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Title: The Hanjin Bankruptcy: some more equal than others

ABSTRACT

On 2 February 2017 (with effect from 17 February 2017), the Seoul Central District Court terminated rehabilitation proceedings and declared Hanjin Shipping Co Ltd (Hanjin) as bankrupt. The District Court appointed Tai-Soo Suk as Hanjin's Custodian. The Court's declaration heralded the end to what was described by the *Wall Street Journal* as the most significant bankruptcy in container transport history.

The antecedent events leading to the ultimate bankruptcy declaration are reminiscent of the fate of many multi-national corporations following the 2008 global economic downturn. Following weak global economic growth, overcapacity on container vessels and weakening Chinese consumer spending, Hanjin sought, in April 2016, to restructure its debts to stave off formal rehabilitation proceedings.

On 31 August 2016, Hanjin filed for receivership in the Seoul Central District Court and requested the court make orders to freeze its assets. The events of 31 August inflamed commercial sensitivities for many of Hanjin's creditors, a number of whom sought to exercise their rights *in rem* against Hanjin's assets. These claims exemplify the tension between laws seeking to ensure the orderly liquidation of the company's assets and creditors' ability to exercise their *in rem* rights.

Despite the fact that the majority of the top 10 shipping nations and top 10 exporters by ship have both ratified the UNCITRAL Model Law on Cross Border Insolvency (the Model Law) and ensured its application through a legislative enactment many of these jurisdictions continue to struggle with the conflict between the Model Law's objectives and the rights of creditors to enforce their security interests. Then, of course, there are economic superpowers, such as the People's Republic of China, who are yet to ratify the Model Law making the orderly conduct of an insolvency the size of Hanjin exceedingly fraught.

A survey of jurisdictions where creditors had issued proceedings *in rem* or where Hanjin's foreign representative, Mr Suk, had sought recognition of the South Korean proceedings for the purposes of the Model Law revealed 25 instances where Hanjin ships had been the focus of either a judicial order in the nature of recognition proceedings or were the subject of an *in rem* claim. The survey reveals that even where States have enacted the Model Law, it is not easy to predict how a court in a particular jurisdiction may interpret or apply the Model Law. Some are more equal than others...