



Newsletter No. 149 (EN)

**Securing and Assigning Claims
in Hong Kong**

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I. Introduction

Security in the form of a charge over certain assets, such as receivables or “book debt” for instance, is of significant importance for international trade and loan transactions. In order for a creditor to minimize the risk of default by the debtor and obtain assurance that only secured rather than unsecured debts are held, the creditor must take several steps to reserve a preferential rank over other creditors.

This newsletter will discuss the assignment of receivables, in German called “Zession”, and what is required for a registration in Hong Kong to reserve a preferential rank in case of insolvency of the debtor. First, the relevant terms will be defined and then described in further detail in context of Hong Kong legislation. The final part of the newsletter will explain what is required to register a blanket assignment of receivables in Hong Kong.

II. Definitions

1. Assignment of receivables

Assignments of receivables are regulated in Germany in § 398 of the Civil Law Code (Bürgerliche Gesetzbuch, **BGB**). The assignment of receivables is a common security for loans. The legal relationship usually consists of a party granting security, the grantor (e.g. person or entity taking a loan) who assigns receivables (e.g. receivables for goods supplied) to a secured party (e.g. entity or person giving a loan). The

assignment of receivables makes the secured party the creditor of the receivables.

2. Types of assignment of receivables

Assignments generally can be distinguished into single assignment (“Einzelzession”), overall assignment (“Mantelzession”) and blanket assignment (“Globalzession”). The blanket assignment is also sometimes referred to as global assignment. The blanket assignment is differentiated from the single assignment and overall assignment insofar, as the blanket assignment assigns all current and future receivables in favour of the secured person or entity. In contrast, a single assignment only assigns a specific receivable while an overall assignment usually assigns only receivables that existed at a certain point in time. Sometimes, overall assignments are accompanied with an arrangement that all future receivables will be assigned through additional overall assignments. However, since such arrangement is very similar to the blanket assignment, usually in such circumstances the parties agree to proceed with a blanket assignment.

3. Absolute and undisclosed assignments

Independent of whether current or future receivables are assigned, or whether one specific receivable or a group of receivables are assigned, the assignment can be either absolute or undisclosed. With an undisclosed assignment the secured party decides not to disclose the

assignment to the third-party debtor, who continues to settle the receivables by payment to the grantor. With an absolute assignment, the assignment is disclosed to the third-party debtor and the debtor is only able to settle the receivables with discharging effect by payment to the secured party, not the grantor.

In Hong Kong, no requirement exists that for an absolute assignment the third-party debtor has to only settle the receivables with discharging effect by payment to the secured party. It is however common, if the secured party is a bank, that a special account is opened, which is used by the third-party debtor to settle the receivables. The money held in these accounts can only be accessed or transferred with the permission of the secured party (usually the bank).

III. Assignment of receivables in Hong Kong

Assignments of receivables such as the blanket assignment are generally possible and are regulated under the broader term “charges”. In Hong Kong and many other common law jurisdictions a distinction is made between “fixed” and “floating” charges.

A fixed charge is a charge over assets which are specified (e.g. a machine or a specific receivable). With the effect of the assignment that the grantor (“chargor”) is no longer free to deal with those assets. In contrast, a floating charge is an assignment of a type or group of assets (e.g. inventory, goods in a warehouse, undefined number of receivables, or the general undertaking or property of the company) which are not specifically identifiable and the chargor is able to continue to use the assets (processing and selling goods, collect receivables, etc.) while the secured person (“chargee”) retains certain rights in case of insolvency.

Charges are generally available to sole-traders as security instrument in business transactions while in practice “floating charges” are primarily only granted by companies. The Companies Ordinance Chap. 622 (CO) does not define fixed and floating charges and so its definition is based on case law in alignment with common law principles. Assignments of receivables have generally been categorised as fixed charges. However, the conditions of what constitutes a fixed charge have changed significantly after the decisions in *Agnew v IRC* [2001] UKPC 28 and *National Westminster Bank Ltd v Spectrum Plus Ltd* [2004] 3 WLR 503.

A blanket assignment has the characteristic that the underlying assets, the receivables, constantly change (old receivables are settled, and new ones are added). Therefore, it is generally accepted that the blanket assignment is not treated like a fixed charge, but as a floating charge. The classification is not up to the involved parties, but is determined by the relevant judge on a case by case basis (common law).

In case the grantor would like to classify the blanket assignment as a fixed charge, it would be necessary to open a bank account, which is used for all settlement payments of the relevant receivables, and the grantor is unable to access or transfer any amounts from this account without the prior permission of the secured party. Since such arrangement is rather unpractical, it can be noted that the blanket assignment will most likely be characterised as a floating charge. With a floating charge, the secured party has only access to the charged receivables, when they “concretise”. A floating charge will concretise if:

- the company winds-up;
- commences insolvency proceedings;
- ceases its business;
- any agreed terms of the charge.

The disadvantage of a floating charge is that the secured party is ranked after creditors that are in the possession of a fixed charge.

IV. Registration

To ensure that a party providing a loan becomes a secured creditor in comparison to an unsecured creditor, it is necessary that the charge is valid and registered. If an assignment of receivables is not registered, it is invalid towards the liquidator and other creditors of the company. The registration of charges is regulated in Section 333 ff of the CO.

1. Registration

Section 334 of the CO includes a list of charges that must be registered (independent whether they are considered fixed or floating charges). Among the listed charges are receivables.

2. Registration period

Section 335 of the CO requires that a charge is registered within a month after its creation.

3. Registry keeping

Pursuant to Section 352 of the CO, a company must keep a registry at its registered office. In case that the registry is not kept at the registered office, the Registrar of Companies must be informed. The registry must be kept in Hong Kong.

4. Registration by the company or its creditors

In theory it is the duty of the company to register the charge. However, it is common that the registration is done by the creditor.

V. Summary

A blanket assignment of receivables is possible in Hong Kong and must be registered at the Companies Registry as charge. A registration is also possible (recommended) by the creditor. A blanket assignment of receivables is most likely categorised as a floating charge, which has the disadvantage that in case of insolvency, the secured party's settlement of claims will be ranked after the creditors of fixed charges.

*We believe that the information provided was helpful for you.
If you have any further questions, please do not hesitate to contact:*

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