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경영학석사학위논문

A study on the current state and the  
effectiveness of the rehabilitation procedures

-Focusing on the inspectors' strategic optimism-

우리나라 회생절차의 운영현황과 효과성에 대한 연구  
-조사위원의 전략적 낙관주의를 중심으로-

2015년 8월

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지도교수 황 이 석

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위원장 곽 수 근 (인)

부위원장 정 운 오 (인)

위 원 황 이 석 (인)

# A study on the current state and the effectiveness of the rehabilitation procedures

## -Focusing on the inspectors' strategic optimism-

Changhwan Kang  
College of Business Administration  
Seoul National University

**Abstract:** The rehabilitation procedure is one of the collective and compulsory decision-making systems, where the creditors make their decisions whether to agree or not on the debtors' repayment plans. Because the repayment plans are built on the debtors' future operating values, the fair and objective valuations for the debtors' future businesses play a key role for the success of the rehabilitation procedures. The inspectors are in charge of these crucial tasks in the rehabilitation procedures. The purpose of this paper is to examine the rehabilitation procedures' effectiveness within the context of the inspectors' valuation reports. This study reveals that the inspectors' valuations are severely biased to the optimistic conclusion that most of the depressed debtors' going-concern values surpass their liquidation values. To be specific, the frequencies of the going-concern value-winning reports are positively related with those of the abolitions-after-confirmations. This result is commonly shared by both the perspective of bankruptcy courts and that of industry classes, indicating that the inspectors' optimisms are intentional or strategic in pursuit of anything but the creditors' wealth maximization. This paper concludes that the inspectors are strategically optimistic in valuations of the debtors' future businesses in an attempt to maximize the inspectors' own utilities, at the cost of the inspectors' legal duty of staying put fair and objective in the rehabilitation procedures.

Keywords: rehabilitation procedure, corporate valuation, liquidation, optimism

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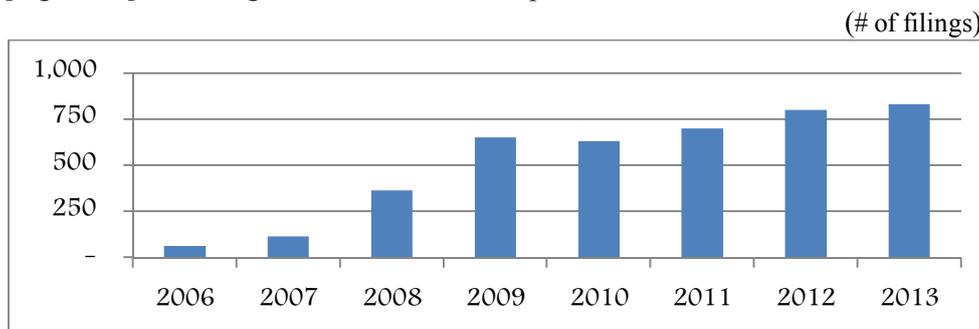
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# 1. Introduction

## 1-1. Distressed debtors and a legal asylum

Recently Korea has seen a sky-rocketing increase in the number of filings for rehabilitation procedure, with an annual increasing rate of 57% from 2006 to 2013. As of December 2013, the number of accumulated applicants for the judicial asylum is 4,167. The state-run procedure has been gaining popularity in the wake of the national economic downturn, coupled with the global economic turmoil. In spite of the popularity of the procedure, little is known to us, to our surprise, about the debtors' whereabouts in the rehabilitation procedures after they were admitted to enter there. How many debtors have come back alive? How many debtors have been sent to their graves? How many debtors are still struggling to survive? How long does it take to graduate from the procedure? Most importantly, is the procedure really doing well as a rational distributor of restricted social resources?

[Figure 01] The filings for the rehabilitation procedure



Year	2006	2007	2008	2009	2010	2011	2012	2013	Sum
# of filings	65	117	365	652	630	701	803	834	4,167

## 1-2. The effectiveness of the rehabilitation procedure

The purpose of this paper is to sketch out the current operating state of the rehabilitation procedures in Korea and to examine whether the rehabilitation procedures have achieved their objective of facilitating the creditors' rational economic decision-makings in line with the principle of wealth maximization.

The rational economic decisions are available only on the ground that the deciders are informed of objective and reasonably correct research materials in a timely manner. When this is not the case, their decisions could be disastrous. This is particularly so true in a collective and compulsory decision-making system where the majority rules prevail. It is evident that the collective decisions would go nowhere eventually when their majority rules act on the incorrect or biased research materials because the majority's misinformed decisions, based on wrong information, could devastate not only their wealth but also the minority's utilities. The rehabilitation procedure is regarded as one of the collective and compulsory decision-making systems and, therefore, under the reign of the majority rules. In order to lubricate the majority's rules to their full potential, the asymmetry of information should be alleviated from the procedures with the help of fair and objective research materials. The inspectors' objective research materials, in the form of valuation reports, are supposed to lessen the information asymmetry in the rehabilitation procedure. With the inspectors' veracious valuations, the creditors can be rested to believe that the research materials are filled with fair and objective information about the debtors. The effectiveness of the rehabilitation procedures depends on the availability of the fair, objective, and unbiased valuation reports. The inspectors' valuations act as a compass for the navigators in the rehabilitation procedures. It goes without saying that the success of the navigations is truly up to the right function of the compass.

## **2. Rehabilitation procedure**

### 2-1. Economic framework

#### (1) Going-concern values still talk

Every company runs the risk of going bankrupt without exceptions, even to the companies that are currently highly prospering, but these risks could not be evaded at all costs unless our economy system abolishes capitalism. Capitalism is believed to be based on the efficiency that stands on fair and fierce competitions among its members. Their competitions inevitably give birth to losers as well as winners. In fact, the winners cannot spring up without the losers. With their frequent failures, the losers are squeezed onto the edge of a knife, as often as not, being forced to liquidate themselves against their wills.

The losers, however, always do not have to be liquidated on the verge of their lives. Even if they are, in present, stranded in the balance sheet insolvency, it is possible that their core competences are still alive. With the creditors' patience and generosity, the losers could bounce back on their feet again with their competences, so they deserve to stay in their businesses instead of being torn apart to pieces. When the debtors are still competitive, they need to be insulated from the individual creditors' myopic, harsh, and selfish debt-collection behaviors. The individual creditors' impatience does not always serve their wealth maximization.

## (2) The wealth maximization principle<sup>1</sup>

It is not against the creditors' economic interests to leave the losers in their business operations when the losers' going-concern values still exceed their liquidation values by a substantial margin. It would be beneficial for the creditors, in the long run, to permit the distressed debtors to continue their businesses because the creditors could harvest more from the debtors' higher going-concern values than from their lower liquidation values.<sup>2</sup> The creditors' such resolutions are in accordance with their wealth maximization principle.

However, allowing the debtors to continue their businesses demands the creditors' immediate sacrifices which span a large spectrum from lowering interest rates to drastic curtailments on the debt principals. Their apparent sacrifices should not be exaggerated as the debtors' altruistic behaviors, because they are just no more than economic interest-seeking behaviors, following the principle of wealth maximization. In addition, more importantly, it should be emphasized that the creditors' sacrifices stand on their strong beliefs that the debtors' going-concern values, or research materials, are calculated in very objective, unbiased, and neutral manners by the inspectors. When their confidences are dismantled, or betrayed, by the debtors' wrong going-concern values, not so long after decision-makings, they come to observe helplessly that their sacrifices are going nowhere, astray from their wealth maximization principle.

## (3) Information asymmetry and the inspectors' valuations

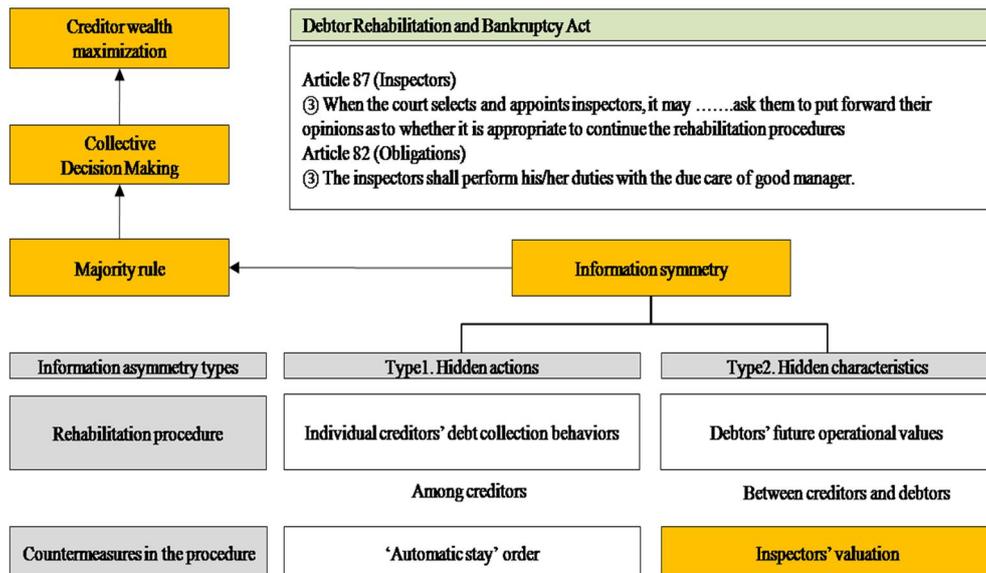
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<sup>1</sup> Thomas H. Jackson, *The Logic and Limit of Bankruptcy Law*, 2, He insisted that the first rule of the bankruptcy law is the creditor wealth maximization saying that 'Just too many spices can spoil the soup, so, too, including too much in bankruptcy law can undermine what everyone agrees it should be doing in the first place'.

<sup>2</sup> This principle is called as 'the best interest rule' in the rehabilitation procedures.

In general, collective decision-making systems adopt the majority rules which, in nature, could have their full effect in the very absence of information asymmetry. As such, the collective decision-making systems can be effective to the extent to which information asymmetry is removed or alleviated. There are two kinds of information asymmetry: the hidden actions and the hidden characters.<sup>3</sup> The same is also true in the rehabilitation procedure as one of the collective decision-making systems: the individual creditors' private debt-collection trials as hidden actions, and the debtors' going-concern value as hidden characters. The information asymmetry, stemming from the 'prisoners' dilemma' situation, could discourage the creditors into their erroneous decisions because each creditor in such conditions is vulnerable not only to other creditors' individual myopic selfish behaviors but also to their ignorance of the debtors' true future values.

[Figure 02] Information asymmetry in the rehabilitation procedures



<sup>3</sup> 서승환, 미시경제학, 제5판, 616~617

The first type of information asymmetry regarding the individual creditors' private debt-collecting behaviors is successfully being dealt with by the 'automatic stay' orders by bankruptcy courts, under which all the current or future creditors' individual debt-collection efforts are halted or prohibited in the rehabilitation procedures.<sup>4</sup> On the other hand, the second type of information asymmetry regarding the veracity of the debtors' going-concern values is left with the inspectors to address.<sup>5</sup> The collective decision-making systems, equipped with well-functioning valuations, could prevent the creditors from falling into their second-best choices, vaccinating the decision makers from the assaults of information asymmetry.

## 2-2. Legal framework

### (1) 'Debtor Rehabilitation and Bankruptcy Act'

The rehabilitation procedures are being governed by the Debtor Rehabilitation and Bankruptcy Act, which was enacted in April 2006. The law was

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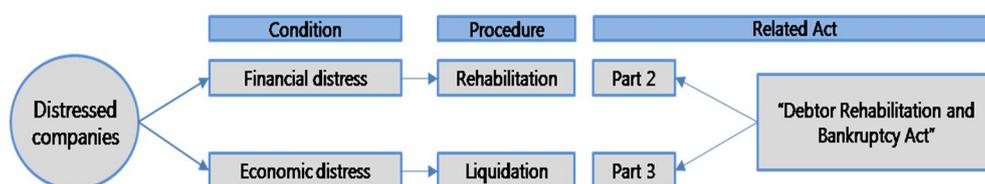
<sup>4</sup> The debtor rehabilitation and bankruptcy act, Article 45 (General Order Given to Prohibit Compulsory Execution, etc) ① when it is recognized that special circumstances are feared to prevent the full realization of the purposes of the rehabilitation procedures only by the discontinuation order provided for in the provisions of Article 44 ① after receiving an application for commencement of rehabilitation procedures, the court may order all rehabilitation creditors and rehabilitation secured creditors, by an application filed by interested persons or by their rehabilitation claims or their rehabilitation security rights by the a determination is made on the application filed for commencing rehabilitation procedures.

<sup>5</sup> Though the current bankruptcy law obligates the inspectors with the duty of 'the due care of a good manager', the inspectors' compliance with the duty depends only on their willingness to abide by.

The debtor rehabilitation and bankruptcy act, Article 87 (Inspectors) ③ when the court selects and appoints inspectors, it may... ask them to put forward their opinions as to whether it is appropriate to continue the rehabilitation procedures. Article 82 (Obligations) ③ The inspectors shall perform his/her duties with the due care of a good manager

transformed into the brand-new single version by extensively reshuffling old precedent laws. The current bankruptcy law is composed of two procedures as its name implies: the rehabilitation procedure and the liquidation procedure. The first half of the law is filled with the rehabilitation procedure, followed by the liquidation procedure in the second half of the law. This is rightfully interpreted as the rehabilitation procedure is given priority over the liquidation procedure. In fact, there are a lot of articles that try to facilitate the use of the rehabilitation procedure over the liquidation procedure in the bankruptcy law. Irrespective of some debtor-friendly characteristics, the main objective of the bankruptcy law has not changed. The objective of the law is to efficiently rehabilitate debtors or, if not, liquidate and distribute them fairly.<sup>6</sup> The bankruptcy law tries to prevent the creditors' turbulence which would be triggered by individual debt-collection trials outside the procedures, and also calls for the creditors to behave in prudent manner for the purpose of their wealth maximization with the consideration of the debtors' distresses: what sort of distresses the debtors are suffering from?

[Figure 03] Debtor rehabilitation and bankruptcy act



## (2) Financial distress vs. Economic distress

<sup>6</sup> The debtor rehabilitation and bankruptcy act, Article1 (Purpose) The purpose of this act is to efficiently rehabilitate debtors who are faced with the likelihood of collapse due to financial difficulties, and their businesses through the coordination of legal relations among interested persons, including creditors, shareholders, and equity holders, etc., and to liquidate the assets of debtors who are deemed difficult to rehabilitate or fairly distribute.

According to the bankruptcy law, the debtor may file for the rehabilitation procedure ① where the debtor finds it impossible to repay his obligations in the repayment period without any serious hindrances to the continuation of his business and ② where it is feared that bankruptcy may accrue to the debtor.<sup>7</sup>

The main causes of bankruptcy can be ascribed to the failure of paying back within the promised period in normal situations or to the balance sheet insolvency. The difficulties that the distressed companies are undergoing can be divided into two types of distresses. First one is the financial distress. The financial distresses occur when the debtors are suffering from their heavy financial cost which their operating incomes cannot bear, while their business operations are still in good shapes. Second one is the economic distress which differs from the first financial distress in that, irrespective of their financial cost, the debtors' business operations are almost ruined or completely destroyed.<sup>8</sup> When the debtors' distresses are proved as financial distresses, those debtors deserve the rehabilitation procedures because, in that case, their going-concern values are expected to surpass their liquidation values. In contrast, the debtors suffering from the economic distresses are not worth of the rehabilitation procedures because their going-concern values are supposed to fall short of their liquidation values. The path on which the distressed debtors walk in the rehabilitation procedures is decided according to what sort of distresses they are suffering from. Needless to say, it is so critical to distinguish the financially distressed companies from the economically distressed companies in the rehabilitation procedures. These vital tasks are left with the inspectors' valuations of the debtors' future businesses.

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<sup>7</sup> The debtor rehabilitation and bankruptcy act, Article 34 (Application for Commencing Rehabilitation Procedures)

<sup>8</sup> 서울중앙지방법원, '회생사건실무(상)', 제4판, 3

### (3) Big picture of the rehabilitation procedures

Rehabilitation procedure is conceptually divided into 3 stages: ① the debtors' valuations by the inspectors, ② the creditors' agreements on the rehabilitation plans, and ③ the implementations of the rehabilitation plans by the debtors.

[In the first stage]

When applicants, or distressed debtors, are allowed to start their rehabilitation procedures by bankruptcy courts in the first stage, accounting experts are designated as inspectors with a duty of fair and objective valuations of the debtors' future businesses. The inspectors' valuation reports are composed of two sets of valuations: the going-concern values and the liquidation values. If the debtors are valued as having higher liquidation values, they have to stop the procedures ('abolition-before-confirmation by inspector'), because their distresses are proved to be the economic distresses rather than the financial distresses.<sup>9</sup> On the other hand, the debtors valued as carrying higher going-concern values are entitled to keep going further in the rehabilitation procedures.<sup>10</sup> They are ordered by the bankruptcy courts to submit their rehabilitation plans. The rehabilitation plans contain the debtors' debt-repaying schedules based on their going-concern values, specifying how the debtors' going-concern values are distributed to the creditors.

[In the second stage]

As noted above, the debtors with higher going-concern values design their

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<sup>9</sup> In this case, the inspectors issue the liquidation value-winning reports, where the debtors' liquidation values are bigger than their going-concern values.

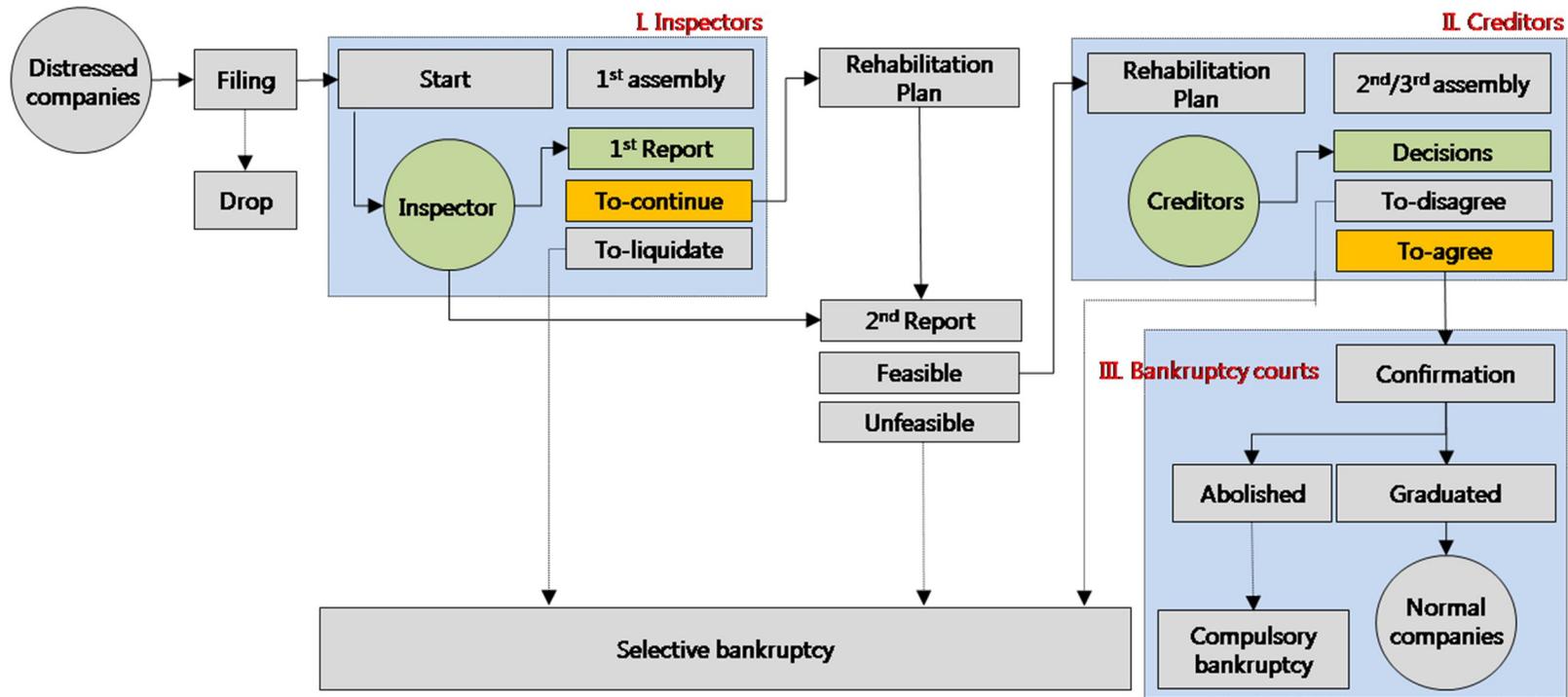
<sup>10</sup> In this case, the inspectors issue the going-concern value-winning reports, where the debtors' going-concern values are bigger than their liquidation values.

repayment schedules in the rehabilitation plans. Through the plans, the debtors' going concern values are allocated to their creditors and, if any left, equity holders. When the debtors' plans succeed in obtaining the creditors' agreements in the 2<sup>nd</sup> and 3<sup>rd</sup> assemblies, the rehabilitation plans are finally confirmed by the bankruptcy courts, which means that the debtors' liabilities are successfully modified in their amount and repayment period with the legal effects. When they fail to obtain the creditors' agreements, however, they have to stop there and leave the rehabilitation procedures ('abolition-before-confirmation by creditor').

[In the third stage]

The time span of the rehabilitation plans is usually 10-year. During that period, the debtors with their confirmed rehabilitation plans are allowed to keep running their businesses and to carry out their rehabilitation plans, paying their creditors as they promised in their rehabilitation plans. To the creditors' disappointment, when the debtors do not escape from poor performances and keep failing their promises in the rehabilitation plans, they are abolished away from the rehabilitation procedures (abolition-after-confirmation). On the contrary, when they keep successful in executing their rehabilitation plans, the debtors are finally authorized to graduate from the rehabilitation procedures, even though they still have a long way to go until the end of the rehabilitation plans.

[Figure 04] The big picture of the rehabilitation procedure



The rehabilitation procedures are conceptually divided into 3 stages. Research materials are made by the inspectors in the first stage. Using the materials, the creditors make their decisions on the debtors' rehabilitation plans in the second stage. In the third stage, the outcomes of the creditors' decisions are revealed.

### 2-3. 'The abolition-after-confirmation' and the effectiveness of the procedures

As a collective and compulsory decision-making system, the rehabilitation procedure is supposed to facilitate and induce the creditors' best decisions otherwise impossible outside the rehabilitation procedures. For the accomplishment of this goal, the information asymmetry should be removed or alleviated from the procedures. The most serious information asymmetry comes from the uncertainties regarding the truthfulness about the debtors' future business values. For this reason, the inspectors are obligated by the bankruptcy law to be objective, unbiased, and neutral in their forecasting of the debtors' future business values for the purpose of successfully lifting up the information asymmetry between the creditors and the debtors in the rehabilitation procedures.<sup>11</sup> If the inspectors' valuations are negligent on this duty, the creditors' decisions are destined to go wrong way and the abolitions-after-confirmation are looming just around the corners. In fact, the abolition-after-confirmation could stand for the rehabilitation procedure's failure as a collective decision-making system. These failures come from the inspectors' defective valuation reports because the creditors make their decisions whether to agree or not on the debtors' rehabilitation plans which are fabricated on the inspectors' going-concern values. Therefore, the feasibility of the rehabilitation plan is analogous with the robustness of the going-concern value by the inspector. The inspectors' valuations dented with a lot of flaws will eventually hurl the creditors into the detriment of their wealth at their ignorance.

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<sup>11</sup> The debtor rehabilitation and bankruptcy act, Article88 (Mutatis Mutandis Application of Provisions Governing Inspections) The provisions of Article 79, and 81 through 83 ① shall apply mutatis mutandis to the inspectors. The debtor rehabilitation and bankruptcy act, Article82 (Obligations, etc. of Custodians) ① every custodians shall perform his/her duties with the due care of a good manager.

### **3. Hypothesis development**

#### 3-1. The effectiveness of the rehabilitation

##### (1) The abolition-after-confirmation

There are three types of abolitions in the procedures. The first one is ‘the abolition-before-confirmation by inspector’, which occurs when inspectors value the debtors as having higher liquidation values in the 1<sup>ST</sup> assembly. They do not deserve the rehabilitation procedures because they do not have any reason to persuade their creditors to let them continue their businesses. The second one is ‘the abolition-before-confirmation by creditors’, which happens when the creditors do not agree on the rehabilitation plan even though the plan promises more payback with the debtor’s higher going-concern value. Lastly, the third one is ‘the abolition-after-confirmation’, which arises when the plan turns out unfeasible because the debtor is not able to keep its promise as stated in the rehabilitation plan although the plan was agreed upon by the creditors and confirmed by bankruptcy court. The plans are built on the debtors’ going-concern values, so the abolitions-after-confirmations mean that the debtors’ going-concern valuations were erroneous from the beginning. The abolitions-after-confirmations are the least desirable events in the rehabilitation procedures from the creditors’ wealth maximizing perspective. The abolitions-after-confirmations can be said to be the signs of failure of the rehabilitation procedures because they have failed to provide the creditors with the best decision-making opportunities by successfully weeding out the information asymmetry stemming from the debtors’ future businesses. This

information asymmetry should have been successfully removed or alleviated through the inspectors' fair, objective and meticulous valuations. The frequency of abolitions-after-confirmations could be used as the measuring means of the rehabilitation procedures' effectiveness.

## (2) The inspectors' departure from objectivities

In the rehabilitation procedures, the inspectors are supposed to ease the information asymmetry between the debtors and the creditors by issuing objective, unbiased, and reasonably correct valuation reports about the debtors' going-concern values. When the debtors are valued by the inspectors as having higher going-concern values and the creditors agree upon the rehabilitation plans which are based on the going-concern values, the rehabilitation plans are confirmed by the bankruptcy courts. If the inspectors are unjustifiably too optimistic in forecasting of the debtors' future performance, they are likely to issue their reports with conclusion that the debtors' going-concern values surpass their liquidation values. Consequently, the rehabilitation plans that are based on those fallible valuations are doomed to inevitably collapse into the abolitions-after-confirmations. I suspect that the inspectors' abnormal optimisms increase not only the going-concern value-winning reports but also the abolitions-after-confirmations.

## 3-2. Participants in the procedures

Are there any factors that could undermine the inspectors' objectivities? In

an effort to find out those factors, it is necessary to examine participants' incentive structures in the rehabilitation procedures. The participants' risks attitudes could shed light on the inspectors' tendency to depart from their duty: objectivity

#### (1) Participants in the rehabilitation procedures

There are two groups of participants in the procedures: creditors and debtors. In case the debtors are privately held companies, they include managements and equity holders. The creditors' group is divided into two subgroups: secured creditors and unsecured creditors. Consequently, in the rehabilitation procedures are three groups of the participants: secured creditors, unsecured creditors, and debtors. The debtors are interchangeable with the equity holders or the managements.

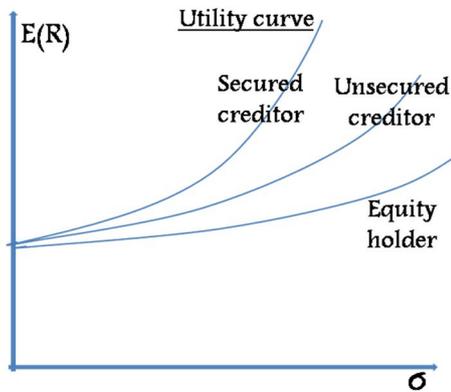
#### (2) Risk attitudes of the participants

When the debtors are valued as having higher going-concern values, the creditors are proposed with two options, in their economic decision-makings, from the debtors: the going-concern value and the liquidation value. Especially, the going-concern values are presented in the form of the rehabilitation plans. Those two options have their own respective risk and return structures. The creditors have to decide whether to agree or not on the rehabilitation plans. If they accept the debtors' going-concern values by agreeing on the plans, the going-concern values in the form of rehabilitation plans will be confirmed by the bankruptcy courts and then will be executed by the debtors for the span of the plans; otherwise the plans will be abolished without confirmations. The creditors' propensity to agree or not on the plans could be analyzed through their risk attitudes to their options.<sup>12</sup>

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<sup>12</sup> 김영규 감형규, 재무관리, 178~197

[Figure 05] Risk attitude of each participant



- Secured creditors: High risk averters

The secured creditors have their rights secured by the debtors' collaterals, such as lands, buildings, and some machinery. Their risk averseness is generally very high because they have already secured their rights with the debtors' tangible assets. They do not need to run the risk of the debtors' future business operations for their debt collection. They usually prefer the debtors' liquidation values to the going-concern values. They actually do not care about the debtors' valuation results because their decisions are not susceptible to the inspectors' valuation results. When they agree, though rarely, on the rehabilitation plans, they usually require sufficient compensations for their risk-takings.

- Unsecured creditors: Moderate risk averters

As their names imply, the unsecured creditors do not have their rights secured. Although they could be left with some liquidation values when the debtors are liquidated, their shares are relatively small in comparison with those of secured creditors. For this reason, they usually agree on the rehabilitation plans and run the risk of the debtors' going-concern values in lieu of small liquidation values. So

their risk averseness is relatively low in comparison with those of secured creditors. The unsecured creditors' liquidation values, however, are prone to decay as time elapses, because their liquidation values are backed up by the transient and soft assets such as cashes, receivables, and inventories. These assets begin to melt away right after the confirmations, which means that the unsecured creditors should be careful in their decisions whether to agree or not. The concepts of opportunity costs are intimately woven with the unsecured creditors' economic interests in the rehabilitation procedures because their liquidation values are susceptible to rapid erosions. In other words, the unsecured creditors are very vulnerable to the feasibilities of the rehabilitation plans which are just reflections of the going-concern values.

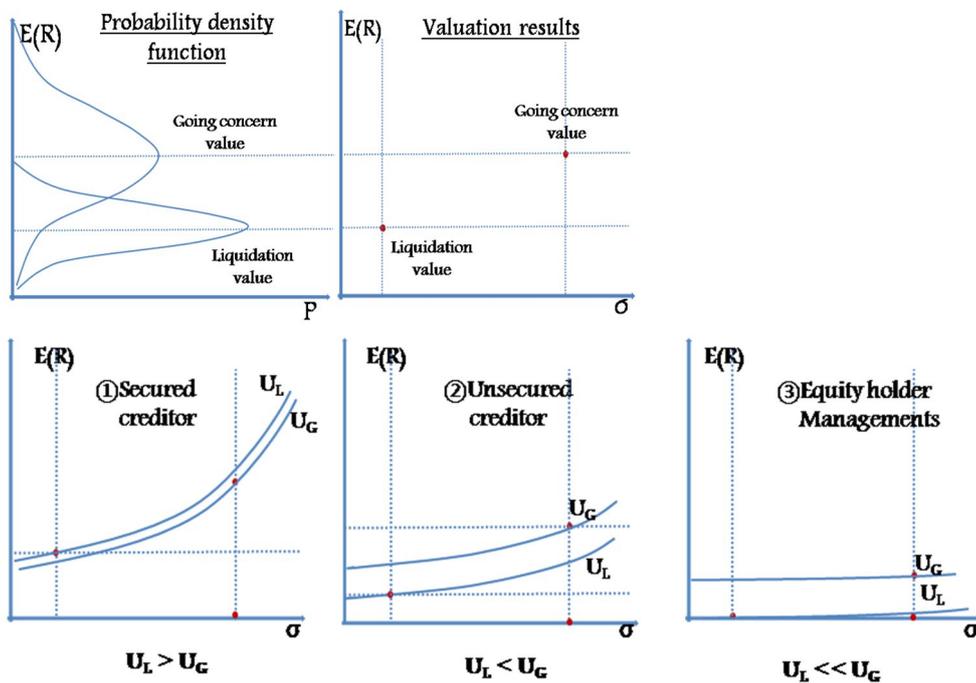
- Managements and equity holders: Low risk averters

In the balance sheet insolvency, the managements and equity holders have nothing to lose when the debtors are liquidated. In contrast, when the debtors are valued as having higher going-concern values, they come to stand a chance of gaining some residual values. Even though the going-concern values turn out unfeasible in the end, their opportunity costs are already no more than zero, which is a striking difference from those of the unsecured creditors. The equity holders' shares in going-concern values are regarded as the time values with derivative options characteristics: option-holders have nothing to lose and only have the chance to gain. So they have no reason to avert the risk of the debtors' future going-concern values. This makes their risk averseness very low. They struggle by all means, sometimes desperately, to persuade their inspectors into the conclusion that the debtors have higher going-concern values, irrespective of their robustness. In other words, they are very aggressive in taking risks in the debtors' higher going-concern values in the form of the rehabilitation plans.

▪ Decision-making of participants

Debtors' going-concern values and liquidation values are plotted together in the grids of both the value-axis and the risk-axis. Creditors make their decisions with their utility functions reflecting their risk attitudes. Combining these values and the participants' utility functions could reveal the participants' decision-making mechanisms.

[Figure 06] Decision-makings with the utility maximization perspective

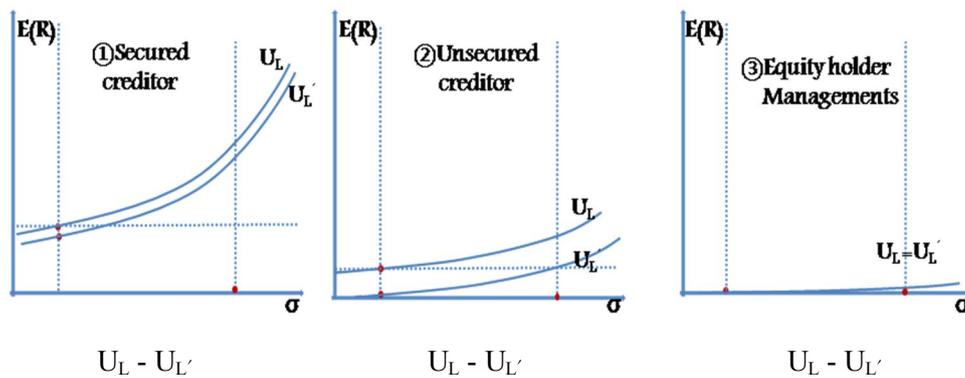


The secured creditors are generally reluctant to accept the rehabilitation plans because they already have their rights secured by the debtors' collaterals. When they, though rarely, agree to the plans, they demand in the rehabilitation plans far more payback than their liquidation values.

With small liquidation values, the unsecured creditors are apt to choose risky going-concern values. Even though the unsecured creditors choose the going-concern values rather than the liquidation values, their decisions not so often end up in disaster when their going-concern values eventually prove unfeasible. Their wrong decisions, needless to say, cannot be revocable because their share in the liquidation values have already evaporated since the the debtors' confirmations.

Equity holders and managers have no reason to disagree on the plans because they have nothing left on their hands when the debtors are liquidated. In other words, even if their going-concern values fail to realize the inspectors' valuations after the confirmations, their opportunity costs are already zero.

[Figure 07] The opportunity costs when the rehabilitation plan fails



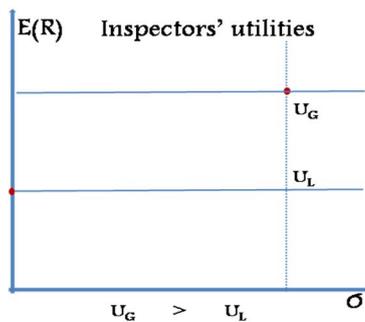
(3) Fierce counterargument from the managements hovers

From the reasoning above, it is clear that the opportunity costs of the managements or the equity holders approach zero. The managements of the debtors crave for the going-concern value-winning reports. When the inspectors are about to issue the liquidation value-winning reports, the managements usually stage fierce counterarguments, sometimes, dragging them into appealing law suits. These

challenges from the debtors' managements make the inspectors reluctant to issue the liquidation value-winning reports. The wrangles with the managements are very troublesome for the inspectors, with no economic benefits. So they could opt to issue the going-concern value-winning reports for their utility maximization at the cost of their duty to keep fair and objective.

### 3-3 Inspectors' strategic selections

[Figure 08] The inspectors' utility curve



The inspectors might as well strategically optimistic in forecasting the debtors' future performances in pursuit of the inspectors' utility maximization. The inspectors' utility shrinks proportionally with the frequency of challenges against their valuation results. The challenges usually come from the managements and equity holders when the debtors are valued as having less going-concern values than their liquidation values. In fact, the managements and equity holders have nothing to lose, even if the rehabilitation plans fail after their confirmation because of the infeasibilities of the going-concern values. This economic motive drives the managements to fiercely stage defiant actions against the inspectors' liquidation

value-winning reports. It is not only difficult but also troublesome for the inspectors to cope with the challenges because, in many cases, the inspectors' specific knowledge about the debtors' own industries fall short of those of the managements, and they have to exert additional efforts again to find out indisputable evidences which could cement their conclusions and shield themselves against the management's assaults. In sum, the issuing liquidation value-winning reports are likely to carry them into troubles. If they have issued the going-concern value-winning reports, they should have avoided those wrangles with the managements. When the inspectors issue the liquidation value-winning reports, their utilities decrease in deed.

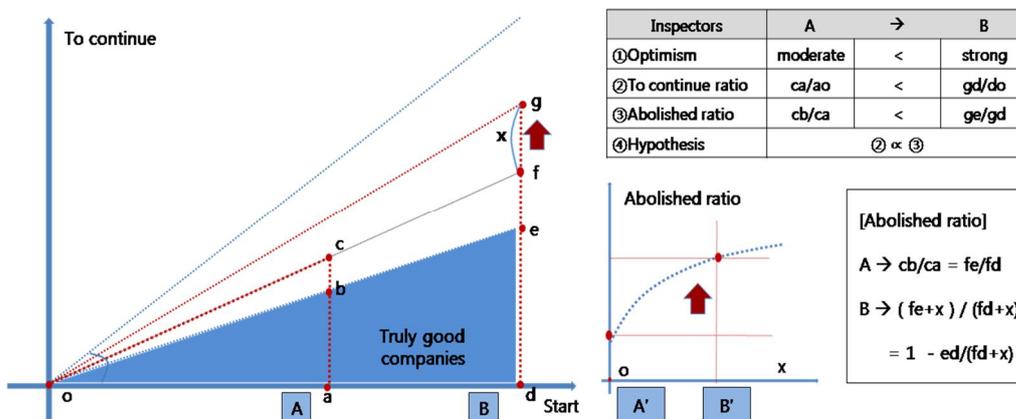
Secondly, the valuation results are also related with inspectors' monetary considerations. They are generally supposed to issue their reports two times in the rehabilitation procedures: first for the 1<sup>st</sup> assembly, and second for the 2<sup>nd</sup>/3<sup>rd</sup> assemblies. However, when they issue the liquidation value-winning reports at the 1<sup>st</sup> assembly, the debtors are abolished before the 2<sup>nd</sup>/3<sup>rd</sup> assemblies. This means that the inspectors lose the opportunities to issue their second reports. Their professional fees are proportional to the number of the reports issuing in the procedures. The inspectors' issuing the liquidation value-winning reports decreases their professional fees as well.

Considering all factors above, the inspectors are suspected to be reluctant to issue the liquidation value-winning reports. The inspectors' utility functions have nothing to do with the risk structures, but are related only with the frequency of the challenges and the monetary losses. The more liquidation value-winning reports they issue, the more challenges they encounter, and also the more decrease in monetary wages they suffer. Both of them decrease the inspectors' utilities in common. In an attempt to shun these decreases in their utilities, the inspectors are suspected to strategically issue the going-concern values-winning reports.

### 3-4. Hypothesis

The inspectors are suspected to be strategically optimistic in the valuations of the debtors' future businesses, consequently issuing the going-concern value-winning reports more than the liquidation value-winning reports. The inspectors' strategic optimism increases the ratios of the going-concern value-winning reports, which, in turn, raise the frequencies of the abolitions-after-confirmations. The strategic optimism nudges the overestimation of their going-concern values, and those fat valuations will, in turn, inevitably render the rehabilitation plans staggering even shortly after their confirmations. Therefore, the inspectors' strategic optimism is expected to increase the frequencies of both the going-concern value-winning reports and the abolitions-after-confirmations. When this is the case, there are positive relations between the ratios of the going-concern value-winning reports and the ratios of the abolitions-after-confirmations.

[Figure 09] The inspectors' strategic optimism



Holding others constant, if the inspectors act more strategically optimistic, then the ratios of going-concern value-winning reports ('To continue ratio') increase ( $A \rightarrow B$ ). When this is the case, the ratios of the abolitions-after-confirmations ('Abolished ratio') are expected to increase ( $A' \rightarrow B'$ ).

## 4. Reviews on the previous literatures

4-1. 지헌열 (1997), *법정관리 결정의 경제적 의미에 관한 연구*, A study on the economic meaning of decision of legal management.

Irrespective of their splendid purposes, the legal managements<sup>13</sup> are being overused by the inappropriate debtors, who do not stand a chance of prompt recovery from their financial difficulties. There seem to be no filtering systems in the procedures to distinguish competent companies from doom-to-die companies. The cause of this phenomenon can be ascribed to the information asymmetry between bankruptcy courts and debtors about the debtors' future businesses values. The legal managements could be overused as illegal shelters by incompetent companies who are in the economic distresses rather than the financial distresses. For this reason, the researcher insists that the bankruptcy courts should be much stricter in allowing the applicants to start the procedures. Bankruptcy courts' more stringent requirements for the debtors are believed to prevent the overuse of the procedures.

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<sup>13</sup> Although 'legal management' is not a legal term, it has been used in practice until the inauguration of new bankruptcy law in 2006.

4-2. 강호정 (2000), **법정관리의 부의 이전효과 및 효율성**, The wealth transfer effect and the efficiency of legal management.

This work of research focuses on the debtors' performances after their graduations from the legal management procedures. According to the researcher's findings, the performances of the graduate firms are significantly falling short of the industrial average performances. The debtors' liability ratios also deteriorated after their graduations compared with those before filings. In addition, he finds that 15% of the graduate firms fell into their financial distresses, knocking on the doors of the legal managements again. It means that the legal management is still suffering from several systematic deficiencies. He also searched for the key factors to the successful graduations of the legal managements and concluded that debtors' profitability before filings and the depth of debt-exemptions are the very factors. However, his findings added that both the size of the debtors' assets and the durations of the procedures are not closely related with the successful graduations from the legal managements.

## 5. Data

### 5-1. Applicants for the rehabilitation procedures

As of March 2015, Korea has 14 active bankruptcy courts which are scattered all over the country, where any distressed debtors could seek judicial asylums whenever they find themselves in severe financial predicaments. In an effort to find the names of the debtors who have filed for the rehabilitation procedures in the bankruptcy courts, I visited Korean Supreme Court<sup>14</sup> and searched all the bankruptcy courts for the applicants. I finally found 4,167 debtors. These debtors belong to one of any types of entities who were entitled by the bankruptcy law to apply for the rehabilitation procedures which are presided over by their collegiate divisions in the bankruptcy courts<sup>15</sup> from January 2006 to December 2013<sup>16</sup>.

Listed below are my findings. Seoul (SEO) is the leading court in Korea with 30.2%, followed by Suwon (SUW) with 14.0%. Two courts' combined weights amount to 44.2%.

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<sup>14</sup> [www.scourt.go.kr](http://www.scourt.go.kr)

<sup>15</sup> There are two types of rehabilitation procedures in the current bankruptcy law; the rehabilitation procedure and the individual rehabilitation procedure. The individual rehabilitation procedure, the latter, is designed especially for the individual persons with smaller debt. The juristic persons as well as the individual persons with bigger debt shall use the rehabilitation procedure, the former, instead of the individual rehabilitation procedure. In addition, the rehabilitation procedure, the former, is divided again into two types according to the entity of persons. The juristic persons are sent to the collegiate divisions with plural judges, whereas the individual persons are assigned to sole judge. I searched for these juristic persons in collegiate divisions with plural judges.

<sup>16</sup> Debtor rehabilitation and bankruptcy act, article 3 (Jurisdiction) ① Every rehabilitation case and every bankruptcy case shall be placed under the exclusive jurisdiction of the collegiate division of the principal district court having jurisdiction over the location of the principal office or the debtor's place of business of...that when the debtor is an individual without his/her principal office or place of business, he/she shall come under the exclusive jurisdiction of the principal district court having jurisdiction over the general jurisdictional location of the debtor.

[Table 01] Applicants for rehabilitation procedure in collegiate divisions from 2006 to 2013

Year	SEO	SUW	INCH	UIJE	CHJ	DAEJ	JEON	KWJ	JEJU	CHU	DAEG	CHW	ULSA	BUSA	Sum.	Wgt.
2006	19	6	-	1	1	-	2	14	-	1	5	9	-	7	65	1.6%
2007	29	7	6	1	5	11	10	17	-	-	16	9	2	4	117	2.8%
2008	110	47	15	13	12	27	12	33	-	2	37	20	10	27	365	8.8%
2009	193	76	37	19	12	34	12	29	8	3	75	91	13	50	652	15.6%
2010	155	102	34	23	21	29	18	51	10	11	59	60	29	28	630	15.1%
2011	190	121	43	30	23	33	19	38	8	8	58	61	30	39	701	16.8%
2012	268	101	55	33	19	45	19	55	4	9	75	58	29	33	803	19.3%
2013	296	125	61	35	17	35	35	41	13	24	51	50	23	28	834	20.0%
Sum	1,260	585	251	155	110	214	127	278	43	58	376	358	136	216	4,167	100.0%
Wgt.	30.2%	14.0%	6.0%	3.7%	2.6%	5.1%	3.0%	6.7%	1.0%	1.4%	9.0%	8.6%	3.3%	5.2%	100.0%	n/a
Rank	1	2	6	9	12	8	11	5	14	13	3	4	10	7	n/a	n/a

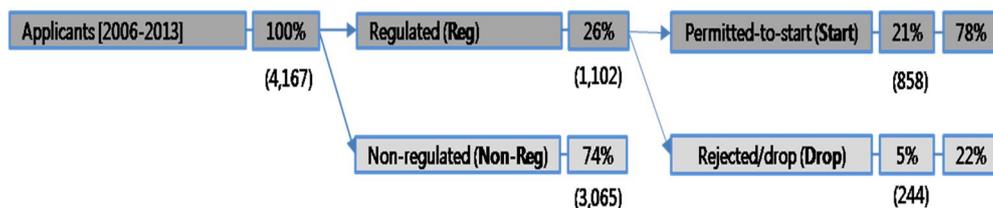
SEO	SUW	INCH	UIJE	CHJ	DAEJ	JEON	KWJ	JEJU	CHU	DAEG	CHW	ULSA	BUSA
SEOUL	SUWON	INCHEON	UIJEONGBU	CHUNGJU	DAEGEON	JEONJU	KWANGJU	JEJU	CHUNCHEON	DAEGU	CHANGWON	ULSAN	BUSAN

## 5-2. Subject group: 'Start'

Among all my findings above, I filtered down some candidates who had no burden of publicizing their financial statements at the time of their petitions (Non-reg) such candidates as small corporations, churches, hospitals, and partnerships. This task left me with relatively bigger commercial entities that were making public their financial statements (Reg). As such, my target group contains only the profit-making companies who were regulated by law to make announcements about their financial information via DART in the Financial Supervisory Service (FSS).

Here are the detailed results. This filtering squeezed out 3,065 applicants (Non-reg) and left me with 1,102 companies (Reg). Among the Reg companies, 244 companies voluntarily dropped or involuntarily got rejected out of the procedures (Drop). As a result, 858 companies finally remain in my subject group (Start). These 858 companies (Start), 78% of 1,102 applicants (Reg), constitute my target group. They are the applicant companies who were publicizing their financial information at the time of petitions and also are allowed to start their rehabilitation procedures.

[Figure 10] Filtering up the subject group



[Table 02] Subject group with the duty of financial statement disclosure

Category	SEO	SUW	INCH	UIJE	CHJ	DAEJ	JEON	KWJ	JEJU	CHU	DAEG	CHW	ULSA	BUSA	Sum.	Wgt.
Applicants	1,260	585	251	155	110	214	127	278	43	58	376	358	136	216	4,167	100%
①Non-Reg	893	396	185	128	83	161	102	217	36	55	276	294	100	139	3,065	74%
②Reg	367	189	66	27	27	53	25	61	7	3	100	64	36	77	1,102	26%

Category	SEO	SUW	INCH	UIJE	CHJ	DAEJ	JEON	KWJ	JEJU	CHU	DAEG	CHW	ULSA	BUSA	Sum.	Wgt.
Reg	367	189	66	27	27	53	25	61	7	3	100	64	36	77	1,102	26%
①Drop	131	33	17	6	7	7	2	6	2	2	14	3	8	6	244	5%
②Start	236	156	49	21	20	46	23	55	5	1	86	61	28	71	858	21%

SEO	SUW	INCH	UIJE	CHJ	DAEJ	JEON	KWJ	JEJU	CHU	DAEG	CHW	ULSA	BUSA
SEOUL	SUWON	INCHEON	UIJEONGBU	CHUNGJU	DAEGEON	JEONJU	KWANGJU	JEJU	CHUNCHEON	DAEGU	CHANGWON	ULSAN	BUSAN

Abbreviation	Meaning
Applicants	The debtors who have applied for the rehabilitation procedures in collegiate divisions
Non-Reg	The applicants who were not making public their financial statements via DART
Reg	The applicants who were making public their financial statements via DART
Drop	The applicants who dropped voluntarily or got rejected involuntarily from the procedures
Start	The applicants who were permitted to start their rehabilitation procedures

[Table 03] Industrial distribution of Subject group

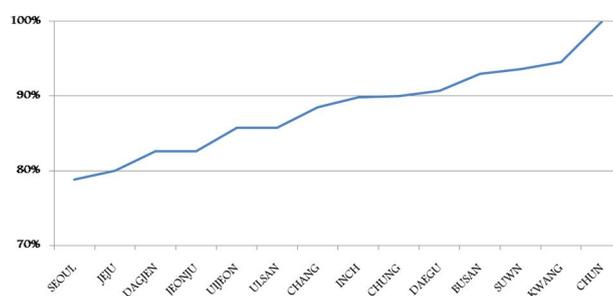
	KSIC	SEO	SUW	INCH	ULJE	CHJ	DAEJ	JEON	KWJ	JEJU	CHU	DAEG	CHW	ULSA	BUSA	Sum.	Wgt.	Rank
A	Agriculture	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	0%	17
B	Mining	-	-	1	1	-	-	-	-	-	-	-	-	-	-	2	0%	13
C	Manufacturing	109	116	34	12	15	39	15	34	1	1	64	40	17	46	543	63%	1
D	Electricity, gas	-	-	-	1	-	-	-	-	-	-	-	3	-	-	4	0%	10
E	Recovery and remediation	3	1	-	1	1	-	-	-	-	-	2	-	-	1	9	1%	9
F	Construction	56	22	9	2	2	1	5	17	0	0	12	11	7	8	152	18%	2
G	Wholesale and retail	25	9	3	2	-	2	1	2	1	-	1	3	2	7	58	7%	3
H	Transportation	11	-	-	-	1	-	-	-	-	-	-	-	-	3	15	2%	5
I	Accommodation and food	1	-	-	-	-	-	-	-	-	-	-	-	-	1	2	0%	13
J	Communications	9	1	-	-	-	1	-	-	-	-	-	-	-	1	12	1%	8
K	Financial and insurance	1	-	-	-	-	-	-	-	-	-	-	-	-	-	1	0%	16
L	Real estate and leasing	7	-	2	1	-	-	-	-	1	-	-	2	-	2	15	2%	5
M	Professional activities	6	4	-	-	-	-	1	-	-	-	3	-	-	-	14	2%	7
N	Business facilities	2	-	-	-	-	-	-	-	-	-	-	-	-	-	2	0%	13
O	Public administration	-	-	-	-	-	-	-	-	-	-	-	-	-	-	0	0%	17
P	Education	-	1	-	-	-	-	-	1	-	-	1	-	-	-	3	0%	11
Q	Human health	-	-	-	-	-	-	-	-	-	-	-	-	-	-	0	0%	17
R	Arts, sports, and recreation	5	1	-	1	1	3	1	1	2	-	3	2	1	2	23	3%	4
S	Membership organizations	1	1	-	-	-	-	-	-	-	-	-	-	1	-	3	0%	11
T	Activities of households	-	-	-	-	-	-	-	-	-	-	-	-	-	-	0	0%	17
U	Extraterritorial organizations	-	-	-	-	-	-	-	-	-	-	-	-	-	-	0	0%	17
	Sum	236	156	49	21	20	46	23	55	5	1	86	61	28	71	858	100%	

## 6. Operating state of the rehabilitation procedures

### 6-1. How many firms were valued as having higher going-concern values?

Among the 858 candidates who were admitted to enter the rehabilitation procedures (Start), 748 companies were valued by the inspectors as having higher going-concern values than their liquidation values (To continue), which means that the inspectors concluded that 87% of ‘Start’ companies were worth of staying in operations instead of being torn apart to pieces because they seem still profitable in their future businesses. There are some variations in the ratios of the going-concern value-winning reports (To continue ratio) among all bankruptcy courts in nationwide, ranging from 79% in Seoul to 100% in Chuncheon, with a standard deviation of 5.82%. The same is also true in the industry classes. The ‘information and communication (J)’ industry has the lowest ‘To continue ratio’, 67%, whereas there are such industries with 100% as mining and quarrying (B); electricity, gas, steam, and water supply (D); accommodation and food service activities (I); education (P); and membership organizations, repair, and other personal services (S).

[Figure 11] The ratios of going-concern value-winning reports



[Table 04] The debtors with going concern value-winning reports

▪ Bankruptcy courts

(# of cases, %)

Category	SEO	SUW	INCH	UIJE	CHJ	DAEJ	JEON	KWJ	JEJU	CHU	DAEG	CHW	ULSA	BUSA	Sum	Wgt
(1) Start	236	156	49	21	20	46	23	55	5	1	86	61	28	71	858	100%
①To liquidate	50	10	5	3	2	8	4	3	1	-	8	7	4	5	110	13%
②To continue	186	146	44	18	18	38	19	52	4	1	78	54	24	66	748	87%
③To continue ratio [②/(1)]	79%	94%	90%	86%	90%	83%	83%	95%	80%	100%	91%	89%	86%	93%	87%	n/a

\* Mean 88.3%, Variation 0.34%, Standard deviation 5.82%

▪ Industry classes

(# of cases, %)

Category	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	Sum	Wgt.
(1)Start	-	2	543	4	9	152	58	15	2	12	1	15	14	2	-	3	-	23	3	-	-	858	100%
①To liquidate	-	-	67	-	2	17	8	2	-	4	1	3	1	1	-	-	-	4	-	-	-	110	13%
②To continue	-	2	476	4	7	135	50	13	2	8	-	12	13	1	-	3	-	19	3	-	-	748	87%
③To continue ratio [②/(1)]	n/a	100%	88%	100%	78%	89%	86%	87%	100%	67%	0%	80%	93%	50%	n/a	100%	n/a	83%	100%	n/a	n/a	87%	n/a

\* Mean 81.2%, Variation 6.2%, Standard deviation 25.6%

[Table 04] The debtors with going concern value-winning reports, continued

Abbreviation	Meaning
Start	The companies who were permitted to start the rehabilitation procedures
To liquidate	The companies who were valued as having higher liquidation values
To continue	The companies who were valued as having higher going-concern values
To continue ratio	The percentage of the going-concern value-winning reports against all of the inspectors' reports.

SEO	SEOUL	KWJ	KWANGJU
SUW	SUWON	JEJU	JEJU
INCH	INCHEON	CHU	CHUNCHEON
UIJE	UIJEONGBU	DAEG	DAEGU
CHJ	CHUNGJU	CHW	CHANGWON
DAEJ	DAEGEON	ULSA	ULSAN
JEON	JEONJU	BUSA	BUSAN

A	Agriculture	H	Transportation	O	Public administration
B	Mining	I	Accommodation and food	P	Education
C	Manufacturing	J	Information and communications	Q	Human health
D	Electricity, gas	K	Financial and insurance	R	Arts, sports and recreation
E	Recovery and remediation	L	Real estate and leasing	S	Membership organizations
F	Construction	M	Professional activities	T	Activities of households
G	Wholesale and retail	N	Business facilities	U	Extraterritorial organizations

6-2. How many debtors succeeded in having their rehabilitation plans confirmed?

Among the 748 'To continue' companies who were evaluated as having higher going-concern values by the inspectors, 577 companies succeeded in having their rehabilitation plans agreed upon by the creditors and being confirmed by their bankruptcy courts (Confirmed). They consume 77% of the 'To continue' companies (Confirmed ratio). Set aside Chuncheon with just 1 case, Daegu (DAEG) is in the lead of the confirmation ratio with 88%, followed by Seoul (SEO) with 85%. Seen from the industry classes, membership organizations repair, and other personal services (S) has the lowest confirmation ratio of 0%, whereas such industries as mining and quarrying (B), electricity, gas, steam, and water supply (D), and business facilities management and business support services (N) have the highest confirmation ratio of 100%.

6-3. How many debtors graduated? / How many debtors were abolished?

Among the 577 'Confirmed' companies, 232 debtors (Graduate) finally graduated from the procedures with 40% of graduate ratio, whereas 149 companies (Abolished) were abolished from the procedures with 26% of abolished ratio. The remaining 196 debtors (Remaining) are still struggling to survive the procedures with 34% of remaining ratio. Replacing the denominators 'Confirmed' with 'Start', these ratios are rephrased respectively as 27% of graduate ratio, 17% of abolished ratio, and 23% of remaining ratio.

From the perspective of bankruptcy courts, Changwon is in the lead of the graduate ratio with 59%, followed by Seoul with 58%. Set aside Chuncheon with 1

case, Chungju is in the lead of the abolished ratios with 53%, followed by Busan with 42%, and Jeju comes last with 0%.

From the perspective of industry classes, electricity, gas, steam and water supply (D), accommodation and food service activities (I), business facilities management and business support services (N) are in the lead of the graduate ratio with 100%, whereas education has the lowest graduate ratio of 0%. Sewerage, waste management, materials recovery, and remediation activities industry (E) has the highest abolished ratio of 60%, followed by mining and quarrying (B) and education (P) with 50%. Electricity, gas, steam and water supply (D), accommodation and food service activities (I), business facilities management and business support services (N) have the lowest abolished ratio with 0%.

[Table 05] The debtors with confirmed rehabilitation plans

▪ Bankruptcy courts

Category																(# of cases, %)	
	SEO	SUW	INCH	UIJE	CHJ	DAEJ	JEON	KWJ	JEJU	CHU	DAEG	CHW	ULSA	BUSA	Sum	Wgt1	Wgt2
(1) Start	236	156	49	21	20	46	23	55	5	1	86	61	28	71	858	n/a	100%
(2) To continue	186	146	44	18	18	38	19	52	4	1	78	54	24	66	748	100%	87%
① Not confirmed	28	39	14	5	3	9	3	19	1	-	9	15	8	18	171	23%	20%
② Confirmed	158	107	30	13	15	29	16	33	3	1	69	39	16	48	577	77%	67%
③ Confirmed ratio = ②/(2)	85%	73%	68%	72%	83%	76%	84%	63%	75%	100%	88%	72%	67%	73%	77%	n/a	n/a
④ Confirmed ratio = ②/(1)	67%	69%	61%	62%	75%	63%	70%	60%	60%	100%	80%	64%	57%	68%	67%	n/a	n/a

[Table 05] The debtors with confirmed rehabilitation plans, continued

▪ Industry classes

(# of cases, %)

Category	B	C	D	E	F	G	H	I	J	K	L	M	N	P	R	S	Sum	Wgt.1	Wgt.2
(1) Start	2	543	4	9	152	58	15	2	12	1	15	14	2	3	23	3	858	n/a	100%
(2) To continue	2	476	4	7	135	50	13	2	8	-	12	13	1	3	19	3	748	100%	87%
① Not confirmed	-	115	-	2	21	8	3	1	1	-	5	3	-	1	8	3	171	23%	20%
② Confirmed	2	361	4	5	114	42	10	1	7	-	7	10	1	2	11	-	577	77%	67%
③ Confirmed ratio = ②/(2)	100%	76%	100%	71%	84%	84%	77%	50%	88%	n/a	58%	77%	100%	67%	58%	0%	77%	n/a	n/a
④ Confirmed ratio = ②/(1)	100%	66%	100%	56%	75%	72%	67%	50%	58%	0%	47%	71%	50%	67%	48%	0%	67%	n/a	n/a

[Table 05] The debtors with confirmed rehabilitation plans, continued

Abbreviation	Meaning
Start	The companies who were permitted to start the rehabilitation procedures
To continue	The companies who were valued as having greater going-concern values
Confirmed	The companies who succeeded in getting agreements from creditors on their rehabilitation plans
Not confirmed	The companies who failed in getting agreements from creditors on their rehabilitation plans

SEO	SEOUL	KWJ	KWANGJU
SUW	SUWON	JEJU	JEJU
INCH	INCHEON	CHU	CHUNCHEON
UIJE	UIJEONGBU	DAEG	DAEGU
CHJ	CHUNGJU	CHW	CHANGWON
DAEJ	DAEGEON	ULSA	ULSAN
JEON	JEONJU	BUSA	BUSAN

A	Agriculture	H	Transportation	O	Public administration
B	Mining	I	Accommodation and food	P	Education
C	Manufacturing	J	Information and communications	Q	Human health
D	Electricity, gas	K	Financial and insurance	R	Arts, sports and recreation
E	Recovery and remediation	L	Real estate and leasing	S	Membership organizations
F	Construction	M	Professional activities	T	Activities of households
G	Wholesale and retail	N	Business facilities	U	Extraterritorial organizations

[Table 06] The debtors in the rehabilitation procedures

▪ Bankruptcy courts

(# of cases, %)

Category	SEO	SUW	INCH	UIJE	CHJ	DAEJ	JEON	KWJ	JEJU	CHU	DAEG	CHW	ULSA	BUSA	Sum	Wgt1	Wgt2
(1) Start	236	156	49	21	20	46	23	55	5	1	86	61	28	71	858	n/a	100%
(2) To continue	186	146	44	18	18	38	19	52	4	1	78	54	24	66	748	n/a	87%
(3) Confirmed	158	107	30	13	15	29	16	33	3	1	69	39	16	48	577	100%	67%
① Graduate	91	26	11	2	2	10	7	14	1	0	28	23	4	13	232	40%	27%
② Abolished	34	24	9	4	8	11	4	5	0	1	15	11	3	20	149	26%	17%
③ Remaining	33	57	10	7	5	8	5	14	2	0	26	5	9	15	196	34%	23%
④ Graduate ratio = ①/(3)	58%	24%	37%	15%	13%	34%	44%	42%	33%	0%	41%	59%	25%	27%	40%	n/a	n/a
⑤ Abolished ratio = ②/(3)	22%	22%	30%	31%	53%	38%	25%	15%	0%	100%	22%	28%	19%	42%	26%	n/a	n/a
⑥ Remaining ratio = ③/(3)	21%	53%	33%	54%	33%	28%	31%	42%	67%	0%	38%	13%	56%	31%	34%	n/a	n/a
⑦ Graduate ratio = ①/(1)	39%	17%	22%	10%	10%	22%	30%	25%	20%	0%	33%	38%	14%	18%	27%	n/a	n/a
⑧ Abolished ratio = ②/(1)	14%	15%	18%	19%	40%	24%	17%	9%	0%	100%	17%	18%	11%	28%	17%	n/a	n/a
⑨ Remaining ratio = ③/(1)	14%	37%	20%	33%	25%	17%	22%	25%	40%	0%	30%	8%	32%	21%	23%	n/a	n/a

[Table 06] The debtors in the rehabilitation procedures, continued

▪ Industry classes

Category	(# of cases, %)																Sum	Wgt.1	Wgt.2
	B	C	D	E	F	G	H	I	J	K	L	M	N	P	R	S			
(1) Start	2	543	4	9	152	58	15	2	12	1	15	14	2	3	23	3	858	n/a	100%
(2) To continue	2	476	4	7	135	50	13	2	8	-	12	13	1	3	19	3	748	n/a	87%
(3) Confirmed	2	361	4	5	114	42	10	1	7	-	7	10	1	2	11	-	577	100%	67%
① Graduate	1	142	4	2	41	21	5	1	5	-	5	3	1	-	1	-	232	40%	27%
② Abolished	1	97	-	3	31	7	2	-	1	-	2	3	-	1	1	-	149	26%	17%
③ Remaining	-	122	-	-	42	14	3	-	1	-	-	4	-	1	9	-	196	34%	23%
④ Graduate ratio = ①/(3)	50%	39%	100%	40%	36%	50%	50%	100%	71%	n/a	71%	30%	100%	0%	9%	n/a	40%	n/a	n/a
⑤ Abolished ratio= ②/(3)	50%	27%	0%	60%	27%	17%	20%	0%	14%	n/a	29%	30%	0%	50%	9%	n/a	26%	n/a	n/a
⑥ Remaining ratio = ③/(3)	0%	34%	0%	0%	37%	33%	30%	0%	14%	n/a	0%	40%	0%	50%	82%	n/a	34%	n/a	n/a
⑦ Graduate ratio= ①/(1)	50%	26%	100%	22%	27%	36%	33%	50%	42%	0%	33%	21%	50%	0%	4%	0%	27%	n/a	n/a
⑧ Abolished ratio= ②/(1)	50%	18%	0%	33%	20%	12%	13%	0%	8%	0%	13%	21%	0%	33%	4%	0%	17%	n/a	n/a
⑨ Remaining ratio= ③/(1)	0%	22%	0%	0%	28%	24%	20%	0%	8%	0%	0%	29%	0%	33%	39%	0%	23%	n/a	n/a

[Table 06] The debtors in the rehabilitation procedures, continued

Abbreviation	Meaning
Start	The companies who were permitted to start the rehabilitation procedures
To continue	The companies who were valued as having greater going-concern values
Confirmed	The companies who succeeded in getting agreements from creditors on their rehabilitation plans
Graduate	The companies who succeeded in graduating the procedures by executing their rehabilitation plans
Abolished	The companies who were abolished from the procedures because of their poor performance of their rehabilitation plans
Remaining	The companies who are still struggling to execute their rehabilitation plans

SEO	SEOUL	KWJ	KWANGJU
SUW	SUWON	JEJU	JEJU
INCH	INCHEON	CHU	CHUNCHEON
UIJE	UIJEONGBU	DAEG	DAEGU
CHJ	CHUNGJU	CHW	CHANGWON
DAEJ	DAEGEON	ULSA	ULSAN
JEON	JEONJU	BUSA	BUSAN

A	Agriculture	H	Transportation	O	Public administration
B	Mining	I	Accommodation and food	P	Education
C	Manufacturing	J	Information and communications	Q	Human health
D	Electricity, gas	K	Financial and insurance	R	Arts, sports and recreation
E	Recovery and remediation	L	Real estate and leasing	S	Membership organizations
F	Construction	M	Professional activities	T	Activities of households
G	Wholesale and retail	N	Business facilities	U	Extraterritorial organizations

6-4. How long did it take for the debtors to graduate from the procedure?

In average, it takes about 0.74 year until the debtors' rehabilitation plans are confirmed by bankruptcy courts since their start of the procedures. Seoul has the shortest duration of 0.61 year, whereas Jeju has the longest duration of 1.16 years for the debtors' confirmations in average. From the industry perspective, business facilities management and business support services (N) has the shortest duration of 0.22 year for the debtors' confirmations since their starts, whereas mining and quarrying (B) has the longest duration of 1.11 years.

It takes about 3.09 years in average for the debtors to graduate from the procedures since their start of the procedures. Seoul has the shortest year of 1.82 year, whereas Jeju has the longest year of 4.59 years. From the industry perspective, business facilities management and business support services (N) has the shortest duration of 0.39 year for confirmation from their starts, whereas real estate activities and renting and leasing (L) has the longest duration of 3.63 years.

[Table 07] The duration of the rehabilitation procedures

▪ Bankruptcy courts

Duration	(year, %)														
	SEO	SUW	INCH	UIJE	CHJ	DAEJ	JEON	KWJ	JEJU	CHU	DAEG	CHW	ULSA	BUSA	Avg.
① Filing ~ Start	0.07	0.11	0.10	0.10	0.08	0.09	0.17	0.11	0.08	n/a	0.07	0.08	0.08	0.14	0.09
② Start~Confirmation	0.61	0.92	0.81	0.84	0.77	0.77	1.11	0.70	1.16	n/a	0.68	0.74	0.87	0.65	0.74
③ Filing~Confirmation	0.68	1.02	0.91	0.94	0.85	0.86	1.27	0.81	1.24	0.00	0.75	0.81	0.95	0.78	0.83

Duration	(year, %)														
	SEO	SUW	INCH	UIJE	CHJ	DAEJ	JEON	KWJ	JEJU	CHU	DAEG	CHW	ULSA	BUSA	Avg.
① Start~Graduation	1.82	2.48	2.29	2.12	3.71	3.25	3.87	2.92	4.59	n/a	2.94	2.84	4.06	3.23	3.09
② Start~Abolition	3.02	3.23	3.02	3.25	3.33	3.35	3.49	2.90	n/a	-	3.02	3.61	2.45	3.75	2.96
③ Start~Remaining	2.33	3.80	3.52	3.02	3.77	3.24	5.07	3.68	3.17	-	3.44	4.40	4.39	3.97	3.41

▪ Industry classes

Duration	(year, %)														
	B	C	D	E	F	G	H	I	J	L	M	N	P	R	Avg.
① Filing ~ Start	0.12	0.09	0.08	0.07	0.09	0.10	0.09	0.08	0.09	0.11	0.08	0.06	0.08	0.09	0.09
② Start~Confirmation	1.11	0.75	0.91	0.75	0.71	0.69	0.71	0.52	0.76	0.77	0.66	0.22	0.86	1.06	0.74
③ Filing~Confirmation	1.23	0.84	0.99	0.83	0.80	0.79	0.80	0.61	0.85	0.87	0.74	0.28	0.94	1.16	0.83

Duration	(year, %)														
	B	C	D	E	F	G	H	I	J	L	M	N	P	R	Avg.
① Start~Graduation	2.61	2.63	1.02	2.26	2.30	2.55	2.01	0.77	1.47	3.63	1.75	0.39	-	3.06	3.09
② Start~Abolition	4.50	3.28	-	2.63	3.28	2.78	2.38	-	2.74	3.75	2.69	-	3.01	2.14	2.96
③ Start~Remaining	-	3.63	-	-	3.60	3.38	2.95	-	2.15	-	2.53	-	3.36	2.47	3.41

[Table 07] The duration of the procedures, continued

Abbreviation	Meaning
Filing	The date when the debtors filed for the rehabilitation procedures
Start	The date when the debtors were permitted to start the rehabilitation procedures
Confirmation	The date when the debtors succeeded in getting agreements from the creditors on their rehabilitation plans
Graduation	The date when the debtors succeeded in graduating the procedures by executing their rehabilitation plans
Abolition	The date when the debtors abolished from the procedures because of their poor performance of their rehabilitation plans
Remaining	As of March 2015 for the debtors who are still struggling to survive their rehabilitation prodedures

A	Agriculture	H	Transportation	O	Public administration
B	Mining	I	Accommodation and food	P	Education
C	Manufacturing	J	Information and communications	Q	Human health
D	Electricity, gas	K	Financial and insurance	R	Arts, sports and recreation
E	Recovery and remediation	L	Real estate and leasing	S	Membership organizations
F	Construction	M	Professional activities	T	Activities of households
G	Wholesale and retail	N	Business facilities	U	Extraterritorial organizations

## 7. Tests and results

### 7-1. Test designs

#### (1) Correlation analysis

##### ▪ Hypothesis

The inspectors are expected to be reluctant to issue the liquidation value-winning reports in an attempt to avoid both the challenges from the interested parties and the decrease in their professional fees. It means that they are presumably strategically optimistic in calculating the debtors' future operational values, thus frequently issuing the going-concern value-winning reports. The going-concern values standing on the inspectors' strategic optimisms are likely to collapse and thus bring about the debtors' abolitions-after-confirmations. So my hypothesis is as follows:

The higher the ratios of going-concern value-winning reports are, the higher the ratios of abolitions-after-confirmations are.

To be more specific, I suspect that there are positive correlations between the frequencies of the going-concern value-winning reports (To continue ratio) and those of the abolitions-after-confirmations (Abolished ratio). If their valuations are truly fair, objective, neutral, and unbiased, contrary to my expectations, then the correlations between two of them should approach zero.

▪ Variables

① Independent variable: To continue ratio

The frequencies of the going-concern value-winning reports (To continue ratio) are adopted as my independent variables. To continue ratios are calculated as the percentages of the going-concern value-winning reports against all of the inspectors' reports. They represent the inspectors' inclinations in their valuations.

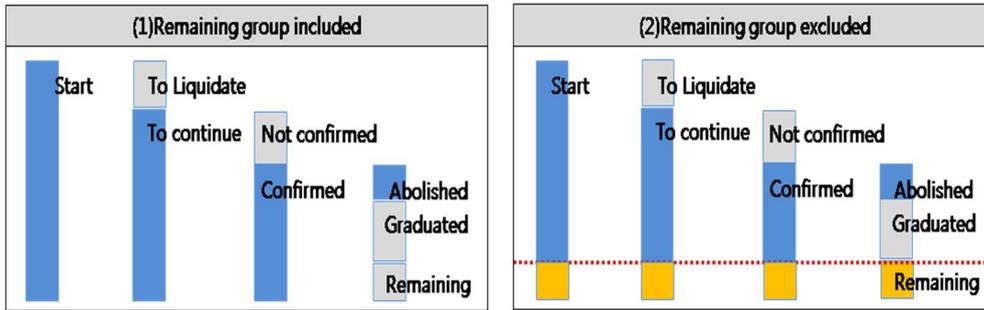
② Dependent variable: Abolished ratio

The frequencies of the abolitions-after-confirmations (Abolished ratio) are adopted to represent the erroneous valuations by the inspectors. With this backdrop, the abolished ratios are selected as my dependent variables. The Abolished ratios are calculated as the percentages of the abolished companies against all of confirmed companies whose rehabilitation plans were agreed upon by the creditors.

③ Modifications with remaining companies (Category 1)

The remaining companies indicate the debtors' groups whose destinies are not decided yet and who are still struggling to survive. They consume 34% of all of the confirmed companies, considerable weight compared with the graduate companies of 40% or the abolished companies of 26%. So I prepared another variable set in order to take the remaining companies into account. The adjustment was made by subtracting the remaining companies from the each variable as shown below.

[Figure 12] Adjusting of variables



Category 1	(1)Remaining group included	(2)Remaining group excluded
Independent variable (X)	$X = \text{'To continue' ratio}$ $= \text{'To continue'} \div \text{'Start'}$	$X = (\text{'To continue'} - \text{'Remaining'})$ $\div (\text{'Start'} - \text{'Remaining'})$
	N/A	X can be distorted as small
Dependent variable (Y)	$Y = \text{'Abolished' ratio}$ $= \text{'Abolished'} \div \text{'Confirmed'}$	$Y = \text{'Abolished'}$ $\div (\text{'Confirmed'} - \text{'Remaining'})$
	Y can be distorted as small	Necessary is the additional assumption that the remaining groups follow the precedent trends of abolition and graduation

④ Modifications with small groups (Category 2)

Necessary is another modification for the too small groups. The bankruptcy courts whose components are less than 5 were classified as small groups. The same applies to the industry classes. So I prepared two sets of variables.

Category 2	Small groups included	Small group excluded
Small group (Less than 5)	Small groups with less than 5 included	Small groups with less than 5 excluded

▪ Analysis matrix

Applying my modifications on the variables, my analysis matrix comes to have 8 cases.

Category1	Category2	Category3	
		Bankruptcy courts	Industry classes
(1)Remaining group included	Small groups included	①	③
	Small groups excluded	②	④
(2)Remaining group excluded	Small groups included	⑤	⑦
	Small groups excluded	⑥	⑧

▪ Regression equation

$$Y = a + b X$$

$$X = \text{To continue ratio}$$

$$Y = \text{Abolished ratio}$$

① Remaining group included

$$X = \text{To continue ratio} = \text{To continue} \div \text{Start}$$

$$Y = \text{Abolished ratio} = \text{Abolished} \div \text{Confirmed}$$

② Remaining group excluded

$$X = \text{To continue ratio} = (\text{To continue} - \text{Remaining}) \div (\text{Start} - \text{Remaining})$$

$$Y = \text{Abolished ratio} = \text{Abolished} \div (\text{Confirmed} - \text{Remaining})$$

## (2) Additional test: Financial statement analysis

### ▪ Objectives

The purpose of this additional analysis for financial statements is to examine the financial positions of the companies who finally graduated from the rehabilitation procedures. The graduate companies can be regarded as the high rank group in the rehabilitation procedures, because they are survivors in the procedures. With observing the changes in their financial situations, I can have another chance to examine the inspectors' fairness and objectivities in valuations. By comparing their financial situations at the time of their graduations with those at the time of the filings, I test whether the graduate companies really improved in their financial situations through the rehabilitation procedures.

### ▪ Test items

With the four financial information items, I can see whether the graduate companies really recovered from their financial distresses through their rehabilitation procedures. Financial information was selected from both the 3 years before filings and the 3 years before graduations.

Category	(1) 3-year average before filing	(2) 3-year average before graduation	(3) Fluctuation
Test01	Operating income	Operating income	Decrease/Increase
Test02	Operating income ratio	Ratio of operating income	Decrease/Increase
Test03	Assets	Assets	Decrease/Increase
Test04	Ratio of asset/liability	Ratio of asset/liability	Decrease/Increase
Test05	All of them above simultaneously	All of them above simultaneously	Decrease/Increase

7-2. Correlation analysis results

(1) Remaining group included - Bankruptcy courts' perspectives

① Relation between 'Abolished ratio' and 'To continue ratio' in bankruptcy courts

	SEO	SUW	INCH	UIJE	CHJ	DAEJ	JEON	KWJ	JEJU	CHU	DAEG	CHW	ULSA	BUSA
X	79%	94%	90%	86%	90%	83%	83%	95%	80%	100%	91%	89%	86%	93%
Y	22%	22%	30%	31%	53%	38%	25%	15%	0%	100%	22%	28%	19%	42%

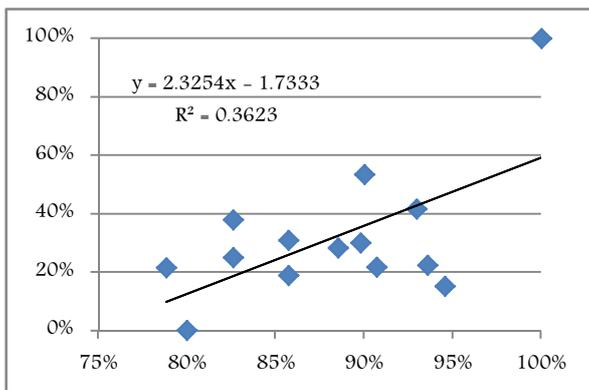
[Test Design]

X = To continue ratio = To continue / Start

Y = Abolished after confirmation ratio = Abolished/ Confirmed

Y = a + b X

[Test results]



	Expected	Result
a	n/a	-1.7333
b	(+)	2.3254
R <sup>2</sup>	n/a	0.3623

② Relation between ‘Abolished ratio’ and ‘To continue ratio’ in bankruptcy courts

	SEO	SUW	INCH	UIJE	CHJ	DAEJ	JEON	KWJ	JEJU	DAEG	CHW	ULSA	BUSA
X	79%	94%	90%	86%	90%	83%	83%	95%	80%	91%	89%	86%	93%
Y	22%	22%	30%	31%	53%	38%	25%	15%	0%	22%	28%	19%	42%

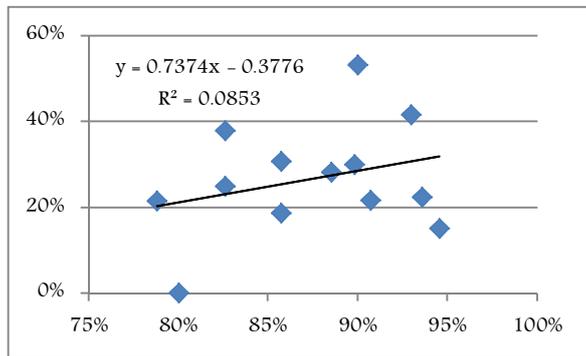
[Test Design]

X = To continue ratio = To continue / Start

Y = Abolished after confirmation ratio = Abolished/ Confirmed

Y = a + b X

[Test results]



	Expected	Result
a	n/a	-0.3776
b	(+)	0.7374
R <sup>2</sup>	n/a	0.0853

(2) Remaining group included - Industry classes' perspectives

③ Relation between 'Abolished ratio' and 'To continue ratio' in industry classes

	B	C	D	E	F	G	H	I	J	L	M	N	P	R
X	100%	88%	100%	78%	89%	86%	87%	100%	67%	80%	93%	50%	100%	83%
Y	50%	27%	0%	60%	27%	17%	20%	0%	14%	29%	30%	0%	50%	9%

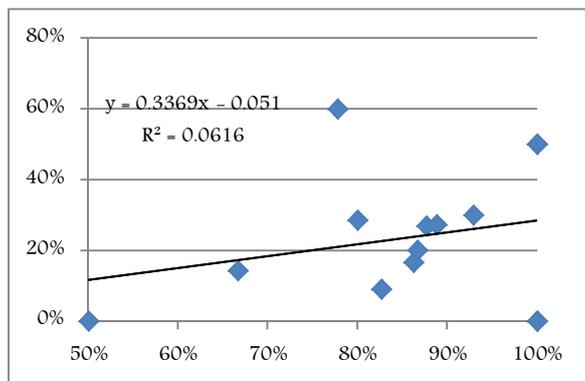
[Test Design]

X = To continue ratio = To continue / Start

Y = Abolished after confirmation ratio = Abolished/ Confirmed

Y = a + b X

[Test results]



	Expected	Result
a	n/a	-0.0510
b	(+)	0.3369
R <sup>2</sup>	n/a	0.0616

④ Relation between ‘Abolished ratio’ and ‘To continue ratio’ in industry classes

	B	C	D	E	F	G	H	J	L	M	P	R
X	100%	88%	100%	78%	89%	86%	87%	67%	80%	93%	100%	83%
Y	50%	27%	0%	60%	27%	17%	20%	14%	29%	30%	50%	9%

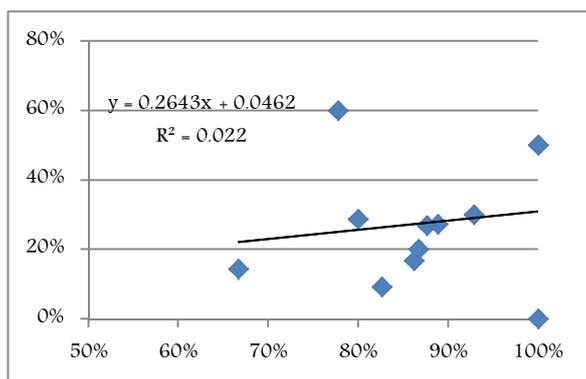
[Test design]

X = To continue ratio = To continue / Start

Y = Abolished after confirmation ratio = Abolished/ Confirmed

$$Y = a + b X$$

[Test results]



	Expected	Result
a	n/a	0.0462
b	(+)	0.2643
R <sup>2</sup>	n/a	0.0220

(3) Remaining group excluded - Bankruptcy courts' perspective

⑤ Relation between 'Abolished ratio' and 'To continue ratio' in bankruptcy courts

	SEO	SUW	INCH	UIJE	CHJ	DAEJ	JEON	KWJ	JEJU	CHU	DAEG	CHW	ULSA	BUSA
X	75%	90%	87%	79%	87%	79%	78%	93%	67%	100%	87%	88%	79%	91%
Y	27%	48%	45%	67%	80%	52%	36%	26%	0%	100%	35%	32%	43%	61%

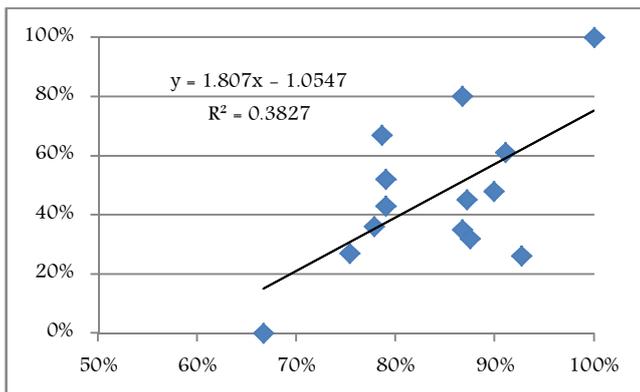
[Test design]

X = To continue ratio = (To continue - Remaining) ÷ (Start - Remaining)

Y = Abolished ratio = Abolished ÷ (Confirmed - Remaining)

Y = a + b X

[Test results]



	Expected	Result
a	n/a	-1.0547
b	(+)	1.8070
R <sup>2</sup>	n/a	0.3827

⑥ Relation between ‘Abolished ratio’ and ‘To continue ratio’ in bankruptcy courts

	SEO	SUW	INCH	UIJE	CHJ	DAEJ	JEON	KWJ	JEJU	DAEG	CHAW	ULSA	BUSA
X	75%	90%	87%	79%	87%	79%	78%	93%	67%	87%	88%	79%	91%
Y	27%	48%	45%	67%	80%	52%	36%	26%	0%	35%	32%	43%	61%

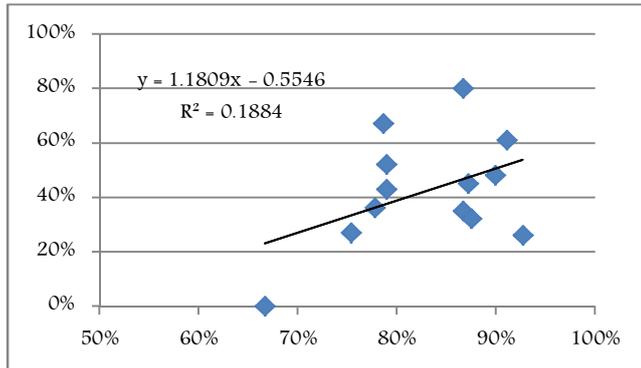
[Test design]

X = To continue ratio = (To continue - Remaining) ÷ (Start - Remaining)

Y = Abolished ratio = Abolished ÷ (Confirmed - Remaining)

Y = a + b X

[Test results]



	Expected	Result
a	n/a	-0.5546
b	(+)	1.1809
R <sup>2</sup>	n/a	0.1884

(4) Remaining group excluded - Industry classes' perspectives

⑦ Relation between 'Abolished ratio' and 'To continue ratio' in industry classes

	B	C	D	E	F	G	H	I	J	L	M	N	P	R
X	100%	84%	100%	78%	85%	82%	83%	100%	64%	80%	90%	50%	100%	71%
Y	50%	41%	0%	60%	43%	25%	29%	0%	17%	29%	50%	0%	100%	50%

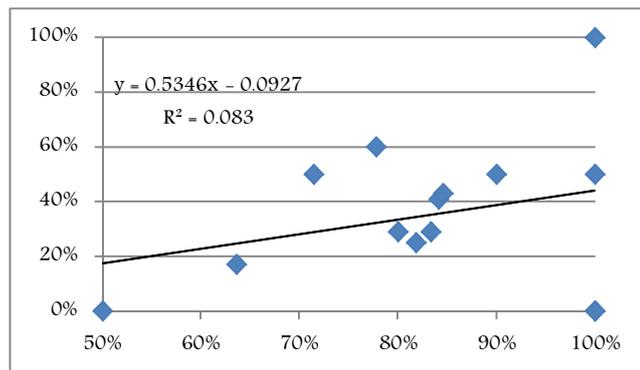
[Test design]

$$X = \text{To continue ratio} = (\text{To continue} - \text{Remaining}) \div (\text{Start} - \text{Remaining})$$

$$Y = \text{Abolished ratio} = \text{Abolished} \div (\text{Confirmed} - \text{Remaining})$$

$$Y = a + b X$$

[Test results]



	Expected	Result
a	n/a	-0.0927
b	(+)	0.5346
R <sup>2</sup>	n/a	0.0830

⑧ Relation between ‘Abolished ratio’ and ‘To continue ratio’ in industry classes

	C	E	F	G	H	J	L	M	R
X	84%	78%	85%	82%	83%	64%	80%	90%	71%
Y	41%	60%	43%	25%	29%	17%	29%	50%	50%

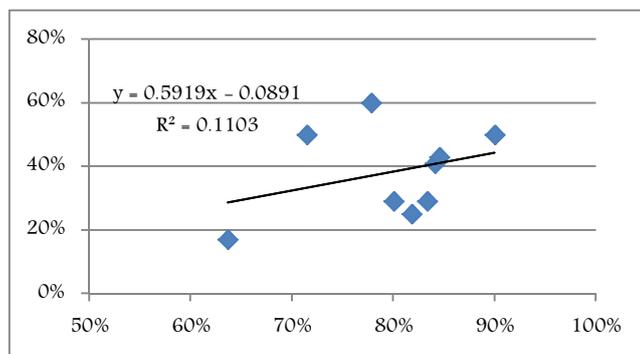
[Test design]

$X = \text{To continue ratio} = (\text{To continue} - \text{Remaining}) \div (\text{Start} - \text{Remaining})$

$Y = \text{Abolished ratio} = \text{Abolished} \div (\text{Confirmed} - \text{Remaining})$

$Y = a + b X$

[Test results]



	Expected	Result
a	n/a	-0.0891
b	(+)	0.5919
R <sup>2</sup>	n/a	0.1103

(5) Summary of correlation analysis results

All of them show the positive relations between the ratios of going concern value-winning reports and the ratios of abolitions-after-confirmations as I expected.

Category 1	Category 2	Category3							
		Bankruptcy courts				Industry classes			
		case	b		R <sup>2</sup>	case	b		R <sup>2</sup>
	expect	result	result		expect	result	result		
(1) Remaining groups included	Small groups included	①	(+)	2.3254	0.3623	③	(+)	0.3369	0.0616
	Small groups excluded	②	(+)	0.7374	0.0853	④	(+)	0.2643	0.0220
(2) Remaining groups excluded	Small groups included	⑤	(+)	1.8070	0.3827	⑦	(+)	0.5346	0.0830
	Small groups excluded	⑥	(+)	1.1809	0.1884	⑧	(+)	0.5919	0.1103

7-3. Financial statement analysis results

Category	SEO	SUW	INCH	UIJE	CHJ	DAEJ	JEON	KWJ	JEJU	CHU	DAEG	CHW	ULSA	BUSA	Sum
① Graduate	91	26	11	2	2	10	7	14	1	-	28	23	4	13	232
② Data available	23	11	5	-	2	5	3	7	-	-	14	5	4	5	84
③ Ratio ②/①	25%	42%	45%	0%	100%	50%	43%	50%	0%	n/a	50%	22%	100%	38%	36%

Abbreviation	Meaning
Graduate	The companies who succeeded in graduating the procedures by executing their rehabilitation plans
Data available	The companies whose financial statements are available for both 3 years before filing and 3 years before graduation

[Test results]

Category	(1)Data Available	Decrease of 3-year-before-graduation average from 3-year-before-filing average									
		Test01		Test02		Test03		Test04		Test05	
		① Operating income		② Ratio of operating income		③ Assets		④ Ratio of asset/liability		Simultaneous Decrease of ①,②,③,and④	
		(2) Decrease	Ratio (2)/(1)	(3) Decrease	Ratio (3)/(1)	(4) Decrease	Ratio (4)/(1)	(5) Decrease	Ratio (5)/(1)	(6) Decrease	Ratio (6)/(1)
SEO	23	14	0.61	14	0.61	19	0.83	15	0.65	9	0.39
SUW	11	7	0.64	8	0.73	8	0.73	7	0.64	4	0.36
INCH	5	2	0.40	2	0.40	4	0.80	3	0.60	2	0.40
UIJE	0	0	n/a	0	n/a	0	n/a	0	n/a	0	n/a
CHJ	2	1	0.50	1	0.50	2	1.00	0	-	0	-
DAEJ	5	1	0.20	2	0.40	3	0.60	0	-	0	-
JEON	3	2	0.67	1	0.33	2	0.67	3	1.00	1	0.33
KWJ	7	7	1.00	7	1.00	6	0.86	5	0.71	5	0.71
JEJU	0	0	n/a	0	n/a	0	n/a	0	n/a	0	n/a
CHU	0	0	n/a	0	n/a	0	n/a	0	n/a	0	n/a
DAEG	14	7	0.50	8	0.57	10	0.71	8	0.57	4	0.29
CHW	5	2	0.40	3	0.60	5	1.00	5	1.00	2	0.40
ULSA	4	1	0.25	1	0.25	2	0.50	1	0.25	0	-
BUSA	5	1	0.20	3	0.60	3	0.60	2	0.40	1	0.20
Sum	84	45	0.54	50	0.60	64	0.76	49	0.58	28	0.33

## 8. Conclusions

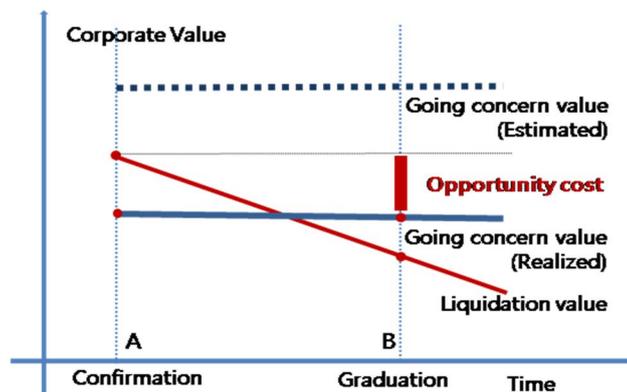
The rehabilitation procedure is one of the collective and compulsory decision-making systems, entailing the majority rules. The majority rules work in their full potential in the circumstance where the information symmetry prevails. The most critical factor for the success of the rehabilitation procedures is the alleviation of the information asymmetry between creditors and debtors. The most severe information asymmetry among them resides in the debtors' future business values. Therefore, objective, neutral, and unbiased valuations play highly critical role in the rehabilitation procedures. This fair and objective valuation is exactly what is expected of the inspectors in the rehabilitation procedure.

However, my test results reveal that the inspectors are strategically optimistic in constructing the debtors' going-concern values. The higher the ratios of the going-concern value-winning reports are, the higher the ratios of the abolitions-after-confirmations are. This result is commonly shared by both the bankruptcy courts' perspectives and the industry classes' perspectives. The inspectors' strategic optimisms intentionally overestimate the debtors' future business values. It means that the inspectors are not successful in providing the creditors with the objective, and reasonably correct research materials.

Financial statement analysis, my additional second test, also casts strong doubt on the inspectors' objectivities. One-third of the graduate companies have shown the severe deteriorations in their financial conditions at the time of graduations, compared with those at the time of filings. They decreased in financial information such as operating incomes, ratios of operating income, assets, and

ratios of assets/liabilities in concurrent manner. This financial analysis shows that it is not easy for the distressed companies to get over their financial distresses and bounce back on their feet again once they have fallen into distresses, which is conspicuously contradicting again to the inspectors' usual optimism and indicating that most of the debtors are, in fact, not in financial distresses but in economic distresses. The inspectors have been unsuccessful in carrying out their duty of distinguishing the financially-distressed firms from the economically-distressed firms.

[Figure 13] The inspectors' optimism and the creditors' second best decisions



It should be stressed that graduation is not always a synonym of the success of rehabilitation procedures. Graduations do not cure the inspectors' wrong valuations. At the time of B, the graduation might be the best decision for the creditors, but, at the time of A with objective and correct valuations (Realized) which are lower than the liquidation values, the creditors must have seized the liquidation values instead of the going-concern values. The inspectors' strategic optimism results in depriving the creditors of the opportunities to make best decisions in the rehabilitation procedures. The creditors' rational economic decisions are available only on the ground that they are served on the objective, neutral, unbiased, and reasonably correct valuations. This is truly what is expected of the inspectors in the rehabilitation procedures.

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## 국문초록

도산상황에 처한 채무자의 향후 처리방안에 대하여 채권자들의 집단적 의사결정을 유도하고, 당사자간 권리의무관계의 포괄적이고 강제적인 조정을 시도하는 회생절차에서 채무자 기업의 미래 사업가치에 대한 공정하고 객관적인 평가는 회생절차의 성공적 진행을 위한 필수불가결의 요소이다. 조사위원의 기업가치평가는 회생절차의 향후 진행방향을 결정함과 동시에 채무자가 제시하는 회생계획에 담긴 채무조정 의 논리적 기반 제공이라는 핵심적이고 중추적인 역할을 수행한다고 볼 수 있다. 이 논문의 목적은 우리나라 회생절차의 전반적인 운영현황을 살펴보고 특히 조사위원의 기업가치평가 실태를 중심으로 회생절차의 실효성을 검토함에 있다. 본 논문의 연구결과, 조사위원의 조사보고서가 과도한 낙관주의 성향에 치우쳐 있어 결과적으로 회생절차 내에서 채권자의 합리적 의사결정에 기여하지 못하고, 오히려 채권자의 최적 의사결정 기회를 박탈하는 결과에 이를 수 있는 것으로 밝혀졌다. 연구결과를 구체적으로 살펴보면, 계속기업가치가 청산가치보다 높다는 결론의 조사보고서의 비중이 높을수록 회생계획 인가 후 회생절차에서 폐지되는 기업의 비중이 비례적으로 높아지는 현상이 관찰되었으며, 이러한 현상은 전국 파산 법원별 및 해당 산업별 연구에서 공통되고 일관되게 나타나고 있다. 본 연구결과는 조사위원의 낙관주의 성향이 일반적인 미래 불확실성에 기인하는 통상적인 수준을 넘어서 조사위원 스스로의 자기효용극대화를 위한 전략적 선택의 결과로 풀이된다. 조사보고서의 이와 같은 전략적인 낙관주의 성향은 도산기업의 공정하고 객관적인 경제성 평가를 통한 사회적으로 한정된 자원의 최적 배분 실현이라는 회생절차의 목적에 부합하지 못하는 것으로 평가된다.

주요어 : 회생절차, 법정관리, 계속기업가치, 기업가치평가, 낙관주의

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