

\_\_\_\_\_  
\_\_\_\_\_

---

中 图 类 D923.3 文 献别 码A 文 章编 2096-6180 2024 03-0046-15

---

547 1

1

2

696 2 407 2

---

1

2020 697

21BFX076  
2020 827

A/CN.9/489 40

2

A/CN.9/489 40

3

4

5

6

10

2

7

---

3

2020

617

2007

420

2021

666

4

2021

224

5

2022

6

156

6

2014

921

Ole Lando, Eric Clive, André Prüm & Reinhard Zimmermann eds., *Principles of European Contract Law, Part III*, Kluwer Law International, 2003, p. 99.

7

2004

27

<https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/zh/ctc-assignment-convention-c.pdf>

8

696 2

1995

22 2

9

10

2000 44

28

22 2

2007

192

2

<sup>11</sup> 2020

696 2

<sup>12</sup>

407 2

192 2

696 2 407

2

1.

8

A/CN.9/470 31

9

1995 30

10

1995 30

2001 130

11

2007 420

12

696 2

547 1

4

2021 229 267

2022

376

13

14

15

545 2

16

2.

465

---

13		5		2022	180				
14				2			2004		62
		2006	51				2006		356
15		5		2021	208	666			
	2	2021	416	2022	179-180				
16							2020	827	
			2020	697					

---

17

18

19

696 2 407 2

20

21

22

23

---

17

5

2022

180

2020

1047

18

2021

210

2000

134

19

2020

1047

20

5

2022

180

21

A/CN.9/470

31

22

A/CN.9/WG.II/WP.105

21

2003

1

24

2013

99

23

2021

210 666

2009 19 3 2 4

24

25

26

27

---

24

2005 55

2021 937-938

25

2020 825

26

2021 5 80  
72 4 2021 156-159

27

2001 117

28

29

30

31

32

33

3 2 4

---

28

2018 01 8074W01A 2018 01 8074W01A

2018 01 8074W01A

696 1 <sup>36</sup>

696 2 407 2

<sup>35</sup> 696 2 407 2

\



41

42

43

4

568

549

44

45

46

47

48

1.

---

44

5

2022

179

45

2020

600

46

2020

600

0.07

47

2020

PECL 11 201 1 2  
49

50

2001

10 1

2

1

3

2

10 1—3

+

10

9

51

---

49

Parties: *Third Party Beneficiaries and Assignment*, Martinus Nijhoff, 1992, p. 91.

50

2014 921 Ole Lando, Eric Clive, André Prüm & Reinhard Zimmermann eds., *Principles of European Contract Law, Part III*, Kluwer Law International, 2003, p. 99.

51

2.

696 2 407

545

52

53

545 2 2

54

547 1

545 2 2

545 2 1

55

---

52

1986

2020

2019

5 3

53

2020

2020

284

54

288

55

2020

288

545 2 1

2020

288

3.

1

696 2 407

547 1

696 1

56

696 2 407

407

119

696 2

57

2

58

56

2020

294

421

696

2

57

58

A/CN.9/470

30

58

59                      696      2      407                      60

696      2

28      2

407      2

696      2

---

59  
60

2020      19

395

2017

59

## The Effectiveness of Prohibiting Assignment of Claims in the Perspective of Guarantee Law

YANG Ruihe

**Abstract:** The purpose of including a non-assignment clause in a guarantee contract is to solidify the guarantee relationship and avoid adverse effects on the guarantor due to the assignment of the creditor's rights. Whether a non-assignment clause can break through the principle of contractual relativity and create legal binding force on third parties depends on the type of rights subject to non-assignment and the subjective status of the assignee. When the rights subject to non-assignment are monetary, the non-assignment clause is only legally binding between the parties to the clause, and the guarantor is obligated to the assignee. When the rights subject to non-assignment are non-monetary, an analysis framework based on the subjective status of the assignee should be applied. The guarantor can assert the existence of the non-assignment clause against malicious third parties and refuse to assume guarantee responsibilities towards both the assignor and the assignee.

**Keywords:** Guarantee Rights; Prohibition Against Assignment; Guarantee Responsibility; Type of Claim; Subjective Status