

## Briefing note

# Hanjin Shipping Co., Ltd: Liquidation or a Different Path?

On September 1, 2016, a rehabilitation procedure was commenced in the Seoul Central District Court in respect of Hanjin Shipping Co., Ltd (**Hanjin**). This action followed many months of discussions between Hanjin and its creditors (both local and international) designed to reach a consensual restructuring, as a result of which various creditors had voluntarily agreed to postpone exercising claims. Such agreement was eventually suspended on August 30, 2016 following notice to Hanjin that such creditors were unable to continue their support.

## Background

The immediate consequences of the rehabilitation proceedings are fluid and fast moving and the facts and information in this briefing note are updated as at 14 September 2016.

- The Seoul Central District Court has approved the commencement of rehabilitation proceedings, the stated purpose of which is the effective rehabilitation of Hanjin and its business, by restructuring its debts owed to creditors in accordance with a rehabilitation plan to be agreed and approved.
- It has been reported that Hanjin has until December 23, 2016 to propose a rehabilitation plan to the court. Creditors will be required to approve this plan, and after such approval, the Court must confirm the plan. Should this not be successful it is likely that a liquidation would follow.
- One of Hanjin's senior executives, Tae-Soo Suk, has been appointed by the Court as the receiver handling Hanjin's business and rehabilitation plan.
- There have been widespread disruptions to Hanjin's fleet and logistics operations, including actions for vessel arrests, denial of berthing and/or unloading of cargo at certain ports and extended vessel voyages in international waters pending clarification of creditors intentions.
- Preliminary reports indicate that (i) up to 53 vessels in the Hanjin fleet have been seized or blocked from access to ports with cargo value estimates on vessels in transit in excess of US\$14 billion, (ii) Hyundai Merchant Marine Co. Ltd. (**HMM**) may be prepared (possibly together with other smaller carriers) to provide vessels to relieve some of the logistical difficulties facing the Hanjin fleet, and (iii) the South Korean government is considering providing support to subcontractors adversely affected by the Hanjin proceedings.

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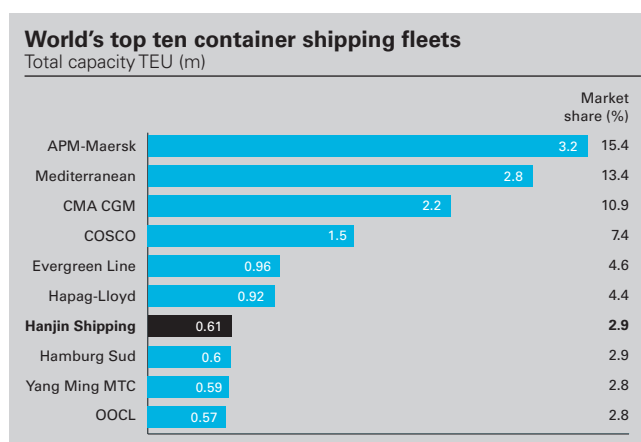
*Marine Money 2016*

- Although there were notable increases in container spot rates in the immediate aftermath of the announcement of the Hanjin rehabilitation procedure, it appears that such rates have now stabilized.
- To provide additional legal protections in respect of its operations and assets, Hanjin filed an application under Chapter 15 of the US Bankruptcy Code on September 2, 2016 (the **US Chapter 15 Filing**). The application was granted on a provisional basis following a preliminary hearing on September 6, 2016, and the provisional order was affirmed on September 9, 2016 subject to a protocol on cargo transfers and continuing challenges from creditors, including holders of maritime liens that have asserted that their interests are not sufficiently protected. Hanjin has also secured recognition of the Korean proceedings in the English courts, and additional applications are expected to extend recognition of the proceedings in other jurisdictions, including for a moratorium on creditor action, to cover assets otherwise at risk of detention and/or arrest.
- Accessing new capital to keep the business afloat and minimizing further service disruptions to logistics operations will doubtless be a primary objective in the coming days and weeks. Preliminary reports indicate that Cho Yang-Ho, the Chairman of Hanjin's parent company, has provided a cash injection of 40 KRW billion to relieve various pressures in this regard, and that Eun-young Choi, the current president at Eusu Holdings (formerly Hanjin Shipping Holdings) and/or one or more of Hanjin's affiliates may be prepared to provide some additional level of emergency funding. It remains to be determined on what terms such additional funding might be provided and/or whether the relevant providers of any such funding would have secured or otherwise protected rights in respect thereof.

## The Hanjin Fleet

The rehabilitation proceedings represent a significant development for a sector that continues to be subject to a variety of economic pressures, and appears to represent a notable policy shift in the way the South Korean government approaches major corporate restructurings.

As indicated in the table opposite, Hanjin is the world's seventh-largest container shipping company.



Source: *Financial Times*

## Alliance Memberships

Hanjin is currently a member of the CKYHE Alliance, along with COSCO, "K" Line, Yang Ming, and Evergreen Line.

Hanjin is also an announced partner in a new alliance ("THE Alliance") with Hapag-Lloyd, "K" Line, Mitsui O.S.K. Lines, Nippon Yusen Kaisha and Yang Ming that is scheduled to begin operations in April 2017.

The impact of Hanjin's reorganization on existing and future alliances remains to be determined.

## The Korean Proceedings Applicable to Hanjin

Rehabilitation proceedings are a statutory insolvency process under the Korean Debtor Rehabilitation and Bankruptcy Act aimed at rehabilitating financially distressed debtors. There is historic precedent for the use of the rehabilitation procedure for large corporate entities, as the cases of Samsung Logix, Korea Line and STX Pan Ocean in recent years demonstrate. Access to more detailed information on the Korean insolvency proceedings can be found by accessing the new White & Case Asia Pacific Restructuring & Insolvency Guide, which contains important information on insolvency and bankruptcy regimes across the region, <http://www.whitecase.com/publications/alert/asia-pacific-restructuring-insolvency-guide>

The following is noted:

- Creditors will be required to approve any rehabilitation plan, and after such approval, the Court must confirm the plan.
- Even before plan voting, creditors will likely need to submit details of their claims and there is likely to be a “bar” date for providing and substantiating such claims against the estate so they can be administered efficiently.
- Access to regular business funding during the case is likely to be critical to normalize business operations and stabilize platform value and provide a bridge for the rehabilitation proceedings.
- During the rehabilitation proceedings creditors are prohibited from exercising their claims and a moratorium is effectively imposed as a matter of Korean law. The freezing of actions and claims can allow a debtor much needed breathing space to put together an effective plan of rehabilitation.
- In maritime cases, and particularly in the case of Hanjin given the size and global scope of its business and operations, a moratorium by the Korean courts alone is unlikely to be sufficient to provide effective breathing space. Broader recognition of such proceedings is possible and, consistent with the US Chapter 15 Filing, we would expect Hanjin to seek protections in additional jurisdictions (see below for further observations on cross border recognition proceedings).
- In the event that a rehabilitation is not possible, the default scenario is likely to be a liquidation of the assets of Hanjin with potential interested parties bidding for assets in the estate.

Intervening steps	Submission of interim report by investigative committee
	Admission or denial of claims by the administrator
	Submission of final report by the investigative committee
December 9	Interested parties’ meeting
December 23	Submission of rehabilitation plan to the Court

### Liabilities and Significant Creditors of Hanjin

- As at June 30, 2016, Hanjin has reported liabilities of 6,028,543 KRW million, with loans totaling 3,140,500 KRW million expected to mature within one year.
- It is understood that a variety of Korean banks are significant financial creditors to Hanjin.
- It is also understood that a variety of independent ship owners have potentially significant claims against Hanjin under ship chartering arrangements, with such claims expected to reflect the high proportion of Hanjin’s fleet that is operated under such arrangements (rather than being owned by Hanjin).

### Assessment of Timeline for Hanjin Court Restructuring Process

The below is an illustrative timeline for the rehabilitation process, understanding that such remains subject to confirmation:

Potential (illustrative) timeline for reorganisation process	
September 1	Rehabilitation proceedings commenced
October 10	Administrator to submit list of creditors
October 11-25	Creditors to file proofs of claim

### Need for Additional Foreign Proceedings?

Commencing rehabilitation, restructuring or insolvency proceedings in one jurisdiction (the **first jurisdiction**) may be just one step in the process of resolving a debtor’s financial difficulties as the proceedings in the first jurisdiction may have only a limited effect on assets or creditors located in other jurisdictions. In complex restructuring cases including global assets a process in the first jurisdiction is often run in parallel with other proceedings in other jurisdictions (**Parallel Proceedings**). Under applicable Korean bankruptcy laws, both secured and unsecured creditors are prohibited from exercising their claims outside of the rehabilitation proceedings and a moratorium is effectively imposed in Korea, but there

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remains the risk of actions in other jurisdictions and the possibility that Parallel Proceedings will be necessary or desirable as the case unfolds.

Given the worldwide nature of the business operations of Hanjin, efforts are already underway by Hanjin and related entities to seek to extend the protection of the Korean proceedings and reduce the risk of maritime arrest and global business disruption. Applications with this objective have been successfully made (in certain cases on a provisional basis) in the US, English and other courts, and additional extra-territorial applications are expected in jurisdictions which have either adopted the UNCITRAL model law on cross border recognition of insolvencies (the **Model Law**) or who have established local laws which provide for the same. The effect of successful applications will generally be to extend (in certain cases for defined periods) the geographic “risk shield” against further creditor action regarding critical assets located within the jurisdictional ambit of the relevant application.

In jurisdictions where relief is granted, lien holders and other creditors will need to exercise great care in assessing how to effectively assert claims and whether they are able to pursue remedies arising from those claims. Some important maritime jurisdictions, such as Singapore, have not yet implemented the Model Law and therefore a successful “risk shield” in all jurisdictions for the debtor’s assets will have to be monitored carefully.

The issues presented by the Hanjin proceeding are interesting when compared to the situation where a debtor incorporated outside the United States decides to seek protection under Chapter 11 of the US Bankruptcy Code, as has occurred on a number of occasions in the shipping sector in recent years. This trend has in part been driven by the relatively low entry requirements for a debtor seeking Chapter 11 protection and the relative predictability of, and body of expertise developed under, Chapter 11. Among other things, a Chapter 11 filing would likely seek to address two fundamental concerns:

- *Access to worldwide automatic stay of proceedings against the debtor.* The extra-territorial ambit of Chapter 11 proceedings would seek to provide effective breathing space against creditor actions without the need to conduct (possibly on a contested basis) judicial proceedings in numerous jurisdictions designed to secure such a moratorium.

- *Platform for DIP financing.* The established market for DIP financing in Chapter 11 proceedings may increase the likelihood of a debtor being able to secure access to emergency funding, an often critical factor in a successful financial restructuring.

A Chapter 11 proceeding also provides a debtor that operates a global business with a centralized forum to deal with its business and creditors, and similarly provides creditors with a recognized forum for dealing with the debtor and addressing claims.

## Maritime Law Issues

While not all creditors will have claims which give rise to the right to arrest a vessel or detain cargo, additional issues may arise where a creditor is able to, and does, exercise a maritime lien which provides additional rights. This could result in further delays and expenses to allow cargo to reach its anticipated destination. Preventing arrest by extending voyages into a variety of key international jurisdictions where the Korean proceedings have been recognized is likely to be a key concern and priority for the receiver and Hanjin appears to be losing no time in advancing this process. Creditors will need to consider carefully their rights and whether such rights have been or will become affected by any applicable insolvency proceedings or recognition orders.

## Next Steps: Key Issues for Creditors

While it is difficult to predict the path most likely to be taken by Hanjin at the present time, affected stakeholders should consider how the current rehabilitation proceedings and the recognition of such proceedings in other jurisdictions affect them both from a business continuity and a claims processing perspective:

- Creditors of Hanjin will in due course need to file proofs of claim with the Court (the most recent available information suggests the relevant time period runs between 11 – 25 October, 2016) to avoid the risk of losing their claim. It is critical that creditors obtain independent legal advice and confirmation on this timing window and the appropriate manner for submission of claims.
- Creditors should be on alert for upcoming court dates (and/or changes thereto) issued by officials in the respective relevant jurisdictions, any recognition orders granted with regard to the Korean rehabilitation

proceedings and orders addressing the ways in which creditors may seek to access assets or claims regimes against Hanjin, and ensure they have appropriate local and/or international legal representation.

- Shippers with Hanjin should consider a detailed review of shipping contracts to identify legal remedies. For example, are such contracts with Hanjin or its alliance partners? Depending on contract terms it may be possible to request cargo to be shipped by other alliance members or further to *ad hoc* arrangements being considered by HMM and/or other shippers.
- Shippers with cargo awaiting delivery may need to consider other remedies, such as asserting insurance claims after reviewing relevant policies and getting in touch with insurers. Hanjin’s insolvency will likely require careful scrutiny of a wide range of contractual boilerplate provision in existing documentation to assess whether shippers will have a remedy.
- Creditors with significant contingent and/or crystallised claims whose choice is a partial recovery, lower charter rates from a restructured entity, and/or finding new long term charter parties for their vessels may need to consider the impact of the rehabilitation proceedings on their existing business and financing arrangements to ensure that trip wires in extant financings are mitigated where possible.

Much third-party commentary in recent days has focused on liquidation as the most likely outcome of the rehabilitation proceedings. While this may ultimately be the case, we would caution against rushing to judgement too quickly, at least until a more complete assessment is made of the underlying value of Hanjin’s global business operations. As the world’s seventh-largest container shipping company with a relatively low ratio of owned to chartered vessels, that value may very well manifest in a variety of different and unanticipated ways. If systemic flaws in Hanjin’s capital structure could be addressed with creditor support, meaningful short-term liquidity could be provided (including with the protections afforded by US Chapter 11 DIP financing techniques or similar analogous structures), a successful rehabilitation is encouraged in the judicial process and/or other factors presently out of view come into play, a different outcome may ensue.

As with all similar cases, time will tell.

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