

July 2022 / 2022 年 7 月

Accounts receivable pledges – offshore lenders' registration obligations in mainland China 应收账款质押 – 境外贷款人在中国境内的登记义务



Accounts receivable financing is widely recognised by suppliers as an effective financing tool to monetise their receivables and improve their cash flow. In a typical open account transaction, certain receivables are owed from a purchaser to a supplier for the goods supplied or services rendered. The supplier may in turn obtain accounts receivable financing from a financier and require that the financier make a prepayment of the receivables prior to their due dates. As security for such repayment, the financier as lender may require a pledge* over the accounts receivable from the supplier as borrower, which is a common form of security in supply chain finance in mainland China and has its own registration requirements.

应收账款融资允许供应商将其应收账款变现以改善现金流，因此获供应商广泛认可为切实有效的融资工具。在一般赊销交易中，供应商将透过销售商品或提供服务产生应由买家支付的应收账款。而针对应收账款，供应商可向融资方寻求应收账款融资，并要求融资方在应收账款到期前支付应收账款。作为还款担保，融资方（作为贷款人）或会要求供应商（作为借款人）对该等应收账款设立质押*。此为中国境内供应链融资中常见的担保形式，亦有规定的登记要求。

* Note: The "pledge" under this note refers to a pledge under mainland Chinese law, the concept of which is different from a pledge under Hong Kong law.

* 注：本文提及的“质押”是指中国法下的质押，跟香港法下的质押概念不同。

In situations where an entity incorporated in mainland China (the "**Onshore Borrower**") obtains accounts receivable financing (the "**AR Financing**") from an offshore financial institution (the "**Offshore Lender**") and pledges its accounts receivable in favour of the Offshore Lender, how should the Offshore Lender deal with the registration of the accounts receivable pledge (the "**Pledge**") in mainland China?

在中国境内注册企业（“**境内借款人**”）向境外金融机构（“**境外贷款人**”）获取应收账款融资（“**应收账款融资**”）并将其应收账款质押予境外贷款人的情况下，境外贷款人应如何处理应收账款质押（“**应收账款质押**”）在中国境内的登记？

Compulsory registration by Offshore Lender 境外贷款人的强制性登记要求

Effective from 1 February 2022, the Measures for the Unified Registration of Security Interests Over Movable Properties and Rights (the "**Measures**") unifies and regulates the registration of security interests over movable properties and rights, including but not limited to pledges of accounts receivable (which is defined as a creditor's right to demand payment from a debtor for providing certain goods, services or facilities except, *inter alia*, those arising from negotiable instruments or otherwise prohibited by laws).

从2022年2月1日起生效的《动产和权利担保统一登记办法》(“《**登记办法**》”)统一并规范了动产和权利担保的登记,包括但不限于应收账款质押的登记(应收账款的定义为债权人因提供货物、服务或设施而获得要求债务人付款的权利,但不包括因票据而产生或法律禁止的付款请求权等)。

According to the Measures, the Offshore Lender (as security interest holder) or its appointee shall be responsible for registering the Pledge at the Credit Reference Centre of the People's Bank of China (the "**CRC**") through its unified registration and public notification system after reaching an agreement with the Onshore Borrower (as security provider) on the particulars to be registered.

根据《登记办法》,境外贷款人(作为担保权人)或其委托人应负责通过统一登记公示系统于中国人民银行征信中心(“**征信中心**”)就应收账款质押办理登记。境外贷款人办理登记前,应当与境内借款人(作为担保人)就登记内容达成一致。

It is particularly important to note that a PRC law-governed pledge of accounts receivable is created only at the time when it is registered in accordance with the Civil Code of the People's Republic of China (the "**Civil Code**"). It follows that registration of the Pledge at the CRC is a compulsory requirement, and the Pledge without registration will not be deemed validly created, which would render it unenforceable against the Onshore Borrower.

需要特别注意的是,根据《中华人民共和国民法典》(“《**民法典**》”),以中国法律管辖的应收账款质权自办理出质登记时设立。因此,应收账款质押在征信中心的登记属于强制性要求,而未登记的应收账款质押不会被视为已有效设立,对境内借款人亦无法强制执行。

Particulars of registration 登记内容

The particulars of a registration shall include but are not limited to: (1) basic information about each of the security interest holder and the security provider (such as its legal name, address/domicile, name of the legal representative/person in charge and organization codes or identifiers); (2) a description of the collateral (i.e. the accounts receivable subject to the Pledge); (3) a reasonable duration of the registration ranging from 1 month to 30 years, subject to any extension; and (4) other relevant information as agreed between the security interest holder and the security provider (including the principal claim amount and scope of security interest etc.).

登记内容应包括但不限于:(1)担保权人和担保人的基本信息(例如法定注册名称、住所、法定代表人/负责人姓名及机构代码或编码);(2)担保财产(即质押的应收账款)的描述;(3)合理的登记期限(由一个月至三十年,并可申请展期);及(4)担保权人和担保人约定的其他相关信息(包括主债权金额及担保范围等)。

Please note that the CRC only provides registration and public inquiry services, and will not give any pre-transaction approvals and/or review any registration particulars. It is therefore the Offshore Lender's responsibility to ensure the accuracy, completeness and legitimacy of the registered particulars of the Pledge and the genuineness of the relevant accounts receivable by: (1) updating the particulars in case of any omission, error or change; (2) cancelling the registration after discharge of the security interest; and (3) rigorously reviewing and verifying the genuineness of the accounts receivable and reviewing other encumbrances created thereon, in each case within the specified time limit as set out in the Measures (if any). Any person providing false information in the registered particulars shall be solely liable for any loss or damage arising therefrom.

请注意,征信中心仅提供登记和公众查询服务,并不会开展事前审批性登记及/或对登记内容进行实质审查。因此,境外贷款人有责任确保应收账款质押的登记内容的真实性、完整性和合法性以及相关应收账款的真实性,并须在《登记办法》规定的指定时限内(如有):(1)就任何遗漏、错误或内容变更办理变更登记;(2)在登记权利消灭的情形下办理注销登记;及(3)严格审核确认应收账款的真实性并查询有关权利负担状况。如任何人在办理登记时提供虚假信息,应当自行承担由此造成的任何损失或损害的法律风险。

Priority of competing claims 相互竞争权利的优先权

Where, in addition to the Offshore Lender, another security interest holder has created a pledge over the same accounts receivable, the following priorities as set out in article 414 of the Civil Code shall apply to the competing security interests: (1) a registered pledge prevails over a non-registered pledge (as the latter is yet to be validly created); and (2) where both pledges have been registered, whichever has been registered first prevails.

除境外贷款人外，如有另一名担保权人对同一应收账款设立了质权，则以下载于《民法典》第四百一十四条的先后顺序规定将适用于相互竞争的质权：(1) 已经登记的先于未登记的受偿（因后者尚未有效设立）；及(2) 均已经登记的，按照登记时间的先后确定清偿顺序。

For the avoidance of doubt, please note that the method of determination of the priority of rights to the accounts receivable under a pledge is different from that under factoring agreements.¹

为免生疑问，请注意应收账款权益的优先权在质押项下跟保理合同项下的判断标准有所不同。²

SAFE registration 外管局登记

Another common question is whether any registration at the State Administration of Foreign Exchange of the People's Republic of China ("**SAFE**") will be required. According to the Notice of the State Administration of Foreign Exchange on Issuing the Provisions on the Foreign Exchange Administration of Cross-border Guarantees, a cross-border guarantee (which includes a pledge) given by an onshore entity to secure its own debts does not require registration. It follows that no SAFE registration will be required for the Pledge granted by the Onshore Borrower in favour of the Offshore Lender.

另一常见问题是是否需要到中华人民共和国国家外汇管理局（“**外管局**”）办理任何登记。根据《国家外汇管理局关于发布〈跨境担保外汇管理规定〉的通知》，境内机构为自身债务提供跨境物权担保（包括质押），不需要办理担保登记。因此，由境内借款人向境外贷款人提供的应收账款质押不会有于外管局登记的要求。

However, as the AR Financing is a foreign debt from the Offshore Lender to the Onshore Borrower, the Onshore Borrower is obliged to report the relevant information relating to the cross-border financing transaction to the SAFE for recordation ("**Foreign Debt Registration**"). Although it is the Onshore Borrower's (and not the Offshore Lender's) duty to report to SAFE, it is advisable for the Offshore Lender to require evidence that such recordation has been done. Otherwise, the Onshore Borrower may not be able to remit funds out of mainland China for repayment purposes by itself.

但在应收账款融资安排下，对于境外贷款人借用予境内借款人的外债，境内借款人有义务将相关信息向外管局办理跨境融资情况签约备案（“**外债签约登记**”）。尽管向外管局备案乃境内借款人（而非境外贷款人）的责任，境外贷款人亦应要求境内借款人提供已完成备案的证据。否则，境内借款人可能无法自行将境内资金汇出境外以作还款用途。

¹ Under Article 768 of the Civil Code: "Where an accounts receivable creditor enters into multiple factoring contracts for the same accounts receivable, causing multiple factors to assert their rights, the factor that has made registration shall acquire the accounts receivable in preference to the factor that has not made registration; if each factor has made registration, the accounts receivable shall be acquired in the order of the time of registration; if none has made registration, the factor stated in the notice of assignment that first reaches the accounts receivable debtor shall acquire the accounts receivable; and absent registration and notice, the accounts receivable shall be acquired in proportion to the proceeds of factoring financing or service remuneration."

² 根据《民法典》第七百六十八条，“应收账款债权人就同一应收账款订立多个保理合同，致使多个保理人主张权利的，已经登记的先于未登记的取得应收账款；均已经登记的，按照登记时间的先后顺序取得应收账款；均未登记的，由最先到达应收账款债务人的转让通知中载明的保理人取得应收账款；既未登记也未通知的，按照保理融资款或者服务报酬的比例取得应收账款。”

Debtors of accounts receivable 应收账款债务人

In practice, when a pledgee enforces the relevant pledge of accounts receivable, it would normally require the relevant debtor of the accounts receivable to perform its obligations directly in favour of the pledgee. But how is enforcing the Pledge concerning an onshore debtor operationally different from enforcing one that concerns an offshore debtor?

实践中，质权人在实现应收账款质权时，通常会要求由应收账款债务人直接向质权人履行债务。但当质押的应收账款分别由境内债务人及境外债务人支付时，在质权实现的操作上有何不同？

Accounts receivable from onshore debtors 应由境内债务人支付的应收账款

Where accounts receivable originally due from an onshore debtor to the Onshore Borrower are required to be paid to the Offshore Lender pursuant to the Pledge, foreign debt(s) will be created between the onshore debtor and the Offshore Lender. In terms of foreign exchange control, it would mean that the onshore debtor will only be able to remit the funds due under the Pledge to the Offshore Lender provided that the onshore debtor has duly completed the Foreign Debt Registration.

如果原应由境内债务人向境内借款人支付的应收账款须根据应收账款质押直接支付予境外贷款人，则在境内应收账款债务人与境外贷款人之间会形成一笔或多笔外债。由于境内外汇管制的存在，只有在境内应收账款债务人成功办理了外债签约登记的前提下，才能确保境内应收账款债务人能够顺利将应收账款质押项下的到期款项汇出给境外贷款人。

Accounts receivable from offshore debtors 应由境外债务人支付的应收账款

In general, there are no legal restrictions on an offshore debtor of accounts receivable paying the Offshore Lender. However, where there is an existing SAFE recordation in respect of the export transaction between the Onshore Borrower and the offshore debtor, the Onshore Borrower should ensure SAFE procedures are properly observed so as to avoid any future penalties for non-compliance with foreign exchange regulations.

境外的应收账款债务人向境外贷款人支付款项通常不存在障碍，但是，由于境内借款人与境外的应收账款债务人之间的出口贸易可能已经在外管局存在记录，其也需要处理好外管局方面的手续，以免后期因外汇法规方面的不合规而受到处罚。

Accounts receivable from future debtors 应由将来的债务人支付的应收账款

Alternatively, the Onshore Borrower may pledge its accounts receivable from future debtors in favour of the Offshore Lender which would require a designated onshore account to be opened by the parties for the sole purpose of receiving accounts receivable from future debtors, such that the Offshore Lender will have priority over the funds in such account in its future enforcement of the Pledge, and any such funds may be remitted outside of mainland China directly. However, in order to ensure the smooth processing of the fund remittance, it is recommended that the Offshore Lender should still inspect whether any Foreign Debt Registration has been done in relation to the AR Financing and whether the Pledge has been registered with the CRC.

再者，境内借款人亦可将其对将来的债务人的应收账款向境外贷款人设立质押。前述质押要求当事人设立仅为收取将来的应收账款而在境内开立的特定账户，使得境外贷款人在后续实现质权时可直接以该账户内的款项优先受偿，而特定账户中的款项可基于应收账款质权的实现直接汇出境外。但为确保款项汇出手续得以顺利办理，我们建议境外贷款人仍须审查应收账款融资安排是否进行了上述外债签约登记等手续，以及应收账款质押是否已经在征信中心登记。

Conclusion 结语

In order to fully protect lenders' interests in creating pledges over accounts receivable of borrowers in mainland China, lenders should always remember to perfect such creation by registering them at the CRC and obtaining evidence of foreign debt registrations from borrowers and to consider the foreign exchange control requirements by taking into account whether the relevant debtor is an onshore or offshore entity, and whether it is an existing or a future debtor.

为充分保障贷款人就中国境内借款人的应收账款设立质押的权益，贷款人应时刻紧记于征信中心办理登记并向借款人获取外债备案的证据以完善质押的设立，并考虑外汇管制要求，包括考虑相关债务人是为境内或境外债务人，以及是为现有或将有的债务人。

For further information, please feel free to get in touch.
欲知详情，请随时联系。

Contact us 联系我们



Anna Kwong 邝皓贤

Partner 合伙人

T 电话: +852 2533 2854

E 电邮: anna.kwong@shlegal.com



Zoe Zhou 周红

Partner 合伙人- Wei Tu Law Firm*

伟途律师事务所*

T 电话: +86 20 8388 0590

E 电邮: zoe.zhou@shlegalworld.com



Phoebe Cheng 郑希琳

Associate 律师

T 电话: +852 2533 2810

E 电邮: phoebe.cheng@shlegal.com



Geting Lin 林戈婷

Associate 律师 – Wei Tu Law Firm*

伟途律师事务所*

T 电话: +86 20 8388 0590

E 电邮: geting.lin@shlegalworld.com

*Wei Tu (a PRC law firm registered in Guangzhou) and Stephenson Harwood (a law firm registered in Hong Kong) are in a CEPA association under the name "Stephenson Harwood - Wei Tu (China) Association". CEPA (Closer Economic Partnership Arrangement) is a free trade agreement concluded between Mainland China and Hong Kong. Under CEPA, Hong Kong based law firms are permitted to operate in association with Mainland Chinese law firms to provide comprehensive legal services in Mainland China governed by Chinese and non-Chinese laws.

*广东伟途律师事务所（注册地为广州的中国律师事务所）和罗夏信律师事务所（注册地为香港的律师事务所）根据《关于建立更紧密经贸关系的安排》设立了“罗夏信律师事务所-广东伟途律师事务所联营”。《关于建立更紧密经贸关系的安排》是一个中国大陆和香港之间的自由贸易协定。在此框架下，香港的律师事务所与内地律师事务所联营，并依据中国和非中国的法律在中国大陆提供全面的法律服务。

Stephenson Harwood is a law firm of over 1100 people worldwide, including 190 partners. Our people are committed to achieving the goals of our clients – listed and private companies, institutions and individuals. 罗夏信律师事务所在全球拥有超过 1100 名员工，其中包括 190 多位合伙人，致力于为我们的客户达成商业目标 — 客户包括上市及私人企业、各大机构和个人。

We assemble teams of bright thinkers to match our clients' needs and give the right advice from the right person at the right time. Dedicating the highest calibre of legal talent to overcome the most complex issues, we deliver pragmatic, expert advice that is set squarely in the real world.

我们的团队集合了才思敏捷的专业人员，能够满足客户的需求，在最恰当的时机由最适当的人员为客户提供最恰如其分的建议。秉承法律人才的最高标准，从而解决最复杂的问题，我们为客户针对实际情况，提供实用而专业的建议。

Our headquarters are in London, with eight offices across Asia, Europe and the Middle East. In addition, we have forged close ties with other high quality law firms. This diverse mix of expertise and culture results in a combination of deep local insight and the capability to provide a seamless international service.

我们的总部设在伦敦，并在亚洲、欧洲和中东地区设有八个办事处。不仅如此，我们还与其他顶级的律所建立了紧密的联系。凭借多元化的专业知识和多重文化，我们不仅对当地的情况有更强的洞察力，同时也有能力提供无缝的国际化服务。