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The concept of a claim evidenced in writing as it appears in the provisions on the assignment of a claim

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**Abstract:**

Assignment is a basic and commonly used method for transferring claims. The article addresses the practical problem of how to understand the term “a claim evidenced in writing”, which is referred to in Article 511 and Article 514 of the Polish Civil Code that govern the assignment. The issue is particularly important in the light of the latter provision, since it establishes an exception to the effectiveness against the assignee of a stipulation contained in the creditor’s agreement with the debtor on the exclusion or limitation of the assignment (pactum de non cedendo) provided for in Article 509 § 1 of the Polish Civil Code. The term under consideration is understood differently in the academic legal writings and the matter is quite often only briefly dealt with by the authors, while the case-law raises some doubts and presents certain differences and inconsistencies.

In the course of the analysis, following an outline of the views presented in the case-law and by the legal scholars, it was separately examined whether the term “a claim evidenced in writing” should be understood identically in the light of both provisions in which it can be found; what should be understood as a claim that is evidenced in writing and who should do it. In conclusion, it was established that, in the Polish Civil Code, the term “a claim evidenced in writing” should be understood as a signed document (bearing a qualified electronic signature where it is in the electronic form) that a reasonable person can regard without any doubt as covering the entire content of the claim. The circle of subjects who should sign it is not identical under Article 511 and Article 514 of the Polish Civil Code, as – in the case of the former article – it is broader under certain conditions, while – in the case of the latter article – the document should always be signed or approved in writing by the debtor.

On the basis of the considerations made, the question that is disputed in the literature was then examined, namely whether a VAT invoice should be regarded as a claim evidenced in writing within the meaning of Article 511 and Article 514 of the Polish Civil Code. To this question a negative answer was actually given.