



ALERT

SPIGTHOFF

NOTIFICATION NO LONGER NECESSARY FOR PERFECTION OF ASSIGNMENT

Assignment of Receivables

Under Curaçao law the transfer of ownership requires transfer of title (*levering*) pursuant to a valid legal title (*geldige titel*) by a person who has the power of disposal over the asset (*beschikkingsbevoegheid*) being transferred. The rules on transfer of title (*levering*) are equally applicable to the creation of a right of pledge over receivables. Until recently, the Curaçao Civil Code, allowed for the following two methods of transfer of title (*levering*) of receivables:

- (1)** By means of a deed of assignment (*cessie*) signed by the assignor and assignee or by the assignor only and notification (*mededeling*) thereof to the relevant debtor(s), meaning that the assignment is only perfected after the assignment is notified to the debtor (the so-called disclosed assignment (*openbare cessie*)). Without such notification legal ownership shall not have been transferred from the assignor to the assignee. Notification after the assignor has been declared bankrupt will thus not prevent the receivables from falling in the bankruptcy estate of the assignor.
- (2)** By means of a deed of assignment (*cessie*), without notification to the debtor being required, if the receivables were being assigned as security for the repayment of debt and provided that such receivables exist at the time of assignment or result directly from an existing legal relationship (*rechtstreeks zullen worden verkregen uit een bestaande rechtsverhouding*) (the so-called undisclosed assignment (*stille cessie*)). However, notification is still required in order for debtors to be able to validly discharge their obligations (*bevrijdend betalen*) under the receivables by paying the assignor. No additional perfection requirements apply. In this case, the receivables will not fall in the bankruptcy estate of the assignor and the debtor

may continue to validly discharge its obligations (*bevrijdend betalen*) under the receivables by paying the (bankrupt) assignor.

Notification no longer necessary for perfection

As of January 1st 2012, the Curaçao Civil Code has been amended to the effect that for an undisclosed assignment it is no longer required that the receivables are being assigned as security for the repayment of debt. Notification is thus no longer necessary for the perfection of an assignment that is a true sale. This is also the case in the Netherlands. However, there the deed of assignment needs to be in notarial form or it has to be registered with the tax authorities for the assignment to be perfected. As set out above, without notification debtors will still be able to validly discharge their obligations (*bevrijdend betalen*) by paying the assignor.

In practice

Receivables may now be assigned, regardless of the purposes of such assignment, by virtue of a private deed (without any notarial or registration requirements), without any notification(s) being required for the perfection of the assignment. In the event of bankruptcy of the assignor the receivables will not fall in the bankruptcy estate of the assignor. The debtors will need to be informed as soon as possible. Otherwise, they may continue to validly discharge their obligations (*bevrijdend betalen*) by paying the bankrupt assignor.

The abolition of the notification requirement has benefits for (commercial) transactions where a true sale is required and notification to the debtors of the underlying receivables is undesirable, impractical or impossible. Examples include factoring arrangements, securitizations and the transfer of receivables to a trust.

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