

Research on the Legal Issues Related to the Pledge of Accounts Receivable

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Abstract: In recent years, with the year-on-year growth of our country's financing volume, the Pledge of accounts receivable has become an essential means of financing for small, medium, and micro-enterprises in our country, which is of great significance for further accelerating the development of the funding in our country's real economy and promoting the sustainable development of our country's economy. There are many risks in our country's current account receivable pledge system, including the risk of creditors' rights and the risk of contract parties. This paper adopts the empirical research method, through comparative analysis of the disputed issues such as the establishment and registration of accounts receivable and the realization of pledge rights of accounts receivable in judicial cases, and concludes that the registration system of pledge rights of accounts receivable in my country should adopt the declaration registration system. The registered content may include the amount of the main claim and other information related to the main claim contract. The objection registration mode should not be adopted when a registration error occurs in the registration system. However, the interested party is directly granted the right to cancel or amend the registration request. Existing laws provide that the realization method of accounts receivable pledges is not explicit. This paper proposes legislation to clarify the realization method of the pledgee directly collecting the creditor's rights from the accounts receivable debtor and to realize the realization of this Pledge in exceptional circumstances.

Keywords: accounts receivable, establishment and registration, notice and confirmation, the method to realize

1. Introduction of Problems

As a channel for corporate financing and an innovative security property rights system, the property law stipulates that the Pledge of accounts receivable is too broad. In October 2017, the People's Bank of China issued the revised "Registration Measures for the Pledge of Accounts Receivable" (referred to as the registration measures), which adjusted the meaning of accounts receivable and the subject matter of Pledge. However, there are still some disputes over the realization method of pledge rights and the resolution of rights conflicts. For

pledged objects, the restrictions on public welfare units such as schools and hospitals should be moderately relaxed; for the realization of pledge rights, the situation where the repayment period has expired and those that have not passed should be investigated separately; for the resolution of rights conflicts, the notification time, subjective good and evil should be comprehensively considered.

2. Conceptual Analysis of Accounts Receivable

The accounts receivable pledge subject matter is accounts receivable, but the Civil Code does not define accounts receivable at the legal level. Define the concept of accounts receivable. The first paragraph of Article 2 of the Measures for the Registration of Pledges of Accounts Receivable stipulates Accounts receivable refer to the right of the creditor to demand payment from the obligor due to the provision of certain goods services, or facilities, and other expenses legally enjoyed. Claims, including existing and future monetary claims, exclude payment claims arising from bills or other marketable securities and payment claims prohibited from being transferred by laws and administrative regulations. To understand accounts receivable in-depth, this paper compares and analyzes accounts receivable with other similar institutional concepts.

2.1. Accounts Receivable and Claims

According to Article 118 of the Civil Code, a creditor right is the right holder's right to request a specific creditor to perform or not achieve a particular activity due to contract, tort, management without cause, unjust enrichment, and other provisions of the law. According to the basic theory of civil law, according to the reasons for the occurrence of debts, debts can be mainly divided into contracts, torts, unjust enrichment, and obligations managed without cause. According to the primary content of debt, a creditor's rights can be divided into monetary payment or debt as payment.

This paper believes that accounts receivable is a contractual claim with monetary payment as the main content. As a type of contractual claim, it is essentially the right to request payment in money. However, it does not include the right to claim compensation arising from bills or other negotiable securities. In essence, it is a kind of creditor's right of monetary payment, and its

superordinate concept should belong to the contractual debt, and all belong to the creditor's request.

2.2. Existing Accounts Receivable vs. Future Accounts Receivable

The first paragraph of Article 2 of the Measures for the Registration of Pledges of Accounts Receivable stipulates for the first time that accounts receivable include existing accounts receivable. Future accounts receivable at the level of departmental regulations, Civil Code No. 440 for the first time, the article stipulates that accounts receivable include existing and prospective accounts receivable at the legal status. Still, the Civil Code does not further define existing and will have accounts receivable. The specific scope of the paragraph is defined. Generally speaking, the existing accounts receivable mainly refer to the debtor of the accounts receivable and the amount of the pledged accounts receivable when the Pledge can be determined or a specific monetary claim.

According to the provisions of Paragraph 4 of Article 61 of the Interpretation of the Guarantee System of the Civil Code, the accounts receivable to be received mainly include the right to income from infrastructure and public utility projects, the creditor rights arising from the provision of services or labor services, and other receivables to be paid. Collect payments. In this regard, the judge of the Supreme People Court further explained that the accounts receivable that will to the debtor of the accounts receivable at the time of Pledge or the undetermined or specific monetary creditor rights of the subject of the Pledge, mainly including the right to charge for real estate, and other assets that can be pledged according to law. The right to assign and other receivables to be engaged [1].

This paper believes that whether the debtor of the receivables or the subject of the Pledge is determined or specific when the receivables are pledged [2]. Some accounts receivable can be roughly divided into three types. First, Infrastructure and Utilities Project Benefit Rights. Second, Claims arising from the provision of services or labor services. For example, the right to charge for hotel operation, rent, hospital billing rights, right to charge tickets. Third, Other receivables to be.

2.3. Accounts Receivable and Income Rights to Be

There is no clear definition of the right to benefit in the laws and regulations. However, generally speaking, the right to help is the right of claim of the right holder for the benefit generated in the future [3]. The underlying assets corresponding to the income rights can be roughly divided into equity income rights, debt income rights, and real estate income rights. Whether the right to benefit can be included in the scope of accounts receivable has always been the focus of controversy in theory and practice. There is a view that the right to toll collection of highways and bridges is a typical right to benefit from real estate. Although it does not contradict the essence of the pledge right, the obligors corresponding to these toll collection rights are not specific. They do not follow the relativity of debt but have certain rights. Due to the nature of the world,

it should not be included in the adjustment scope of the pledge rights of accounts receivable [4]. There is also a contrary view: the property of the right of income is essentially the same as that of accounts receivable. Because the right of payment itself lacks effective means of publicity, it is not conducive to transaction security. At the same time, the Pledge of accounts receivable has been relatively successful in my country. If the revenue right is stripped from accounts receivable, it will not help solve the uncertainty of accounts receivable but will increase the difficulty of interpreting reports receivable [5].

3. Establishment and Registration of Accounts Receivable Pledge

3.1. Establishment of Accounts Receivable Pledge

As a kind of Pledge of rights, the Pledge of accounts receivable means that to guarantee the performance of the debt, the debtor or a third party, as the pledgor, pledges the legally owned funds receivable the pledgee. The pledgee shall have the right to receive priority in the payment of the security interest in respect of the accounts receivable in the event of debt in due time or in the event of the realization of the Pledge as agreed upon by the parties. The legal relationship of accounts receivable pledges usually includes three parties, namely the pledgee, the pledgor accounts receivable creditor, and the accounts receivable debtor. According to Articles 427, 440, and 445 of the Civil Code, as well as the Measures for the Registration of Pledges of Accounts Receivable and Decision (Guo Fa [2020] No. 18) and other relevant regulations, the Pledge of accounts receivable shall be signed by the parties concerned with a valid written pledge contract of funds receivable. It shall be registered in the unified registration system of movable property financing of the Credit Information Center of the People Bank of China (referred to as (Credit Information Center Registration and Publicity System) is established when the pledge registration is processed. Therefore, establishing the account receivable pledge right requires the signing of a written account receivable pledge contract and the registration of the accounts receivable Pledge. Under this kind of establishment requirements model, the publicity effect of registration is the strongest, which is helpful for the third party to quickly, conveniently, and clearly understand the Pledge of rights existing in the accounts receivable, and can better protect the rights of the pledgee and other third parties [6]. In this regard, judicial precedents before the Civil Code came into force have fully reflected (2017) Supreme Court Minsheng No. 5014, (2020) Supreme Court Minsheng No. 4920, and other cases.

3.2. Registration of Accounts Receivable Pledge

Different from movable or immovable property, accounts receivable are contractual claims with monetary payment as the content, and there is no materialized written record as proof of rights. Therefore, whether it is the accounts receivable pledge contract or the accounts receivable pledge registration based on the accounts receivable pledge contract, the relevant elements of the

accounts receivable should be clearly described. According to Article 53 of the Interpretation of the Guarantee System of the Civil Code, Paragraph 1 of Article 10 of the Measures for the Registration of Pledges of Accounts Receivable, and the Operational Rules of the Unified Registration and Publicity System of Movable Property Financing of the Credit Information Center of the People Bank of China (revised in 2021) Article 19, paragraph 3, this article believes that accounts receivable should exist objectively and truly, and the specific or general description of accounts receivable in the pledge contract and pledge registration should be reasonably identifiable. The standard of accounts receivable makes the specific direction of accounts receivable specific. Otherwise, it will directly affect the establishment and realization of the pledge rights of accounts receivable. In this regard, judicial judgments before the Civil Code came into effect have been fully reflected.

Although Article 53 of the Interpretation of the Guarantee System of the Civil Code stipulates the standard of reasonably identifiable, before and after the Civil Code came into force, neither the legislation nor the judicial interpretations have further clarified the degree of reasonable identification. In addition, different courts have different understandings of the standard of valid identification in judicial practice. Therefore, for the pledgee, they should first select qualified accounts receivable as the subject matter of the Pledge. Then when signing the pledge contract and handling the pledge registration, they need to clearly or relatively clearly describe the accounts receivable to improve the specificity of accounts receivable. In this regard, this paper suggests that: Accounts receivable pledge should refer to the example of property description of funds receivable Pledge and transfer registration issued by the registration and publicity system of the Credit Information Center, and follow the Accounts Receivable Pledge Registration Measures. Furthermore, the different types of accounts receivable stipulated in the second paragraph of Article 2 shall be described in a targeted manner. At the same time, this article also expects the Supreme People Court to issue relevant judicial interpretations or guide cases to regulate further and guide this issue.

4. Notice and Confirmation of Accounts Receivable Pledge

The realization of the pledge right of accounts receivable ultimately depends on the debtors of accounts receivable to fulfill their debts. Therefore, notifying the debtor of the accounts receivable about the fact of the Pledge of the fund's receivable, and obtaining the confirmation of the debtor of the accounts receivable on the authenticity of the accounts receivable, is very important for the pledgee to realize the Pledge. In this regard, Article 61 of the Interpretation of the Guarantee System of the Civil Code stipulates the notification and confirmation of the Pledge of accounts receivable.

4.1. Notice of Accounts Receivable Pledge

Accounts receivable are monetary claims in nature. Both the Pledge of accounts receivable and the transfer of accounts receivable are at heart the actions of the rights holder to dispose of their accounts receivable. According to the first paragraph of Article 546 of the Civil Code, if the creditor transfers the creditor's rights without notifying the debtor, the transfer will not affect the debtor. Still, the Civil Code has not issued a notice of the Pledge of accounts receivable. Regulations. Therefore, there are many views that the Pledge of accounts receivable should be applied by analogy to the general rules on assignment of creditors' rights; that is, the establishment of the Pledge of accounts receivable should be notified to the debtor accounts receivable. Otherwise, it will not have a legal effect on it [7].

In this regard, Paragraph 3 of Article 61 of the Interpretation of the Guarantee System of the Civil Code stipulates. With the existing accounts receivable pledged, the debtor of the accounts receivable has performed the debt to the creditor of the accounts receivable, and the Pledge is made. If the debtor of the accounts receivable requests the debtor of the accounts receivable to perform the debt, the people court shall not support it, except that the debtor of the accounts receivable still commits to the creditor of the accounts receivable after receiving the notice from the pledgee to perform the debt. It can be seen that this clause refers to the provisions of the Civil Code that the assignment of creditor rights is binding on the debtor after notification and clarifies the legal effect of information in the realization of the Pledge of accounts receivable [8].

Therefore, for the pledgee, the establishment of the account receivable pledge and the requirement of the account receivable debtor to change the debt payment method will not have an effect against the account receivable debtor if the account receivable debtor is not notified. The debtor of the account can still pay off the creditor of the account receivable and does not need to bear any responsibility to the pledgee. In this regard, judicial precedents before the Civil Code came into effect have fully reflected, such as (2016) Yue 03 Min Zhong No. 19804, (2018) Gan Min Zhong No. 270, (2018) Yu Min Zhong No. 325, (2019) Wan 02 Minzhong No. 2512 and other cases. As for the subject, time, and method of the pledge notice of accounts receivable, there are many disputes and problems in judicial practice and practical operation. Due to space limitations, this article will not discuss it for the time being, and this article will be further explored in the follow-up.

Based on the creditor rights nature of accounts receivable, when the pledgee realizes the pledge right to claim the repayment of the accounts receivable from the secondary obligor, the secondary obligor can also make various defense rights to the pledgee to the pledgee, including but not limited to It is limited to the invalidity, changeable or revocable defense rights, performance defense rights, rescission rights, and limitation defense rights arising from defects in the primary contract, as well as the defense against the non-pledge or assignment stipulated in the preliminary contract. Therefore, in the

draft confirmation notice based on full due diligence and careful verification of the primary transaction materials, it is necessary to fully describe the above-mentioned relevant content, including but not limited to requiring the secondary debtor whether the basic information on the accounts receivable is true, accurate and complete and whether it is related to the Pledge. Accordingly, the registration information shall be confirmed unanimously, and the secondary debtor shall be required to give up the relevant defense rights of the accounts receivable as much as possible to realize the smooth realization of the following pledge rights.

Theorists believe that notifying the secondary obligor is not a pre-procedure for the accounts receivable pledge business, but the notification will have binding force on the secondary obligor. The judicial practice also believes that if the notice does not specify the repayment path, the secondary debtor will continue to perform its repayment obligations according to the original repayment method, eliminating the creditor right and the account receivable pledge, but the notice clearly states. The repayment path is legally binding on the secondary obligor. Suppose the secondary obligor still repays the debt according to the original repayment path. In that case, it is maliciously damaging the interests of the pledgee, and the repayment act has no legal effect on the pledgee. In short, the indirect payment without the pledgee's consent constitutes invalid compensation for the pledgee and does not have the legal effect of balance.

Whether the Pledge of accounts receivable can be opposed to the set-off right of the secondary debtor is not without controversy in theory and practice. The Pledge of accounts receivable shall not be against the statutory right of set-off of the pledged creditor and debtor; for the exercise of the agreed set-off, it shall be determined whether the right of set-off is established when the Pledge is notified to the third debtor. Judgment standard, if the agreement has been offset before the notification, the Pledge of accounts receivable cannot be used against the third debtor to exercise the deal to offset against the pledgor; if the agreement is offset after the notification, the Pledge of accounts receivable can be opposed to the third debtor. Because of the different understandings of the theoretical and practical circles, the author suggests that the best way is to clarify the relevant content of the accounts receivable set-off right in the notice when sending the pledge confirmation notice to the secondary debtor, including but not limited to requiring the secondary debtor. The debtor confirms whether there is a statutory or agreed-off creditor right to the pledgor and requires that the creditor rights that can be set off by agreement during the duration of the Pledge of accounts receivable shall not be mutually agreed to offset and damage the interests of the pledgee and request it to give up as much as possible—exercise of statutory set-off rights.

Of course, whether the right of set-off, especially the statutory right of set-off, as a form of ownership, can be waived in advance by the secondary debtor in the confirmation notice or excluded by agreement, a clear

answer is given in similar cases in judicial practice. It is recognized that this arrangement has legal and valid legal effects in the case of factoring disputes between ICBC Xinjiang Iron and Steel Sub-branch and China Railway Logistics Xinjiang Company and Guangzhou Chengtong Company. The Supreme Court held that Articles 82 and 83 of the Contract Law the stated right of defense and freedom of set-off, its legislative purpose is to protect the debtor's interests from being harmed by the assignment of the creditor right. It can be claimed either against the original creditor or against the assignee. Therefore, even if the debtor promises to the factoring bank in advance to give up the exercise of the right of defense and the right of set-off, the substantive rights it enjoys have not been eliminated, and it can still claim the relevant rights against the original creditor. Therefore, from the perspective of the parties' interests, the debtor's pre-commitment to the assignee to waive the right of set-off and defense will not lead to an imbalance of interests between the parties.

4.2. Confirmation of Accounts Receivable Pledge

Due to the characteristics of the accounts receivable itself, in the accounts receivable pledge business, the pledgor or the debtor of the accounts receivable is more likely to make up the accounts receivable. Therefore, for the pledgee, it is indispensable for the pledgee to notify the debtor of the accounts receivable and confirm the authenticity, legality, specificity, and validity of the accounts receivable when the accounts receivable Pledge is established. In this regard, the first paragraph of Article 61 of the Interpretation of the Guarantee System of the Civil Code stipulates, with the existing accounts receivable pledged, the debtor of the accounts receivable confirms the authenticity of the accounts receivable to the pledgee and claims not to assume responsibility because the account receivable does not exist or has been eliminated, the people court shall not support it. It can be seen that this clause stipulates that after the debtor of the account receivable confirms the authenticity of the report receivable, the people court shall not support it. No liability shall be claimed because the accounts receivable does not exist or have been extinguished.

In addition, Paragraph 2 of Article 61 of the Interpretation of the Guarantee System of the Civil Code stipulates: with the existing accounts receivable pledged, and the debtor of the accounts receivable has not confirmed the authenticity of the accounts receivable, the pledgee shall If the debtor of the accounts receivable is the defendant and requests to be paid preferentially for the accounts receivable and can provide evidence to prove that the accounts receivable existed at the time of the pledge registration, the people court shall support it; the pledgee cannot provide evidence to confirm that the pledge registration has been carried out. The people court shall not help the request for priority payment of the accounts receivable only because the pledged registration has been completed and the versions receivable exist. It can be seen that the pledgee claims to the debtors When the Pledge is granted, the claimant is entitled to priority in payment of the accounts receivable and must bear the

burden of proof on the authenticity of the report's receivable. In this regard, the judicial judgment views are reflected before and after the Civil Code takes effect. As for the standard and degree of the pledge burden of proof. Due to space limitations, this article will not discuss it for the time being, and this article will be further explored in the follow-up.

5. Realization of Accounts Receivable Pledge

The Civil Code does not stipulate the realization method of the Pledge of accounts receivable. Still, since the Pledge of accounts receivable is a kind of Pledge of rights, according to the provisions of Article 446 of the civil code, it should be the realization method of the pledge right of accounts receivable shall apply to the realization method of the Pledge right of movable property stipulated in the second paragraph of Article 436 of the civil code. The proceeds from the sale of the pledged property shall be paid in priority. The relevant judicial judgments before the civil code came into effect have been reflected, such as (2019) E Min Zhong No. 741, (2019) Supreme Court Min No. 547, and other cases. In addition, Article 61 of the Interpretation of the Guarantee System of the Civil Code makes relevant provisions on the realization method of the Pledge of accounts receivable. The specific requirements are as follows.

5.1. The Way to Realize the Pledge Right of Existing Accounts Receivable

When the existing accounts receivable pledge right is established and realized, the debtor of the accounts receivable and the subject matter of the Pledge have been determined. Therefore, when the pledgee exercises the right, it usually advocates the most profitable way, that is, advocates for the account receivable. The debtor of the invoice receivable shall be paid first and request the debtor of the account receivable to perform the debt to it directly. In this regard, the judges of the Supreme People Court held that: if a creditor right is pledged, the effect of the creditor right Pledge is of course extended to the debtor who has committed the creditor right, and the pledgee has the right to directly request the third debtor to pay off the pledged creditor right [9]. In judicial practice, the conditions for exercising the Pledge of accounts receivable are fulfilled. There is no doubt that the pledgee has priority in repayment of accounts receivable when the debtor of the accounts receivable expires. Whether a person has the right to directly request the debtor of the accounts receivable to pay the funds receivable now to himself, there are mainly two different views.

The affirmative theory believes that the pledgee has the right to require the debtor of the receivables to pay the receivables to himself. For example (2014) Su Shang Zhong Zi No. 0267, (2015) Hu Erzong Min Liu (Shang) Zhong Zi No. 444, (2016) Su 02 Min Zhong No. 2861, (2018) Wan Min Chu No. 35, (2019) Supreme Court Minzhong No. 1023 and other cases; in the negative, it is believed that the pledgee has no right to require the debtor of the accounts receivable to pay the funds receivable to himself. For example, the 2016 Lu Minzhong No. 1674

Civil Judgment pointed out: Therefore, even if there are accounts receivable involved, there is no contractual basis for the pledgee to request the debtor of the accounts receivable to pay it directly. In addition, the ownership of accounts receivable as collateral should also belong to the pledgor. The pledgee has the priority to repay the version receivable but has no right to compensate the debt with the Pledge directly; another example is the Civil Judgment (2017) Supreme Court Minsheng No. 1572, which states: What is formed is the legal relationship of the Pledge of accounts receivable. Because the creditor of the accounts receivable has not transferred the creditor rights to the debtor of the accounts receivable to the pledgee, there is no formation between the pledgee and the debtor of the accounts receivable. There is a direct creditor-debtor relationship, so the pledgee has no right to request the debtor of the accounts receivable to pay the funds receivable involved in the case directly.

Although Article 61 of the Interpretation of the Guarantee System of the Civil Code does not stipulate whether the pledgee has the right to directly require the debtor of the accounts receivable to perform its debts to it, combined with the first three of Article 61 of the Interpretation of the Guarantee System of the Civil Code The current tendency of this article is that: based on the money claims attributes of accounts receivable, the pledgee informs the accounts receivable debtor of the establishment of the account receivable pledge and obtains the fund's receivable debtor's opinion on the receivables. After the account's authenticity is confirmed, once the conditions for exercising the Pledge of the account receivable are fulfilled, the pledgee has the right to require the debtor of the account receivable to directly pay the charge receivable to himself and enjoy the priority of the version receivable. Compensation rights. This is because it can avoid the tedious procedures such as discount or auction, sale, etc., required to realize the Pledge of accounts receivable and reduce the exercise cost of the pledgee, and is conducive to speeding up the settlement of disputes between the parties. However, it is not unconditional for the pledgee to directly claim payment to the debtor of the accounts receivable. Whether the court makes such a judgment will usually be determined based on the order of repayment of the two creditor's rights and debts involved in the Pledge of the accounts receivable [10].

In addition, it should be noted that, based on the principle of civil litigation, if the pledgee only claims to have the priority in compensation for the accounts receivable, the court will usually not voluntarily order the debtor of the accounts receivable to file a claim against the pledgee directly. Instead, the right holder pays the relevant payments. For example, in (2015) Min Er Zhong Zi No. 179, (2019) Supreme Court Min No. 823, and other cases, the court decision confirmed that the pledgee prioritizes receiving repayment of accounts receivable but did not mention the specific implementation method. Under such judgments, there may be difficulties in the execution stage because the process of realizing the pledge rights is not specified. For another example, in (2019) E Min Zhong

No. 741, (2019) Supreme Fa Min Zhong No. 547, and other cases, the court decided to confirm that the pledgee has the right to receive preferential compensation after the auction, sale price, or discount of the accounts receivable. Under such judgments, it is difficult for the pledgee to apply to the court for direct enforcement against the debtor of the accounts receivable. Usually, the pledgee needs to file a lawsuit for the right of subrogation against the debtor of the account receivable to require the debtor of the invoice receivable to file a lawsuit against the debtor of the account receivable. Pay off debts. Therefore, we suggest that: when the pledgee points a case to request the realization of the Pledge, the debtor of the accounts receivable can be listed as the defendant to sue, and at the same time, the debtor of the accounts receivable can be requested to pay the pledgee directly and take the initiative to communicate with the court and the judge. Communicate appeals to ensure the rapid realization of pledge rights.

5.2. There will be a Way of Realizing the Pledge of Accounts Receivable

Regarding the realization of the Pledge of accounts receivable, the Supreme People's Court Guiding Case No. 53 pointed out that the right to the proceeds of the sewage treatment project belongs to the future monetary creditor's right. Therefore, the pledgee may request the court to order him to submit the debtor of the pledgor directly collects the money and exercises the right of priority for repayment of the capital, so there is no need to adopt the method of discount or auction or sale. Moreover, the right to benefit all has certain burdens attached, and its operating subject is specific, so it is not suitable for auction or sale due to its nature. Therefore, the pledgee has the right to directly collect sewage treatment fees from the franchisee by the agreement and exercise the priority of compensation for the sewage treatment service fees collected. Particular attention should be paid to the fact that in this case, the debtor of accounts receivable is the signatory of the Agreement on Pledge of Franchise Pledge, and the agreement stipulates that the pledgor and the debtor of accounts receivable agree to give priority to the use of sewage treatment fees to repay the loan. The debt of the debtor under the contract. If the debtor of the accounts receivable in this case is not the signatory subject of the Pledged Franchise Pledge Guarantee Agreement and the agreement has not made the above agreement in advance, whether the pledgee has the right to pay the debtor of the accounts receivable Collecting money and exercising priority over that money is to be explored.

In addition, Paragraph 4 of Article 61 of the Interpretation of the Guarantee System of the Civil Code stipulates Pledge the right to benefit from infrastructure and public utility projects, the creditor's rights arising from the provision of services or labor services, and other accounts receivable that will be If a specific version is set up for accounts receivable, and when a statutory or agreed cause for the realization of the Pledge occurs, the pledgee requests that the funds in the specific account be paid preferentially, the people court shall support it; the funds

in the particular account are not sufficient for repayment If the debtor has not established a specific version, and the pledgee requests a discount or auction or sale of the project's income rights, etc., the remaining accounts receivable, and the proceeds are paid in priority, the people court shall support it by the law. Therefore, according to the parties concerned, there are two situations in which a specific account is set up for accounts receivable. There are two situations in which the Pledge of accounts receivable is realized: First, when the parties set up a specific budget for accounts receivable, when a statutory or agreed reason for the realization of the Pledge occurs, the pledgee has the right to request that the funds in the specific account be paid preferentially; secondly, if the funds in the particular account are not enough to pay off the debt or the specific charge has not been established, the pledgee has the right to request a discount or auction or sell the project proceeds and other pending funds receivable, and receive priority in repayment at a price obtained.

What needs special attention is that Paragraph 1 of Article 70 of the Interpretation of the Guarantee System of the Civil Code stipulates: The debtor or a third party shall, to guarantee the performance of the debt, set up a particular security deposit account under the actual control of the creditor, or deposit its funds. If the creditor claims that the funds in the account will be paid preferentially, the people court shall support it. The party claims that the creditor who controls the report does not have the right to the funds in the account because the funds in the deposit account are floating. The people court will not support the priority of the right to repayment. Therefore, the establishment of the pledge right of the margin account needs to meet two standards simultaneously, that is, the specificity of the subject property and the actual control of the pledgee. We believe that the specific account established for some accounts receivable is similar to the margin account. According to the established standard of the Pledge of the margin account, the primary function of the specific version of the accounts receivable is to make the debtor of the accounts receivable to the pledgor. Payments are specified to guarantee the future realization of the Pledge. Therefore, the reports receivable specific account already meets the specified criteria to a certain extent. However, whether the particular version of funds receivable needs to meet the standard of actual control of the pledgee, there is a view that: to protect the interests of the pledgee better, the specific account of accounts receivable should meet the standard of actual control of the pledgee. There are also views that: the Pledge of the margin account needs to be publicized by the pledgee's precise control, but the accounts receivable pledge registration has achieved the effect of publicity and confrontation, so the specific history of accounts receivable does not need to meet the actual control standard of the pledgee. Since there is currently no relevant judicial precedent, which of the above views is more reasonable, the attitude of subsequent judicial practice remains to be seen.

As a way of accounts receivable financing, the Pledge of funds receivable allows enterprises to use their accounts receivable resources to finance, thereby alleviating the practical difficulties such as difficulty in funding and expensive financing to a certain extent. Based on previous legislation and judicial practice, this Civil Code and Interpretation of the Civil Code Guarantee System have made new provisions on the subject matter, establishment, registration, notification, confirmation, and realization methods of pledge rights of accounts receivable. This is conducive to standardization and promotes the standard operation of the accounts receivable pledge business. However, there are still many disputes over the subject and method of the pledge notice of accounts receivable, the standard of the pledgee's burden of proof for the authenticity of reports receivable, and the realization method of the Pledge of accounts receivable in the future: Follow-up judicial interpretations and different answers and improvements to the adjudication rules. At the same time, we will continue to pay attention to the above issues and continuously deepen our understanding of the Pledge of accounts receivable.

5.3. Debtor's Right of Defense and its Application

In the Industrial and Commercial Bank of China case, the Supreme Court held that the debtor had given up the right of defense in the accounts receivable confirmation document, so he could no longer exercise the right of protection. The Supreme Court judgment, in this case, held that from the perspective of the economic purpose pursued by the parties in the factoring financing business, it is reasonable for the debtor to make a no-objection commitment to the assignee in advance. This is because the primary transaction contract involved in the factoring financing business is good. For both parties concerned, the passage through the factoring bank can enable the transaction of the relevant underlying agreement to proceed smoothly; for the factoring bank, the fact that it accepts the creditor's rights for the customers advance is not the ultimate purpose of obtaining the creditor's rights but hopes to receive remuneration and interest from customers (creditors), and the debtor returns the financing principal. Therefore, the debtor makes a no-objection commitment to the assignee of the creditor's rights in advance, conducive to promoting factoring financing business from the actual situation; no-objection commitment has become more common in factoring financing practice. According to the facts that have been identified in this case, China Railway Xinjiang Company in the Account Receivable Factoring Business Confirmation Letter. The undertaking to ICBC Guangcheng Sub-branch not to make any offsets, counterclaims, or deductions for any reason is an expression of its true intentions, so it should be recognized as legal and valid according to the Receivables According to the commitments in the Account Factoring Business Confirmation Letter, China Railway Xinjiang Company shall not file any other defenses against Chengtong Company in this case, such as the non-establishment of the creditor's rights involved, flaws in the establishment,

invalid or revocable, and the elimination of the creditor's rights. Guangcheng Sub-branch filed a defense. Therefore, this court does not accept the reason that China Railway Xinjiang Company proposed to ICBC Guangcheng Sub-branch in this case that the sales contract involved in the case was a false representation of both parties and that the creditor's rights in accounts receivable were not natural.

6. Conclusions

In the above judgment, the Supreme Court held that the no-objection undertaking has become a transaction practice and is in line with the practical situation of factoring business. It is difficult for banks to thoroughly verify the accounts receivable's authenticity in a factoring company. Therefore, most factoring banks will require debtors to issue confirmation documents for accounts receivable, drafted mainly by banks. There are often clauses in which the debtor waives the right of defense and the right of set-off. The validity of such waiver of defense clauses also has its theoretical basis. Article 405 of the German Civil Code stipulates: The debtor has issued a debt certificate, and the creditor's right is assigned based on the presentation of the document, the debtor shall not claim against the new creditor that the conclusion or admission of the debt relationship is false, or that the original creditor has agreed to exclude the assignment of the creditor's rights unless the new creditor knew or should have known the above facts at the time of the project. Article 18, paragraph 2, of the Swiss Debt Code, states: The third party recognizes the debt in reliance on a written debt. If the debtor has obtained the creditor's rights, the debtor shall not make any false defense against it. Theoretically, the assignment of the creditor's rights based on the debt certification documents issued by the debtor constitutes the appearance of the creditor's right that can be trusted by the creditor's rights, to some extent similar to the meaning of good faith acquisition of creditor's rights.

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