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Cover Page Footnote
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Jasper S. Kim†

ABSTRACT

In an attempt to boost consumer spending and reinvigorate the national economy following the 1997-98 South Korean financial crisis, the South Korean government encouraged consumer credit card usage. However, the South Korean government did not foresee the ensuing consumer credit card crisis caused by consumers spending much more than their actual earnings. As a result, the world’s eleventh largest economy was heavily weighed down by debt-ridden individuals, totaling at one point nearly ten percent of the entire South Korean population, with the potential to trigger another financial crisis in the Asia-Pacific region.

The government’s response came in the form of the Individual Debtor Rehabilitation Act (IDRA), which was passed by the South Korean National Assembly on March 2, 2004 and became effective as of September 23, 2004. The intent of IDRA is to provide individual debt claim relief to qualified debtors. IDRA effectively provides a rehabilitation program for individual debtors who have income, but are still at risk of individual bankruptcy. Eligibility is limited to those who will receive a reliable and continuous source of future income through some form of employment. This paper discusses IDRA’s approach to resolving South Korea’s post-1997 consumer spending hangover.

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1 INDIVIDUAL DEBTOR REHABILITATION ACT [IDRA] art. 1 (S. Korea).
2 Id.
I. Introduction

A. Paper Methodology

This paper consists of three major components. The introduction describes the circumstances surrounding the post-1997 South Korean credit card spending hangover. The second part provides a broad overview and discussion relating to IDRA and its stated objectives. Finally, part three analyzes IDRA from a policy perspective.

B. Existing Academic Literature

No literature currently exists that covers individual credit defaulters from a legal and legislative purview within the South Korean context in the post-1997 period. Most existing research separates the two related problems of credit default and credit card corporation delinquency, with the majority focusing on the latter issue of credit card corporation delinquency as it relates to South Korean macroeconomic growth. For example, Gon Pil Choi discusses the credit defaulter issue and argues that the credit card companies’ rampant issuance of credit cards did not constitute sound economic policy to stimulate macroeconomic growth.3 Although Choi discusses several government countermeasure policies, the paper merely provides a general overview of each act

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and does not focus on the legal issues within such acts. Similarly, the Korea Institute of Finance released a paper analyzing Korean government policy relating to credit card defaulters, which argued for greater use of revolving credit card lines—which are common in the United States but currently not widely adopted in South Korea—and other related structural reforms.4

Other papers were published in the pre-1997 period and thus are dated, such as Professor Dong-Ki Kim’s paper,5 which provides a comprehensive non-legal overview of South Korean credit card policy and notes that almost no academic literature exists for the post-1997 period.6 Finally, Professor Soo-Geun Oh discusses IDRA, but only in the context of a practical guide for interested credit defaulters who are seeking IDRA protection.7 This paper attempts to fill this void in the literature in the hope that it will be beneficial to both the academic and financial community, which may seek greater clarity as to how IDRA may impact the South Korean markets.8

South Korea is a nation of massive credit card defaulters.9

4 See generally Korea Instit. of Fin., Confronting Strategy for the Credit Defaulter Problem, 13 KOREAN ECON. & FIN. OUTLOOK 8 (2004).


6 Id.


8 In particular, there exists significant interest from global investment banks based in the Asia-Pacific region that cover the South Korean markets. Specifically, such interest is in part focused on the Korean consumer non-performing loan (NPL) market. If IDRA effectively cures South Korea’s creditor delinquency problem, then the NPL pool size may be less than if IDRA is ineffective legislation that will not significantly curb the growing number of consumer defaults in South Korea. Often global investment banks, such as Morgan Stanley, Goldman Sachs, Deutsche Bank, and Lehman Brothers, purchase such NPLs to use as collateral for the issuance of high yielding asset-backed securities (ABS) vis-à-vis the use of a special purpose vehicle (SPV) as an issuer domiciled in a tax-efficient jurisdiction, such as the Cayman Islands, Labuan, or Bermuda. See Dominic O’Kane, Structured Credit Research, Credit Derivatives Explained: Markets, Products, and Regulations, March 2001, Lehman Brothers International (Europe), at 35-37; KAMCO website, at http://www.apibiz.com/eng/intro/summary/awards.jsp.

9 For purposes of this paper, “South Korea,” “ROK,” and “Korea” (and any derivation thereof) shall, each and collectively, refer to the Republic of Korea.
Nearly ten percent of the entire Korean population, or nearly four million individuals, have defaulted on their personal credit card debts or loans with little indication of improving conditions. The transformation is remarkable. A mere eight years ago, in the wake of the 1997-98 Korean financial crisis (1997-98 Crisis), Korean households were largely debt free. But now Korean households hold an average household debt amount of approximately US$27,000.

The introduction of consumer credit cards by the Korean government following the 1997-98 Crisis was the first of two proposed solutions to boost domestic consumer spending. The first government initiative provided incentives for consumers to use credit cards, such as a twenty percent income tax deduction for those whose credit card expenditures totaled more than ten percent of his or her annual income. The second government initiative provided deregulatory incentives to consumer credit card issuing institutions, including the lifting of long-held restrictions against cash advances.

Following the post-1997-98 Crisis, national policy helped banks and credit lending institutions. Such groups sought to benefit from credit card use mostly through credit card interest rates, which generally range from twenty to twenty-five percent in South Korea. Moreover, Korean credit cards generally do not offer “revolving credit,” such as is common in the United States. The practical effect is that Korean consumers must pay off any charged amount by the next monthly payment period, which furthers debtor delinquency.

The lack of consumer spending is a ramification of the 1997-98 Crisis that continues to adversely affect South Korea’s economy. The reason for this is twofold. First, many Koreans

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12 Id.

13 See Larkin, supra note 10.

14 Id.

15 Id.

16 Id.
saw their purchasing power drop substantially during the 1997-98 Crisis, which directly translated into fewer consumer purchases. Second, during the 1997-98 Crisis, many Korean industries were forced into bankruptcy, which increased unemployment rates and dramatically deflated consumer confidence. Therefore, after the 1997-98 Crisis, consumers generally chose not to spend when faced with a decision between spending now and not spending at all. However, consumer spending behavior dramatically changed from the beginning of the 1999 government promotion of the individual use of credit cards in an effort to spur domestic consumer spending. Individuals spent money on credit in a far greater proportion than ever imagined by policymakers and credit-lending institutions. This ultimately led to binge credit spending and a notable spending spree hangover in the form of credit repayment delinquencies and debtor defaults.

C. Credit Card Spending Binge

At times, the success of a government initiative is just as detrimental as the failure of such an initiative. A case in point is the Korean government’s credit card initiative following the 1997-98 Crisis. In 1997-98, the problem was that consumer spending was too sluggish to revive the domestic economy. After 1999 the solution to boost consumer spending was a series of disparate and often uncoordinated government initiatives to promote the mass issuance of credit cards to individuals. The notable result was that offering credit cards to boost consumer spending brought about another unforeseen problem in the form of a post credit card spending binge hangover. This occurred not because the government plan to promote credit card usage was not successful enough, but rather because the credit card initiative was overly successful.

17 Schofield, supra note 11.

18 For a paper focusing more on firm level credit problems, see Eduardo Borensztein & Jung-Wha Lee, Financial Crisis and Credit Crunch in Korea: Evidence from Firm Level Data 5, 9 (Int’l Monetary Fund, Working Paper, 2000) (arguing that following the 1997-98 Crisis, credit was reallocated away from large Korean conglomerates (chaebol) to more “efficient” firms). For a more political economic perspective on the Korean 1997-98 Crisis, see generally STEPHAN HAGGARD & JONGRYN MO, THE POLITICAL ECONOMY OF THE KOREAN FINANCIAL CRISIS 197-218 (2000) (arguing that the 1997-98 Crisis was caused by: (1) a greater liberalization between state and business; and (2) a timing conundrum in which the crisis occurred at an election year, which may have added both to the depth and severity of the 1997-98 Crisis).
Evidence of excessive credit card spending existed in various forms. For example, just a mere three years after the government’s 1999 credit card initiative, Koreans quickly went from having very few or no credit cards to having an average of nearly four credit cards per person. Such added lines of credit quickly translated into increased consumer spending and gross domestic output. Furthermore, South Korean economic output in 1999 was an extremely robust 10.9 percent, followed by a nearly impressive 9.3 percent growth rate the following year.

D. The Next Day Hangover

Domestic consumers began to spend beyond a prudent level such that credit card usage went above and beyond repayment capacity as overall economic conditions began to improve in South Korea. Thus, by late 2002, South Korea’s economy was weighed down with approximately $100 billion in credit card debt, not including personal loan debt obligations. The debt levels

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19 See Larkin, supra note 10.


21 Larkin, supra note 10. As background, in less than six years South Korean households went from being largely debt-free in 1997-98 to holding an average of $27,000 in debt per household, a figure representing close to ten percent of the country’s population. The effect has been more than $375 billion in household debt. As one example of the dire effects relating to the credit card crisis, LG Card (South Korea’s second largest credit card company at the time) collapsed in 2003, creating great concern in Korea about rising consumer debt and the fear of massive defaults. LG Card had started to rationalize its operations by disposing of some of its investments, including a two percent stake in LG Investments, estimated to be worth about $149 million. Struggling LG Card received a vote of confidence after U.S. broker Merrill Lynch announced on August 5, 2004 that it would buy $400 million of asset-backed bonds issued by LG Card. Id.

Shortly after the 1997-98 Crisis, the South Korean government encouraged the growth of credit cards to boost consumer spending, but paid a heavy price in defaults. Credit card companies and banks extended credit with little concern for repayment risk because of knowledge that the government wanted to increase debt spending with the strong implication that credit was tacitly underwritten by the national treasury. In 2003, new legislation, known as the Regulation on Supervision of Credit-Specialized Financial Business (in which Chapter V relates to consumer protection and preservation of credit order), was passed mandating that credit card firms curb their credit allocations, insist on credit checks, and temper cash loans. Id.

22 Id. at 2.
equaled nearly seventy-five percent of South Korea’s 2003 annual economic output, or in other terms, nearly $365 billion in household debt.\textsuperscript{23}

\textbf{E. Confucian Consumer Constraint}

Such a credit card problem was in large part unforeseeable in a conservative nation that places a high priority on traditional Confucian ideals. In part due to such ideals, the government seemingly presumed that the potential of public dishonor of bankruptcy would mitigate both the likelihood of spending more than earnings and the potential of personal bankruptcies.\textsuperscript{24}

The sudden availability of credit lines that could be spent at any time proved too overwhelming for South Koreans, especially given that most individual credit card debtors are under forty years of age on average.\textsuperscript{25} Additionally, because of the 1999 initiative, lack of detailed personal credit history information, and rigid privacy laws, credit cards could be obtained by many Koreans without proper credit checks. The resulting credit card spending binge rapidly transformed into South Korea’s current and ongoing credit card hangover, detailed in the following table summarizing South Korean credit card delinquency levels from 1998 to 2003.

<table>
<thead>
<tr>
<th>Table 1. Credit Card Delinquency Levels in South Korea (1998-2003)\textsuperscript{26}</th>
<th>1998</th>
<th>1999</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
</tr>
</thead>
<tbody>
<tr>
<td>Credit Card Delinquents (in millions)</td>
<td>193</td>
<td>199.6</td>
<td>208.4</td>
<td>245</td>
<td>263.6</td>
<td>372</td>
</tr>
<tr>
<td>Increase Amount (in millions)</td>
<td>50.1</td>
<td>6.6</td>
<td>8.8</td>
<td>36.6</td>
<td>18.6</td>
<td>108.4</td>
</tr>
</tbody>
</table>

\textsuperscript{23} See Schofield, \textit{supra} note 11.

\textsuperscript{24} Post-1997-98 modern Korean society individual demands and materialistic needs counter such traditional ideals that stemmed in large part from the Korean Chosun period (1392-1910). Specifically, many Koreans, including many younger Koreans, saw credit cards as a relatively easy way to obtain formerly unobtainable high priced luxury goods. \textit{Id.}

\textsuperscript{25} Larkin, \textit{supra} note 10.

\textsuperscript{26} Ministry of Finance website (March 10, 2004), http://webdb02.korcham.net/korchamnet/kndata/epic/files/200403151308/D0403016.ppt.
II. The Proposed Hangover Solution: IDRA

The sudden surge in credit card debt levels caused the Korean government to act once again. But instead of trying to resolve the issue of how to get Koreans to spend more, the Korean government was placed in the awkward position of needing to assist consumers who overspent as a direct result of the government’s earlier 1999 initiatives.

The government’s proposed solution to the new consumer excess spending problem came in the form of the Individual Debtor Rehabilitation Act (IDRA), passed by the South Korean National Assembly on March 2, 2004, and effective as of September 23, 2004. The practical effect of IDRA is to provide relief for qualified debtors of individual debt claims, including the extension of debt repayment schedules for up to eight years.

IDRA provides a rehabilitation program for individual debtors who have income, but who are otherwise at risk of bankruptcy. Eligibility is limited to those who will receive a set amount of salary either through employment or self-employment. Coverage for individual debtors is limited to KRW 500 million for unsecured debt and KRW 1 billion for guaranteed debt. IDRA covers debt obligations owed to financial institutions as well as private liabilities. Debtors owing between KRW 300 million and KRW 1.5 billion may receive benefits pursuant to IDRA. The debtor in need of IDRA protection must apply directly to the court that has jurisdiction with respect to the debtor’s residence.

In terms of the IDRA application process, potential applicants must file their plans for debt annulment to the court of jurisdiction within two weeks of applying for IDRA related protection. The court of jurisdiction must reach a decision on the eligibility of the

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27 See generally IDRA.
28 KRW refers to the Korean won, the national currency of South Korea. A conventional benchmark for conversion into US dollar (USD) is 1000 KRW per 1 USD.
29 Unsecured debt refers to debt obligation that is not collateralized.
30 Guaranteed debt refers to debt obligations that have a guarantor feature. In other words, in the event that any payment obligation is not made as scheduled, then the guarantor may be liable to “step into the shoes” of the debtor and make one or more outstanding payments.
31 IDRA art. 3(1).
32 Id. art. 71(1).
applicant for IDRA benefits within one month of receiving the application.\textsuperscript{33} Once an application is accepted, the rights of the lender and all rights related to the collection of debts, such as provisional seizure and rights to a guarantee of debts, are put on hold and the property of the debtor cannot be sold without court permission.\textsuperscript{34}

A maximum of eight years is allocated for pardoning of debts.\textsuperscript{35} If the debtor can repay such owed debt in accordance with the submitted IDRA plan, the remaining debt may be pardoned by court decision. However, if the debtor cannot repay such debt in accordance with the plan laid out by the court, the court will deem the entire plan null and void.\textsuperscript{36}

Moreover, even if the debtor complies with the agreed upon schedule and owed debts are fully repaid within eight years, the debtor is still liable for certain charges. These charges may include relevant surplus charges, penalty fees, damages due to unlawful conduct, and duties to employees, including unpaid salary and retirement pay, if the debtor is deemed a business owner.\textsuperscript{37}

The amount of debt required for further debt annulment after eight years is still a matter left to specific legislation. In the event of fraud in reporting the total amount of the debtor’s property or any actions that cause damage to the lender, the entire IDRA restructuring process may become void.\textsuperscript{38} Further, the debtor cannot re-apply for IDRA protection for the next five years.\textsuperscript{39}

IDRA effectively rescues certain individual debtors, provided that they possess the potential to continuously and repeatedly earn future income,\textsuperscript{40} while at the same time protecting certain creditor

\textsuperscript{33} Id. art. 56(1).
\textsuperscript{34} Id. art. 60.
\textsuperscript{35} Id. art. 71(5).
\textsuperscript{36} Id. art. 79(1).
\textsuperscript{37} IDRA art. 87.
\textsuperscript{38} Id.
\textsuperscript{39} If it is determined that fraud exists in reporting property, which directly damaged the relevant lender, then the debtor is subject to either five years imprisonment with hard labor or a fee of KRW 50 million. Id. art. 92.
\textsuperscript{40} Id. art. 2 (explaining the sources of the “incomes” of the candidates).
Prior to the enactment of IDRA, individual bankruptcy issues were governed by Korean bankruptcy law. Under these bankruptcy laws, creditors were unable to receive any of their owed obligations if a court ruling related to the individual bankruptcy case, such as when the debtor was sentenced to imprisonment or ordered to refrain from further financial dealings. Generally, IDRA-related cases are subject to the debtor’s local court jurisdiction, as determined by the debtor’s official address. If no such local court is available, the location of the debtor’s property, rather than the debtor’s official address, determines which local court has jurisdiction. Under this section, interest-related parties (i.e., creditors) may lodge an immediate complaint within fourteen days of the court’s sentence and any dissatisfaction with the decision can be appealed thereafter, but only in writing.

In terms of procedural issues, the IDRA process begins when the debtor applies for IDRA consideration by submitting certain required IDRA-related documents to the relevant local court. Once the debtor submits the application, the court considers whether the candidate has the relevant qualification under IDRA.

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41 Id. art. 1.

42 Under current Korean bankruptcy law relating to individual bankruptcy (Gyein Pahsahn Sohejajpahsahn), when an individual consumer fails to repay debts the court liquidates all of the debtor’s properties towards creditor repayment as a compulsory measure. One distinguishable section between IDRA and current Korean bankruptcy law falls within the sections relating to the granting of immunity. For example, under the current Korean bankruptcy law, all debtor-owned property is disposed of by the court before the debtor receives immunity via a court decree. Yet, under IDRA, the debtor need not dispose of all properties to receive such immunity from the court. Moreover, evidence in the form of official records reflecting the debtor’s default will exist until such immunity is granted, while the debtor under the IDRA rehabilitation process does not have such disadvantages. See (Pahsahn Bup) (Korean Bankruptcy law) art 7, 15 [hereinafter Bankruptcy Law].

43 Id. art. 47.

44 IDRA art. 2(1).

45 Id. art. 11.

46 Where there is a “supervision committee,” established pursuant to the Corporate Rearrangement Act (Hyoesa Chungri Buhp) Article 93(2), this committee can evaluate the process of the Act during the trial process. See IDRA art. 13(1).

46 Id. art. 13(1).

47 Id. art. 1. “IDRA is designed to effectively rescue those who are suffering from financial bankruptcy, who possess potential to continuously and repeatedly earn incomes
Within fourteen days after the debtor’s IDRA application is submitted, the debtor submits the required “repayment plan” to the court. Thereafter, the court determines whether to accept or reject the IDRA application. In the event that the application is accepted, any parties with a related interest to the specific proceeding, such as debtors or creditors, may file an application within fourteen days following the court’s ruling.

The definition of property under IDRA, includes “all properties owned by the debtor [until] the individual rescue process begins” and “all properties earned by the debtor during the individual rescue process.” The relevance of defining property is that the local court will factor in the debtor’s asset amounts to determine whether the debtor-applicant has the ability to repay debt obligations. The assumption is that the more assets and property owned, the greater the likelihood that the local court may grant IDRA protection. The rationale is that more property translates into more assets capable of liquidation to repay owed debt obligations.

Assets not included under “Individual Rescue Property” are in the future.”

48 Id. art. 70.

49 IDRA art. 11. If the application is accepted, pursuant to Article 13, the court can organize a “supervision committee,” which effectively oversees the entire IDRA-related process with the local court. Thereafter, pursuant to Article 62, the rescue committee (which focuses on IDRA’s contents, such as supervising the debtor’s repayment plan schedule) investigates the debtor’s properties and incomes. Pursuant to Article 24, Clause 1, the designated local court then determines the debtor’s asset amounts, such as the properties owned by the debtor (referred to as “Individual Rescue Property”), and determines the amount of credits the debtor holds (referred to as “Individual Rescue Credits” or “Individual Rescue Institutional Credits”). The court then examines the debtor’s “repayment plan.” Thereafter, the court announces its decision (normally within one month from the debtor’s application date), whereby the debtor repayment payment schedules are typically restructured such that the debt repayment period is extended, but not lasting longer than eight years after the court’s approval of the debtor’s repayment plan. Id.

50 Id. art. 24(1).

51 Id. art. 24(2).

52 The debtor, under IDRA Article 24, also has the right “to manage or dispose of his/her property.” However, the properties that are included as part of the debtor-submitted “repayment plan” must be managed or disposed of per such debtor’s repayment plan. Id. art. 24.
properties that cannot be seized, housing expenses of the debtor and individuals supported by the debtor (i.e., dependent family of the debtor), and six months worth of living expenses as required by the debtor and those persons financially supported by the debtor.

Being subject to the IDRA process means that the debtor (applicant for the IDRA process) should repay a specified amount of owed debt obligations. However, the IDRA legislation is silent as to what exactly should be the minimum level of debtor repayment. Presumably, the minimum level is left to the local court’s discretion. Therefore, it is necessary for the local court to clarify what properties and income should or should not be used for repayment. IDRA provisions provide that most of the incomes and properties, excluding minimum living expenses but including housing expenses, are liable for such repayment.

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53 IDRA is silent as to exactly what such properties may be. See generally id.
54 Id. art. 25(1) (exempting certain property).
55 The amount of the repaid debt is designated in the debtor’s “repayment plan.” The court examines the debtor’s repayment plan, including but not limited to, the debtor’s income, properties, and owed debt obligations, in determining the amount of repayment the debtor should make pursuant to IDRA. See IDRA art. 24.
56 Id.
57 See generally IDRA. Because IDRA is designed primarily to provide a method by which debtors can repay their credit obligations, it is important to explicitly define what kind of debts fall under the ambit of the IDRA process, what kind of debts should be repaid, and in what order such debts should be repaid. In this regard, provisions three and four of IDRA provide language as to what constitutes debt obligations. Id.

In short, two types of debt (referred to as “credits” under IDRA’s language) exist: individual and institutional debt. In terms of creditor payout hierarchy, institutional credits receive priority over individual (non-institutional) credits. In other words, the debtor must repay institutional debts owed prior to repaying individual debts owed, whereby such debtor payout hierarchy must also be reflected in the debtors “repayment plan,” pursuant to IDRA Article 39. Id.

Relating to individual debts (referred to as “Individual Rescue Credits”), such debts can be covered only if such debt was incurred due to events or reasons prior to the IDRA process, as per Articles 26-29. Moreover, among “Individual Rescue Credits” debts, such as interest (which accrue after the IDRA process began) and IDRA related expenditures follow after “Individual Rescue Credits.” Id.

Second, institutional individual debt obligations (referred to as “Individual Rescue Institutional Credits”) are defined under Article 36, Clause 3, as (1) payment and expenditures relating to the “rescue committee” (under Article 61 and Article 40, Clause 1); (2) taxes (under article 40, clause 2); (3) fees, retirement grants, and accident compensations for the employees of the debtors (under article 40, clause 3). Id.
IDRA also grants a "veto power" to prevent debtors from committing certain actions intentionally to damage creditors, such as nominal transfer of properties (i.e., houses) to families before going into the IDRA process.\(^5\) The local court can order the debtor to conduct the veto power on the request of the creditors or rescue committee, or by the court's own right. However, this veto power cannot be used after one year of the decision to begin the IDRA process and/or five years following the completion of any such actions.\(^5\) Although the veto power is referred to as a legal "right" of the debtor, the actual drafters' intent is to preserve the creditors' interest. Moreover, under IDRA Article 5, the right of set-off apparently also exists.\(^6\)

In terms of initiating the actual IDRA process, provision six discusses the specific requirements. Individuals qualified to apply for IDRA are (1) individual debtors who have the ability to earn income "continuously and repeatedly" per IDRA Article 1 (based mostly on the rescue committee and/or local court's discretion) through employment or owning a business; and (2) individual debtors who have debt either (a) under KRW 1,000,000,000 of individual credits, which include liens, the right of pledge, mortgages, negotiable instruments, and provisional registration securities; or (b) individual credits under KRW 500,000,000, except for the aforementioned credits.\(^6\)

The IDRA applicant should submit the written IDRA application detailing relevant information, such as the debtor's name and Korean identification number, the reason and purpose for applying, and the property and credits of the debtor. Also, the applicant should attach the following: (1) a list of the creditors with their name, address, and the amount and reason of the credit; (2) a list of properties owned; (3) a list of the debtor's incomes and spending; (4) related documents, in the event that the applicant has

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\(^{58}\) Id. art. 43.

\(^{59}\) Id.

\(^{60}\) Id. art. 5. The legal right to "set off" gives the debtor and/or the creditor the option to apply owed payments (future cashflows in) towards any obligations owed (future cashflows out). For example, if debtor was owed KRW 10,000,000 and creditor owed debtor KRW 8,000,000, then the debtor could "set off" such debt owed from creditor, which effectively reduces debtor's owed amount to KRW 2,000,000 (KRW 10,000,000-8,000,000) rather than KRW 10,000,000.

\(^{61}\) IDRA art. 48.
previously applied for individual bankruptcy (under the existing Korean Bankruptcy Act) or IDRA; (5) data that attests to the fact that the debtor is an employer or a business owner; and (6) other documents which the Supreme Court deems necessary and relevant to the process. Also, the applicant should pay in advance the process expenses determined by the Supreme Court’s rule.

The local court, separate from the Supreme Court, has jurisdiction to decide whether to execute the IDRA process for the debtor. The time period for the court’s decision is normally within one month after the case is filed. Any objection by relevant creditors should be filed within two months after the court’s decision to grant IDRA repayment protection.

The local court may also reject the applicant when: (1) the debtor fails to meet the specified qualifications pursuant to IDRA; (2) the debtor fails to file the documents required by IDRA Article 49, or fraudulently writes and/or submits documents, or does not meet the application deadline set forth by the court (i.e., on or before fourteen days of the applicant’s original application); (3) the debtor fails to pay the required IDRA process-related expenses; (4) the debtor fails to meet the repayment plan deadline; (5) the debtor-applicant has been previously rejected for the IDRA process within five years prior to the most recently submitted IDRA application; (6) the debtor received court-ordered immunity (including the immunity by the bankruptcy process) within the past ten years; (7) the debtor’s submitted repayment plan fails to amount to the general creditors’ interest; or (8) for any other reasons such as, but not limited to, the court’s determination that the application has not been filed in good faith, or is seen as merely trying to delay debt repayment without reasonable justification.

Under IDRA, the local court has discretion to appoint the

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62 Id. art. 49.
63 Id. art. 50
64 Id. art. 56(1)-(2).
65 IDRA’s current language is silent as to exactly what standards would preclude an applicant from receiving IDRA protection, apart from meeting the aforementioned standards per IDRA Article 48. See generally id.
66 Id. art. 55
members of a rescue committee. Pursuant to provision seven, the rescue committee investigates and observes the execution process of IDRA, subsequent to approval by the court. In effect, the Rescue Committee is a supervisory organization that oversees the execution of the overall IDRA rehabilitation process.

Pursuant to IDRA provision eight, creditors can participate in the court’s determination of the amounts that should be repaid to them under the IDRA process. This provision specifies that creditors who object to the contents of the creditors list, which details what amounts are owed to which creditors, may request a “Trial for Settling Individual Rescue Credit” during the objection period. For example, creditors have from two weeks to two months after the court’s decision by which to accept the applicant’s repayment plan to initiate the IDRA process. In this case, the plaintiff is the creditor and the defendant is the debtor; the party that participates in the IDRA process and submitted the creditors list. The local court has the discretion to rule whether such a trial may proceed.

Provision nine under IDRA discusses specifics related to the debtor repayment plan. Under this process, the debtor should submit his or her repayment plan within fourteen days following the submitted application for the IDRA process. The repayment plan should contain details of properties and incomes that can be used for repayment, repayment details of the debtor’s individual rescue institutional credits and other credits, and repayment details

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67 The members of the committee may consist of (1) a member of the supervision committee; (2) the administrative official of the court; or (3) any other individuals per the discretion of the Supreme Court. The Rescue Committee investigates the debtor’s properties and income as well as oversees the debtor meeting’s process. Id. art. 61.

68 Id. art. 62.

69 Id. art. 62(1).

70 Id. art. 64(1).

71 Id. art. 64.

72 “Individual Rescue Credits” will be determined based on whether creditors (listed on the creditor list) requested a “Trial for Settling Individual Rescue Credit” during the relevant period, or if the creditor’s request for a “Trial for Settling Individual Rescue Credit” was rejected by the court. After the amount of the individual rescue credit is determined, the IDRA process may begin. IDRA is silent as to the exact timeframe and criteria for such processes. See generally IDRA.

73 Id. art. 70(1).
of all or part of the debtor's individual rescue credits.\textsuperscript{74}

The court will approve the repayment plan when: (1) the repayment plan is suitable\textsuperscript{75} to the provisions of the law; (2) the repayment plan is fair and viable; (3) payment of certain IDRA-related administrative fees and expenses prior to the approval of the debtor's repayment plan; and (4) the whole amount of the individual rescue credit estimated until the day of the approval of the court, is not less than the amount of debt that the debtor has to pay when seeking bankruptcy protection.\textsuperscript{76} In terms of debt repayment creditor priority, the IDRA Rescue Committee is first in line for any payments made by the debtor, followed by payments to relevant creditors.\textsuperscript{77}

While positive language in provision nine stipulates what criteria may be considered in terms of granting IDRA debtor protection, provision ten details in negative prose what criteria local courts may consider in terms of rejecting an IDRA applicant’s repayment plan.\textsuperscript{78} Specifically, the local court may terminate the IDRA process both before and after repayment plan approval. When terminating the IDRA process before the grant of judicial approval, the court may exercise discretion when the court cannot approve the repayment plan from the debtor because it appears to be written in purposefully ambiguous language, the debtor provides a false basis for court testimony, or fails to attend an IDRA-related judicial hearing.\textsuperscript{79} Even after the court’s

\textsuperscript{74} IDRA art. 72(1).

\textsuperscript{75} As currently written, IDRA is silent as to how the term “suitable” can be interpreted. See id.

\textsuperscript{76} Generally, under current South Korean bankruptcy law, a repayment schedule option exists. See Bankruptcy Law, supra note 42, arts. 40-42. In such a case, the amount of the individual rescue credit can be less than the owed debt amount following the bankruptcy filing, provided that all relevant creditors agree. Id. art. 74.

\textsuperscript{77} In this process, the debtor makes payments to the the IDRA-appointed rescue committee, which oversees the entire payout process. Thereafter, the rescue committee makes repayments to the debtor's creditors per the IDRA court-approved repayment plan. However, this rule does not apply when (1) no rescue committee exists; or (2) the repayment plan or the approval of the repayment plan is structured such that the rule does not apply. Id. art. 76.

\textsuperscript{78} Id. arts. 70-78 (relating to the factors in the consideration of the IDRA Repayment Plan). See also id. arts. 79-86 (relating to the factors in the decision to reject the IDRA Repayment Plan).

\textsuperscript{79} Id. art. 79.
approval of the debtor’s repayment plan, either by the official authority of the court or by the request of relevant creditors, the plan can still be abolished or amended. This may occur when it is evident that the debtor is not able to repay the debts that are provided for pursuant to the repayment plan, or the debtor fails to repay owed debts per the court-approved IDRA repayment plan as a direct result of the debtor’s illegal conduct, such as concealing property or income.\footnote{IDRA art. 80.}

Moreover, the court should give immunity to the debtor by the official authority of the court or by debtor request when the debtor completes the repayment plan. However, the court can give immunity to the debtor even though the debtor failed to complete the repayment due to reasons which the debtor could not control, or the entire amount of the individual rescue credit estimated (up to the court approval date) is not less than the amount of debt that the debtor has to pay when declaring bankruptcy, and the amendment of the repayment plan is deemed “impossible.”\footnote{IDRA is silent as to exactly what repayment plan would be deemed “impossible.” \textit{See generally id.}} The court cannot grant immunity to debtor applicants when they omit material individual rescue credits from the credit list in bad faith, or if they fail to observe their responsibilities and duties under IDRA.\footnote{In terms of penalties pursuant to IDRA Articles 87, 88, and 90, the local court has the ability to impose penalties when: (1) the debtor attempted to conceal the debtor’s property or decrease the burden of repayment for the purpose of harming related creditors (i.e., acts of fraud or willful misrepresentation); (2) the rescue committee or the supervisory committee engages in acts of bribery; or (3) the debtor’s property investigation takes place for purposes other than those expressly mandated pursuant to IDRA (i.e., the debtor’s property is investigated in bad faith outside the purview of IDRA). IDRA-related penalties can include both civil (KRW 50,000,000) and criminal (up to five years imprisonment) action. \textit{See id.} arts. 83, 87-90.}

III. Analysis

A. IDRA: Winners and Losers

Given the scope and mandate of IDRA and related debt relief programs covered in this paper, this section analyzes the potential winners and losers under the Act. In short, the potential winners
are qualified individual debtors who are effectively being "bailed out" of debt pursuant to the Act;\(^83\) foreign financial institutions that may be eager to purchase Korean won-denominated NPLs for future upside (addressed in the NPL table below); Korean institutions which will be able to receive injected public funds into their balance sheets vis-à-vis the Act; and from a political purview, the ruling South Korean Uri political party that helped to push the Act into passage on September 23, 2004. The potential losers are the Korean taxpayers who are effectively paying to bail

\(^83\) In practice, the number of debtors seeking credit card bailouts has increased since IDRA's introduction in September 2004, with the total number of applicants for IDRA and/or IDRA-type debt rescue programs at approximately 38,828 and the government reviewing an average of 4,000 applications every month for such programs. See Ji-young Kwan & Chung-un Cho, Over 20,000 Debtors Rescured in First Year of Court Bailout, KOREA HERALD ONLINE, Sept. 23, 2005, http://www.koreaherald.co.kr/SITE/data/html_dir/2005/09/23/200509230033.asp. Most IDRA applicants are between ages 40 and 49 (31.7 percent), with men comprising 60.2% of debtors, compared to 39.8 percent for women. Id. The cumulative average debt range is from 50 million to 100 million won, with "business failure" being given as the main reason for such individual bankruptcy cases. Id. And most directly relating to this paper, credit card bills represented the largest proportion of individual debt within such programs, representing about 59.8% of total individual average debt under such programs. Id.

At first blush, these numbers may appear to give IDRA some credibility in terms of resolving South Korea's credit card bankruptcy binge spending hangover. However, IDRA and its related programs failed to meet expectations for several reasons. First, before IDRA, the Supreme Court expected more than 10,000 defaulters per month to register, but the court received less than half of that number of applications in 2004, the first year of IDRA's implementation. Second, the numbers clearly demonstrate that debtors in default prefer to pursue private debt counseling programs, such as the Credit Counseling & Recovery Service (CCRS), which has received up to 20,000 applications, rather than the public court system linked to the IDRA program. Id. In terms of costs, CCRS is much less (requiring a fee of 50,000 won, or about $48) than IDRA's complex court-guided paperwork structure, which typically requires legal assistance amounting to an extra 1 to 2 million KRW ($1000 to $2000). Third, the IDRA process is both cumbersome and slow, often taking several months for the court to accept or reject an individual debtor's rescue plan. Id.

Moreover, if an individual consumer had overdue debts of 300,000 Korean won for three months, such person would be classified as a "credit delinquent" and thereafter be placed on a creditor "black list" of the financial institutions for one year. As IDRA effectively "rescues" (or bails out) a debtor from debt, the IDRA applicant may avoid the notorious title of "credit delinquent" and lower both the time spent and the likelihood of being placed on the "black list" used by Korean financial institutions. See Kim Dong-ho & Park Sung-ha, Credit Black List Goes: New Systems Come In, JOONGANG DAILY, Apr. 25, 2005, available at http://joongangdaily.joins.com/20050424/200504242241080279900090509052.html.
out individual credit card debtors and perhaps the reputation of the Korean financial infrastructure due to a "moral hazard" concern.  

Table 2. NPL Levels for Korea from 1998 to 2001

<table>
<thead>
<tr>
<th>Year</th>
<th>1998</th>
<th>1999</th>
<th>2000</th>
<th>2001</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trillions of Korean Won</td>
<td>118.0</td>
<td>88.0</td>
<td>64.6</td>
<td>39.1</td>
</tr>
</tbody>
</table>

B. Why Bail Out Credit Card Debtors?

This section discusses a balancing of such considerations as well as an analysis relating to the relevant arguments for and against bailing out individual credit card debtors pursuant to IDRA.

The Korean National Assembly originally passed IDRA with the view that the benefits of action outweighed the costs of inaction as it related to the Korean credit card crisis. In other words, Korean legislators feared that action could potentially be more detrimental than inaction from both an economic and social perspective.

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84 The issue of "moral hazard" can be evidenced in theory and practice in the South Korean case. For example, since late 2004, following IDRA's passage and various government official statements relating to individual debt assistance programs, debtor payments have dropped. For example, the Credit Recovery Committee reported that as of mid-December 2004, the number of debt adjustment applicants exceeded 1,000 per day. However, following Finance Minister Lee Hun-jai's January 7, 2005 statement that the ministry may exempt certain principal debts owed, the debt restructuring plan applicant levels dropped to 400 the next day. Further, an average of 4,000 consulting cases existed in November 2004 (following IDRA's September 2004 passage), a number that fell to 476 on January 8 (the day following Minister Lee's comments above). Taken from a big picture purview, this signals that debtors are waiting longer to repay debt obligations in the view that, "they will receive some sort of benefit" for possibly making payments at some point in the future rather than now. See Woon Dong-Hee, Debtors Abandon Payments, JOONGANG DAILY, Jan. 18, 2005, at 3, available at http://joongangdaily.joins.com/200501/17/200501172242201250990090509051.html.


86 Separate from the economic, the negative social ramifications includes increased reported cases of suicide, insurance fraud, and prostitution. See Larkin, supra note 10.

87 What may have been a primary driver behind such debt relief actions was the fear that inaction could result in a financial crisis similar to that in 1997-98. To work backwards, the sheer size and scope of individual credit card debt that existed in Korea,
The aggregate effect of the large number of individual credit card defaulters could place an extreme amount of stress upon the Korean financial infrastructure. Thus, if such lending institutions began to fail, as in the case of Korea’s former largest credit card company LG Card, it could lead to a crisis in financial sector confidence. Because lending institutions are critical to the viability of the Korean economy, which is largely driven by large conglomerate growth known as chaebol, the fall of one lending especially after 2002, provide a basis for an argument regarding possible financial crisis. Such credit card debt is effectively a loan with high interest rates, usually ranging from 20 to 25%, that should be repaid to the lending institution, which is usually a domestic credit card company or financial institution. Thus, if such debt is not repaid, a net loss equal to the expected original loan amount plus interest will result.

If only principal is repaid, then, the transaction should be net neutral, whereby neither an upside nor a downside is realized. However, if neither principal (in part or full) nor interest are fully repaid, then a net loss exists within the balance sheet of the lending institution. For example, if lending institution A lends $100 equivalent to lendee B with a twenty percent interest rate charge, then lendor expects $100 (principal only) to be $120 (principal plus interest) on its asset side of the balance sheet. Anything less will result in lost expected revenue, which hurts the financial viability of lending institution A.

88 See Seriousness of Household Debts Top Bureaucrats Appear Too Optimistic, KOREA TIMES, Nov. 7, 2003, at 3 (“The high risk of family credit default means that the nation’s economy is still ailing amid ever-decreasing corporate investment, rising unemployment, intensifying labor disputes, and rampant real estate speculation.”).

89 The IMF argued that South Korea’s economic rebound has been hampered by a host of problems, including huge debts incurred by credit card firms. The IMF also pointed out a downside risk for the Korean economy that the consumption could be weighed down by heavy household debt. Moreover, the IMF warned of the risk of moral hazard relating to credit delinquencies due to the credit card crisis. See Cho Hyoung-kwon, IMF Warns of Moral Hazard of Credit Delinquents, KOREA TIMES, May 30, 2004, http://search.hankooki.com/times/times_view.php?term=imf++&path=hankooki3/times/l page/biz/200405/kt2004053015303611870.htm&media=kt.

90 In April 2004, Samsung Electronics spent nearly 600 billion KRW to bail out its affiliate and Korea’s largest credit card issuer, Samsung Card Co. Thereafter, Samsung Card Co. stated in January 2005 that it would raise 1.2 trillion KRW ($1.2 billion) selling shares to its group affiliate, Samsung Electronics. Altogether, Samsung Electronics’ actions represented two notable bailouts in one year. The funding structure is devised such that Samsung Card will sell 240 million new shares at 5,000 KRW per share in March 2005. Individuals and Samsung Card employees own a combined 11.7 percent stake in Samsung Card. See $1.2 Billion Bailout for Card Firm, JOONGANG DAILY, Jan. 29, 2005, at 3, http://joongangdaily.joins.com/200501/28/200501282230062079900090509052.html.

91 Major credit card companies in Korea include Samsung Card Co., LG Card Co., Shinhan Card Co., and BC Card Co. Among these four, the first two credit card
institution could lead to the fall of other lending institutions. This scenario would then ultimately lead to a 1929 U.S. Great Depression-style run on banks and a drying up of all credit onshore in Korea. This would stifle the Korean economy and potentially plunge the eleventh largest global economy back into another financial crisis.\textsuperscript{92} Thus, enacting IDRA legislation was a reactionary attempt to send a clear message to the markets that the government recognized this potential risk and that the language embedded in IDRA would mitigate the potential of similar events occurring and in turn restore confidence to the onshore markets.

Government intervention opponents have several counter-arguments. The first argument is that bailing out individual credit card holders creates "moral hazard," which effectively creates an incentive for individuals to spend negligently or recklessly again in the future with little or no fear of the consequences related to debtor default because they will expect to be bailed out again by the government at the taxpayers' expense.\textsuperscript{93} The second argument is that IDRA may represent an inefficient use of taxpayer money. The rationale is that taxpayer revenues should be used for things such as pension funds, healthcare, and crime prevention, rather than subsidizing the spending habits of Korean consumers. The third argument is that IDRA may send a dangerous signal to the markets that the Korean government is in the business of acting as a constant market surveyor, ready to act at any given moment if it perceives that designated price levels have somehow crossed a

\textsuperscript{92} See Borensztein & Lee, supra note 18, at 5-9 (discussing the monetary causes of the South Korean "credit crunch"); see generally Joseph E. Stiglitz & Andrew Murray Weiss, Credit Rationing in Markets with Imperfect Information, 71 AM. ECON. REV. 393 (1981) (discussing a slightly more theoretical purview on credit rationing effects).

\textsuperscript{93} As a matter of practice rather than theory, government action to relieve the debts of individuals caused credit delinquents to expend less effort to pay what they owe. After the government announced on January 7, 2005, that the Ministry of Finance and Economy would look into exempting the principal debts, debts adjustment consulting requests to the Credit Recovery Committee fell from average 4,000 a day in November 2004 to 476 on January 8, 2005. See Debtors Abandon Payments, JOONGANG DAILY, Jan. 18, 2005, at 3, http://joongangdaily.joins.com/200501/17/200501172242012509900090509051.html.
Investors enter into every transaction on the basis of caveat emptor. However, if the government signals that it is in the business of acting as a market commentator—holding up red, yellow, and green lights to signals indicate if, when, and how its populace should spend their money—then the country’s public policy is to create a nation dependent on the government, rather than on individuals themselves. Related risks also exist, which include inaccuracies of information, lags in receiving information, and lack of needed information in relation to setting forth such legislation. In short, the public policy message is that individual debtors need not evaluate relevant risks relating to their personal expenditures, because the government will do the analysis for them and bail them out when deemed necessary.

An additional pro-IDRA argument stems from the traditional Keynesian economic perspective and recommends that government should play a very active hands-on management role in relation to the public. Proponents argue this would help mitigate actual or threatened market failures as well as instill public confidence that a watchful force exists to protect consumers against financial turbulence and/or crisis.

The main problem in this scenario is that such an instant price deflation towards a certain designated level would be chosen not by the markets, as in most developed nations, but by government bureaucrats.

“Let the buyer beware.”

One of the well-known examples on incomplete information is “the parable of separate islands.” This concept was first introduced by Edmund S. Phelps in The Microeconomic Foundations of Employment and Inflation (1970). Robert Lucas used this parable to explain the concept of incomplete information. In his explanation Lucas made up the economy with a single business unit based on a separate island, such that no one knows what happens on other separate islands. With this lack of information, the investor based on the separate island can make incorrect investment decisions. Therefore, incomplete information may increase the risk much more than expected. See Martin Neil Baily & Philip Friedman, Macroeconomics, Financial Markets, and the International Sector 468 (2d ed. 1995).

Mark Blaug, Economic Theory in Retrospect 671 (5th ed. 1997). The fundamental lesson of Keynesian economics is that the automatic adjustment mechanism of competition cannot be relied upon to achieve such policy objectives as full employment and price stability. The main message of Keynesian economists is that the automatic adjustment process of the market is too unreliable to serve as a practical basis for a full-employment policy. Id.

However, after the 1997 Korean economic crisis, some academics blamed the government-led economic development as the main reason for the economic crisis,
The threshold issue here is what role the government should play to assist the general public. In other words, what areas should an effective and highly efficient government address to help its people? Assuming the government can provide some positive value-added services like education, crime prevention, and welfare reduction, it can be a highly effective means by which to reach certain objectives for the overall societal good.

One argument for a Keynesian type approach as it relates to the issue at hand is that most, if not all, of the credit card users involved in the Korean credit card crisis are domestic and have a relatively shorter history of personal credit card expenditure. Therefore, the Korean government must step in to provide market signals. Another conceivable argument is that the 1997-98 Asian financial crisis and the Korean credit card crisis demonstrated that markets left unattended could cause immense damage to the welfare of people. Such was the case for the average Korean when individual purchasing power parity dropped dramatically as the Korean won depreciated to unprecedented low levels against the U.S. dollar in late 1997-98.

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99 This is in comparison to the separate issue of whether the government should play any role at all to help assist the general public.

100 The notable exception would be those who hold true to fundamental libertarian beliefs that less government, or even no government, is a better government since government tends to misallocate consumer resources, thus causing more aggregate good than harm.


102 See Rebecca Harding, One Semester Economics: An Introduction for Business and Management Students, 190-91, Blackwell Publishers (February 1999)

103 Personal investors are also referred to as “retail investors.” See Frank J. Fabozzi and Franco Modigliani, Capital Markets: Institutions and Instruments, 263-64 (3d ed. 2002). Fabozzi notes that three distinctions exist between retail and institutional investors. First, transaction size of retail investors is much less relative to institutional investors. Second, individual investors tend to pay more in transaction commissions than institutional investors. Third, retail investors use stockbrokers, while institutional investors use institutional broker/deal desks to execute orders. Id.

104 In late December 1997-98, the Korean won to U.S. Dollar (USD) exchange rate was nearly 2000 KRW/USD. Uk & Sunwoong, supra note 98, at 493. Given that the
Even assuming that a relatively short credit card usage history exists with South Korean consumers, which may or may not be tied to an increased propensity for reckless spending, the underlying principle should exist that such consumers are free to choose what they purchase. Moreover, consumers should bear full responsibility for their fiscal behavior, whether it is prudent or reckless. Similarly, who should be held responsible if IDRA does not have the intended effect of creating a "soft landing" for uncontrolled credit card debt? If the answer is that the fault still lies on the individual spender, per the principle of *caveat emptor*, then little rationale exists for the Act in the first place, because the policy would merely shift massive credit card debt from one class (the original credit card debtors) to another class (the taxpayers).

A similar pro-interventionist argument is that the 1997-98 Asian financial crisis is evidence that the public, including the original credit card debtors, needs to be protected from the markets through government protective legislation. Perhaps then useful government action could occur by focusing on the effects of another possible financial crisis rather than the perceived credit card crisis itself. This would instill investor confidence without market interference. Furthermore, less risk exists that the proposed legislation may over or undershoot its objectives, triggering a potential financial negative blip or a potential mass sell-off in the Korean financial markets in a more extreme case. Thus, the focus should instead be on improving credit history checks on individuals applying for credit cards and improving risk management of credit lending institutions.

A separate and distinguishable argument against market intervention is that the Act may not have its intended effect in the current benchmark stands at about 1200KRW/USD, this means an approximate two-thirds drop in purchasing power parity within a six-month period. Federal Bank of New York website, at http://www.ny.frb.org/markets/fxrates/historical/fx.cfn. See generally RONALD W. MELICHER & EDGAR A. NORTON FINANCE INTRODUCTION TO INSTITUTIONS, INVESTMENTS, AND MANAGEMENT 164-65 (2000) (discussing foreign exchange issues generally).

However, market intervention by the Korean government is considered a factor that has negative effects on the Korean economy. The IMF stated that "the Korean economy is better guided by market principles thanks to reduced government intervention in recent years." See Sim Sung-tae, IMF Sees Rebound in Korean Economy by Early Next Year, KOREA HERALD, Oct. 29, 2004, available at http://www.koreaherald.co.kr/archives.
markets.\textsuperscript{106} The basic rationale is that market intervention is a risky business. In addition to the risks already mentioned, such as lags, undershooting, and overshooting of stated objectives, highly respected economists, such as Ronald Coase\textsuperscript{107} and Alan Greenspan,\textsuperscript{108} have advocated strong deference to the markets and postulated alternatives to government enforced taxation.\textsuperscript{109}

\textbf{C. Relevant Risks}

In short, several broad risks exist with implementing the Act, in addition to several tangential sub-risks. The first broad risk is that the Act could send a dangerous signal to the markets that the Korean government is in the business of acting as constant market surveyor ready to strike when it perceives that designated debt levels have crossed the fine line from not enough consumer debt spending to too much consumer debt spending.\textsuperscript{110}

Investors enter into every transaction on the basis of \textit{caveat}

\begin{footnotesize}
\textsuperscript{106} See generally IDRA (stating the objectives of IDRA).

\textsuperscript{107} Ronald Coase won the 1991 Nobel Prize in Economics “for his discovery and clarification of the significance of transaction costs and property rights for the institutional structure and functioning of the economy.” Coase served as faculty for the University of Chicago, was editor of the University of Chicago’s \textit{Journal of Law and Economics}, and received a B.Sc. (Econ) from the London School of Economics. http://nobelprize.org/economics/laureates/1991/.

\textsuperscript{108} Regarding Greenspan’s view on regulation and regulators, the U.S. Federal Chairman is quoted as saying:

Super-regulators tend to overregulate and make unbelievable mistakes. I would suspect that I would know most of the people who would be in charge of making the types of judgments that would be required for that, and I will tell you that they don’t have a clue as to what to do. I would much prefer to allow very complex market forces to tell us.


\textsuperscript{109} The alternative approach by Ronald Coase is known as the “property rights” approach, which is an alternative approach to the more standard “tax or subsidy” approach posited by British economist, A.C. Pigou. The “property rights” approach suggests that creating new private sector institutions is better than using taxes or subsidies. See \textit{Thomas A. Pugel, International Economics} 189 (12th ed.).

Moreover, during a speech for a central bank symposium in Jackson Hole, Wyoming, Greenspan was also quoted as saying, “I find it difficult to conceive of an adequate degree of central bank certainty to justify the scale of pre-emptive tightening that would likely be necessary to neutralise a bubble.” \textit{Greenspan Defends Fed Actions, BBC News}, Aug. 30, 2002, http://news.bbc.co.uk/1/hi/business/2226174.stm.

\textsuperscript{110} See \textit{supra} note 94.
\end{footnotesize}
emptor. If the government sends out signals that it is in the business of acting as market commentator, this will lead to the nation’s becoming dependent on the government and in the process undermine the importance of investor self-reliance. Related risks exist as well, including inaccuracies of information, lags in receiving information, and lack of needed information. In short, the practical effect would be that the Act would signal to individual investors that they need not evaluate relevant spending risks, because the government will bail them out if the situation is dire enough to warrant intervention. In other words, the more reckless the spending behavior, the higher the likelihood of being bailed out. Such behavior strikes at the core of how the Act could promote moral hazard to the detriment of both the South Korean and international financial markets.

In comparison, the U.S. government has, with rare exception, purposely chosen not to send out clear market signals that would have the net effect of explicit guidance relating to personal investment decisions. Instead, Federal Reserve chairman Alan Greenspan opted to focus Federal Reserve policy towards the spending bubble’s “consequences” rather than on the spending bubble itself. From a broad policy standpoint, the Federal Reserve’s policy instilled confidence that the markets, not the U.S. government, would dictate prices in the short and long

111 See supra note 96.

112 Government-led Korean economic development during the 1970s also caused moral hazard problems. By the early 1970s, government-supported industrial groups (mostly large conglomerates) were highly leveraged with loan guarantees through the banks owned by the government. As the government became a partner responsible for their failure as well as success, this bailout induced excessive risk taking. See Yung Chul Park, Development Lessons from Asia: The Role of Government in South Korea and Taiwan, 80 AM. ECON. REV. 118 (1990).

113 One example of such a rare exception occurred in the late 1980s with the savings and loan crisis in which the U.S. government created the Resolution Trust Corporation (RTC) as a mechanism to assist the many troubled banking institutions involved. See generally Mark Cassell, How Governments Privatize the Politics of Divestment in the United States and Germany 3 (2002).

114 For example, in the late 1990s, Chairman Alan Greenspan of the U.S. Federal Reserve Board elected not to implement a tight monetary policy (i.e., to raise real interest rates) in an effort to burst the apparent spending bubble.

115 This type of non-interventionist policy helped to fuel the largest post-war economic expansion in U.S. history and created unprecedented wealth creation for millions of Americans. See Greenspan Defends Fed Actions, supra note 109.
The second broad risk is that, even assuming a debt-spending hangover scenario, what test should the government apply to intervene in the markets? Ideally, such a test would be uniform, clear, and transparent in order to bolster investor confidence. As it stands now, however, no statement has been given to the general public regarding the exact methodology as to when, how, and to what extent the government will apply any further related legislation. Such inaction does not reflect uniformity, clarity, or transparency. Instead, such inaction will signal to the markets that the socio-political, economic, and legal landscape in South Korea has changed drastically from a relatively transparent investment environment based on open and free market principles back to the pre-1997-98 crony capitalistic days of old. This would result in a reversion back to a system in which the government and the markets could theoretically at times be indistinguishable, in which the government could heavily influence macroeconomic growth, and in which the government rather than the markets would dictate investment behavior.

The third broad risk is that IDRA may prove too successful in that it runs the risk of overreaching its stated objectives. At first blush, this notion may seem counter-intuitive. However, looking at recent Korean economic history, a clear reminder of this likely


117 For a specific example, the new bill on debt reorganization and bankruptcy, which would combine the mishmash of existing bankruptcy laws, was held up in the National Assembly, without any guarantee it would eventually pass. See Jung-wook Kim & So-young Moon, Bankruptcy Bill Held Up: Disputes, Complexity Hinder Passage, JOONGANG DAILY, Feb. 17, 2005, available at http://joongangdaily.joins.com/200502/16/200502162228271539900090509051.html.

118 For a broad overview on the influential role of the state within the South Korean economy, see generally, Tony F. Yu, Entrepreneurial State: The Role of Government in the Economic Development of the Asian Newly Industrialized Economies, 15 DEV. POL’Y REV. 47 (1997). On the contrary, for an academic survey that discusses the limitation of the state’s role within the South Korean economy, see generally, Jong-Chan Rhee, The State and Industry in South Korea; The Limits of the Authoritarian State (1994).

119 Id.
outcome arises. Shortly after the 1997-98 Crisis in Korea,\textsuperscript{120} the government initiated several purposeful measures directly aimed at spurring consumer lending.\textsuperscript{121} The government aggressively promoted credit card usage in South Korea to spur domestic economic spending and therefore macroeconomic growth.\textsuperscript{122}

Less than ten years after the 1997-98 Crisis, the Korean economy is in trouble again. The population is heavily debt-ridden,\textsuperscript{123} not due to any run on the official Korean won, or because the government’s national economic recovery plan to increase consumer lending failed to be effective, but because the plan was overly effective. Specifically, Korean consumers had instant access to a large pool of funds in the form of credit availability, many for the first time. Consumers with little experience, and apparently little fiscal discipline, began to spend money that they could not repay in the short or perceivable long term.\textsuperscript{124}

On the creditor side, Korean banks as per the government’s post-1997-98 government initiatives began to offer extended lines of credit in the forms of “vanilla loans” or credit cards to often undeserving consumers\textsuperscript{125} with little or no credit risk management


\textsuperscript{121} Larkin, supra note 10.

\textsuperscript{122} See id.

\textsuperscript{123} See supra note 21. This in turn led to the currently worrisome high levels of personal indebtedness and bankruptcies. This reality ran counter to the policy assumption that the Confucian ideals of honor and discipline that many believe often epitomize Korean society would prevent payment defaults. As it turned out, this assumption was simply wrong.

\textsuperscript{124} In a 2003 survey by the Bank of Korea (“BOK”) of nearly 780 bank customers, credit card payments were the most popular form of payment method. Further, BOK economist Ji-ho Lee noted that South Koreans avoided using cash advance services in an effort to “control spending.” See Jae-kyoung Kim, South Korea’s Credit Card Headache, BBC NEWS, Feb. 3, 2003, http://news.bbc.co.uk/2/hi/business/2719929.stm.

\textsuperscript{125} One reason for this is that current Korean law does not readily allow creditors to gain access to individual credit history; further, no truly comprehensive and centralized credit-reporting agency currently exists in Korea similar to such agencies like TRW in the United States. A very well publicized example of such problems on the creditor side can be seen with LG Card, which is in the process of seeking reorganization or bankruptcy.

LG Card, which has more than a million customers, is teetering on the brink of a liquidity crisis and is expected to suffer a shortage of about 400 billion KRW in cash
institutionalization by such credit-lending firms. \(^{126}\) Similarly, IDRA could easily overshoot its stated objectives and cause a greater than expected drop in consumer spending \(^{127}\) by Korean consumers. This is the very same scenario as in the period immediately following the 1997-98 Crisis and the very opposite scenario following the government’s 1999 push for consumers to spend on credit.

The fourth broad risk is that sudden government intervention into the credit card markets could deter investors in investments within related, or even seemingly unrelated, domestic financial markets. One example of this risk is the negative sentiment that many global investors could have for bailouts of large credit card companies, such as LG Credit Card. \(^{128}\) Such actions could affect the equities markets, bond markets (most notably high-profile corporate debt), and the foreign exchange (FX) markets. \(^{129}\)

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\(^{126}\) South Korean household debt includes 449.4 trillion won of loans from banks and other financial institutions and 25.2 trillion won in cash advances and credit card spending, according to the central bank. *Korea Posts Sharp Gain in Household Debt, INT’L HERALD TRIB.,* Mar. 9, 2005, at B2.


\(^{128}\) LG Card may likely post 360 billion KRW in net losses during the fourth quarter of the year and its 2003 losses are estimated to total 1.38 trillion KRW. The securities firm said would be difficult for LG Card to get back into the black next year, predicting it will lose 411 billion KRW in 2004. The credit card company's restructuring package will accelerate the reduction of operating expenses and huge loan write-off charges, Goldman said, “The kind of practice will be harmful to its performance.” *See Analysts Divided Over LG Cards Future, KOREA TIMES, Dec. 2, 2003, at 14.*

Goldman Sachs also issued a negative investment opinion on LG Card. "Creditors’ demand that LG Group should yield its management rights in the card unit is expanding uncertainties in the market," it said. *Id.* Morgan Stanley and Credit Suisse First Boston (CSFB) have also downgraded their investment opinions on LG Card, casting doubts over the card issuer's recovery. Standard & Poor’s noted that LG Card needs as much as 3 trillion won in fresh capital to normalize its management while its creditor banks have promised only 2 trillion won in loans. But several domestic securities firms, including Hyundai Securities, forecast that LG Card will be able to make a profit from the third quarter of 2004. *Id.*

\(^{129}\) There are two additional considerations in the analysis. First, the broad risks
IV. Conclusion

The negative externalities of the Korean credit card spending binge and subsequent hangover have recently been met with strong market interventionist counter-action by the Korean government in the form of the IDRA. IDRA may benefit the Korean economy through the massive influx of taxpayer capital reallocated to bailout credit card debtors so as to avoid a rapidly-downward spiraling financial infrastructure that could potentially mirror the 1997-98 Crisis. The possible downside is that IDRA may lead to moral hazard whereby consumers will be given an incentive, or perhaps more aptly put, little disincentive to not spend recklessly going forward. Instead, valuable taxpayer revenue could be used for potentially more beneficial purposes if allocated elsewhere.

Despite apparent merits of IDRA, the best solution to a outlined above should not be assumed to be mutually exclusive. That is, one or more of the broad risks outlined may occur simultaneously or near-simultaneously. When investor confidence weakens, a panic mentality can quickly engulf the markets as a whole, and may seemingly override "rational" behavioral tendencies in the short run.

The second consideration is that the 1999 government policy to increase credit card usage would have been an effective policy but for the existence of the critical systemic problem of implementing proper credit risk management within South Korea's credit-lending institutions. By implementing such risk management, the credit card crisis would not have arisen to the level that exists today and the Act would have been unnecessary, thus saving the taxpayers millions of Korean won and allowing the government to spend such taxpayer revenue in more direct programs to spur the economy. Even now, nearly any Korean resident can receive a credit card based on minimal credit history verification. From the credit-lending institution's view, net benefits outweigh costs based on the rationale that the potential upside (approximately twenty percent interest) will outweigh the potential costs of payment default in the long run. From the consumer's standpoint, the incentive to spend money that the individual may or may not have in the short term outweighs the potential risk of not being able to pay when payment is due. Further, with IDRA's passage, that such spending may be subsidized in full or in part by the government.

Although IDRA arguably has its merits, one additional obstacle that may inhibit its effectiveness is that too many programs similar to it currently exist in South Korea. For example, in addition to IDRA, other debt relief programs such as Bad Bank, CCRS, and Credit Bank, exist that overlap, in part, in terms of debtor relief protection. Such overlapping coverage may lead to confusion on the part of individual debtors seeking a solution to their credit card debt hangover. As a potential solution, legislative efforts should be made to consolidate and wrap all related programs, including IDRA, under one legislative umbrella. By doing this, clarity will be given to individual debtors who are seeking debt relief, but are unaware of such programs, due to the myriad of programs that already exist under varying mandates and auspices.
situation in which clear signals of market failure do not yet exist is not massive government intervention that will potentially trigger moral hazard and thus more reckless debt spending. Rather, market-interventionist legislation should not be implemented due to the relatively greater downsides of spurring moral hazard relative to the potential upsides of bailing out reckless individual debtors. At the same time, strong efforts should be made to implement sound long-term risk management so that lines of credit are given only to those individuals who have a relatively low probability of defaulting on payment. By doing this, South Korea’s financial infrastructure can become both more flexible and crisis-resistant. This will signal to other global financial players that market fundamentals in Korea are taken seriously and are predominantly left unfettered, both in theory and in practice. Such action may also minimize the probability of similar crises occurring in the foreseeable future, which would benefit both the South Korean and international financial markets.
Appendix:
IDRA Timeframe Graph

Application
Repayment Plan
(Within 14 Days After Application)

- Dismissal
  (No Application within 5 Years)

- Rescue Committee Appointment

- Court's Execution Rule
  (Within 1 Month After Application)

  Objection to the IDRA Credits
  (2 weeks – 2 months from the Execution Rule)

  - Application for Confirming IDRA Credits Trial

  - Objection to the Repayment Plan

  - Court's Rule of Immunity
    (Ban another application within 10 years)

  - Conduct the Repayment Plan
    (Maximum 8 years)

  - Application for Immunity

- Application for withdrawal of the Immunity Rule