquires any rehabilitation claim or any rehabilitation security right with knowledge of the fact that payment is suspended or a petition for bankruptcy is filed: Provided, That the same shall not apply to the time when such act falls under any item in subparagraph 2.

Article 147 (List of Rehabilitation Creditors, Rehabilitation Secured Creditors, Shareholders and Equity Right Holders)

(1) Every custodian shall prepare a list of rehabilitation creditors, the list of rehabilitation secured creditors, and the list of shareholders and equity right holders (hereinafter referred to

as "lists" in this Part) and submit them within such period as prescribed in Article 50 (1) 1. <Amended by Act No. 12892, Dec. 30, 2014>

(2) The matters falling under each of the following subparagraphs shall be noted in the lists:

1. List of rehabilitation creditors:
 - (a) The names and domiciles of rehabilitation creditors;
 - (b) The details of and grounds for such rehabilitation claims;
 - (c) The amount of voting rights;
 - (d) When there are claims with general preferential right, the gist thereof;
 2. List of rehabilitation secured creditors:
 - (a) The names and domiciles of rehabilitation secured creditors;
 - (b) The details of, and grounds for such rehabilitation security rights, the purposes for the security rights, their values and when anyone other than the debtor for whom the rehabilitation procedures commence is a debtor, his/her name and domicile;
 - (c) The amount of voting rights;
 3. List of shareholders and equity right holders:
 - (a) The names and domiciles of shareholders and equity right holders;
 - (b) The kinds and the number of shares or equity shares.
- (3) The court shall make the lists available for inspection by interested persons during the reporting period.
- (4) Any custodian may alter or correct the matters noted on the lists after obtaining permission therefor from the court under the conditions prescribed by the rules of the Supreme Court by the last day of the reporting period.

Article 148 (Report on Rehabilitation Claims)

(1) Any rehabilitation creditor who intends to participate in the rehabilitation procedures shall report the matters falling under each of the following subparagraphs to the court and submit evidential documents thereof, or certified copies or abridged copies of such evidential documents to the court within the reporting period:

1. His/her name and domicile;
2. The details and grounds for his/her rehabilitation claim;
3. The amount of his/her voting rights;
4. When his/her claim holds a general preferential right, the gist thereof.

(2) Any rehabilitation creditor shall report separately the portion of the general preferential right among his/her rehabilitation claims.

(3) When any lawsuit is pending at the time that the rehabilitation procedures commence for rehabilitation claims, the relevant rehabilitation creditor shall report the court, parties, the case name and the case number, other than the matters that are prescribed in the provisions of paragraphs (1) and (2).

Article 149 (Report on Rehabilitation Security Rights)

(1) Any rehabilitation secured creditor who intends to participate in rehabilitation procedures shall report the matters falling under each of the following subparagraphs to the court and submit evidential documents thereof, or certified copies or abridged copies of such documents to the court within the report period:

1. His/her name and domicile;
2. The details of, and grounds for his/her rehabilitation security right;
3. The purpose for and value of his/her rehabilitation security right;
4. The amount of his/her voting rights;
5. When anyone is a debtor, other than the debtor for whom the rehabilitation

procedures commence, the former's name and domicile.

(2) The provisions of Article 148 (3) shall apply mutatis mutandis to cases under paragraph (1).

Article 153 (Report on Rehabilitation Claims, etc. after Lapse of Reporting Period)

(1) With respect to any rehabilitation claim and any rehabilitation security right that accrue after the lapse of the reporting period, a report thereon shall be made within one month from the date on which such claim and such right accrue.

(2) The provisions of Article 152 (2) through (4) shall apply mutatis mutandis to the report referred to in the provisions of paragraph (1).

Article 161 (Objections, etc. Raised to Rehabilitation Claims and Rehabilitation Security Rights)

(1) Anyone falling under any of the following subparagraphs may raise a written objection to the court with respect to any rehabilitation claim and any rehabilitation security right entered in the list or reported within the inspection period:

1. The custodian;
2. The debtor;
3. Any rehabilitation creditor, any rehabilitation secured creditor, any shareholder and any equity right holder who are all entered in the list or are reported.

(2) When it has been decided to alter the inspection period, the court shall serve a written decision on each of the persons referred to in the provisions of paragraph (1).

(3) Service under paragraph (2) may be made by mailing the relevant documents.

Article 170 (Judgment in Claim Allowance Proceedings for Rehabilitation Claims and Rehabilitation Security Rights)

(1) When any custodian, any rehabilitation creditor, any rehabilitation secured creditor, any shareholder or any equity right holder raises an objection to any rehabilitation claim and any rehabilitation security right that are recorded on the list or reported, the rightful claimant who holds the rehabilitation claim or the rehabilitation security right (hereinafter referred to as "disputed claim" in this Part) may file an application with the court for a judgment in claim allowance proceedings (hereinafter referred to in this Part as a "judgment in claim allowance proceedings") for the confirmation of his/her claim and rights with all of the objectors as the other parties: Provided, That the same shall not apply to cases under Articles 172 and 174.

(2) The application referred to in the main sentence of paragraph (1) shall be filed within one month from the last day of the inspection period or from the special inspection date.

(3) The judgment in claim allowance proceedings shall determine whether disputed claims exist and the contents of such claims.

(4) When the court gives the judgment in claim allowance proceedings, it shall examine objectors.

(5) The court shall deliver a written decision on the judgment in claim allowance proceedings to each of the parties.

Article 179 (Claims Constituting Priority Claims)

(1) Any of the following claims shall constitute priority claims: <Amended by Act No. 8138, Dec. 30, 2006; Act No. 8829, Dec. 31, 2007; Act No. 9346, Jan. 30, 2009; Act No. 9804, Oct. 21, 2009; Act No. 12595, May 20, 2014>

1. Claims for expenses incurred in a judgment for common interest of any rehabilitation creditor, any rehabilitation secured creditor, any shareholder and any equity right holder;
2. Claims for expenses incurred in

performing the management of the debtor's business and properties and the disposal of his/her properties after the rehabilitation procedures commence;

3. Claims for expenses incurred in implementing the rehabilitation plan: Provided, That any expenses that incurred after the completion of the rehabilitation procedures shall be excluded;
4. Claims for any expenses, remuneration, compensation and special compensation provided for in the provisions of Articles 30 and 31;
5. Claims for funds borrowed by any custodian in order to manage the debtor's business and properties after the rehabilitation procedures commence and any claim arising out of any other act;
6. Claims that accrue to the debtor from clerical work or unlawful gains after the rehabilitation procedures commence;
7. Claims held by other parties when any custodian fulfills obligations pursuant to the provisions of Article 119 (1);
8. Claims that accrue from the supply made by the other party to a bilateral contract that obliges the continued supply before the rehabilitation procedures commence after an application is filed for commencing them;
9. Tax that falls under any of the following items and the deadline for payment thereof has yet to arrive at the time rehabilitation procedures commence:
 - (a) Taxes withheld: Provided, That the tax imposed on any bonus that is deemed reverted to the representative pursuant to the provisions of Article 67 of the Corporate Tax Act shall be limited to tax collected at source;
 - (b) Value-added tax, individual consumption tax, liquor tax.

- (c) Education tax and special tax for agricultural and fishing villages, levied and collected according to the example of a disposition taken to impose and collect the main tax;
 - (d) Local tax collected and paid by the person liable for the special collection;
 - 10. The wages, severance pay and disaster compensation of the debtor's employees;
 - 11. The debtor's employees' right to claim for a refund of bailment monies and fidelity guarantee monies, which accrue from causes arising before the rehabilitation procedures commence;
 - 12. The borrowing of funds and procurement of materials that are performed by the debtor or any protective custodian after obtaining permission therefor from the court after an application is filed for commencement of rehabilitation procedures and prior to the commencement of rehabilitation procedures and other claims that accrue from acts that are inevitable in continuing the debtor's business;
 - 13. Expenses determined by the court as necessary for the creditors' consultative council to carry out its activities pursuant to the provisions of Article 21 (3);
 - 14. Supporting allowances to the debtor and his/her dependents;
 - 15. Other inevitable expenses to be incurred for the debtor, which are not referred to in the provisions of subparagraphs 1 through 14.
- (2) In granting permission for borrowing of funds under paragraph (1) 5 and 12, the court shall hear opinions of interested parties.
<Newly Inserted by Act No. 9804, Oct. 21, 2009>

Article 193 (Contents of Rehabilitation Plan)

- (1) The matters falling under of the following subparagraphs shall be prescribed in the rehabilitation plan:
1. Any change to all or part of the rights of any rehabilitation creditor, rehabilitation secured creditor, shareholder or any equity right holder;
 2. The repayment of priority claims;
 3. Means of raising fund to repay the debtor's obligations;
 4. The purpose for using profits, that exceed the amount anticipated in the rehabilitation plan;
 5. When any other claims are known after the rehabilitation procedures commence, the details thereof.
- (2) The matters falling under any of the following subparagraphs may be prescribed in the rehabilitation plan:
1. The transfer of any business or any properties, any investment or any rent and the commission of any corporate governance;
 2. Any amendment to the articles of incorporation;
 3. Any change in directors and the chief executive officer. (When the debtor is not a stock company, anyone who holds the authority to represent the debtor shall be included);
 4. A decrease in the capital;
 5. The issuance of new shares or bonds;
 6. The all-inclusive exchange, transfer, merger, merger after divestiture after division of shares;
 7. Dissolution;
 8. The incorporation of a new company;
 9. Other matters necessary for the rehabilitation.
- (3) When an agreement is reached among all or some creditors on the repayment order of claims that they hold by the deadline determined by the court in accordance with Article 92 (1), the rehabilitation plan shall

have no provision against claims for which repayment order is agreed insofar as such agreement does not prejudice other creditors under the rehabilitation plan. In such cases, the creditors shall submit data attesting to their agreement to the court by the deadline determined by the court in accordance with Article 92 (1). <Amended by Act No. 12892, Dec. 30, 2014>

Article 218 (Principles of Equality)

(1) The conditions of the rehabilitation plan shall allow for equality between persons who hold rights of the same nature: Provided, That the same shall not apply to the following cases: <Amended by Act No. 14177, May 29, 2016>

1. When consent is obtained from a person who suffers disadvantage;
 2. When the principles of equality are not undermined even if any rehabilitation creditor, any rehabilitation secured creditor whose claims are minor in terms of amount, or any person who holds a claim provided for in subparagraphs 2 through 4 of Article 118 are differently prescribed or differentiated;
 3. When the rehabilitation claims of a small and medium business entrepreneur who is a transaction partner of the debtor is repaid preferentially to other rehabilitation claims in fear that the rehabilitation claims are likely to cause a clear impediment to the continuation of the business;
 4. When the principles of equality are not undermined even if persons who hold rights of the same kind are differentiated.
- (2) Where any of the following claims is prescribed differently from other rehabilitation claims or is differentiated in the rehabilitation plan, it is recognized that such does not undermine the principles of equality, and such claim may be handled more disadvantageously than other rehabilitation claim:

1. A claim arising out of a cash loan

extended to a person with a special relationship, whose scope is prescribed by the Presidential Decree, with the debtor before the rehabilitation procedures commence;

2. A claim regarding guarantee obligations where the debtor becomes a guarantor without compensation for the person in a special relationship, the scope of which is prescribed by the Presidential Decree, with the former before the rehabilitation procedures commence;
3. A claim for indemnification arising out of a guarantee liability for the debtor where the person in a special relationship, whose scope is prescribed by the Presidential Decree, with the debtor becomes a guarantor for the debtor before the rehabilitation procedures commence.

Article 220 (Submission of Rehabilitation Proposal)

(1) A custodian shall prepare and present a rehabilitation proposal to the court within the period determined by the court, in accordance with Article 50 (1) 4 or paragraph (3) of the same Article.

(2) A custodian shall, in case of being unable to prepare a rehabilitation proposal within the period under paragraph (1), report the fact to the court within that period.

Article 223 (Prior Submission of Rehabilitation Proposal)

(1) Any creditor who holds a claim corresponding to at least 1/2 of the debtor's obligations or any debtor who has obtained the consent of such creditor may develop a rehabilitation plan and submit it to the court from the time when rehabilitation procedures commence before the commencement of rehabilitation procedures. <Amended by Act No. 12892, Dec. 30, 2014; Act No. 14177, May 29,

2016>

(2) The court shall keep the rehabilitation proposal (when the rehabilitation proposal is revised pursuant to Article 228 or 229 (2), this refers to the revised rehabilitation proposal; hereinafter in this Article referred to as "prior rehabilitation proposal") in the court for inspection by interested parties.

(3) Creditors other than creditors who have submitted the prior rehabilitation proposal, may express their intentions to agree to the prior rehabilitation proposal in writing to the court by the date preceding the date the assembly of related persons is held or the date preceding the first day of the period determined by the court under Article 240 (2) to resolve on the rehabilitation proposal. <Amended by Act No. 14177, May 29, 2016>

(4) Any person who submits a prior rehabilitation proposal shall submit lists of rehabilitation creditors, rehabilitation secured creditors, shareholders, and equity holders (it must include the matters in the subparagraphs of Article 147 (2)), documents including the matters provided for in the subparagraphs of Article 92 (1), and other documents prescribed by the rules of the Supreme Court to the court before rehabilitation procedures commence. <Newly Inserted by Act No. 14177, May 29, 2016>

(5) When the lists of rehabilitation creditors, rehabilitation secured creditors, shareholders, and equity holders are submitted, such lists shall be considered as lists in Article 147 (1). <Newly Inserted by Act No. 14177, May 29, 2016>

(6) When the prior rehabilitation proposal is submitted, the relevant custodian need not submit the rehabilitation proposal after obtaining exemption thereof from the court or may withdraw the rehabilitation proposal that he/she has submitted to the court. <Amended by Act No. 14177, May 29, 2016>

(7) Any creditor who submits the prior rehabilitation proposal or expresses an intention to agree to the prior rehabilitation

proposal shall be deemed to have agreed to it when the prior rehabilitation proposal is approved by a resolution at the assembly of related persons that is called for the adoption thereof: Provided, That when the contents of the prior rehabilitation proposal are amended to the detriment of creditors, circumstances are greatly changed and material grounds exist, such creditors may withdraw their agreements after obtaining the court's permission therefor by the day preceding the date on which the assembly of related persons is held. <Amended by Act No. 12892, Dec. 30, 2014; Act No. 14177, May 29, 2016>

(8) When a prior rehabilitation proposal is referred to for a written resolution under Article 240 (1), any creditor who submits a prior rehabilitation proposal, or has expressed his/her agreement to such prior rehabilitation proposal before the response period prescribed in paragraph (2) of the same Article shall be considered to have agreed within the response period mentioned in the above: Provided, That when the details of the prior rehabilitation proposal is revised unfavorably to the creditor or there exists a substantial circumstantial change or there exists other grave grounds, the creditor may withdraw his/her agreement by obtaining permission from the court by the date the response period terminates. <Newly Inserted by Act No. 14177, May 29, 2016>

Article 232 (Assembly of Related Persons Called to Resolve on Rehabilitation Proposal)

(1) When the court does not order the revision of the rehabilitation proposal that goes through an examination of the assembly of related persons pursuant to the provisions of Article 224 or 230, the court shall call an assembly of related persons to resolve on the rehabilitation proposal after setting the date therefor.

(2) In cases under paragraph (1), the court shall deliver in advance a copy or summary of

the rehabilitation proposal to following persons:

1. The custodian;
2. The debtor;
3. Rehabilitation creditors, rehabilitation secured creditors, shareholders and equity right holders (excluding anyone not entitled to exercise his/her voting rights) who are entered in the list or are reported;
4. Any person who bears any obligations or provides security for the rehabilitation.

(3) The delivery referred to in the provisions of paragraph (2) may be made by mail.

(4) The provisions of Article 8 (4) and (5) shall apply mutatis mutandis to the delivery referred to in the provisions of paragraph (3).

Article 237 (Requirements for Adoption)

A rehabilitation proposal shall be adopted at an assembly of related persons, according to each of the following groups:

1. Group of rehabilitation creditors:
Consent shall be obtained from the persons holding the voting rights equivalent to at least 2/3 of the total amount of the voting rights of the rehabilitation creditors who are entitled to exercise their voting rights;
2. Group of rehabilitation secured creditors:
 - (a) With respect to the rehabilitation proposal under Article 220, consent shall be obtained from the persons holding the voting rights equivalent to at least 3/4 of the total amount of the rehabilitation secured creditors who are entitled to exercise their voting rights;
 - (b) With respect to the rehabilitation proposal under Article 222, consent shall be obtained from the persons holding the voting rights equivalent to at least 4/5 of the total amount of the rehabilitation secured creditors who are entitled to exercise their

voting rights;

3. Group of shareholders or equity right holders:

Consent shall be obtained from the persons holding the voting rights equivalent to at least 1/2 of the total number of the voting rights of shareholders or equity right holders who are entitled to exercise their voting rights at an assembly of related persons to approve the rehabilitation proposal.

Article 242 (Whether or Not to Grant Authorization of Rehabilitation Plans)

(1) Where a rehabilitation proposal is adopted at an assembly of related persons, the court shall make a decision on whether to grant authorization of the rehabilitation plan, on the date of such adoption or on the date of decision declared by the court immediately after the adoption.

(2) Any of the following persons may, on the date referred to in paragraph (1), state their opinions on whether to grant authorization of the rehabilitation plan: *<Amended by Act No. 8863, Feb. 29, 2008>*

1. Persons falling under any subparagraph of Article 182 (1);
2. The administrative agency supervising the debtor's business, the Minister of Justice, the Minister of Justice, and the Financial Services Commission.

(3) Where a decision on setting the date whether to grant authorization of the rehabilitation plan is made by the court declaration, such decision may be exempted from public notice and service requirements.

(4) and (5) Deleted. *<by Act No. 14177, May 29, 2016>*

Article 243 (Requirements for Authorizing Rehabilitation Plans)

(1) The court may determine to grant authorization of the rehabilitation plan only in

cases where the requirements falling under each of the following subparagraphs are met:

1. The rehabilitation procedures or the rehabilitation plan shall conform to the provisions of Acts;
2. The rehabilitation plan shall be fair, equitable and executable;
3. The rehabilitation plan shall be resolved on the basis of good faith and fairness;
4. Repayment methods according to the rehabilitation plan shall be in terms geared towards making repayments more advantageously than repayments would be made to each creditors when the debtor's business is liquidated: Provided, That the same shall not apply to cases where the creditors agree to payment methods;
5. The rehabilitation plan, the terms of which are geared for a merger or merger after divestiture, requires a resolution passed by a general meeting of shareholders and a general meeting of members of the other company, which approves any merger contract or an agreement on merger after divestiture: Provided, That the same shall not apply to cases where the relevant company does not require such approval resolution of the general meeting of shareholders or the general meeting of members;
6. Matters requiring permission, authorization, license or other disposition of administrative agencies in the rehabilitation plan shall be consistent with opinions of administrative agencies provided for in the provisions of Article 226 (2) with respect to major points;
7. With respect to the rehabilitation plan, the terms of which are geared towards an exchange of shares, a general meeting of shareholders of the other company is required to pass a resolution

that approves such all-inclusive share swap: Provided, That the same shall not apply to cases where the company performs the all-inclusive share swap pursuant to the provisions of Articles 360-9 and 360-10 of the Commercial Act.

(2) Even in cases where the procedures for determining whether to grant authorization for the rehabilitation plan are in violation of the provisions of Acts, when it is deemed inappropriate not to grant authorization for the rehabilitation plan taking into account the extent of the violation, the current state of the debtor and all other circumstances, the court may determine to grant such authorization.

Article 244 (Authorization in Cases of Group in Disagreement)

(1) Where a resolution on a rehabilitation proposal is passed at an assembly of related persons or the rehabilitation proposal is placed in a written resolution under Article 240, even when any group fails to reach agreement thereon among persons who hold voting rights that exceed the statutory amount and number, the court may amend the rehabilitation proposal, prescribe provisions aimed at protecting the rights of the rehabilitation creditors, rehabilitation secured creditors, shareholders and equity right holders of such group in a manner falling under any of the following subparagraphs and determine to grant authorization for the rehabilitation plan:

1. The means by which properties subject to security rights are transferred to a newly incorporated company or any other person or is withheld for the debtor while keeping the security rights intact for the rehabilitation secured creditors;
2. The means by which properties subject to security rights for rehabilitation secured creditors, the debtor's properties

to be appropriated for the repayment of claims for rehabilitation creditors and the debtor's properties that is to be appropriated for the distribution of residual property for shareholders and equity right holders are all sold at a price that exceeds fair value (with respect to properties that are subject to security rights, any burden incurred by such rights shall be deemed nonexistent) that is set by the court and the balance obtained by subtracting costs of sale from the sale proceeds is used for repayment, distribution and deposit;

3. The means by which proceeds of the fair trade price of the rights that is set by the court are distributed to the rightful claimants;
4. The means by which the rightful claimants are fairly and equally protected according to the means referred to in the provisions of subparagraphs 1 through 3.

(2) Where a resolution is passed at an assembly of related persons on the rehabilitation proposal or the rehabilitation proposal is presented for written resolution pursuant to the provisions of Article 240, when it is clear that it is impossible to obtain from any group the agreement necessary to meet the requirements for resolving upon the rehabilitation proposal, the court, at the request of the person developing the rehabilitation proposal, shall prescribe provisions that aim for protecting the rights of such group of rehabilitation creditors, rehabilitation secured creditors, shareholders and equity right holders by means referred to in the provisions of each subparagraph of paragraph (1) and permit developing the rehabilitation proposal.

(3) When the application referred to in the provisions of paragraph (2) is filed, the court shall hear the opinions of the applicant and not less than one rightful claimant of the group

from which it is evidently impossible to obtain an agreement.

Article 251 (Immunity of Rehabilitation Claims, etc.)

When it is decided to grant authorization for the rehabilitation plan, the debtor shall be exempted from his/her responsibilities under all of the rehabilitation claims and rehabilitation security rights, with the exception of rights recognized pursuant to the rehabilitation plan or the provisions of this Act and the rights of shareholders and equity right holders, and all security rights over the debtor's properties shall cease to exist: Provided, That the same shall not apply to claims provided for in the provisions of Article 140 (1).

Article 283 (Discontinuation of Rehabilitation Procedures)

(1) When repayments commence according to the rehabilitation plan, the court shall decide to discontinue the rehabilitation procedures, at the request of any of the following persons or ex officio:

1. The custodian;
2. Any rehabilitation creditor or any rehabilitation secured creditor who is entered in the list or reported.

(2) The court shall, when it makes the decision referred to in the provisions of paragraph (1), publicly notify the operative part of such decision and the gist of its reasoning. In this case, no service need be made.

(3) The provisions of Article 40 (1) shall apply mutatis mutandis to cases where the decision referred to in the provisions of paragraph (1) is made.

Article 286 (Discontinuation before Authorization Granted for Rehabilitation Plan)

(1) In any of the following cases, the court

shall ex officio determine to discontinue rehabilitation procedures:

1. Where a rehabilitation proposal is not submitted within the period or extended period respectively, set by the court or all of the draft;
 2. Where a rehabilitation proposal is voted against or is not resolved upon at the assembly of related persons within two months or the extended period from the first day of the assembly of related persons;
 3. A rehabilitation proposal is not resolved upon at the assembly of related persons within the period provided for in the provisions of Article 239 (3);
 4. When it is decided to place a rehabilitation proposal in a written resolution pursuant to the provisions of Article 240 (1), however the rehabilitation proposal is not resolved upon according to the written resolution: Provided, That when the hearing continuation date provided for in the provisions of Article 238 is designated with respect to the rehabilitation proposal that is not resolved upon by a written resolution, it shall mean the time the written resolution is not passed at the assembly of related persons on the hearing continuation date rehabilitation plans that are submitted within the period are so poorly developed that it does not justify placing them before the examination or in a resolution of the assembly of related persons.
- (2) When the value of the debtor's business when if is liquidated is deemed evidently higher than the value thereof when the debtor's business continues before or after a rehabilitation proposal is submitted, the court may, at the request of any custodian or ex officio, decide to discontinue the rehabilitation procedures before it is decided to grant

authorization for the rehabilitation plan: Provided, That the same shall not apply to cases where the court permits the drawing up of a rehabilitation proposal, the content of which is about the liquidation, etc. in accordance with Article 222. <Amended by Act No. 12892, Dec. 30, 2014>

Article 288 (Discontinuation after Authorization Granted for Rehabilitation Plan)

- (1) When it is evidently impossible to implement the rehabilitation plan after it is decided to grant authorization for the rehabilitation plan, the court shall determine to discontinue the rehabilitation procedures, ex officio or at the request of the custodian, rehabilitation creditors or rehabilitation secured creditors entered in the list or reported.
- (2) The court may hear opinions of the Custodial Committee, the creditors' consultative council and interested persons on a fixed date before it makes the decision referred to in the provisions of paragraph (1): Provided, That when the court fails to specify the fixed date, it shall provide each of them with an opportunity to present their opinions within a specified deadline.
- (3) The decision to specify the date or the deadline referred to in the provisions of paragraph (2) shall be publicly notified and such fixed date or such specified deadline shall be delivered to persons who are known as persons who hold the rights recognized in the rehabilitation plan on the basis of the rehabilitation claims or rehabilitation security rights that are confirmed respectively.
- (4) The discontinuation of the rehabilitation procedures referred to in the provisions of paragraph (1) shall not affect the implementation of the rehabilitation plan and effects that accrue from the provisions of this Act.

**NEW YORK STATE BAR ASSOCIATION INTERNATIONAL SECTION
2018 ASIA REGIONAL MEETING
APRIL 23-24, 2018
SEOUL, KOREA**

**Cross-Border Insolvency:
Implications of the Hanjin Shipping Bankruptcy**

Submitted by

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Introduction.

This section of the program will examine various approaches to business restructurings under the recently revised Korean Debtor Rehabilitation and Bankruptcy Act (“DRBA”) and Chapters 11 and 15 of the United States Bankruptcy Code. Particular attention will be paid to the attempted restructuring of Hanjin Shipping, a Korea-based international shipping company that filed a Chapter 15 case in the District of New Jersey seeking recognition of a receivership proceeding filed in its home country of Korea. The Chapter 15 case was highly contentious from the outset, and while recognition ultimately was granted the restructuring in Korea wound up as a liquidation proceeding, with worldwide creditor recoveries estimated not to exceed 1% of claim value.

Background on the Company and Korean Receivership Filing.

- Hanjin was the seventh largest container carrier in the world
- Filed for receivership in Seoul court in late August 2016 (US\$5.5 billion in outstanding debt)
- More than 130 vessels in its fleet, operating all over the world

- With the Korean insolvency filing, Hanjin faced creditors attempting to seize vessels, other ships being turned away from ports and denied passage through canals, and terminal operators refusing to handle cargo
- As a result, Hanjin vessels were stranded at sea and global supply chains were disrupted at peak shipping season for holiday retail merchandise in U.S. and other countries
- Foreign representative appointed in Seoul proceeding sought recognition of that proceeding and cooperation from as many as 43 jurisdictions around the world, in effort to complete delivery of goods in transit, prevent local creditors from seizing ships, and preserve going concern value for rehabilitation of company
- One such proceeding was U.S. Chapter 15 filing in New Jersey in early September 2016, presenting largely different set of legal issues to U.S. court and different body of creditors than involved in Korean rehabilitation proceeding.

Brief Overview of Chapter 15.

- Special Chapter of U.S. Bankruptcy Code adopted to provide ancillary relief in respect of foreign insolvency proceeding, based upon UNCITRAL Model Law on Cross-Border Insolvency.
- Purpose not to administer estate assets or claims or develop restructuring plan with U.S. creditors for approval by bankruptcy court, but to obtain recognition of “foreign proceeding” upon request of “foreign representative,” so as to facilitate cooperation by US courts with foreign insolvency proceedings.

- Differentiation between “foreign main proceeding” and “foreign non-main proceeding” based on concept of debtor’s center of main interests, referenced worldwide as COMI.
- Different levels of relief available based upon recognition as “foreign main” or “foreign non-main”; e.g., automatic imposition of bankruptcy stay upon recognition of “foreign main”; discretionary upon recognition of “foreign non-main.”
- Requirement for recognition as foreign main proceeding that debtor’s COMI exist in foreign jurisdiction in which that proceeding is pending (presumption that COMI exists where debtor entity is incorporated or otherwise organized).
- Requirement for recognition as foreign non-main proceeding (outside debtor’s COMI) that debtor maintain an “establishment” in the jurisdiction – defined as “any place of operations where the debtor carries out a nontransitory economic activity.”
- COMI disputes can frustrate or delay U.S. recognition – e.g., *Bear Stearns Funds; O.A.S.; Oi Cooperatief Brasil, S.A.*
- Does not preclude separate commencement of Chapter 7 or 11 case for debtor (described below in respect of Chapter 11).
- Eligibility for relief and invocation of U.S. jurisdiction.
- Provisional and final relief available in advance of and upon recognition.
- Limited role for U.S. creditors, other than in connection with grant/denial of recognition and related COMI and eligibility issues.

- Use of cross-border protocols and court-to-court communication, incl. simultaneous hearings and even trials, e.g. *Nortel*.

Use of Chapter 11 by Non-U.S. Companies

- Low threshold for jurisdiction facilitates filing by non-U.S. companies – proverbial “umbrella in New York.”
- Independent from or in conjunction with Chapter 15 filing – after recognition, foreign representative can commence voluntary or involuntary case per section 1511, or upon recognition as foreign main proceeding a concurrent proceeding can be commenced under section 1528.
- Same legal process as for U.S.-based debtor.
- Administration of estate and development of reorganization plan for vote by creditors and confirmation by bankruptcy court in transparent and participatory process.
- Well-developed system with multiple tools available to achieve restructuring in proceedings before specialized courts and experienced judges:
 - Retention of authority by debtor in possession to manage and operate business
 - Automatic stay
 - Ability to obtain post-petition financing on secured, superpriority basis
 - Ability to use, sell and lease property in ordinary course of business
 - Ability to assume, reject or assume and assign executory contracts and unexpired leases
 - Exclusive right of debtor in possession to file Chapter 11 plan

- Broad notice to creditors
- Formation of Creditors Committee with authority to retain professionals at expense of estate, appear and be heard on all issues in case
- Extensive financial disclosure requirements.

The Hanjin Restructuring

- Abrupt refusal of lenders and Korean Development Bank to fund additional advances caused lack of meaningful opportunity for advance planning, guidance or thoughtful coordination.
- Difficulty in implementing cross-border strategy to protect vessels or maintain continuity of operations.
- Lack of reliable or predictable source of third party financing (even though Korean law allows for post-petition financing).
- Minimal financial and operational information available to international creditors.
- U.S. Chapter 15 court has limited jurisdiction and authority in respect of operational issues, e.g. no authority to approve post-petition financing to maintain operations under section 364 of Bankruptcy Code.
- No insight into Korean proceedings in U.S.; no protocols, court-to-court communication did not occur until after critical period had passed.
- Contentious issues from very first day
 - Arrest of ships/protection of maritime lienholders – collision of bankruptcy and maritime law regarding recognition and enforcement of maritime liens and related rights
 - Entry of ships into U.S. ports to unload cargo

- Payment of port charges
- Intermodal delivery to beneficial cargo owners – resourcefulness of U.S. counsel in developing delivery protocols, and flexibility of U.S. court in approving and adopting.
- Rights and interests of port authorities.

Lessons Learned

- How U.S. Chapter 11 case might have unfolded – greater transparency and flexibility, greater role for U.S. court and creditors, availability of additional relief??
- What additional relief might have been available – post-petition financing; rejection of burdensome contracts and leases; claims administration and objection; formulation and proposal of plan of reorganization or liquidation, incl. cramdown of dissenting creditors??
- Would outcome have been different??