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UNCITRAL Model Law Assists in Flow of Hanjin Containers during Bankruptcy

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This past weekend, Hanjin vessels commenced unloading operations on the U.S. West Coast for the first time since Hanjin filed its bankruptcy petition with the Seoul Central District Court in Korea. Vessels have also been reportedly unloading in Japanese and Canadian ports. There is an obvious overriding public interest in having the many millions of dollars worth of cargo resume moving to its various destinations. The swift recognition of the Korean bankruptcy reorganization proceeding by courts in Tokyo, Newark, London and other major shipping destinations, together with the extension of domestic bankruptcy protections in those locations, has allowed Hanjin to continue carrying cargo to its destinations. In Japan, the United States, and the United Kingdom, in particular, this process was eased by the adherence of each country to the 1997 UNCITRAL Model Law on Cross-Border Insolvency. To U.S. practitioners, the Model Law is more familiar as Chapter 15 of the U.S. Bankruptcy Code (adopted in 2005). In the United Kingdom and Japan, the Model Law came into force as The Cross-Border Insolvency Regulations 2006 (U.K.S.I. 2006 No. 1030) and the Act on Recognition of and Assistance for Foreign Insolvency Proceedings (Law No. 129 of 2000), respectively. Whatever its local name, the Model Law has clearly shown its usefulness in providing decisive cross-border action within a week's time.

In China, where the largest number of Hanjin vessels have reportedly been arrested, the Model Law has not been adopted. Instead, China opted to enact the Enterprise Bankruptcy Law of 2006, which devotes only one provision, Article 5, to the possibility of cross-border insolvency matters. Article 5 has been criticized by some commentators as not being up to the task of managing the 2010 bankruptcy of Chinese yoghurt manufacturer Taizinai. Nevertheless, the Supreme People's Court's 2014 decision in the *Sino-environment Technology Group Ltd*. case may signal that the Chinese judicial establishment will encourage full-hearted cooperation with overseas insolvency proceedings, particularly those originating in debtor's home jurisdiction. Moreover, to the extent that Chinese bankruptcy remedies do not prove sufficient to quickly support the movement of cargo on Hanjin vessels, there remains the option of releasing those vessels in the ordinary course of proceedings before the Chinese maritime courts under the 1999 Maritime Procedure Law. The 1999 Law does provide for some protection against re-arrest after security is provided, but not against new claimants against the same vessel or debtor.

In the United States, the difficult matter will be release of the cargo currently being unloaded from Hanjin vessels. As of last Friday, September 9, the U.S. Bankruptcy Court has ordered Hanjin to cooperate in good faith with cargo owners and cargo handlers in the release of cargo once Hanjin has been paid "full ocean freight." The same order also permits marine terminal operators and other bailees of the cargo to release the

cargo to the owner free and clear of third party liens, once certain conditions are met. However, these terms are the subject of ongoing objections in the Bankruptcy Court. Moreover, cargo owners may find themselves in the unenviable position of having to test the effect of the court's order on the post-petition lien claims of intermediary cargo handlers and service providers, among other things. In the meantime, Reuters reports that the bankruptcy judge has directed the major parties to work out more detailed cargo release protocols, which will hopefully provide clearer answers to how Hanjin-borne freight can move inland from U.S. ports.