

Hanjin Shipping - Current jurisdictional status and options – United Kingdom

The collapse of Hanjin Shipping Co Ltd, marked by its application for rehabilitation relief in South Korea at the end of August 2016, has given rise to a number of legal and commercial difficulties at an international level. Here, we review the steps Hanjin Shipping Co Ltd have taken in a number of jurisdictions around the globe and the practical consequences of those steps.

The fact that the receiver appointed for Hanjin, Mr Tai-Soo Suk, quickly took steps to extend to the UK the protection afforded by the Korean rehabilitation proceedings, was of little surprise, as England is likely to be the forum where the majority of creditors will have to bring proceedings to recover debts or claim damages for breach of contract.

While the recognition of Hanjin's Korean rehabilitation proceedings, on 6 September, by the Companies Court in London, provides the receiver with breathing space in which to gather in Hanjin's assets and ascertain whether the company can be saved or, alternatively, be put into formal liquidation, it leaves Hanjin's creditors, who are bound to bring claims in London, with little right of recourse in the contractually agreed forum.

The UK recognition order carves out a number of claims from the moratorium on English proceedings (both in the High Court and in London arbitration), and provides the receiver or the Companies Court in London with the ability to give permission to waive the stay. However, the circumstances in which the stay will be permitted to be lifted are limited, and consequently, creditors are faced with the prospect of registering their claims in the Korean rehabilitation proceedings.

This gives rise to interesting questions, not least around whether submitting a claim in the rehabilitation proceedings in South Korea subverts the contractually agreed English law and jurisdiction clause, and the ability of the South Korean Court to deal with disputes arising out of a breach of an English law contract, and the applicable measure of damages.

Outside the UK, there are jurisdictions in which a creditor may be able to assert a lien or obtain an arrest of a Hanjin vessel in order to improve their position vis-à-vis other creditors. But as Hanjin take additional steps to obtain insolvency protection around the world, creditors are now faced with a race against time.



Author:
Andrew Preston



Author:
Bethan Bradley