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## **The Collapse of Hanjin in Spain**

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There is no doubt that Hanjin collapse has created chaos in the shipping industry affecting, with ripple effects, port's operations, cargo owners, and supply chain companies, to say the least.

Spain, with three “Hanjin” ports  
is not of course an exception:

- **Barcelona**
- **Valencia**
- **Algeciras**

Initially, it was reported that port authorities had refused access to Hanjin vessels due to concerns about Hanjin's ability to pay fees.

However, at the time of preparing this presentation, several Hanjin vessels had already discharged their cargoes in the port of Valencia.

These are the Hanjin Bosal, the Hanjin Spain, the Hanjin Shenzen, the Hanjin Buddha, the Hanjin Italy and the Hanjin Tabul (today named Seaspam Zambei).

In fact, this last vessel is expected to call Spain in a very near future, with a different name, to load the cargo for Italy which had been discharged in Valencia.

There are however other Hanjin vessels, with ETA Algeciras, still anchored out of the Spanish territorial waters.

When it was announced that Hanjin had filed for rehabilitation, many believed that several Hanjin vessels were going to be arrested, but no arrest application has been filed in the Courts of Valencia to date.



In fact, when Hanjin filed for bankruptcy protection in Valencia, at the beginning of this month, several Hanjin vessels had already discharged in Valencia and none of them had been arrested there.

At the time of preparing this presentation, I have not heard that the Court dealing with the insolvency protection had already granted it.

I have my doubts about the success of this late step by Hanjin since it is not directed to a specific defendant but referring to “all creditors of Hanjin”.

According to the relevant Spanish provisions of law, a demand for the exequatur of a foreign decision is to be directed against that party or parties against which the foreign judgment is to be enforced.

As said, it is doubtful that Hanjin's application for bankruptcy protection will be successful in Spain, given its vague terms as to the defendants.

After this very general overview to the situation in Spain, let's do few some brief comments on some legal issues.

What is the position of the NVOCC under Spanish Law with regards to cargo claims, including those related to the delivery of the cargo or delays ?

Each case must be studied but in principle the liability of the forwarder is clearly set out under Spanish law: He is jointly and severally liable with the effective carrier.

The freight forwarder is entitled to be reimbursed by the effective carrier for compensations paid by virtue of this joint and several liability.

However, given the rehabilitation of Hanjin, any reimbursement will be, according to our experience with Korean insolvencies, very small.

Another relevant practical legal issue is the demands made by Terminals in respect of their claims against Hanjin for unpaid fees, handling charges, etc.

It has been reported that a number of NVOCC are not being allowed to collect discharged cargo unless said demands are paid or a deposit is provided to the terminals.



Are these demands legitimate?

Again, each demand should be studied case by case but generally speaking the port handling operator is entitled to withhold the goods in his power until it is not paid the price owed for the operations relating to said goods, regardless of when the terminal has a contractual relationship.

The terminal has a right of withholding the goods as security but do not have a right to exercise a lien over them for the sale of the goods in order to be paid, as the carrier has under Spanish law for the outstanding freight and other carriage expenses.

On the other hand, the holder of the bill of lading is entitled under Spanish Law to commence enforcement proceedings of the bill of lading in order to obtain from the courts an order for the delivery of the goods.

There are many other legal issues arising out of the collapse of Hanjin but my time is limited.

I believe nobody knows now how the rehabilitation proceedings will result but it is undoubtful that the effects of Hanjin's collapse will be felt for many months to come. It is likely that next year we will be speaking again about it.

Thank you for your attention.

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