

映畫製作 投資 法律

- I.
- II. 映畫資本
- III. 産業 資産流動化
- IV. 收入 流動化方案
- V.

I.

復興期

.1) TV가

가 1999 「 」

가

2001

46.1%

.2)

가

가

「 」

가

가

가

.3)

*

1) , “ ”, Issue Paper, 2002.2.28, 8 .

2) , 10 . 30%

，
 私募(private placement)

，公募(public offering)

< 1 >

		- 가	- 1990
		- , KTB , KM 가	- , JSA , ,
		- , 가	- 2001 26
		- 가 ,	- (2)
		-	- 「 」 (1) 60

: 17 18

(: ,) 가
 短命 가
 가 가
 가 , 가 가

(structuring) (cash flow) 가

III. 産業 資産流動化

1. 資産流動化

1980

(pooling) , , 同質性 가
資産保有者(originator)
9)

「 , SPV SPV
」 SPV 1 有限會
社 (17 1).

가 . , TV

가 .

IV.

가

, (private seat) , ,
, 84

9) 가
SPV '破産 絶縁'(bankruptcy remote) SPV
(true sale/transfer)가 , 「 ABS -
」, 1999, 21 .

2. 劇場收入 10)

가.

가 RUG(Really Useful Group) 2000

13 (15,652) RUTL(Really Useful Theatres Limited)

RUTL

SPV RUTFL(Really Useful Theatres Finance Limited) 2000 10 RUTFL 13
 (FRN) 가 20 , 27 , 29 3 84

가 A2 Ba3

가

DSCR(debt service coverage ratio), 1,250

(liquidity facility)

가

2 (47) 後順位債(subordinated bonds)

(servicer)

RUTL가

RUTL

/

(production agreement)

(deposit)

, RUTL

. 法律的 檢討

RUTFL

가

SPV

(secured loan) 가

RUTL

(deed of fixed and floating charge)

RUTL

倒産法(Insolvency Act 1986)

(administrative receiver)

.11)

10) Moody's Investors Service, *Really Useful Theatres Finance Limited Asset Backed Notes*, International Structured Finance Pre-Sale Report, October 16, 2000.

A2 3 LIBOR

RUTFL (financial and operating covenants) DSCR

(Capex) 125

RUTFL

1 , 126

(portfolio properties)

가

(occupancy), (,),

DSCR

.12)

IV. 收入 流動化方案

1. 外國 流動化 事例

가. 映畫 流動化

(box office) · DVD

TV , 脚色版權,

.13)

1997 2 가 가

15 (“Bowie Bonds”) 55

11) *Ibid*, p.3.

12) RUTFL ‘ , ’

Jeeves Takes

Charge, Cats, Song & Dance, On Your Toes, Cafe Puccini, The Phantom of the Opera (); Starlight Express, Daisy Pulls It Off, The Hired Man, Lend Me a Tenor, Aspects of Love, Joseph, the Amazing Technicolor Dreamcoat, Sunset Boulevard (); Jesus Christ Superstar, Whistle Down the Wind, The Beautiful Game

13) 福田政之, “地球に落ちてたロイヤルティ- 証券化 ロック・ミュージシャン, 服飾デザイナーからハイテク企業まで”, 國際商事法務 Vol.28, No.6(2000.6), 國際商事法研究所, 655 662

Earth) “地球 ” 1976 (The Man Who Fell to
 ,¹⁴⁾ 가 ,

1998 9

換金性

가

가

가

信用補強(credit enhancement)

가

投資適格 가

가

流動化 要件

가

가

가

(track records)

ABS

5 8 ,

20

SPV가

가

.¹⁵⁾

14) 1997 11
 receivables) 325
 (surety bond)

(SPV: Dreamworks Film Trust)

(future

ABS

CAPMAC

Aaa

15)

大法院判例

가

가

가

“

가
 .16)
 가
 (licensee) 가
 25 EMI 15
 (distribution license)
 가 가
 , ABS
 가 (true sale)
 對抗要件(perfection) , (reserve fund)
 , L/C 가
 가
 私募

2. 流動化 構造

構造化
 (structuring)
 SPV
 (bankruptcy remote)
 (two-tier structure) 가
 (SPV₁) 가, 가 SPV (SPV₂)
 SPV₂가 複層構
 造 1 SPV₁ , 2
 SPV₂ (substantive consolidation)
 2 SPV₂ 가
 가
 “ 가 ”
 가
 “ ”, 「
 1996.7.30. 95 7932; 1991.6.25. 88 6358.
 」 9 (2001.2), , 22 23 ; 1997.7.25. 95 21624.
 16) 가 3 5
 ABS

,
 .
 SPV 가 [non-recourse]
 ,
 가 가 .
 50%
 移延的效果 損
 金 .17)
 . 投資
 가 가
 ,
 ,
 가
 가 . 3 ,

4. 法的 問題點

가. 無瑕疵性

[free and clear] .
 . 質權(lien) 가
 .
 가 . 가 가

17) , 656 . 賣買가 (secured loan)
 . Nicole Chu, *Bowie Bonds: A Key to Unlocking, The Wealth of Intellectual Property*, 21
 Hastings Comm/Ent. L.J. 469, 485 (1999).

[hell or high water waiver]

事前實查(due diligence)

가

가

(1976 Copyright Act)

舊

(1909 Copyright Act)

가

가

自動停止(automatic stay)

가

SPV

州法

SPV

質(quality)

가

[還

流]

가

가

가

(servicer)

(fraudulent transfer)가

가

3 ()

· 實質的聯結

SPV₁ SPV₂ SPV₁
(substantive consolidation)

· SPV₁ , , ,
(notification)

(preferential transfer)

對價性

· 未履行雙務契約

가 未履行雙務契約(executory contract)
[cherry picking]

가

美國 1988

365 (n)

가

가

가

가

(back-up servicer)

· 擔保權 對抗要件

(attachment) (UCC Article 9)
(collateral agreement)

, 對價(value) , 가 (right)

가

(copyright) (U.S. Copyright Office)

, (Secretary of State) . UCC 州法
(preemption) (:)

, (:)
가
“belt and suspenders”).

3 (priority) 對抗要件
(perfection) . ABS
 (“strong arm” power) SPV
(possession), (control) 가 (filing),
(U.S. Patent
and Trademark Office)

가
(cash proceeds)
(commingle) [期
中] 가

V.

「 」 ‘善循環’ 가
18) IMF

「 」가 “ ”, “ ”

19)

危機要因 가

가 ,

가

映畫資源 가

가

obligations) CBO²⁰⁾(primary collateralized bond 가

가 .

私募

가 가 (cash flow)

韓流 가 가

‘1 1’ .²¹⁾

‘Multi-Use’

, VOD, DVD 附加版權 VCR

가

著作權 가

40 106)

19) , 28 .

20) , “ ”, 「 」 20 1 (2001.5), , 726-729 .

21) , 42 .

Abstract

How to Finance Korean Film-Makers

Whon-Il Park

Since *Swiri* made an unprecedented mega-box hit in 1999, the Korean movie industry has enjoyed an alleged *Neo-Renaissance* after a long depressed period. Now Korea is one of a few countries that successfully defend local film markets against blockbuster hollywood cinemas.

Though Korean film-makers have less difficulties in securing production funds than their predecessors, there are still limited sources of funds like venture capitalists, private investment funds and netizen funds mobilized through the Internet. But we can find a brand-new source of funds, i.e., securitizing future cash flows from a series of movies, and other proceeds from VCR/DVD conversions, broadcast and cable TV programs and other adaptations from the original pictures. For instance, Dreamworks Film succeeded to issue U\$325 million Aaa-bonds based on its future receivables in November 1997. Another example must be U\$55 million Bowie Bonds floated by an SPV which had bought the licensing rights from the legendary rock artist, David Bowie, in February 1997.

Otherwise a pool of theaters would be an ample source of funds as witnessed by Andrew Lloyd Webber's Really Useful Group. In early 2000, Really Useful Theatres Limited successfully raised £84 million through a complicated structured financing.

Right now it seems impossible to apply such an asset securitization scheme to movie production. But we have made it possible for small and medium enterprises to raise handsome amount of monies through primary CBOs, or collateralized bond obligations. If ordinary Korean movie-goers don't change their mind to Korean movies in the near future, there is an increasing possibility for Korean film-makers to raise funds through structured financing and other sophisticated financial schemes. It is also required that they should expand the source of revenues to the maximum extent, and preserve the screen quota for Korean-made movies.