

# Hanjin Shipping Applies to Commence Corporate Rehabilitation: Impact on Creditors

## 1. Current Situation

On August 31, 2016, Hanjin Shipping (“Hanjin”) submitted an application to commence corporate rehabilitation proceedings with the Bankruptcy Division of the Seoul Central District Court (the “Court”). As the largest shipping company in Korea and the 7th largest worldwide, Hanjin’s actions are expected to have far-reaching consequences worldwide.

After a creditor-led work-out program was commenced on May 4, 2016, Hanjin submitted a restructuring plan to its creditor financial institutions. However, the creditors rejected this plan as it did not provide for sufficient fund raising necessary to pay off maturing debt, make payments in arrears to ship-owners, and cover operational costs. Hanjin applied to commence corporate rehabilitation proceedings immediately after the creditor financial institutions decided to terminate the work-out program.

Upon Hanjin’s application, the Bankruptcy Division of the Court immediately held a meeting with Mr. Seok Tae Su, the representative director of Hanjin, and issued a comprehensive stay order (to prevent creditors from seizing or foreclosing on Hanjin’s assets) as well as a preservation order (to prevent Hanjin from disposing of its assets and paying off its debts). On September 1, 2016, just one day after Hanjin submitted its application, the Court announced that it had approved Hanjin’s application to commence corporate rehabilitation proceedings and appointed Mr. Seok as the receiver. Taking into consideration the significant role Hanjin plays in the Korean shipping industry, as well as the impact on Hanjin’s workers, contractors, and the Korean economy, the Court explained that its exceptionally quick response was necessary to mitigate the uncertainty triggered by Hanjin’s application to commence corporate rehabilitation proceedings. The Court has appointed Samil PricewaterhouseCoopers to act as examiner to evaluate Hanjin’s corporate assets, to prepare financial statements, and to assess the suitability of the proceedings. It should be noted that the opinion of the examiner is critical with regards to the preparation of the rehabilitation plan, and thus will play a crucial role in determining the future of Hanjin. Since the Court is seeking to expedite

the proceedings, it is scheduled to receive an interim report by October 7, 2016, and the final report by October 28, 2016. The deadline for submitting the rehabilitation plan is November 25, 2016. The Court also emphasized that while it is not ruling out selling off Hanjin's business divisions and assets, any such sales would be for the effective reorganization of the company rather than to prepare for liquidation.

## 2. Key Legal Issues and Examination and Finalization Judgment of Claims

### A. Filing of Rehabilitation Claims and Examination and Finalization Judgment of Claims

Since the court decided to commence corporate rehabilitation proceedings for Hanjin, both foreign and domestic creditors will need to file their rehabilitation claims with the Court unless their claims are already included in the list of claims submitted to the Court by Hanjin's receiver. If the receiver objects to a claim filed by a creditor, the creditor will need to apply for an examination and finalization judgment of the disputed claim with the Court in order to protect its rights.

### B. Ship Arrest and Rejection of Ship Charter Agreements

From the perspective of shippers, the most pressing issue is the potential arrest of Hanjin's vessels. For ship-owners, the most important issue would be the possible rejection of ship charter agreements.

In order to prevent its vessels located overseas from being arrested, Hanjin will likely file for recognition of foreign insolvency proceedings in the countries where Hanjin has ports of call. If Hanjin is successful, the courts in those countries will recognize the corporate rehabilitation proceedings in Korea and prevent arrests in their respective jurisdictions.

It should also be noted that, pursuant to the Debtor Rehabilitation and Bankruptcy Act (the "DRBA"), the receiver has the power to reject executory contracts. Since ship charter agreements are considered executory contracts, it is possible that they may be rejected by Hanjin's receiver. Thus, ship-owners should prepare response plans in order to file claims and determine liability for damages under those contracts. Recent rehabilitation proceedings of other shipping companies (Pan Ocean, Samsung LOGIX Corporation, etc.) show that the rejection of ship charter agreements by the receiver and the subsequent determination of liability for damages under those agreements are likely to be the most significant issues once rehabilitation proceedings commence. If Hanjin's receiver does not reject a ship charter agreement or agrees to maintain the ship charter agreement on revised terms and conditions, the main issue will be on how to satisfy damages already incurred by the ship-owners.

As executory contracts, Hanjin's receiver may also reject financial investment agreements (including any put options contained in such agreements). Therefore, financial investors of Hanjin will also need to pay close attention to how their rights may be affected under these contracts by the corporate rehabilitation proceedings.

### C. Power of Avoidance

If Hanjin disposed of its assets, repaid certain creditors in priority to other creditors, or provided collateral to new or existing creditors, the receiver is entitled to exercise its power of avoidance by setting aside such transactions.

Under the DRBA, the power of avoidance can be exercised in many different forms based on complex legal principles. Therefore, it is important for creditors to assess the likelihood that the receiver would exercise its power of avoidance over any asset transfer, debt repayment, or collateral provided ahead of Hanjin's corporate rehabilitation proceedings, and to prepare appropriate response plans in case such transactions are avoided by the receiver.

## 3. Shin & Kim's Expertise in Ship Financing and Insolvency & Corporate Restructuring

Shin & Kim advises major domestic shipping companies as well as domestic and foreign financial institutions involved in ship financing on leasing, asset-based financing structures and structured financial transactions. In addition, Shin & Kim is one of the most experienced law firms in the area of insolvency and restructuring, having been involved in all aspects of insolvency and workouts since the financial crisis of Korea in the late 1990s. Shin & Kim prides itself for providing the best legal services in the area of insolvency and restructuring, based on its extensive experience and practical know-how accumulated throughout the years.

During Pan Ocean's rehabilitation proceedings in 2015, Shin & Kim advised on the sale of Pan Ocean and the sale of non-performing loans by creditors, and represented the receiver during charter rate negotiations. With a strong background in ship financing and a successful history in insolvency and corporate restructuring matters, Shin & Kim is well equipped to provide top-tier legal advisory services and to guide stakeholders through any legal issues that may arise as Hanjin seeks to restructure its businesses.

**Note: Shin & Kim is not representing Hanjin in its corporate rehabilitation proceedings.**

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