

SECTION C - SECURED FINANCING

C1. Property rights regime

- (a) Yes. System of ownership rights for land and other property is reasonably stable in Korea.
- (b) (i) Yes. System of mortgage registration on property is well developed in Korea.

(ii) Although property other than real property (and quasi-real property) are not registered in Korea, the system of ownership in personal property is developed and lending on security of such property is common.

C2. Secured financing

- (a) There are a number of ways to take security over assets in Korea. Broadly, they can be categorized as mortgage, lien by retention (*yuchikwon*) and pledge.
- (b) All these types of security can be used by financiers. The most common form would be a mortgage on real property.
- (c) This would largely depend on whether the asset subject to a security is registered. As such, mortgage on real property is registered. A pledge on securities can also be registered.
- (d) Priorities would depend on perfection and timing of perfection among competing securities.

C3. enforcement of securities

- (a) It is often the case that a secured lender and the corporate borrower would seek to negotiate a suitable arrangement before the secured lender enforcement upon the security.
- (b) The secured lender has the power to enforce the security. This may take the

form of filing a legal proceeding with the court, taking title and possession of the secured property or liquidating such property. Whether all of these remedies are available would depend on the nature of the secured asset and the nature of the security.

- (c) Yes, a secured creditor may “self-enforce” the certain security without an order from the court or regulatory authority.
- (d) The most commonly employed method would be foreclosure proceeding where the court would auction the property.
- (e) An application to auction the property is filed with the court having jurisdiction over the property. If the court approves the application, it will issue an order for seizure. Thereafter, an appraiser will value the property. Based on the appraised value, the court will set the minimum auction price and set the date and time of auction. After the auction, the successful bidder must pay the money to the court by the date decided by the court. The court will then distribute the proceeds to the interested parties.

C4. Effectiveness of judicial system

- (a) The judicial system is quite effective for the purpose of enforcing secured property and Korean court handle numerous such cases.

C5. Effect of insolvency proceedings

- (a) The answer depends on the type of insolvency proceeding filed. In a company reorganization proceeding, the rights of the secured creditor will depend on the reorganization plan as finally determined by the court. In a composition proceeding and bankruptcy proceeding, the secured creditors have a right of separation. Once an insolvency petition is filed, the company is prohibited from engaging in acts that may “harm the creditors”.
- (b) In a reorganization context, company’s assets cannot be enforced, attached or seized and on-going enforcement, attachment and seizure will cease once the commencement for reorganization proceeding is ordered. In the bankruptcy and composition context, the secured creditors have a right of separation.