

Security interests: pledges, assignments and fiduciary arrangements

*Dr Alexander Ressos, TEP
Attorney-at-Law (Switzerland), Solicitor (Hong Kong),
Solicitor (England & Wales)*

Transactional financing rests on security interests whose legal soundness determines the credit. The bank that finances a cargo obtains a pledge over the goods, embodied in the delivery of the order bill of lading, a document of title whose possession confers the right to dispose of the goods. It further obtains an assignment of the receivables arising from the resale, so that the payment by the final buyer accrues to it, and sometimes a pledge over bank accounts and hedging contracts.¹ These security interests are governed by Swiss law where the bank and the trader are in Geneva, but the goods, the vessel, the buyer and the accounts are abroad. Enforcing them in the event of default presupposes that Swiss security interests are recognised by foreign legal systems, a complex question that the commodity lawyers described in Part G deal with every day.

The frauds of 2020 revealed the fragility of these security interests when the documents are forged or duplicated: a bill of lading presented to two banks, a stock pledged several times over, a receivable assigned to several financiers. The banks responded by demanding original bills of lading, having inventories verified by independent inspectors, cross-checking information among financiers and exploring the electronic document registers described in Part K. Because Swiss security law, sound on paper, depends on the truthfulness of the documents, trade finance is in the final analysis a business of documentary trust.

1 Notes

1. Art. 884 para. 1 of the Swiss Civil Code (CC; droit-bilingue.ch): “Save for the exceptions provided by law, movable property may be pledged only by way of a possessory pledge”; Art. 902 para. 1 CC: “The pledge of securities representing goods confers a lien on the goods themselves”; Art. 164 para. 1 of the Code of Obligations (CO): “A creditor may assign his claim to a third party without the consent of the debtor, unless the assignment is prohibited by law, by agreement or by the nature of the transaction”. ↩

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