

The Priority of Floating Charge and Other Types of Security Interest

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Abstract

Floating charge is a special type of charge developed in financing. It contains such characteristics like: the assets of the charge would be changing from time to time, the company may carry on its business in ordinary way and finally the charge would be fixed on some assets becoming a fixed charge. This kind of charge is transplanted by many civil law countries because of its advantage in financing, and the 2007 property law of PRC adopted the floating charge.

If several security interests are created on one asset, the priority of these interests becomes a problem which concerns whether the secured creditor could be paid and how much it would be paid. This problem presents when the holder of a floating charge confronts other secured creditors (the holders of fixed charge, the holders of pledge and other holders of floating charges). Our current rule provides that the priority of hypotheca interests depends on the time of registration, and a hypotheca interest always has the priority over the pledge interest. But this rule contradicts the characteristics of the floating charge which allow the chargee to create security on the assets. Since floating charge contains the particular characteristic, I consider that we

should create a rule for the priority of floating charge.

The floating charge originated from the Anglo-American Legal System. Hence we should consider the solution in the System of Anglo-American Legal. So I compared the England rules with the UCC rules, also referred to the suggestion of Chinese law professors, trying to arrive at a conclusion

Creating a rule should be considerate. It is necessary to consider that whether the rule is appropriate being applied to liquidation. Since a floating charge may be created on a whole company, the execution of it could result in the liquidation of the company, while the liquidation is one of the reasons why the floating charge crystallize. The liquidation is a process to balance the right of all the creditors besides the secured creditors. Like other secured creditors, the holder of the floating charge with the Exemption Right could not be restrained by the bankruptcy administrator. In case he exercised his right, other interests of secured creditors would be deprived. Therefore, I applied the England rules and the UCC rules to the situation of liquidation to analysis the effects. According to the rules of Chinese bankruptcy law, I considered that we could selectively borrow the rules of England and UCC, accept the suggestion of the Chinese law professors partially, and finally create a rule.

Floating charge is created for financing, and the value of it is to obtain the company as much money as possible. Another advantage of it is to keep the value of

an enterprise as a whole in execution. I did the economic analysis of effect applying the rule in chapter 4, with the purpose of proving the rules is suitable for realizing the value of floating charge.

In summary, I drew a conclusion of the priority rule for floating charge , trying to make the floating charge system improve economic development to realize the purpose of the legislator.

Key Words: Floating charge Priority Bankruptcy