

HANJIN IN REHABILITATION: WHAT NEXT?



The insolvency of Hanjin Shipping (Hanjin), the world's seventh largest container line, is likely to have a significant impact throughout the maritime sector. In this briefing we provide an overview of some of the potential consequences of Hanjin's insolvency and which parties will be most affected by this development.

Background

On 31 August 2016, Hanjin announced that it had filed for rehabilitation and the appointment of a receiver in the Seoul District Court, setting in motion formal insolvency proceedings in that jurisdiction. This move followed a decision taken in previous days by Hanjin's creditors not to extend further financial support to the heavily indebted company.

The exact form of the proposed restructuring plan is still unknown and in the meantime Hanjin has applied to the Korean courts for a protection of assets and a comprehensive injunction which will, if granted, give the company certain insolvency-related protection.

A wide range of Hanjin trading partners will be affected and press reports state that a number of Hanjin vessels have already been arrested by

creditors. Serious disruption to supply chains is anticipated over the coming weeks as a result of delays and uncertainty caused by Hanjin's position. We expect the following main issues to face companies which have contracted with Hanjin.

1. Shipowners - unpaid hire

One immediate concern for shipowners will be the non-payment of overdue or pending hire for vessels time chartered to Hanjin. Several shipowners had expressed a willingness to work with Hanjin in order to keep it afloat and in June some of them met with the company's largest creditor, Korea Development Bank, in order to develop a solution to the line's financial difficulties. Hanjin had also announced, as late as the day before it entered rehabilitation, that it was in ongoing negotiations with owners concerning hire reductions.

The creditors' subsequent decision to cut off Hanjin's credit lines has effectively put an end to such informal approaches, and owners will now fear that hire owed to them by Hanjin will remain unpaid.



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Owners may not be able to treat Hanjin's action as a repudiatory breach and may instead have to rely on rights of withdrawal, the timing of which would have to coincide with the due date for payment of the next hire instalment. Further complications for owners will include their obligations towards owners of cargo on board, as well as to the owners of bunkers, should these be subject to retention of title terms. These complications may result in delays in the carriage of cargo presently on board these vessels.

2. Container lessors – unpaid hire and recovery of containers

Owners of containers leased to Hanjin will also be concerned about the recoverability of hire due to them. It is reported that Hanjin has already been negotiating with several container lessors regarding hire payments, indicating the difficulty Hanjin was having in meeting its obligations to lessors.

Efforts are already likely to be underway by those wishing to recover possession of their containers in order to facilitate their re-hire to alternative carriers. Container lessors may also be seeking to arrest Hanjin assets in order to obtain security.

3. Ports, terminals and container yards – unpaid terminal and storage charges

Terminals and container yards currently owed fees/charges by Hanjin are also likely to be seeking advice on recovery.

Reports suggest that port authorities in Shanghai and Xiamen in China, Valencia in Spain, and Savannah in the US, among others, have already refused access to Hanjin vessels due to concerns about Hanjin's ability to pay fees. Others are apparently exercising a lien over Hanjin containers. This will in turn cause serious delays to the delivery of cargoes.

4. Consequences for Hanjin's vessel sharing and alliance partners

The rehabilitation's consequences will be felt immediately by parties which have entered into vessel sharing agreements with Hanjin and its partners in the CKYHE alliance, and other alliances to which Hanjin is a party.

Hanjin's partners are likely to be concerned about recovery of freight and termination of their slot sharing arrangements, given the overlap between the governing law of the contracts and the rights of the receiver in the rehabilitation to cancel such contracts. Hanjin's alliance partners may be looking to collect their cargoes from Hanjin vessels, and to bar Hanjin cargoes from being loaded onto their own vessels.

Hanjin's vessel partners may begin efforts to have containers re-delivered so that alternative shipment can be arranged. This could lead to complications arising between Hanjin's partners and other interested parties, in particular other Hanjin creditors.

5. Consequences for freight forwarders

Freight forwarders which have booked cargoes with Hanjin will face problems similar to those confronting Hanjin's vessel sharing partners.

There will be concerns regarding liabilities for customer cargoes which are currently being shipped on vessels operated by Hanjin. Delays caused by Hanjin's position, such as vessel arrest or the refusal of ports to let Hanjin vessels berth, may leave freight forwarders open to claims from their customers. Some freight forwarders have already moved to obtain redelivery of containers due to be shipped by Hanjin, in order to arrange carriage by another operator.

In some instances, forwarders will have paid hire to Hanjin in advance, and forwarders will now be concerned about recovery of these sums. Some freight forwarders had reportedly in recent weeks already stopped booking slots on Hanjin vessels as a matter of company policy.



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6. Consequences for cargo interests

Parties who own cargoes on board Hanjin-operated vessels will want to ensure that voyages currently underway are continued without undue delay and that any cargoes due to be delivered will reach their destination and be discharged on schedule. Cargo interests will also want to arrange for the re-delivery and alternative carriage of containers due to be carried by Hanjin.

Cargo interests which have paid freight in advance to Hanjin will be considering claims to recover such sums.

7. Hauliers and rail operators - unpaid freight

Hauliers or rail operators engaged for the onward carriage by land of containers shipped by Hanjin are now at risk of not receiving payment of these debts and will also be considering claims.

8. Crew - unpaid salaries

Hanjin-employed crew who are owed salary or other payments may not now receive full payment of any amounts to which they are contractually entitled. This may be mitigated by the provisions made in certain jurisdictions, including England & Wales, for employees to receive payment as preferential creditors at the conclusion of any insolvency.

9. Port agents – outstanding agency payments

In many instances, Hanjin will have engaged port agents to coordinate port operations at ports and terminals where Hanjin-operated vessels have called. Such agents will now face uncertainty regarding the recovery of any unpaid agency fees.

10. Vessel suppliers – unpaid invoices

Numerous suppliers involved in the maritime sector may also encounter problems in respect of unpaid sums owed by Hanjin for services or supplies rendered. Affected parties will include providers of tugs and other necessities and pilotage services.

11. Banks and bondholders – mortgages, bonds and other corporate debt

In the event that the rehabilitation and restructuring is not successful, corporate and institutional creditors can expect to suffer severe losses as a result of Hanjin's collapse. At the time that the rehabilitation was announced, Hanjin's total debts amounted to US\$4.2 billion, with its corporate bonds worth around 1.1 trillion Korean won (almost US\$1 billion).

Holder of Hanjin's corporate debt now face the prospect of receiving little or no funds in repayment of these debts.

Secured creditors such as mortgagees are also at risk.

Banks, bondholders and other corporate creditors will be closely monitoring the rehabilitation process and seeking to maximise any possible recovery.

Conclusion

The Korean rehabilitation process remains at an early stage. We will keep you updated on the evolving situation there, as well as any global developments on ancillary or parallel proceedings.

A range of options is available to parties affected by the onset of Hanjin's rehabilitation and we would encourage those affected to seek advice as soon as possible to protect their position. Our team of specialists across the world have many years of experience in handling the legal issues arising from major insolvencies and the multi-jurisdictional challenges they pose for many concerned parties.



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