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JIPYONG & JISUNG

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(Firm News)

Jipyong & Jisung Represented Korea Finance Corporation to Complete Shipping Finance Transaction in the Form of Bare Boat Charter Hire Purchase

In October 2010, Jipyong & Jisung represented the Korea Finance Corporation and successfully completed a shipping finance transaction in the form of a Bare Boat Charter Hire Purchase in a short term for Sinokor Merchant Marine Co., Ltd.'s purchase of a second-hand bulk-carrier.

This case is particularly significant as it is the first time in which the Korea Finance Corporation took part in a shipping finance transaction as a sole lender instead of being a syndicated lender.

Jipyong & Jisung thoroughly reviewed the loan agreement, related security agreements and provided legal advice for all necessary procedures and documents required for delivery of a vessel, and carried out all necessary legal reviews and procedures which were required for the creation of security interests and mortgages in favor of the lender.

[Attorneys]

Seong KANG	Yully KANG	Jung-Han YOO	Ju-Young Susie IM
· Managing Partner	· Partner	· Associate	· Foreign Attorney

(Firm News)

Jipyong & Jisung Provides Legal Advice to an Australian Law Firm on Legal Issues Arising from Real Estate Investment Company Act, Foreign Exchange Transactions Act, etc.

Jipyong & Jisung is currently providing legal advice to an Australian law firm representing a seller of real estate on domestic legal issues arising from Korean legislations such as the Real Estate Investment Company Act and the Foreign Exchange Transactions Act, in relation to an Australian real estate investment project which is being conducted by a self-managed real estate investment trust ("REIT") specialized in development.

In this indirect investment structure, a Korean REIT will establish a SPC in Australia and then acquire shares in the SPC, and in turn, such established SPC will acquire real estate in Australia with the investment funds. So far, there have been no cases where a Korean REIT has successfully carried out or is in the process of carrying out a development of overseas real estate nor any precedent of investment in development of overseas real estate in such indirect manner.

[Attorneys]

Seung-Hyuk Edward HAN
· Foreign Attorney

Tae-Hyun LEE
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Sang-Hee LEE
· Foreign Attorney

(Firm News)

Jipyong & Jisung Represents Dio Corporation and Successfully Induces Foreign Investment of US$64,000,000 from Dentsply International

Jipyong & Jisung represented Dio Corporation, a KOSDAQ listed company in successfully inducing US$64,000,000 of foreign investment through issuing convertible bonds and selling the issued and outstanding shares to Dentsply Germany Investments GmbH.

Dentsply International located in the State of Pennsylvania, USA, is a NASDAQ listed company and boasts of a long history. It is also the market leader in the area of dental materials in the world with the aggregate market capitalization amounting to US$ 5 trillion. Dio Corporation entered into the investment agreement with Dentsply GmbH, a German investment company.

Dio Corporation which is a Korean middle sized company specialized in medical equipment is planning to supply its medical equipment to the global market via the global network of Dentsply in the future.

[Korean Article Reference]

- Hankook Ilbo - Dio Corporation successfully induced Foreign Investments worth 70 Billion Korean Won (December 9, 2010)
- Korea Economy - Dio Corporation executed an Investment Agreement worth US$64,000,000 with a German Corporation (December 10, 2010)

[Attorneys]

Haeng-Gyu LEE	Young-Min KIL	Jae-Min YOUN	Jean HONG	Ju-Young Susie IM
· Partner	· Associate	· Associate	· Foreign Attorney	· Foreign Attorney

(Firm News)

[NOTICE] JISUNG HORIZON will change its name to JIPYONG & JISUNG

IMPORTANT NOTICE

Effective as of December 1, 2010, JISUNG HORIZON will change its name to JIPYONG & JISUNG in order to align our English name with our Korean name.

Due to this change of our firm's name, our website address is now www.jipyong.com and our professionals' email addresses now use the domain "@jipyong.com".

	BEFORE	AFTER (As of Dec. 1)
Firm's English Name	JISUNG HORIZON	JIPYONG & JISUNG
Firm's Domain Name	www.js-horizon.com	www.jipyong.com
Firm's E-mail Address	@js-horizon.com	@jipyong.com

You will continue to have access to our website at www. js-horizon.com and our professionals using the domain "@js-horizon.com" during the transition period.

However, in order to avoid any inconvenience later on, please kindly update your records accordingly.

The Korea Chamber of Commerce & Industry Bldg. 11th FL, 45 Namdaemunro 4-ga, Jung-gu, Seoul, 100-743 Korea Tel 82-2-6200-1600 Fax 82-2-6200-0800

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(Firm News)

Jisung Horizon Represents Kolao Holdings, a Leading Overseas Korean Merchant Group in Laos in New Listing on KOSPI Market

Jisung Horizon represented Kolao Holdings, a leading overseas Korean merchant group in Laos, in the process of listing on the Korea Exchange and succeeded in newly listing it on the KOSPI Market as of November 30. The total trading volume of shares in Kolao Holdings on the very first day of its listing reached 13,600,000 shares, which reflects the market's high level of interest in it.

Kolao Holdings, which is listed on the KOSPI Market as the first overseas Korean merchant group, holds the exclusive sales rights to Hyundai Motor Group and it is the 100% holding company of Kolao Developing Co., Ltd ("KDC") which is the largest automobile company in Laos. KDC became the first Lao company to be listed on not only the Lao Securities but also a foreign securities exchange. Therefore, this is a case which marks a very significant step in the development of the capital market in Laos as well as the globalization of Korean capital market.

In the meanwhile, Kolao Group, to which Kolao Holdings is affiliated, also owns subsidiaries such as 'Indochina Bank,' a comprehensive finance company and 'K-Plaza,' a distribution company of electronic products.

[Korean Article Reference]

- Korea Economy –Kolao which debutted on the Korea Exchange prmosied to be Model of Success for Overseas Korean Companies (November 30, 2010)
- The Hankyoreh – Sae-Young Oh, the Chairman of Kolao Group, is Listed for the First Time on KOSPI Market as the Overseas Overseas Merchant (December 1, 2010)
- The Herald Economy – A Ceremony for Listing of Kolao Holdings (November 30, 2010)

[Attorneys]

Young-Tae YANG · Managing Partner	Sang-Jun KIM · Partner	Haeng-Gyu LEE · Partner	Hee-Suk CHAI · Associate	Jeoung-Hoon YOO · Associate
Eun-Young LEE · Associate	Jean HONG · Foreign Attorney	Ki-Il BAN · Foreign Attorney	Sang-Su KU · C.P.A	

(Firm News)

[Case & Winner] Advice on the First Launch of an Overseas Resource Development Private Equity Fund November 23, 2010 (PEF)

[Photo] Cheol JEONG • Associate, Hee-Suk CHAI • Associate, Han-Seol Myung • Partner

An example of a successful case led by the Resource, Energy & Environment Development Team of Jisung Horizon Attorneys at Law which saw the team provide legal advice on an 'overseas resource development private equity fund (PEF)' was published in the 'Case & Winner' section of the Maekyung Economy magazine on December 1st under the title of 'Advice on the First Launch of an Overseas Resource Development Private Equity Fund (PEF).'

[Korean Article Reference]

- Maeil Economy - [Case & Winner] Advice on the first launch of an overseas resource development private equity fund (PEF) (Online version)
- Maeil Economy - [Case & Winner] Advice on the first launch of an overseas resource development private equity fund (PEF) (PDF version)

(Firm News)

Jisung Horizon obtained Incorporation License from Vietnamese Central Bank on behalf of Mirae Asset Capital, First Case in Korean Financial Institutions

Jisung Horizon obtained the 'License of Incorporation and Operation of Finance Company' from the Vietnamese Central Bank on behalf of Mirae Asset Capital on November 22, which was the first case for the Korean financial institutions.

Accordingly, Mirae Asset plans to establish 'Mirae Asset Finance Company' and begin operation from 2011. Finance company may be engaged in not only loan business but also deposit-taking and card business partially and is one of the business areas with favorable outlook in Vietnam.

So far, there are only four foreign finance companies which succeeded in obtaining such license, including three European companies and one Japanese company.

[Korea Article Reference]

- Financial News – Mirae Asset obtained the Vietnamese License (November 23, 2010)
- Korea Financial Times – Mirae Asset obtained the incorporation license of finance company in Vietnam (November 25, 2010)

[Attorney]

Hee-Kyung BYUN

· Associate

Ho Chi Minh Office

(Firm News)

Jisung Horizon Represents SK Group in Bidding Battle for Medison Co., Ltd.

Jisung Horizon is representing SK Corporation, a holding company of SK Group in a bidding battle for Medison Co., Ltd., in which eight corporations, including KT&G, SK Group and Samsung Electronics, are participating.

SK Corporation has submitted a Letter of Intent (LOI) to JP Morgan, the financial advisor for the sale, in order to acquire 40.94% shares in Medison Co., Ltd. from Consus Investment, a private equity fund.

Medison Co., Ltd. is the largest manufacturer of diagnostic ultrasound devices in South Korea, occupying 32% market share, and has established a strong position as the 5th largest manufacturer after General Electric (GE), Phillips, Siemens and Toshiba with 8% market in the international diagnostic ultrasound devices market.

[Korean Article Reference]

- The Chosun Ilbo – SK Joins the Bidding War for Medison Co., Ltd. (October 21, 2010)
- The Hankyoreh – Samsung and SK go head to head in Bidding War for Medison Co., Ltd. (October 21, 2010)
- Yonhap Infomax – Why SK has joined Bidding War for Medison Co., Ltd. (October 25, 2010)

[Attorneys]

Seong KANG	Min SHIN	Cheol JEONG	Jung-Tae JUNG
· Managing Partner	· Partner	· Associate	· Associate

(Firm News)

Jisung Horizon advises Tong Yang Securities Inc. in executing Financial Advisory Agreement with the Ministry of Economy and Finance of Cambodia

On the 11th November, Tong Yang Securities Inc. held an opening ceremony at its Phnom Pehn office for the birth of the first securities company of Cambodia as well as a signing ceremony for the Financial Advisory Agreement (FAA) for the Initial Public Offering (IPO) and listing of Cambodia's state-owned enterprises, Phnom Pehn Water Supply and Telecom of Cambodia.

The finance team of Jisung Horizon and its Cambodia office have been advising Tong Yang Securities Inc. for the past two years in order to achieve the execution of the Financial Advisory Agreement with the Ministry of Economy and Finance of Cambodia.

Currently, the government of Cambodia plans to complete the establishment of the Cambodia Securities Exchange by next year in collaboration with the Korea Exchange and on the 20th October, as a part of the preparations for the above purpose, a total of seven financial institutions obtained approvals as comprehensive securities company and Tong Yang Securities Inc., advised by Jisung Horizon, was selected as the first securities company.

Jisung Horizon is planning to continue advising Tong Yang Securities Inc. and proceed with listing Cambodia's good state-owned enterprises related to public social overhead capital and telecommunications.

[Additional Information]

- Maeil Economy – Tong Yang Securities Inc., registered as the first securities company in Cambodia… promotes the listing of state-owned enterprises (November 11, 2010)
- Asia Economy – Tong Yang Securities Inc., promotes the listing of Cambodia state owned-enterprises (November 11, 2010)
- The Financial News – Tong Yang Securities Inc. obtains license as a comprehensive securities company in Cambodia. (October 22, 2010)

[Attorney]

Young-Tae YANG	Haeng-Gyu LEE	Jeoung-Hoon YOO	Jung-Han YOO	Jean HONG
· Managing Partner	· Partner	· Associate	· Associate	· Foreign Attorney

(Firm News)

Jisung Horizon Won Lawsuit involving Violation of the Indirect Investment Asset Management Business Act relating to Provision of Product Disclosure Statement of Fund

Jisung Horizon obtained a judgment of acquittal in a case representing an ex-branch manager of Woori Bank, who had been subject to summary indictment on charges of failing to provide an investment prospectus while selling the fund to investors (in violation of the Indirect Investment Asset Management Business Act). This judgment ruled by the 4th Single Criminal Division of the Seoul Northern District Court explains that "providing an investor a 'product disclose statement' which contains sufficient explanation of the revenue structure is equivalent to giving an official investment prospectus." Under the current Indirect Investment Asset Management Business Act, "the selling company of the fund should deliver the investment prospectus to investors directly, by post, or alternatively, by using its website or e-mail." This case, which refers to the method and the format of delivery of the investment prospectus, becomes a big issue in the financial sector.

[Korean Article Reference]

- Maeil Economy - The court ruled that product disclose statement is sufficient to explain the investment (November 3, 2010)
- Yonhap News - The court ruled that product disclose statement is sufficient to explain the investment (November 3, 2010)
- Asia Today - The court ruled that adequate product disclosure statement should be deemed as investment prospectus (November 3, 2010)

[Attorneys]

Sang-Yoon WOO
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Sung-Hyun SONG
· Associate

(Firm News)

New Wave of IPO Issuance in Korea

(Jisung Horizon Haeng-Gyu LEE · Partner)

Attorney Haeng-Gyu LEE of Jisung Horizon Attorneys at Law wrote an article on the subject of listings of foreign corporations on the Korean stock market which was published in the 2011 issue of the 'Asia-Pacific Capital Markets Handbook.'

[Article Reference]

- New wave of IPO issuance creates an optimistic outlook for Korea's capital markets - Euromoney Issue for 2011

(Firm News)

Jisung Horizon Launched a Latin America Global Business Team

Jisung Horizon has kept a close eye on Central and South American countries such as Brazil, which are enjoying continuous economic growth and becoming the centre of the world's economy.
With the aim of providing a more efficient service which is tailored to suit the regional characteristics of Central and South America, Jisung Horizon has created a Latin American team which comprises of experts in M&A, finance and overseas investment.

Jisung Horizon has created a network for facilitating investment in Brazil by establishing strong connections with local consulting firms and it has also created an environment in which it can deliver an effective legal service by interacting with several Brazilian law firms which have an extensive network in the Latin American region. In particular, for the first time for a Korean law firm, a second-generation Korean-Brazilian attorney has joined the Seoul office, which has enabled the firm to offer comprehensive and independent legal advice related to Latin American countries within Korea.

With the background knowledge in international business gained from China, Southeast Asia and Russia, Jisung Horizon intends to deliver top-quality legal advice coupled with regional expertise for cases related to Latin America which are likely to rise in number in the future.

[Main Practice Areas]

- Comprehensive advice on Foreign Direct Investment
- Obtainment of investment permits, advice related to establishment of companies and acting as an agent
- Advice on Joint Venture Agreements
- Advice on M&A of local companies, acquisition of shares and conducting due diligence
- Advice on construction, real estate development and sale of real estate
- Advice on natural resources development and SOC
- Advice on finance-related matters including Project Finance
- Advice on capital markets

- Advice on the management of local companies and organization changes
- Advice on trade-related matters and lawsuits

[Major Achievements]

- Advised a logistics company on establishing a local company in Brazil
- Provided legal advice related to the construction of a sewage treatment facility in Peru
- Provided legal advice related to dispute between trading companies

[Network of Brazilian Law Firms] (In alphabetical order)

- Dantas Lee Brock e Camargo Advogados
- Demarest e Almeida Avdogados
- Machado Associados
- Madrona Hong Mazzuco
- Mattos Filho Veiga Filho Marrey Jr e Quiroga
- Pinheiro Neto Advogados
- Siqueira Castro Advogados
- Souza Cescon Avedissian Barrieu e Flesch
- Tozzini Freire Advogados
- Velloza, Girotto e Lindernbojm Advogados Associados

[Attorneys]

Young-Tae YANG	Sang-Jun KIM	Yully KANG	Min SHIN	Cheol JEONG
· Managing Partner	· Partner	· Partner	· Partner	· Associate

Byung-Joo LEE	Yoo-Kyung LEE	Choong-Wook RO	Jean HONG	Arao KANG
· Associate	· Associate	· Foreign Attorney	· Foreign Attorney	· Foreign Attorney

(Firm News)

Managing Partner Young-Tae YANG attends Inauguration Ceremony of Laos Securities Exchange, the Joint Securities Exchange of KRX

(JISUNG HORIZON Young-Tae YANG · Managing Partner)

In the morning (local time) of 10th October, Managing Partner Young-Tae YANG attended an inauguration ceremony of Laos Securities Exchange (LSX) which was held in Vientiane, Laos.

The Korea Exchange (KRX) and the government of Laos have been working closely together since September 2007 in order to establish the LSX, which is planning to commence trading of securities in January of next year.

Jisung Horizon has been representing KRX and providing legal advice related to the establishment of LSX. Furthermore, Jisung Horizon has been providing legal services through "JSH-LLC," which is a joint venture law firm established through an exclusive collaboration agreement between Jisung Horizon and the biggest law firm in Laos, "LLC (Laos Law & Consultancy Group)" in November 2009 in order to enter the legal services market in Laos.

[Related Article]

- Hankyung Business Weekly – Laos' Capital Market Opening... The Korea Exchange to Participate in Management (September 15, 2010) – Haeng-Gyu LEE · Partner

[Korean Article Reference]

- Yonhap News – KRX successfully creates the first joint securities exchange, Laos Securities Exchange (October 10, 2010)
- Newsis – Establishment of joint securities exchange between Laos and Korea... Result of 3 years of investment (October 10, 2010)
- Asia Today – Establishment of joint securities exchange between Laos and Korea (October 11, 2010)

(Firm News)

Jisung Horizon advised Establishment of 'Global Dynasty Overseas Resources Development Private Equity Fund' in which Korea Investment & Securities Co. Ltd., LG International Corporation and Barclays participated as Joint General Partners

Jisung Horizon has successfully completed the establishment of 'Global Dynasty Overseas Resources Development Private Equity Fund,' a private equity fund for overseas resources development in which Korea Investment & Securities Co. Ltd., LG International Corporation and Barclays participated as joint general partners.

In order to establish a private equity fund for overseas resources development according to the Overseas Resources Development Business Act under the supervision of the Ministry of Knowledge Economy, this project was promoted through a competitive bidding procedure twice since June 2009 and was completed by registering as a private equity fund with the Financial Supervisory Commission on 8th October after overcoming various legal and economic difficulties which were uncertain due to the lack of precedents.

The above private equity fund is planning to actively participate in investment in overseas resources development upon its establishment.

[Korean Article Reference]

- EDAILY – Rise of the second local private equity fund focused on overseas resources investment (October 5, 2010)

[Attorneys]

Han-Seok MYUNG
· Partner

Hye-Jung RYU
· Associate

Hee-Suk CHAI
· Associate

Eun-Young LEE
· Associate

Hyung J. PARK	Hee-Suk CHAI	Sang-Su KU	Yong-Hyun RYU
· Foreign Attorney	· Associate	· C.P.A	· C.P.A.

(Firm News)

[Lawyer of the Moment]
Sung-Jun HONG, Specialist in Bankruptcy and Restructuring

On 3rd October, Financial News published an interview with Sun-Jun HONG, a partner at Jipyong & Jisung in its [Lawyer of the Moment] column.

[Korean Article Reference]

- Financial News - [Lawyer of the Moment] Sung-Jun HONG, Specialist in Bankruptcy and Restructuring (Online article)

(Firm News)

[Korea's Leading Lawyers]
Seong KANG, Managing Partner of Jisung Horizon

(Jisung Horizon Seong KANG · Managing Partner)

In the October 2010 edition of the Monthly Leaders Magazine, an interview entitled '[Korea's Leading Lawyers] Seong KANG, Managing Partner of Jisung Horizon' was published.

[Korean Article Reference]

- Monthly Leaders Magazine - [Korea's Leading Lawyers] Seong KANG, Managing Partner of Jisung Horizon (Online version)
- Monthly Leaders Magazine - [Korea's Leading Lawyers] Seong KANG, Managing Partner of Jisung Horizon (PDF version)

(Column)

Bankruptcy of the Owner or the Contractor of Construction and the Effects on the Bilateral Construction Contract

(Jisung Horizon Jung-Tae JUNG · Associate)

(Jisung Horizon Jiyoung BAE · Associate)

1. Termination or Cancellation of a Bilateral Contract when both parties have failed to perform their obligations

It is usually the case that any obligations under a construction contract are fulfilled over long periods of time and the construction amount is paid in several installments corresponding to the level of progress. One of the characteristics of a long-term contract such as construction contracts is that there is a high risk of rehabilitation proceedings or bankruptcy proceedings commencing against either the owner ("Owner") or the contractor ("Contractor") of construction during the term of the contract.

In between the time when the contractor commences construction and the time of completion of construction work, the Owner's obligation to pay the construction amount ("balance") and the Contractor's obligation to complete the construction are not yet fulfilled, which constitutes a 'mutually unfulfilled bilateral contract.' Under the Debtor Rehabilitation and Bankruptcy Act (the "Insolvency Act"), with respect to a mutually unfulfilled bilateral contract, the receiver (in the case of rehabilitation proceedings) or a trustee in bankruptcy (in the case of bankruptcy proceedings) may select from the following options; (i) terminate or cancel the contract, or (ii) fulfill the obligations of the debtor and request the other party to also fulfill its obligations (Articles 119 (1) and 335 (1) of the Insolvency Act). Pursuant to the above provisions, since the receiver or trustee in bankruptcy of the Owner or the Contractor may "terminate or cancel" the contract instead of choosing to fulfill its obligations, there seems to be room for interpretation that the contract may be terminated retrospectively in the context.

On the other hand, the Civil Act prescribes that when the Owner has been declared bankrupt, the Contractor or trustee in bankruptcy may terminate the contract. In such cases, the Contractor or trustee in bankruptcy may apply to be included in the distribution of property amongst the creditors with respect to any consideration for the completed work and other expenses not included in such consideration (Article 647 (1) of the Civil Act). However, the Civil Act does not have any special provision when the Contractor has been declared bankrupt. It only stipulates that the Owner may terminate the contract by compensating for any

damages before the Contractor completes the construction (Article 637 of the Civil Act).

In the above cases, although the term “termination” is used, it is still possible to claim for consideration and expenses for the completed work. Thus, the contract may be extinguished (with the same effects as a ‘termination’ of a contract) and the parties will be released from any future obligations but it is not possible to terminate the contract retrospectively.

Meanwhile, if both the Owner and the Contractor choose to perform the mutually unfulfilled bilateral contract, the claim of the other party becomes a public interest claim or a preferential claim (Article 179 (1) 7 and Article 473 (7) of the Insolvency Act). In this case, the main issue is whether the claim for progress payment with respect to the work completed by the Contractor prior to the decision to commence rehabilitation or bankruptcy proceedings ought to be deemed as (i) a rehabilitation claim or a bankruptcy claim since the some work has been completed, or (ii) a public interest claim or a preferential claim since the construction obligation has not yet been fully completed.

In the following paragraphs, we will examine the issues outlined above based on the judgment of the Supreme Court.

2. Effect of the Owner’s Bankruptcy on the Contract

The Supreme Court ruled that the provision on the mutually unfulfilled bilateral contract under the former Bankruptcy Act (currently, the Insolvency Act) does not apply in cases where the Owner has been declared bankrupt, and instead, Article 674 (1) of the Civil Act will apply, and thus the contract is terminated and the parties are no longer bound by the terms of the agreement (Supreme Court Case No. 2001Da13624 dated August 27, 2002).

According to the above ruling, the right to terminate a mutually unfulfilled bilateral contract by the trustee in bankruptcy under the former Bankruptcy Act cannot be exercised; however, the right to terminate such contract under Article 674 of the Civil Act can be exercised. Specifically, (i) it is not possible to retrospectively invalidate or void the contract from the beginning through to termination, and (ii) the restituted claim which arises from the termination of the contract will not be a preferential claim but a bankruptcy claim. That is, the trustee in bankruptcy of the Owner cannot claim for a refund of the progress payment with respect to the completed work but the trustee can claim for the construction amount paid (with the exception of progress payment), through bankruptcy proceedings only, as part of a bankruptcy claim on an equal basis to other creditors and can claim an amount proportionate to the claim amount.

3. Status of Claim for Progress Payment upon the Owner's Bankruptcy

The Supreme Court ruled that when the Owner is subject to a decision on commencement of corporate reorganization proceedings whilst the construction is in progress under the former Corporate Reorganization Act (corresponding to the rehabilitation proceedings under the Insolvency Act), the Contractor's claim for progress payment with respect to the completed work prior to the decision on such commencement falls under a public interest claim (Supreme Court Case No. 2002Da65691 dated February 11, 2003).

The grounds for the above ruling are as follows: (i) in general, the work to be fulfilled by the Contractor under the contract is indivisible and thus, the claim for payment of such work cannot be divided into claims arising out of the commencement of the corporate reorganization proceedings and claims arising for other reasons, and (ii) with respect to the payment method of the construction amount, there is a discrepancy between the agreement to pay on a regular basis according to the rate of completed work and the agreement to confirm the completed work for each interim period of construction progress and to pay the construction amount accordingly.

However, if there is an agreement to divide the entire construction into several types of work each with its own independent value (for example, in the case where each step of the entire construction work such as excavation work, air-conditioning work, facility work, and finishing work may each be a separate sub-contract) and to separately set a construction amount to be paid for each task, then payment for each task can be deemed as a debt in its own right. Therefore, there is a possibility that the claim for such payment is likely to be acknowledged as a public interest claim or a preferential claim.

Meanwhile, any creditor who desires to participate in the rehabilitation or bankruptcy proceedings is required to report the rehabilitation claim or bankruptcy claim (Articles 148 (1) and 447 (1) of the Insolvency Act) and the entry into the list of rehabilitation creditors or the list of bankruptcy creditors has the same effect as a final and conclusive judgment (Articles 168 and 460 of the Insolvency Act). Despite this, the Supreme Court ruled that even in the case where the claim for progress payment of the Contractor is recognized as a public interest claim, if the Contractor has reported such claim for progress payment as a reorganization claim under the former Corporate Reorganization Act (corresponding to a rehabilitation claim under the Insolvency Act), it would be difficult to say that the Contractor has consented to the treatment of the claim for progress payment as a reorganization claim, or that the Contractor has waived his status as a public interest creditor (Supreme Court Case No. 2004Da3512 and 3529 dated August 20, 2004).

The reasoning for the above ruling are as follows;

Firstly, the fact that the entry into the list of reorganization creditors (corresponding to the list of rehabilitation creditors under the Insolvency Act) has the same effect as the final and conclusive judgment simply means that it has a confirmatory and an incontestable effect within the reorganization proceedings, but that it has the effect of excluding further litigation on the same matter. Thus, an act of simply reporting the public interest claim as a reorganization claim and entering it into a list of reorganization creditors, etc. does not mean that the nature of a public interest claim can be altered into that of a reorganization claim.

Secondly, if the public interest creditors experience difficulties in making a clear decision on whether their claim falls under a public interest claim or a reorganization claim, they might report it as a reorganization claim in order to preserve their rights if their claim cannot be recognized as a public interest claim when they have not reported their claim as reorganization one.

4. Effect of the Contractor's Bankruptcy upon the Contract

Unlike the cases where the Owner is declared bankrupt as outlined above, the Supreme Court once ruled that when the Contractor is declared bankrupt, Article 50 of the former Bankruptcy Act (Article 335 of the Insolvency Act) which stipulates that the trustee can either terminate the contract or fulfill the debtor's obligations and require the other party to carry out its obligations under the contract shall apply because there is no provision on the exclusion of such Article (Supreme Court's Case No. 2001Da24174 and 24181 dated October 9, 2001). The current Act prescribes to the above effect that when the Contractor is declared bankrupt, the trustee in bankruptcy may require the debtor or a third party to perform any uncompleted construction work by providing any necessary materials (Article 341 (1) of the Insolvency Act).

However, in the case of the above ruling, the Contractor was declared bankrupt with only the warranty obligations left and after going through the completion inspection (the Contractor had also failed to pay the balance of the construction amount). The Supreme Court decided that once the construction had been completed, the construction contract could not have been terminated and the Contractor ought to be deemed to have performed its obligations under the Contract. In conclusion, the relevant contract could not be deemed as a bilateral contract not fulfilled by both parties at the time of declaration of bankruptcy and thus, Article 50 of the former Bankruptcy Act did not apply.

In the above case, although it seems unfair because the Owner's claim for compensation against the Contractor which arises as a result of a warranty becomes a bankruptcy claim, the Owner's claim can be preserved by exercising the right of set-off since the claim for compensation arising from the warranty, which is a bankruptcy claim, becomes an automatic claim and the claim for construction amount falling under the property divisible for distribution among creditors becomes a passive claim.

(Precedent)

Changes in Judicial Precedent of Invalidation of Union Establishment

A decision of the Supreme Court in January, 2010 states that a blank document of consent collected from the land-owners by the Steering Committee of the Reconstruction Union (the "Union") which omits the land-owners' consent for various items outlined in Article 26(1) of Decree of Act on the Maintenance and Improvement of Urban Areas and Dwelling Conditions for Residents (the "Old Act") are null and void. Therefore, because the disposition of approval for the establishment of the Union which was based on such consent had grave and apparent legal flaws, it was ruled that the disposition ought to be invalidated (Supreme Court Decision 2009Du4845 dated January 28th, 2010). This decision which states that the approval for the establishment was invalid from the very beginning because of a legal flaw in the process is expected to have wide-ranging repercussions.

A summary of the main points of the decision are as follows;

> "Reasoning and record of the trial's decision states that the written consents which the Steering Committee of the Intervenors' Union submitted to the defendants after collecting them from the land-owners had completely omitted items which were specifically required to be recorded even though the form had sections for recording the 'Design Outline of the Buildings to be constructed' as set out in Article 26(1)1 of Decree of the Old Act and 'Estimated Amount Necessary for Removal of Structures and New Construction' as set out in Article 26(1)2 of the same Decree. Nonetheless, on January 24th 2010, the defendants approved the establishment of the Intervenors' Union.
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> If this is the case, the disposition which acknowledges an invalid consent as a valid one whilst violating the examination criteria of written consent of land-owners which is necessary for the approval of establishment of Unions is illegal. Given the importance of the meaning of written consents from the land-owners, who are directly interested parties of the Union, it can be said that the legal flaw in the disposition above is sufficiently serious. Furthermore, the legal flaw is also clear and apparent if one considers the fact that the defendants effectuated the written consents even though it was the legal flaws were easy to detect (Supreme Court Decision 2009Du4845 dated January 28, 2010)."

However, in October 2010, the Supreme Court delivered another decision which appeared to contradict the original judgment – it accepted a claim for sale filed by the Union which had obtained approval for

establishment of the Union based on blank consents (Supreme Court Decision 2009Da29380 dated October 29, 2010).

> "Facts admitted by the original court shows that the claimants held an inaugural meeting on May 13th, 2006, obtained approval for establishment from the head of Nowon District on June 12th, 2006, and completed incorporation registration on June 15th, 2006, and written consent which was submitted as part of the application for establishment of the Union to the administrative authority was a complete and valid document even though the items for 'estimated amount necessary for removal of structures and new construction' were missing in the written consent originally collected from the land-owners. As such, even though the relevant information was omitted in the written consent submitted during the establishment of the Union, disposition of the administrative authority which approved the establishment of the Union may not be recognized as ipso jure null and void so long as the written consent submitted as part of the application for approval of the establishment of the Union to the administrative authority had the 'estimated amount necessary for removal of structures and new construction.'" (Supreme Court Decision 2009Da29380 dated October 29, 2010)

At first glance, the two decisions appear to contradict each other, but this is not the case. Supreme Court's Decision 2009Du4845 delivered on January 28th, 2010 points out that the administrative authority approved the establishment of the Union even where the written consents were submitted while some items were left blank, and Supreme Court Decision 2009Da29380 delivered on October 29th, 2010 concerned a case in which the blank consent was supplemented before the application for establishment of the Union was actually filed.

Supreme Court's decisions can be interpreted in two separate ways. First, where the Union obtains an approval for establishment based on blank consent, if the Union wants to avoid the decision becoming null and void due to its grave and apparent legal flaws, it should fill in the blank items of consent before submitting it for application. Second, if the Union fails to get the necessary consent for the application due to the legal flaws in the written consent, or if some specific items were omitted in the written consent which the public officer receives, invalidation of the disposition of approval for the Union establishment may not be avoidable even if the Union supplements the legally flawed written consent.

The Supreme Court's latest decision is significant because it acknowledges for the first time that even where a written consent is collected as a blank consent, if the blank is filled in before the application for disposition is filed, the disposition of approval of the establishment of the Union shall not be null and void. The degree of severity of the legal flaws which will determine whether the approval of the establishment of the Union based on grave and apparent flaws would be accepted or rejected was quoted by the Seoul High Court in a trial

appealed by the Union who lost the case in the first court of first instance (Seoul High Court Decision 2009Na21302, dated June 23, 2010). The logic presented by the Court in this case may lay the legal foundations for future cases of reconstruction of unions and construction companies which experience similar legal problems and could enable them to continue their schedules.

Taking into consideration the significance of the consent of the land owners who are the directly interested parties in the reconstruction projects, if the written consent is collected while the sections for 'design outline of the buildings to be constructed' and 'estimated amount necessary for removal of structures and new construction' are left blank, even though the Union may have applied for disposition of approval of the establishment of the Union by filling in the blanks afterwards, it can be said that the disposition of approval still has grave and apparent legal flaws. However, the administrative authority which receives application for disposition of approval of establishment of the Union can only examine whether or not all items required by each section of Article 26 (1) of the Decree of the Old Act are satisfied in the written consent. At the same time, the administrative authority has neither the authority nor the obligation to examine whether the sections on the 'design outline of the buildings to be constructed' and 'estimated amount necessary for removal of structures and new construction' were filled in from the beginning or supplemented at a later stage.

Therefore, the legal flaws mentioned above cannot be classified as apparent flaws (Seoul High Court Decision 2009Na21302, dated June 23, 2010).

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