A CASE OF ELUSIVE CROSS-BORDER TRANSACTION: SECURITIZATION OF INTERNATIONAL AIRLINES’ FUTURE FLOW RECEIVABLES

W. Eugene Chang*

Keywords: Korea Financial Crisis, Cross-Border Securitization,

I. Introduction

Ever since the financial crisis of the late 1990s, Korea has been one of the most active markets for cross-border securitization in Asia. There is no question that the Korean economy has been relying on the international securitization market as one of the most significant sources for its foreign currency funding. Various Korean financial institutions, including commercial banks and card companies, have been regularly issuing asset backed securities utilizing various asset types, including credit card receivables, residential mortgage loans, automobile loans, consumer loans, etc. Despite drastic contraction of the global securitization market since the subprime loan crisis of 2008, Korean companies have still been successfully issuing asset backed securities in the international capital market.¹ Major Korean originators are now recognized as key players in the Asian securitization market and are known to be experienced and well-versed in a variety of techniques employed in cross-border securitization.

However, if we look more closely into the Korean cross-border securitization market, we will quickly come to the realization that the types of assets that have been securitized for foreign currency funding are rather limited. Assets most widely used by Korean originators in cross-border securitization transactions have been credit card receivables, residential mortgage loans and other kinds of consumer loans such as

---

* Mr. Chang is a senior counsel at Orrick, Herrington & Sutcliffe’s Tokyo office.
¹ Of course, the issuance of asset backed securities by Korean companies has gotten tougher since the subprime loan crisis. Funding costs have gone up significantly and the total number of successful issuances of asset backed securities has gone down. However, most practitioners and securitization professionals generally agree that Korea has been the only country in Asia to have been consistently issuing asset backed securities in the international capital market.
automobile loans. Of course, drastic growth of the credit card and consumer loan market in Korea during the past decade has contributed to the dominance of such asset types in the Korean securitization market. On the other hand, from a legal practitioner’s perspective, the legal framework also appears to have played an important role in the growth of securitization of these kinds of assets. More than anything, the Asset Backed Securitization Act of Korea\(^2\) helped Korea emerge as one of the most active cross-border securitization markets in Asia. In particular, credit card receivables and mortgage loans are the kinds of assets that are well-suited to take advantage of special features granted by the Asset Backed Securitization Act.\(^3\) Further, these assets have a common advantage of being easily definable. Credit card receivables are rights of a credit card company to receive payment from its customers for credit card purchases whereas mortgage loan receivables are rights of a mortgage bank to receive payments for mortgage loans advanced to its customers. These rights are based upon a contract entered into by and among the originator and each of its customers, and the securitization of these assets, among others, will be comprised of the transfer of the originator’s rights under these contracts to a specialized securitization vehicle.

Although not so visible to the public as compared to credit card receivables and various loan receivables described above, during the past decade, Korean airline companies have been steadily issuing securities backed by their foreign currency denominated future flow receivables. In particular, over several occasions during the past decade, Korean airline companies have successfully securitized future passenger ticket receivables and future cargo receivables arising in Japan and in the United States.\(^4\) Korean airline companies’ steady reliance on the issuance of securities backed by future flow for their foreign currency funding is somewhat surprising given various legal and other challenges confronting this type of securitization. However, securitization of airlines’ foreign currency denominated future flow offers the originator an ultimate

---

\(^2\) The Asset-Backed Securitization Act (“Jasan Yudonghawe Gwanhan Beobyul”) was enacted in 1998 to facilitate Korean companies’ funding from international financial markets through securitization of asset pools held by them.

\(^3\) Article 7 of the Asset-Backed Securitization Act provides that assignment of receivables will take effect as against third parties upon the registration of such assignment with the Financial Supervisory Commission, despite the notice requirements of the Korean Civil Code. Accordingly, by way of registration with the Financial Supervisory Commission, assignment of credit card/mortgage loan receivables to specialized securitization vehicles can be perfected against third parties without sending notice to numerous obligors of these receivables.

\(^4\) Securitization of future flow receivables arising in Japan involved the issuance of Japanese Yen denominated securities, as subject receivables are denominated in Japanese Yen, whereas securitization of future flow receivables in the US involved the issuance of US Dollar denominated securities.