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UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WASHINGTON

In re:

Petition of HO SEOK LEE as Court-Appointed  
Manager of YOUNG CHANG CO. LTD,

Debtor in Foreign Bankruptcy.

No.

APPLICATION OF FOREIGN  
REPRESENTATIVE FOR  
RECOGNITION OF A FOREIGN  
PROCEEDING PURSUANT TO  
11 U.S.C. § 1515 AND MEMORANDUM  
OF LAW IN SUPPORT

Foreign representative Ho Seok Lee petitions this court for recognition under 11 U.S.C. Chapter 15 of the corporate reorganization proceeding commenced in the Incheon District Court, Department of Bankruptcy, of the Republic of Korea by Young Chang Co. Ltd. ("Young Chang"), pursuant to Korea's Company Reorganization Act. The Incheon District Court, Department of Bankruptcy, in that proceeding appointed Ho Seok Lee the manager and President of Young Chang.

1 **Introduction**

2 Petitioner seeks recognition of a foreign bankruptcy action pending in the Incheon  
3 District Court, Department of Bankruptcy, for the purpose of preventing a Korean creditor  
4 from pursuing a civil action commenced in the Pierce County Superior Court. In *Samsung*  
5 *Mfg. Co., Ltd., a Korean corporation v. A N D Music Corp*, Pierce County Superior Court  
6 Case No. 05-2-07400-6 Samsung seeks to realize on purported security for a debt owed by  
7 Young Chang by seizing accounts receivable owed to Young Chang which are located in the  
8 United States.

9 Petitioner submits that the relief sought in this petition is appropriate and necessary in  
10 order to accomplish the purposes of Chapter 15, as set out in Section 1501, including:

- 11 (1) the cooperation between courts of the United States and courts of foreign  
12 countries involved in cross-border insolvency cases;
- 13 (2) greater legal certainty for trade and investment;
- 14 (3) the fair and efficient administration of cross-border insolvencies protecting the  
15 interests of all creditors, and other interested entities, including the debtor;
- 16 (4) the protection and maximization of the value of the debtor's assets; and
- 17 (5) the facilitation of the rescue of financially troubled businesses, thereby protecting  
18 investment and preserving employment.

18 **I. FACTS**

19 ***Entities involved in this action***

20 Young Chang Co., Ltd. is one of Korea's largest piano manufacturers. Declaration of  
21 Ho Seok Lee ("Lee Decl.") at ¶ 3. A N D Music Corporation is a Delaware corporation,  
22 Young Chang's wholly-owned subsidiary and its distributor of pianos for North America,  
23

1 Central America and South America. Lee Decl. at ¶ 4. It is located in Lakewood,  
2 Washington. *Id.*

3 Samsung Mfg. Co., (“Samsung”) a Korean corporation, is a wholly-owned subsidiary  
4 of (or is wholly-controlled by) Korean piano manufacturer Samick Musical Instruments  
5 Company, Ltd. (“Samick Korea”). *Id.* at ¶ 5. Samick Korea is a long-time business rival of  
6 Young Chang. *Id.*

7 Samick Korea’s distributor in North America is a wholly-owned California  
8 corporation, Samick Music Corp. (“Samick America”). *Id.* at ¶ 6. Samick America is a  
9 sister corporation to Samsung, with common ownership. *Id.*

10 The entities involved, then, are these:

11 *Young Chang Co., Ltd.* (Korean corporation)

12 Subsidiary: *A N D Music Corp.* (Delaware corporation)

13 *Samick Musical Instruments Company Ltd.* (Korean corporation)

14 Subsidiary: *Samsung Mfg. Co., Ltd.* (Korean corporation)

15 Subsidiary: *Samick Music Corp.* (California corporation)

16 ***Samick Korea’s Attempted Takeover of Young Chang and A N D Music***

17 In March 2004, Samick Korea acquired 26.5% of Young Chang’s stock. Samsung  
18 acquired an additional 22.08% of Young Chang’s stock. This stock ownership gave Samick  
19 Korea control over Young Chang. *Id.* at ¶ 7.

20 Samick Korea then installed its own slate of directors and officers for Young Chang,  
21 and took steps to merge Samick Korea and Young Chang into one company. *Id.* at ¶ 8.

1 In between April and June, 2004, Samick Korea announced that Samick America and  
2 A N D Music would begin operating out of the same location in the City of Industry,  
3 California. Samick Korea directed A N D Music to move from its location in Lakewood,  
4 Washington to the Samick America building in City of Industry, California. Samick Korea  
5 also installed its own officers and directors to run A N D Music. *Id.* at ¶ 9.

### 6 ***Loan Agreements between Samsung and Young Chang***

7 Young Chang borrowed 1.1 billion Korean Won from Samsung around June 11,  
8 2004. Samick Korea was in control of Young Chang at this time. That Loan Agreement had  
9 a one year term, and came due on June 10, 2005, and did not provide for any security for the  
10 loan. *Id.* at ¶ 10.

11 Young Chang borrowed an additional 1.0 billion Korean Won on June 14, 2004.  
12 That Loan Agreement was also for a one-year term, maturing on June 13, 2005, and did not  
13 provide any security for the loan. *Id.* at ¶ 11.

14 There exist other versions of loan documents, also dated June 11 and June 14, 2004,  
15 respectively, but with maturity dates of August 31, 2004, and providing for an assignment of  
16 about \$1.8 million (U.S.) of Young Chang's accounts receivable due to it from A N D Music  
17 Corp. as security for the loans. Young Chang contends that Samsung Mfg. Co.  
18 representatives caused these versions of the loan documents to be prepared and executed in  
19 August 2004, backdating them to June 11 and June 14, 2004. *Id.* at ¶ 12.

### 20 ***The Unwinding of Samick Korea's Takeover***

21 The Korean Fair Trade Commission ("FTC") took action in August 2004 to unwind  
22 Samick Korea's takeover of Young Chang on the basis that it was a violation of Korea's  
23

1 antitrust laws. Around mid-August 2004, the FTC indicated that the takeover was a violation  
2 of Korea's antitrust laws, and in September 2004 ordered that it be unwound. The Seoul  
3 High Court early this year stayed the FTC's ruling, but at the present time Young Chang and  
4 A N D Music are operating independently of Samick Korea control. *Id.* at ¶ 13.

5 The Korea FTC ordered Samick Korea and Samsung Mfg. Co., Ltd. to transfer and  
6 divest all of their shares of stock in Young Chang within one year. The Korea FTC also froze  
7 the voting rights of Samick Korea in Young Chang. This allowed the original management of  
8 Young Chang to regain control of the company. *Id.* at ¶ 14.

9 ***Bankruptcy of Young Chang, Appointment of Bankruptcy Court Manager***

10 Young Chang became insolvent on or about September 21, 2004, and filed a petition in  
11 bankruptcy under Korea's Company Reorganization Act (the "CRA") on or about September  
12 24, 2004. The Korean Bankruptcy Court secured all the assets of Young Chang as of October  
13 8, 2004, and froze all of Young Chang's liabilities. *Id.* at ¶ 15. Under the CRA, all parties  
14 who desire to participate in the Korean bankruptcy are provided an opportunity to assert such  
15 claims and to introduce evidence in support of that claim. *Id.* at ¶ 19. Samsung filed its claim  
16 for the 2.1 billion Korean Won due from Young Chang, in Young Chang's reorganization  
17 proceeding, claiming to be a secured party. *Id.* at ¶ 20.

18 Since October 20, 2004, the court-appointed manager, Ho Seok Lee, has held all of the  
19 decision-making power for Young Chang, and is operating Young Chang with the Korean  
20 bankruptcy court's consent. *Id.* at ¶ 17. In the Korean bankruptcy action, Young Chang and  
21 Ho Seok Lee filed an objection to Samsung's assertion that its claims in the bankruptcy  
22 proceeding were secured. *Id.* at ¶ 21.

1 Young Chang on December 20, 2004 filed a separate civil action against Samsung  
2 Mfg. Co. in the Incheon District Court, contesting the validity of the versions of the loan  
3 agreements which include the assignment of Young Chang's \$1.8 million (U.S.) of accounts  
4 receivable due from A N D Music Corp. as security. *Id.* at ¶ 22. The determination of  
5 whether the purported assignments for security will be made in this civil action, rather than by  
6 the Bankruptcy Court. *Id.* In September 2005, the Incheon District Court in Young Chang's  
7 civil action against Samsung found that the supplemental loan agreements were valid. Young  
8 Chang has appealed that decision, and the appeal is pending as of the date of this Petition. *Id.*  
9 at ¶ 25.

10 On February 28, 2005, Ho Seok Lee submitted a reorganization plan for Young  
11 Chang to the Incheon District Court, Department of Bankruptcy. *Id.* at ¶ 23. That court  
12 approved the plan on July 26, 2005. Copies of that plan, both in Korean and translated to  
13 English, are Lee Decl. Exhibit 1. A certificate from translator Ann Sook Jeon is included.  
14 Ho Seok Lee provides these documents to satisfy the requirement of 11 U.S.C. § 1515 (b)(2)  
15 and (3).

16 Young Chang's Reorganization Plan provides two alternate schedules for Young  
17 Chang's payment to Samsung Mfg. Co., depending on whether those claims are secured, or  
18 unsecured:

19 If it is determined that the purported assignment is void, such that Samsung is an  
20 *unsecured* creditor, then Young Chang is obliged to pay only 40% of the 2.1 billion Korean  
21 Won loans over a 5 year period, during years 6-10 of the Plan. *Id.* at ¶ 24.  
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1 **III. LEGAL ARGUMENT**

2 **A. Mr. Lee and Young Chang meet the requirements set out in 11 U.S.C. § 1517 for**  
3 **recognition of a foreign proceeding.**

4 Section 1517 provides:

5 Subject to section 1506, after notice and a hearing, an order recognizing a  
6 foreign proceeding shall be entered if—

7 (1) such foreign proceeding for which recognition is sought is a foreign  
8 main proceeding or foreign nonmain proceeding within the meaning of  
9 section 1502;

10 (2) the foreign representative applying for recognition is a person or body;  
11 and

12 (3) the petition meets the requirements of section 1515.

13 11 U.S.C. § 1517.

14 **1. Granting the Petition is consistent with public policy as required by**  
15 **Section 1506.**

16 Section 1506 provides “Nothing in this chapter prevents the court from refusing to  
17 take an action governed by this chapter if the action would be manifestly contrary to the  
18 public policy of the United States.” Granting recognition to Young Chang’s Korean  
19 Bankruptcy presents no such issues.

20 Under former code section 304, like section 1506, the court was required to analyze  
21 whether the foreign government’s dissolution or reorganization procedures were consistent  
22 with U.S. public policy. “Section 304(c)(4) represents a legislative choice to require courts  
23 to consider differences between American priority rules and those applicable to the foreign  
proceeding in determining whether affording comity will be repugnant to American public  
policies.” *In re Treco*, 240 F.3d 148, 158 (C.A.2 (N.Y.) 2001). The Southern District of

1 New York Bankruptcy court found that affording comity to Korean bankruptcy laws was  
2 appropriate.

3 The record confirms that Korean bankruptcy law, and in particular the  
4 Company Reorganization Act, is substantially similar to United States  
5 law, does not discriminate against non-Korean creditors, and comports  
6 with American notions of fairness and due process. The Korean  
7 Proceeding provides many of the same procedural safeguards as would  
8 apply in a Chapter 11 case in the United States. The distribution of  
9 proceeds pursuant to Onse's Plan of Reorganization is substantially in  
10 accordance with United States law. Therefore, affording comity to the  
11 Foreign Proceeding is warranted and appropriate.

12 *In re Petition of Kyu-Byung Hwang, as Court Appointed Receiver of Onse Telecom, Debtor in*  
13 *Foreign Proceedings*, 309 B.R. 842, 846 (Bkrcty.S.D.N.Y. 2004).

14 **2. The Reorganization of Young Chang is a “foreign main proceeding” as**  
15 **defined in 11 U.S.C. § 1502(4).**

16 “[F]oreign main proceeding” means a foreign proceeding pending in the country  
17 where the debtor has the center of its main interests.” 11 U.S.C. § 1502(4). Young Chang is  
18 a Korean corporation with the majority of its assets in Korea. Lee Decl. at ¶ 2. Young Chang  
19 became insolvent on or about September 21, 2004, and filed a petition in bankruptcy on or  
20 about September 24, 2004. *Id.*

21 **3. Ho Seok Lee is a foreign representative as defined in 11 U.S.C. § 101(24).**

22 The term "foreign representative" means a person or body, including a  
23 person or body appointed on an interim basis, authorized in a foreign  
proceeding to administer the reorganization or the liquidation of the  
debtor's assets or affairs or to act as a representative of such foreign  
proceeding.

11 U.S.C. § 101(24).

The Korean Bankruptcy Court in that proceeding acquired control over all the assets of  
Young Chang as of October 8, 2004, and stayed all actions to collect on Young Chang's

1 liabilities. Lee Decl. at ¶ 16. On October 20, 2004, the court appointed Ho Seok Lee the  
2 Manager of the bankruptcy and he has held all of the decision-making power for Young  
3 Chang, and is operating Young Chang with the Korean bankruptcy court's consent. *Id.* at ¶ 17.  
4 The *Hwang* court found that a "receiver" under Korean bankruptcy law (who had the same  
5 responsibilities as the Manager in this case) was a "foreign representative" under former 11  
6 U.S.C. §101(24): "the Petitioner is clearly a 'foreign' representative within the meaning of  
7 section 101(24) in that he is the 'duly selected . . . representative of an estate in a foreign  
8 proceeding." *In re Petition of Kyu-Byung Hwang*, 304 B.R. at 845.

9 **4. This Petition meets the requirements of Section 1515.**

10 Section 1515 sets out the documentation required for recognition of a foreign  
11 proceeding.

12 (b) A petition for recognition shall be accompanied by—

13  
14 (1) a certified copy of the decision commencing such foreign proceeding and  
appointing the foreign representative;

15 (2) a certificate from the foreign court affirming the existence of such  
16 foreign proceeding and of the appointment of the foreign representative;  
or

17 3) in the absence of evidence referred to in paragraphs (1) and (2), any  
18 other evidence acceptable to the court of the existence of such foreign  
proceeding and of the appointment of the foreign representative.

19 (c) A petition for recognition shall also be accompanied by a statement  
20 identifying all foreign proceedings with respect to the debtor that are  
known to the foreign representative.

21 (d) The documents referred to in paragraphs (1) and (2) of subsection (b)  
22 shall be translated into English. The court may require a translation into  
English of additional documents.  
23

1 11 U.S.C. § 1515.

2 Attached as Exhibit 1 to the declaration of Ho Seok Lee is a copy of the Incheon  
3 District Court Department of Bankruptcy's decision accepting the plan of reorganization of  
4 Young Chang. Lee Decl Ex 1.<sup>1</sup> It identifies Mr. Lee as the Manager of the reorganization.

5 On December 25, 2005, Young Chang asked permission from the Korean bankruptcy  
6 to file a petition for recognition of foreign proceeding. Lee Decl. Exhibit 2 (including English  
7 translation.) The Court granted Young Chang's request and gave Ho Seok Lee authority to  
8 file this petition. *Id.*

9 The only foreign actions of which Ho Seok Lee is aware with respect to Young Chang  
10 are the reorganization, the civil case between Young Chang and Samick Musical Instruments  
11 Company Ltd. (currently under appeal) and the Korean Fair Trade Commission action  
12 regarding the Samick merger violations of Korean anti-trust laws<sup>2</sup>. Lee Decl. at ¶ 28.

13 **RELIEF REQUESTED**

14 Petitioner requests that this court, pursuant to 11 U.S.C. § 1517, enter an order  
15 recognizing the Young Chang reorganization proceeding currently pending in the Republic  
16 of Korea, Incheon District Court, Department of Bankruptcy.

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20 <sup>1</sup> Ex. 1 includes copies of both the original document, and translation from Korean into  
English. Also attached is the certification of translator Ann Sook Jeon.

21 <sup>2</sup> There is one other action pending in the U.S. On January 4, 2005, Samick America sued  
22 A N D Music in California state court regarding inventory and equipment that Samick moved to  
California while in control of Young Chang and A N D Music. In late March 2005 A N D Music  
23 obtained a preliminary injunction requiring Samick America to return A N D Music's inventory and  
equipment to it.

1 Dated: January 13, 2006

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3  
4 s/ Jason T. Dennett  
5 WSBA #30686  
6 Carlson & Dennett, P.S.  
7 1601 Fifth Ave., Suite 2150  
8 Seattle, WA 98101  
9 Telephone: (206) 621-1158  
10 Fax: (206) 621-1151  
11 E-mail: [jason@carlsonlaw.com](mailto:jason@carlsonlaw.com)  
12 Attorneys for Petitioner Ho Seok Lee  
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