

Security under Swiss law

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The security that a lender takes in a commodity financing is usually governed by the law of the place where the goods are located and, for receivables, by the law chosen by the parties or the law governing the receivable. The financing documents of the large traders are usually governed by English law. Swiss law becomes relevant where the goods are in Switzerland, which is rare, where the trader is a Swiss company whose receivables and bank accounts are to be pledged or assigned, and where the security must be enforced against a Swiss company in insolvency.

Swiss law is demanding in its requirements for the creation of security over movable goods. A pledge of movable property requires the transfer of possession to the pledgee or to a third party holding for him, failing which the pledge is, in principle, void.¹ For goods in transit, possession is transferred through the documents of title, above all the bill of lading, which represents the goods and whose transfer transfers the right to take delivery.² For goods in a warehouse, possession can be transferred through the notification of the warehouse keeper or through the transfer of a warehouse receipt. The practitioner must verify, for each financing, that the security has been validly created under the applicable law and that the documents on which it rests are genuine.

The assignment of receivables for security purposes is widely used and is governed, for receivables subject to Swiss law, by the provisions of the Code of Obligations on assignment, which require a written form and do not require notification of the debtor for the validity of the assignment.³ The pledge of bank accounts and of shares in the trader's subsidiaries completes the security package in many financings.

1 Notes

1. Art. 884 para. 1 and 3 ZGB (SR 210), text as reproduced on [droit-bilingue.ch](#): chattels may be pledged only by transfer of possession to the pledgee; the pledge is not established as long as the pledgor retains exclusive control of the chattel. BGE 80 II 235 (8 July 1954), [entscheide.weblaw.ch](#): pledge by handing over a key invalid where the pledgor keeps a second key giving free access. ↩
2. Art. 925 para. 1 ZGB (SR 210), [droit-bilingue.ch](#): where securities representing goods entrusted to a carrier or warehouse are issued, the transfer of the document counts as transfer of the goods themselves; Art. 482 OR (SR 220), [swissrights.ch](#): warehouse documents are securities; Art. 1153 OR: mandatory content of documents of title issued by a warehouse keeper or carrier. ↩
3. Art. 165 para. 1 OR (SR 220), [droit-bilingue.ch](#): the assignment requires written form to be valid; Art. 167 para. 1 OR: a debtor who pays the former creditor in good faith before being notified of the assignment is validly discharged. ↩

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