

Hanjin Bankruptcy

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On 31 August 2016, it was reported that Hanjin Shipping (the world's seventh-largest container shipper) filed for bankruptcy protection and stopped accepting new cargo after its bankers withdrew financial support for the company.

The Hanjin bankruptcy may well have consequences for Trade Finance transactions where the underlying goods are shipped via Hanjin Shipping, primarily because the goods may be severely delayed.

The purpose of this article is to take a look into the potential consequences of such events – that formally is “outside” the Trade Finance transaction – related to documentary credits, international guarantees and collections.

Documentary credits

For the perspective of documentary credits the “formal” approach is quite simple: If a complying presentation is made the confirming- and/or issuing bank must honour or negotiate! A confirming bank that has honoured or negotiated the complying presentation is entitled to reimbursement from the issuing bank. Similarly, the issuing bank that has honoured the complying presentation is entitled to reimbursement from the applicant.

The only exception is when a court injunction or stop payment order is made preventing the bank from paying. Confirming- and/or issuing banks should do their utmost to convince the courts not to go down that route.

A key factor when examining documents presented under documentary credits is that in most of the cases the bank (confirming, nominated, issuing) knows its customer - and has a pretty good understanding of what will get paid. Situations like the Hanjin Bankruptcy add uncertainty to the whole thing - and one mistake is more likely to have negative consequences: That the presentation is refused - and NOT subsequently honoured.

For the confirming bank the consequences are obvious. The confirming bank face the risk that they have accepted the documents, and that the presentation is subsequently refused by the issuing bank. I.e. the confirming bank may have missed a valid discrepancy, or the issuing bank may refuse base on a “spurious” discrepancy.

For the issuing bank this poses extra risks. First of all, there is the obvious risk of a court injunction or stop payment order. However, in order to get there, the obligation of the issuing bank must have been triggered by the issuing bank accepting the presentation. In case the issuing bank has missed a discrepancy, they may actually face a lawsuit from the applicant. Likewise, the process of

refusing the presentation should not be taken lightly: Small deviations from UCP 600 article 16 may preclude the issuing bank from claiming that it is not a complying presentation.

All of the above is - as such - as it always is. The change is that there is an increased risk in the banks handling, simply because the goods may be delayed many months - and the incentive to pay is lower than it normally is.

Collections

For documentary collections the drawee may refuse to pay or accept, due to the fact that the goods are delayed.

In such case it is important that the collecting bank ensures that the URC 522 is fully complied with; especially articles 1, 4 and 5. For example that the collection instruction is fully complied with, in respect of notifications ability to return the documents etc.

Guarantees

For the purpose of guarantees there is the risk that demands are made under a guarantee either because the goods (shipped via Hanjin Shipping) are not delivered as agreed or because the payment is not made as agreed.

If such demand is complying, the guarantor is obligated to honour, and there is the risk that the applicant is seeking an injunction preventing the guarantor from paying under the guarantee.

It should be mentioned also, that in reality it may be hard - if not impossible for a bank to determine if a specific transaction may be affected by the Hanjin Bankruptcy. Most likely a main part of the goods on board the Hanjin vessels are shipped via freight forwarders. In such case it is the bill of lading of the freight forwarder that is presented to the bank - and not the Hanjin Shipping bill of lading. Likewise - an event like this one is likely to affect others; i.e. There may well be others parties that end up in the same situation - because of non payment from Hanjin.

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