THE ASSET TRACING AND RECOVERY REVIEW

EIGHTH EDITION

Editor
Robert Hunter

THE LAWREVIEWS

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PREFACE

As Warren Buffet famously said, 'only when the tide goes out do you discover who has been swimming naked'. The coronavirus pandemic has offered the global economy another opportunity to prove him right. Not only are new frauds being discovered, but the growing recession will challenge the budgets of victims, regulators and criminal enforcement bodies to bring those responsible to justice and to retrieve the proceeds. Remote interpersonal dealings are increasing the distance between business counterparties in a way that the internet did, and the growth of cryptocurrency transactions continues to do.

It is not possible to predict the trajectory of these developments. While it is now a cliché to speak of the 'new normal', nobody can be actually sure what that normal will be. Some even dispute that it is useful to speak of a normal at all. Nassim Taleb has argued that the financial world is more frequently and radically affected by extreme and unpredictable occurrences (which he calls 'Sigma' or 'Black Swan' events) than we acknowledge. According to Taleb, we live in 'extremistan' and not 'mediocristan'. He has suggested that it is part of our makeup to blind ourselves to the influence of what we cannot predict.

Taleb may be right. For my part, I rather think that he is. But amid all the unpredictability, there are nevertheless some certainties. Society depends upon trust, and there will always be some people who abuse it. So some people will always commit fraud. Globalisation has ensured that major fraud will usually have an international element. Fraud lawyers will therefore have to be internationally minded.

Perhaps most of all, the growing international and technical complexity of fraud will continue to outstrip the ability of any one person to understand or remedy it. One of the heartening things about the legal profession over the past 25 years or so is the growth of an international community of lawyers specialising in fraud and asset tracing work who share knowledge and experience with each other about the events in their fields. This book continues to be a useful contribution to that community.

Robert Hunter
Robert Hunter Consultants
August 2020

Chapter 26

SOUTH KOREA

Michael S Kim, Robin J Baik, S Nathan Park and Chiyong Rim[1]

I OVERVIEW

Korea was the sixth-highest-exporting country in terms of the dollar value of exports as of 2018. This is in part due to Korea's deliberate economic policy of encouraging exports. For example, the government has provided banking services to local and foreign businesses that are engaged in trade. Korean companies commonly use letters of credit or refund guarantees in international trade that are backed by government-sponsored import–export insurance programmes.

As Korea matured into a top tier economy, it has attracted significant amounts of foreign investment in the form of establishing business operations or acquiring stocks and other financial instruments. In the World Bank's 2020 Doing Business Report, Korea was ranked fifth (and ahead of the United States) for ease of doing business, attesting to its highly developed business environment.

To strengthen the stability and transparency of the Korean financial system, a great amount of legislative efforts have been extended in the areas of money laundering and forfeiture of assets or profits obtained by crimes such as fraud and human trafficking. Increasingly, the government is becoming more active in international investigative or judicial cooperation with regard to money laundering and asset forfeitures.

The Financial Supervisory Service, which oversees Korea's financial system, provides a public electronic disclosure system called the data analysis, retrieval and transfer system (DART), which allows any listed company, or any corporation issuing securities in the public market, to submit disclosures online. Like the US Securities and Exchange Commission's EDGAR system, these disclosures become immediately available to investors and other users.

Accounting transparency is an important requirement in Korea. Borrowing money from banks by submitting false balance sheets constitutes criminal fraud, even if an independent accounting firm prepared the balance sheet.[2] Stock investors have remedial rights against a corporation's external accounting firm that prepares a false balance sheet to the extent that the accounting firm aided the corporation's window dressing.[3]

1 Michael S Kim is co-founder, Robin J Baik is a partner and S Nathan Park is of counsel at Kobre & Kim, and Chiyong Rim is an attorney at Kim & Chang. This chapter was written as a collaborative project between Kobre & Kim and Bae, Kim & Lee. Bae, Kim & Lee contributed summaries of Korean law, and Kobre & Kim contributed thoughts on general cross-border asset tracing and recovery strategies from its international practice experience.

2 The Supreme Court 2015. 4. 29. 2002 DO 7262.

3 The Supreme Court 2007. 9. 12. 96 DA 41991.

As Korea has a civil law system, civil litigation does not feature pretrial discovery of the kind available in the common law system. However, parties may ask during the trial for a court order to produce documents and witnesses. Failure to comply with the court order may result in sanctions, such as a fine or up to seven days' imprisonment.[4]

In addition to civil litigation, a victim of a fraud may file a criminal complaint with the police or the Public Prosecutor's Office. The Prosecutor indicts a suspect with different charges based on not only the nature but also the size of the fraud, with aggravated offences. Depending on the alleged size of the proceeds from the fraud, the prosecutor may ask the court to apply a special statute that provides for harsher punishments for serious financial crimes.

II LEGAL RIGHTS AND REMEDIES

i Civil and criminal remedies

Under Korean law, a fraud victim may file a suit under at least two legal theories: breach of contract or tort under the Civil Act. The choice between the two would be determined by the particulars of a case, and other considerations such as the statute of limitations. The amount of damages from either action is the same. Punitive damages are not available under Korean law.

If a debtor or a third party who knew of the fraud received a victim's property and held it in possession, the victim, as the rightful proprietary interest holder, may demand its return. If the debtor has already disposed of the properties, the victim may recover damages.

Under Article 406 of the Civil Code, a creditor may apply to the court for cancellation and restitution of any entry of contract, transfer or release of property rights and claims as a fraudulent conveyance if the act is detrimental to creditors and both the debtor and the counterparty of the act had knowledge of this implication. A transaction is deemed detrimental to creditors if the debtor becomes insolvent as a result of the transaction or if the debtor was already insolvent at the time of the relevant transaction.

Registered directors have a fiduciary duty to their company under the Civil Code. Directors are jointly and severally liable to the company and third parties if they violate the law, regulations or a company's articles of incorporation, or if they neglect to perform their duties. The Supreme Court has held that a chief executive director has a duty to supervise the enforcement of other directors. In other words, if a chief executive director neglects the wrongful activity of other directors, he or she may be liable for the damages of the corporation.[5] The business judgement rule is generally recognised, but if directors did not weigh the balance of cost and benefit to the corporation based on a concrete assessment of interests of the corporation, the relevant judgement is not given deference under the rule. Therefore, decisions based only on the general and abstract expectation that it would be beneficial to the corporation to lend money to, or to provide a guarantee for, an affiliate

4 Article 311 of the Civil Procedure Act.

5 The Supreme Court 2007. 12. 13. 2007 DA 60080.

corporation, may not be defensible under the business judgement rule.[6] A breach of fiduciary duty can also potentially lead to personal civil liability for directors and officers under Korean law.[7]

Although directors of a corporation are primarily liable for damage to the corporation, they may be also liable to the corporation's creditors and shareholders if the directors are wilfully or grossly negligent in their breach of their fiduciary duties of care and loyalty to the corporation.

Potential liabilities of directors often become an issue upon insolvency or near insolvency, as the management authority transfers to the court-appointed trustee. After rendering a commencement order, the bankruptcy court can inquire about the existence or scope, or both, of the directors' liabilities with speedy and simple proceedings under the bankruptcy procedure.[8]

Commencement of a reorganisation or liquidation proceeding suspends any action filed by creditors pursuant to Articles 404 or 406 of the Civil Act pending in the court at the time, until the trustee takes over the litigation or until the reorganisation or liquidation proceedings are completed.

The Supreme Court of Korea has held that during the pendency of bankruptcy proceedings, the trustee has an exclusive power to file suit against directors who violated their fiduciary duty.[9] In other words, shareholders may not file a derivative suit against directors and auditors upon bankruptcy.

ii Defences to fraud claims

In addition to procedural defences such as those based on the statute of limitations, a tortfeasor may raise the defence of fault or negligence on the part of the victim. The court may limit the amount of damages claimed if the victim's fault contributed to the damage. However, the Supreme Court has held that if a tortfeasor intentionally abuses a victim's negligence, the doctrine of fairness and equity does not permit this defence.[10]

6 The Supreme Court 2007. 10. 11. 2006 DA 33333.

7 For example, under Article 97 of the Civil Act, if a company is financially distressed but continues the business without obtaining court bankruptcy protection, such that the continued operation only increases the company's losses, the directors' fiduciary duty is to take protective measures for the company, such as filing a petition with the court for a bankruptcy or rehabilitation proceeding. Directors who do not file such a petition for bankruptcy proceedings after a corporation becomes unable to pay its debt may be sanctioned under the Civil Act. There is, however, no case precedent to date in which the directors' failure to apply for a bankruptcy or rehabilitation proceeding has actually been deemed to be a breach of their fiduciary duty to the company and led to personal civil liability.

8 For rehabilitation proceedings, Article 114 of the Debtors Rehabilitation and Bankruptcy Act is applied; for straight bankruptcy proceedings, Article 351 is applied.

9 The Supreme Court 2002. 7. 12. 2001 DA 2617.

10 The Supreme Court 2016. 4. 12. 2013 DA 31137.

III SEIZURE AND EVIDENCE

i Securing assets and proceeds

Provisional relief from the court

To maintain the status quo regarding tortfeasor or debtor assets, a claimant can apply for either or both of the following: a provisional attachment order, and a provisional prohibition order from disposing of assets or a provisional injunction. The creditor may apply for these reliefs *ex parte*. A provisional attachment order is invoked by creditors that have monetary claims against the debtor, and it covers personal property as well as real property.[11] Provisional attachments are effective even if the assets are disposed to third parties. The creditor must identify in its application specific assets owned or possessed by the debtor. After the claimant wins the lawsuit on merit, he or she can enforce his or her right under the court's auction.

A creditor who has a claim other than a monetary claim may apply for a provisional prohibition order from disposing of assets to obtain delivery of personal property, transfer of accounts receivable or bank accounts, or registration of real property.[12] The order prevents the owner or holder of the property from transferring legal title, delivering possession, or assigning or granting encumbrance of the property to a third party. Like a provisional attachment order, a provisional prohibition order from disposing of assets is effective against third parties.

A creditor seeking to prohibit specific actions may seek a provisional injunction.[13] The court usually reviews the petition and supporting evidence without witness testimony, and has discretion as to the issuance of the order and the size of the undertaking necessary to protect the interests of the defendant.

In an involuntary bankruptcy context, creditors may seek a comprehensive injunction prohibiting the debtor from transferring any assets of the debtor or payment to any creditors. This is to prevent the debtor from dissipating assets between the time the involuntary bankruptcy petition is filed by the creditors and the time the court officially commences the proceeding. Once the bankruptcy proceeding commences, the right to dispose of the debtor's assets belongs to the court-appointed trustee, and the trustee's disposition of assets is subject to court approval or a creditor's supervision, or both.

Provisional relief from an arbitral tribunal

Generally, courts may not interfere with matters subject to arbitration.[14] However, after an arbitral tribunal has been constituted, parties may file a petition for provisional relief with the tribunal or directly with the court.[15] Parties may request provisional relief from the court even before the arbitral tribunal is constituted pursuant to the arbitration agreement.

An arbitral tribunal cannot issue provisional relief with respect to a third party that is not participating in the arbitration proceedings. Unlike provisional orders of the court, the application for provisional relief under the arbitration proceedings cannot be made *ex parte*.[16]

11 Article 276 of the Civil Execution Act.
12 Article 300 of the Civil Execution Act.
13 Article 304 of the Civil Execution Act.
14 Article 6 of the Arbitration Act.
15 Article 18 of the Arbitration Act.
16 Article 19 of the Arbitration Act.

ii Obtaining evidence

The Korean Civil Procedure Act does not provide for the broad discovery that can be found in certain common law jurisdictions, such as the United States. A party in civil litigation may only obtain evidence from the other party through the court. The court may, by request of the parties, examine evidence prior to the commencement of civil proceedings (i.e., the service of the complaint upon the defendant). The court may grant the party's request for pretrial examination of evidence if the court finds that there may be undue hardship in examining evidence later in the trial. The pretrial examination in such a case may be witness testimony, production of documents or inspection of the actual site of controversy.[17]

The Criminal Procedure Act provides for similar proceedings to obtain evidence prior to indictment. The prosecutor or the accused may ask the court to seize, search or inspect evidence; interrogate witnesses; or appraise the asset value if undue hardship is expected in examining evidence later in the trial.[18]

Once the trial begins, a party may ask for a court order mandating the production of documents held by the opposing party or third party. If the party fails to comply with the production order, the court may deem that the contents of the requested documents are as asserted in the party's petition for production.[19]

Korean law treats a judgment creditor as an unsecured creditor whose priority is lower than that of security interest holders in civil execution proceedings as well as in insolvency proceedings.

A judgment creditor has the right to request that a debtor, including individuals as well as corporations, disclose his or her assets. The court may order the debtor to submit a schedule of assets.[20] If the debtor fails to do so, the court may sanction the debtor or representative directors with up to 20 days of imprisonment. The court, by request of the creditors, may also enlist the debtor into the register of delinquent debtors. The register is delivered into the county office and would be disclosed to the public, and oftentimes is used by financial institutions.[21] The judgment creditor facing an evasive debtor may also obtain a court order to investigate the debtor's finances through financial institutions or other third parties.[22]

IV FRAUD IN SPECIFIC CONTEXTS

i Banking and money laundering

Under Korean law, a party must use his, her or its own name in conducting financial transactions. This rule is designed to prevent corporations and individuals from using nominee arrangements to conceal illicit property, money laundering or financing of terrorism, or evading compulsory execution or otherwise evading law enforcement. Violation of the rule may result in criminal sanctions, including imprisonment and fines.

Directors of an issuing company, public accountants, appraisers and credit rating specialists can also be held liable for damage inflicted upon any person as a result of acquiring

17 Article 375 of the Civil Procedure Act.

18 Article 184 of the Criminal Procedure Act.

19 Article 349 of the Civil Procedure Act.

20 Article 61 of the Civil Execution Act.

21 Article 72 of the Civil Execution Act.

22 Article 74 of the Civil Execution Act.

securities by including a false description or representation of any material fact in documents such as a registration statement and an investment prospectus, or omitting a material fact from these documents.[23]

In a securities case, the burden of proof is significantly shifted to the defendants so as to protect the investors. The Supreme Court has held that victims of security fraud cases need not prove the existence of a causal relation between damage and false representation. A defendant must prove that the purchaser was aware of the material fact in question when the purchaser made the offer to acquire the securities, or that the defendant would not have been able to discover the inclusion or omission of material facts even if he or she exercised reasonable care.

Korean law does not generally recognise class actions. However, investors who suffer damage from certain types of securities transactions listed in the Securities Related Class Action Act may file a class action.[24] To file a class action, there must be more than 50 plaintiffs, and the plaintiffs must collectively hold more than 1/10,000 of the issued shares.[25] Investors who wish to file a class action under the Securities-Related Class Action Act must first obtain permission from the court allowing the action.[26] Recently, a district court for the first time granted permission for a class action pursuant to the Supreme Court decision allowing it.[27]

ii Insolvency

An unsecured creditor who is a victim of a fraud may file an involuntary bankruptcy petition against an insolvent debtor if the debtor cannot duly repay the debt. Upon commencement of bankruptcy proceedings, the court must appoint a trustee who has the power to manage the business and dispose of the bankruptcy estate.

The Debtor Rehabilitation and Bankruptcy Act (DRBA) provides the trustee with a powerful measure to locate the debtor's assets by inquiring about these with the government, financial institution or other third parties that deal with the debtor's assets. The court, by request of the trustee, may inquire about the location and amount of the debtor's assets.[28]

Under the DRBA, certain transactions entered into by a debtor may be challenged after the debtor enters into a formal insolvency proceeding on the grounds of preferential treatment of certain creditors. The DRBA allows a trustee (both in bankruptcy and in rehabilitation) of the insolvent debtor to avoid certain otherwise-lawful transfers undertaken by the insolvent debtor before commencement of the insolvency proceedings.[29] Such avoidable transfers include:

a transfers that would harm other creditors at the time of the transfer, provided that the recipient was aware that the acts would harm other creditors. Fraudulent conveyance is a typical example;

23 Article 125 of the Financial Investment Services and Capital Markets Act.

24 Article 3 of the Securities-Related Class Action Act lists the damages claims for which victims may file.

25 Article 12 of the Securities-Related Class Action Act.

26 Article 15 of the Securities-Related Class Action Act.

27 The Supreme Court 2015. 4. 9. 2013 MA 1052, 1053.

28 Article 29 of the DRBA. This clause is also invoked by interested parties including creditors who filed proofs of claim with the bankruptcy court.

29 Articles 100 and 391 of the DRBA.

b transfers that repay any debt or provide collateral after insolvency, provided that the payee or the secured party was aware that the insolvency event had occurred. Preferential repayment after filing for insolvency proceedings is a typical example;

c transfers that repay debt or provide collateral within the 60 days prior to an insolvency event when the insolvent debtor was not obliged to do so at that time, provided that the payee or secured party was aware that the acts would prejudice the equal treatment of the insolvent party's creditors. Preferential repayment, such as paying debt in advance of the due date or granting security interests for unsecured creditors without a precedent contract, is a typical example; and

d transfers that take place after or within six months of the occurrence of an insolvency event and that conferred benefits on the beneficiary in exchange for no or nominal compensation. Guaranteeing the debtor's principal debt for creditors without receiving any consideration is a typical example.

iii Arbitration

A party may challenge an arbitral award on the ground that recognition or enforcement of the award would be contrary to public policy. A party may also challenge an award on the basis that the award has been obtained fraudulently. However, the recognising court may not review the propriety or impropriety of the award itself.[30]

iv Fraud's effect on evidentiary rules and legal privilege

Korean rules of evidence generally do not recognise an attorney–client privilege or an attorney work product doctrine that protects legal communications from evidence examination. Accordingly, a legal opinion written by an attorney is generally admissible in civil and criminal proceedings as long as the attorney recognises the document's authenticity, unless it falls under separate exceptions such as those related to the protection of trade secrets. There is one narrow exception that the legal opinion is inadmissible in criminal proceedings under certain limited circumstances.[31]

V INTERNATIONAL ASPECTS

i Conflict of law and choice of law in fraud claims

For a Korean court to exert a judicial right to hear a case having some foreign elements, the court must have personal jurisdiction over the defendant and have subject-matter jurisdiction. The Act on Private International Law provides a Korean court with international jurisdiction if a party or the subject in dispute is substantially related to Korea.[32]

The Supreme Court has held that the courts must pay due regard not only to the parties' interests, such as fairness, convenience and predictability, but also the court's interests, such as propriety or the speediness of the civil proceedings and the effectiveness of a judgment.[33]

Korean courts have exercised personal jurisdiction over a foreign defendant if the defendant has a domicile, operates an establishment or commits a tort in Korea. In addition,

30 The Supreme Court 2009. 5. 28. 2006 DA 20209.

31 The Supreme Court 2012. 5. 17. 2009 DO 6788.

32 Article 2 of the Act on Private International Law.

33 The Supreme Court 2005. 1. 27. 2002 DA 59788.

certain actions based on contracts against foreign defendants are also permitted. If the plaintiff is a consumer domiciled in Korea, he or she may file a suit in a Korean court against foreign defendants based on a consumer contract.[34] Employees may also file a suit in Korea against a foreign defendant based on an employment contract if the employee has continuously provided service to the defendant employer in Korea.

The Act on Private International Law also provides a choice of law for the victim, who may choose between the law of the place where the tort occurred or the law of the place where he or she suffered the damage from the tort. In addition, if the debtor entered into a fraudulent contract through misrepresenting facts, the victim may enforce the choice of law clause in the contract.

ii Collection of evidence in support of proceedings abroad

In 2009, Korea joined the Convention on the Taking of Evidence Abroad in Civil or Commercial Matters (Hague Evidence Convention); accordingly, a foreign court may request examination of evidence by the Korean court. However, under Korean law, the private examination of a witness (such as a deposition) is not allowed. A party in a legal proceeding must examine witnesses before the court, upon the court's approval. In addition to the Hague procedures, the Korean courts have cooperated with foreign courts based on the Act on International Judicial Mutual Assistance in Civil Matters.

iii Seizure of assets or proceeds of fraud in support of the victim of fraud

In an insolvency proceeding, the court-appointed trustee has the authority to dispose assets located abroad if the assets belong to the bankruptcy estate. However, before exercising the trustee power abroad, the trustee must first file an appropriate petition to obtain recognition of the Korean insolvency proceeding in the foreign country. For example, the trustee has to file a Chapter 15 petition in the US Bankruptcy Court to exert his or her management power in the United States.

The reverse is true as well. After bankruptcy proceedings are commenced abroad and foreign creditors find that the debtor has assets in Korea, the representative of the foreign insolvency proceedings may file a petition for a recognition order with the Central District Court of Seoul. Once recognition is granted, the Central District Court of Seoul may appoint a trustee, who may locate a debtor's assets in Korea in accordance with the DRBA.

iv Enforcement of judgments granted abroad in relation to fraud claims

Recognition of foreign arbitral awards

Korean courts have generally recognised foreign arbitral awards. Korea ratified the United Nations' Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) on 8 February 1973. On the same day, it also ratified the Convention on the Settlement of Investment Disputes between States and Nationals of Other States. A foreign arbitration is recognised in Korea according to these treaties.

As to the United States, Korea entered into a bilateral treaty with the United States: the Treaty of Friendship, Commerce and Navigation between the Republic of Korea and the United States of America. Section 5 of the Treaty states that both countries guarantee the

34 Article 27 of the Act on Private International Law.

validity of arbitration clauses in agreements and in the execution of arbitration awards. The issue of revocability of an arbitration award rendered abroad is determined by the laws of the place of arbitration, not the laws of the enforcing forum.

v Fraud as a defence to enforcement of judgments granted abroad

Korean courts recognise foreign judgments based on comity and reciprocity. If there is no reciprocity between Korea and a foreign country, a foreign judgment may not be recognised.

For a foreign judgment to be recognised, the foreign court must have had personal jurisdiction against the defendant and subject-matter jurisdiction. If the Korean court deems that the complaint was not served to the defendant or that the defendant was not granted due process, or both, the court may not recognise the foreign judgment. The Korean court may also refuse to grant recognition if the foreign judgment was obtained fraudulently.

VI CURRENT DEVELOPMENTS

Korean courts have been cooperative regarding the recognition of foreign insolvency proceedings. Since 2006, Dutch, US, Hong Kong and Japanese bankruptcy proceedings have been recognised and the Korean courts have issued relief orders, such as granting or cancelling a preliminary attachment at the request of a representative of foreign insolvency proceedings.[35]

More generally, Korean courts have seen an increasing number of cross-border disputes and ensuing asset tracing and recovery efforts made in Korea. As of 2019, insolvency proceedings, including both reorganisations and liquidations, of the Netherlands,[36] the United,[37] the Hong Kong Special Administrative Region,[38] the United Kingdom,[39] Japan[40] and the Philippines[41] have all been recognised in Korea. By 2020, there have been two judicial cooperations for Korean bankruptcy courts to repatriate to the United Kingdom and United

35 Seoul District Court 2007. 10. 18. 2007 KUKSEUNG 1.

36 Seoul Central District Court (Bankruptcy Division)[Dist. Ct.] 2007Kookseoung1, 18 October 2007 (S. Kor.). Debtor is LG Philips Displays Holding BV under liquidation proceedings in the court of Hertogenbosch.

37 Id. 2007Kookseoung 2, 12 February 2008 (S. Kor.). Debtor is Mr Oh under a Chapter 11 proceeding in the US Bankruptcy Court Central District California, Santa Ana Division; Id. 2014Kookseoung1, 9 April 2014 (S. Kor.). Debtors are Mr and Mrs Kang under a Chapter 11 proceeding in the US Bankruptcy Court for the Eastern District of Virginia. Id. 2016Kookseoung100000, 12 September 2016 (S. Kor.). Debtor is Phoenix Heliparts, Inc under a Chapter 11 proceeding in the US Bankruptcy Court District of Arizona.

38 Id. 2009Kookseoung1, 8 October 2010 (S. Kor.). Debtor is Lehman Brothers Commercial Corporation Asia Limited under companies (winding-up) proceedings in the High Court of the Hong Kong Special Administrative Region Court of First Instance.

39 Id. 2016Kookseoung100001, 10 October 2016 (S. Kor.). Debtor is Lehman Brothers International (Europe) under administration proceedings in the High Court. The Seoul Bankruptcy Court had sent proceeds to England seven times of a total amount of 27 million dollars from 2018 to 2020.

40 Id. 2012Kookseoung1, 30 August 2012 (S. Kor.). Debtor is Sanko Kisen Kabushiki Kaisha under a corporate reorganisation proceeding in Tokyo District Court; Id. 2015Kookseoung100001, 28 December 2015 (S. Kor.). Debtor is Daiichi Chuo Kisen Kabushiki Kaisha under a civil rehabilitation proceeding in the Tokyo District Court.

41 Seoul Bankr Ct, 2019Kookseoung100000, 25 January 2019 (S. Kor.). Debtor is HHIC-Phil, Inc at the Regional Trial Court, Olongapo City.

States the proceeds of sales of foreign debtors' assets located in Korea. Judges are becoming more knowledgeable and experienced in dealing with cross-border cases. Upon counsel's proper explanation and the provision of relevant support, some judges have made rulings on certain procedural issues or described certain procedural steps that they would not in purely domestic litigation contexts, mainly to alleviate a party's burden to fight collateral attacks on the procedural points that may occur down the road in a foreign court unfamiliar with the Korean procedural rules. For example, service of process is rarely an issue in Korean domestic litigation because it is completed through the court and postal office and, therefore, not discussed in written decisions. In some instances, however, judges have made an affirmative finding that the service was completed in accordance with the applicable rules – mainly to ensure that its judgment will not be subject to a collateral attack in a foreign court. This trend will likely continue to develop and ultimately further accommodate cross-border litigants in a more efficient and effective way.

Korea's regulatory authorities are more actively taking their investigations abroad and seeking cooperation from their counterparts in other countries. Korea Deposit Insurance Corporation, for example, recently established its first-ever international outpost in Phnom Penh, Cambodia, to trace and seize assets of certain Korean debtors known to hide assets there. In July 2017, Korea's Public Prosecutor's Office successfully traced and repatriated Ponzi scheme proceeds that were diverted to China, marking the first time Korea's law enforcement repatriated criminal proceeds from China. With the Moon Jae-in administration prioritising anticorruption efforts, we expect Korea's regulatory authorities to become even more active in conducting international investigations and making repatriation efforts for crimes and transactions with a nexus in Korea.

Appendix 1

ABOUT THE AUTHORS

MICHAEL S KIM

Kobre & Kim

Michael S Kim is the co-founder of Kobre & Kim, an international disputes and investigations firm. He serves as lead counsel in high-stakes financial disputes, with a particular focus on international enforcement of judgments and arbitration awards. Mr Kim is a highly regarded advocate in complex financial and insolvency disputes, particularly those involving international asset tracing and recovery. He was ranked one of the top 10 judgment enforcement and asset recovery lawyers in the world by the publishers of *Global Arbitration Review*.

ROBIN J BAIK

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Robin J Baik is an experienced litigator practising out of the Seoul office of Kobre & Kim, an international disputes and investigations firm. He focuses his practice on representing Korean and other Asia-based corporations and individuals in international judgment enforcement and asset recovery matters, including those relating to insolvency proceedings and involving fraudulent schemes to hide and embezzle misappropriated assets. His experience in this area includes representing clients such as sovereign entities, and energy and technology companies, as well as financial institutions.

S NATHAN PARK

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S Nathan Park is of counsel at Kobre & Kim, an international disputes and investigations firm. He practises in the areas of cross-border commercial litigation, asset tracing and recovery and international arbitration, particularly involving US and Asia-based clients. As an expert in East Asian politics and economy, Mr Park's writings and analysis have appeared on CNN, the *Washington Post* and *Foreign Policy*, among other media outlets. Mr Park has also published academic articles on cross-border judicial remedies such as international judicial cooperation, domestication of international judgments and injunctions with transnational application.

CHIYONG RIM

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Chiyong Rim is an attorney at Kim & Chang. He practises in a wide range of insolvency and restructuring areas, with a focus on corporate liquidation, mergers and acquisitions in reorganisation proceedings and cross-border insolvency cases. His most recent position was that of judge for the bankruptcy panel of the Seoul Central District Court.

He has been listed in *The Legal 500* as a leading lawyer in insolvency law and has been recognised in *Chambers Asia-Pacific* as a 'Band 1' lawyer. *Chambers and Partners* in 2014 said that 'he was noted among peers for his many years of experience' in this field, and cites him as a veteran bankruptcy lawyer.

He has co-authored various publications in English, including *The International Insolvency Review* (Korea chapter, Law Business Research), *Cross-Border Insolvency* (Korea chapter, Globe Law and Business); *Collier's International Business Insolvency Guide* (Korea chapter, LexisNexis); and *'Korean Insolvency System' in the Norton Annual Survey of Bankruptcy Law 2003* (Thomson West). He has also published four volumes of *The Study of Bankruptcy Research*.

He was placed on a secondment to Addleshaw Goddard LLP in London for three months in 2014, and he is a member of the Insolvency Law Review Committee of the Department of Justice.

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