Cross-Border Assignments of Receivables
— Conflict of Laws in Secured Transactions —

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I. Introduction

- **Cross-border Transactions in the Globalized World**
  - Global Capital Market
  - Importance of Secured Transactions & Assignments of Receivables
  - Assignment: Outright Transfer or Creation of Security Rights

- **Conflict of Laws Dimension**
  - Triangular Relationship: Creditor (Assignor/Grantor) + Assignee + Debtor
  - Proprietary Effects: Third-Party Effectiveness & Priority
II. Conflicts Rules on Assignment of Receivables

- (1) Assignment Contract between Creditor (C) (Assignor/Grantor) and Assignee (A): Law governing the Assignment Contract
- (2) Assignability of the Claim: Law governing the claim
- (3) A’s Rights against D + Discharge of D’s Obligations: Law governing the claim

Art. 28-29 UN Assignment Convention (2001)
Art. 84 & 96 UNCITRAL Model Law (2016) (*creation)
Art. 14 Rome I (EU); Art. 23 Japanese PIL Act (Cf.) Art. 145 Swiss PIL Act (party autonomy)
III. Possible Solutions for Proprietary Effects

- Third-Party Effectiveness & Priority between A and competing claimants
- Third parties: C’s (secured) creditor, second Assignee etc. + insolvency administrator
1. Debtor’s Domicile

- France, Sweden, Czech Republic; **Art. 12 of the 1898 Jap. PIL Act**
- Focal point of the assignment (creditors may change, but not the debtor)
- Protection of the debtor; consent of/notification to the debtor
- (fictive) Location of the claim (lex situs)

**Drawbacks**
- Change of creditors: destiny of the claim = Law governing the claim should decide
- Debtor’s domicile may be unascertainable or change
- No sufficient protection for third parties
- Supreme Court 20 April 1978: (Priority against a secured creditor) Law governing the claim

**Reform in Japan** → **2006 PIL Act**
2. Party Autonomy

- Switzerland (Art. 145 (1) PIL Act): Party Autonomy; in relation to the debtor, consent is required; in the absence of choice of law: Law governing the claim
- Effective Law Determination and Application (incl. bulk assignment)

**Drawbacks**
- Relativity of Effects (if different laws are chosen; the debtor’s partial consent)
- Complication as to priority issues

Cf. Law governing the Assignment Contract (e.g., Netherlands): Relativity; defrauding C’s creditors; no protection of the debtor (*with limitations, suggested in the EU)*
3. Law Governing the Claim

- Spain, Poland, Germany, UK, Italy; Australia, Canada, Russia: traditional solution in many jurisdictions
- „Destiny of the claim“
- Clarity and Stability
- Protection of the debtor

**Drawbacks**

- Multiple claims governed by different laws; Future claims
- Uncertainty or change of the applicable law (third parties’ rights are reserved)
- Difficulty for bulk assignments (securitization; factoring contracts)

Cf. Specific conflicts rule for bulk assignments? Difficulty of relativity (if the claim is subject to both a single and bulk assignment)
4. Location of Creditor (Assignor/Grantor)

- **Art. 22 and 30 UN Assignment Convention (2001) + Art. 86 Model Law (2016); also Belgium (Art. 77 (3) PIL Act) = Location of Assignor/Grantor (central administration)**
- Easy to ascertain, also for future claims
- Effective for bulk assignments
- "Registration system" in the Jap. substantive law

**Drawbacks**
- Characterization & Delineation (different laws govern effects against debtor and priority)
- Assignments involving multiple creditors (e.g. inseparable claims)
- Change of the creditor’s location
- No practical need (banking sector); assignees check the law governing the claim in any case

**Art. 23 of the 2006 PIL Act: Law governing the claim: viable arguments?**
UN Assignment Convention (2001) and UNCITRAL Model Law (2016)

Location of Assignor/Grantor (central administration)

*Additional Advantages

- Unitary Approach for all assets
- Registration System
- Adjustment for certain claims by establishing exceptions?
*Some exceptions*

Bank accounts (Art. 97 Model Law)

Certain types of assets in registration (Art. 98)

Non-intermediated securities (Art. 100)
V. Conclusion

Future developments
- New types of transactions
- Practical need
- Developments in other jurisdictions, particularly in the EU

Possibility to Revisit the Existing Rules