



European Bank
for Reconstruction and Development

FACTORING SURVEY IN EBRD COUNTRIES OF OPERATION

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An abstract graphic consisting of several overlapping, semi-transparent, light blue and grey geometric shapes. These shapes are faceted, resembling crystalline structures or architectural elements, and are arranged in a way that creates a sense of depth and movement across the lower half of the page.

A survey of legal and regulatory regimes for factoring in EBRD countries of operation.

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FACTORING SURVEY

The following country survey report was prepared following a review of local laws and based on input received from local legal practitioners answering the following questions:

	No.	Question
Regulatory Issues	1.	Is there a licence/certification/authorisation requirement for non-banking financial institutions (NBFIs) offering factoring services?
	2.	What type of licences are required (e.g. for companies - business licence, for managers - approval of managers, for shareholders – approval of qualifying holdings (e.g. for 10% or more shares?)
	3.	What are the official requirements for obtaining licences (for each category)?
	4.	Which supervisory body (if any) regulates/supervises (issues licences, scrutinizes performance, etc.) the NBFI providers of factoring services and based upon which laws?
	5.	What are the supervisory authorities of that regulator (e.g. inspections, temporary/permanent revoking of licences, issuing penalties, issuing mandatory instructions, etc.)?
	6.	Which forms/types of reporting (if any) are required by the supervisory authorities? - Annual, half yearly, quarterly financial reports? Audited or not?
	7.	Are there any obligatory financial covenants such as for instance capital adequacy requirements, provisioning, et simile for factors? (e.g. Basel III type provisioning, equity size/balance sheet ratio)?
Factoring Contract Features	8.	Is the country a member of any international conventions on factoring? (UNIDROIT and UNCITRAL)
	9.	Is there a law on factoring or special contract law provisions for factoring in general Civil Code / Commercial Law / Obligations act (not general provisions on assignment of claims)? Please name the law or particular provisions in the general law(s).
	10.	Is there a definition of factoring in local jurisdiction? If so please quote this.
	11.	Are various types of factoring defined (recourse, non-recourse, domestic, international, reverse factoring, etc.) and if yes, which in particular?
	12.	Are there any restrictions on origin of receivables that can be factored (e.g. just those arising from sale of goods or provision of services)?
	13.	Are there any restrictions on the maturity of receivables that can be factored and/or maximum time exposure of factoring companies to those receivables (from the moment of purchase to the nominal due date)?
	14.	Are factoring companies allowed to negotiate extension/restructuring of payment terms after purchasing receivables and under what conditions (if any)?

	15.	Is recourse factoring and non-recourse factoring both considered a true sale transaction (instead of recourse factoring being considered secured lending transaction) and is this confirmed pursuant to existing legislation?
	16.	Are any of the following necessary to achieve validity of assignment against the debtor or third party creditors: <ul style="list-style-type: none"> ○ registration of assignment, ○ stamp-duty or other documentary taxes paid on transaction ○ notification <p>Are there any other requirements for the validity of assignment?</p>
	17.	Is it possible to assign future receivables? How clear is the law in respect of minimum determination of those receivables in assignment documents (what information needs to be mentioned for the assignment to be considered valid e.g. both debtor and creditor of receivable, maximum amount, etc.)?
	18.	Does assignment (deed, contract) have to be in a written (paper based) form?
	19.	Can a receivable be validly assigned using an Electronic Data Exchange message?
	20.	Is there a law on electronic signature? Is it widely used?
	21.	Is a contractual prohibition against the assignment of receivables valid against factoring in your country? What are the consequences of its breach (invalidity of transaction or inapplicability of transaction against the debtor)? Is there any difference if factoring is done with or without recourse?
Miscellaneous	22.	Are there any VAT issues or problems in your country concerning the assignment of receivables? What is the VAT treatment of factoring commission/ service charge? What is the VAT treatment of discount or interest? Are there any differences in the VAT treatment between banks and non-banks engaged in factoring?
	23.	In case of factoring of receivables created in export activity which are denominated in a foreign currency - can a domestic factoring company purchase those receivables by paying for them in their nominal (foreign) currency or does their value have to be exchanged in domestic currency and the purchase price paid in domestic currency (FOREX exposure and exchange costs)?
	24.	Are there any penalties (and if so of what kind) applicable to late payments?

OVERVIEW OF SURVEY RESULTS

Table 1 – Regulation of factoring operations

		FACTORING OPERATIONS			
No.	Country	Regulated factoring industry?	License needed to operate?	No Capital adequacy requirements?	Factoring companies are supervised?
1.	Albania	✓	✓	✓	✓
2.	Armenia	✓	✓	✗	✓
3.	Azerbaijan	✓	✓	✓	✓
4.	Belarus	✓	✓	✓	✓
5.	B&H	✓	✓	✓	✓
6.	Bulgaria	✓	✗	✓	✓
7.	Croatia	✓	✓	✓	✓
8.	Cyprus	✗	✗	✓	✗
9.	Egypt	✓	✓	✗	✓
10.	Estonia	✓	✗	✓	✓
11.	FYR Macedonia	✓	✓	✓	✓
12.	Georgia	✗	✗	✓	✗
13.	Greece	✓	✓	✓	✓
14.	Hungary	✓	✓	✗	✓
15.	Jordan	✗	✗	✓	✗
16.	Kazakhstan	✓	✓		✓
17.	Kosovo	✓	✓	✓	✓
18.	Kyrgyzstan	✓	✓	✗	✓
19.	Latvia	✗	✗	✓	✗
20.	Lebanon	✗	✗	✓	✗
21.	Lithuania	✓	✗	✓	✓
22.	Moldova	✗	✗	✓	✗
23.	Mongolia	✓	✓	✗	✓
24.	Montenegro	✗	✗	✓	✗
25.	Morocco	✓	✓	✗	✓
26.	Poland	✗	✗	✓	✗
27.	Romania	✓	✓	✗	✓
28.	Russia	✓	✓	✗	✓
29.	Serbia	✓	✓	✓	✓
30.	Slovakia	✗	✗	✓	✗
31.	Slovenia	✗	✗	✓	✗
32.	Tajikistan	✓	✓	✓	✓
33.	Tunisia	✓	✓	✗	✓
34.	Turkey	✓	✓	✓	✓
35.	Turkmenistan	✗	✗	✗	✗
36.	Ukraine	✓	✗	✓	✓
37.	Uzbekistan	✓	✓	✓	✓
✓		26✓	22✓	26✓	26✓
✗		11 ✗	15 ✗	10 ✗	11 ✗

✓ = Yes

✗ = No

■ = No Info

Table 2 – Features of Factoring Contract

		FACTORING CONTRACT						
No.	Country	Specific Law or specific provisions in the Civil Code	Specific definitions for different types of factoring?	Recourse factoring a true sale?	Is it possible to assign future receivables?	Ban on assignment clauses ineffective?	Electronic Data Exchange	Notification not needed for assignment validity
1.	Albania	✓	✓	✓	✓	✓	✓	✗
2.	Armenia	✓	✗	✗	✓	✓	✓	✗
3.	Azerbaijan	✓	✗	✗	✓	✓	✗	✗
4.	Belarus	✓	✓	✓	✓	✓	✓	✓
5.	B&H	✓	✓	✓	✓	✓	✓	✓
6.	Bulgaria	✓	✓	✗	✓	✗	✓	✓
7.	Croatia	✓	✓	✓	✓	✗	✓	✓
8.	Cyprus	✗	✗		✓		✓	✗
9.	Egypt	✓	✓	✓	✓	✗	✗	✗
10.	Estonia	✓	✗	✗	✓	✓	✓	✓
11.	FYR Macedonia	✓	✓	✓	✓	✗	✓	✗
12.	Georgia	✓	✗	✗	✓	✗	✓	✗
13.	Greece	✓	✓	✓	✓	✓	✓	✗
14.	Hungary	✓	✗	✓	✓	✗	✓	✓
15.	Jordan	✗	✗	✗	✓	✗	✓	✗
16.	Kazakhstan	✓	✗	✓	✓	✓	✓	✗
17.	Kosovo	✓	✓	✓	✓	✓	✓	✗
18.	Kyrgyzstan	✓	✓	✓	✓	✗	✓	✗
19.	Latvia	✓	✓	✓	✓	✓	✓	✓
20.	Lebanon	✗	✗	✓	✓	✓	✓	✓
21.	Lithuania	✗	✗	✓	✓	✗	✗	✓
22.	Moldova	✓	✓	✗	✓	✓	✓	✓
23.	Mongolia	✓	✗	✗	✓	✗	✗	✓
24.	Montenegro	✗	✗	✓	✓	✗	✓	✓
25.	Morocco	✓	✗	✗	✓	✓	✓	✗
26.	Poland	✗	✗	✓	✓	✓	✓	✗
27.	Romania	✓	✗	✗	✓	✓	✓	✓
28.	Russia	✓	✓	✓	✓	✓	✓	✗
29.	Serbia	✓	✓	✓	✓	✓	✓	✗
30.	Slovakia	✗	✗	✓	✗	✗	✓	
31.	Slovenia	✗	✗	✓	✓	✗	✓	✗
32.	Tajikistan	✓	✗	✓	✓	✓	✗	✗
33.	Tunisia	✗	✗	✓	✓	✗	✓	✗
34.	Turkey	✗	✗	✓	✓	✗	✗	✓
35.	Turkmenistan	✗	✗					
36.	Ukraine	✓	✓	✓	✓	✓	✓	✓
37.	Uzbekistan	✓	✗	✗	✓	✓	✗	✗
✓		26✓	15✓	24✓	35✓	20✓	29✓	15✓
✗		11 ✗	22 ✗	11 ✗	1 ✗	15 ✗	7 ✗	20 ✗

✓ = Yes
✗ = No
= No Info

Table 3 – Miscellaneous issues affecting factoring

		MISCELLANEOUS		
No.	Country	Non-Restrictive For-Ex regulations	Same Tax Treatment for bank/non-bank factoring?	Penalties available on late payment?
1.	Albania	✓	✓	✓
2.	Armenia	✓	✓	✓
3.	Azerbaijan	✓		✓
4.	Belarus	✓	✓	✓
5.	B&H	✓	✗	✓
6.	Bulgaria	✓	✓	✓
7.	Croatia	✓	✓	✓
8.	Cyprus		✓	✓
9.	Egypt	✓	✓	✓
10.	Estonia	✓	✓	✓
11.	FYR Macedonia	✗	✗	✓
12.	Georgia	✓	✓	✓
13.	Greece	✓	✓	✓
14.	Hungary	✓	✓	✓
15.	Jordan	✓	✓	✓
16.	Kazakhstan	✓		✓
17.	Kosovo	✗	✓	✓
18.	Kyrgyzstan	✓	✓	✓
19.	Latvia		✓	✓
20.	Lebanon	✓	✓	✓
21.	Lithuania	✓	✓	✓
22.	Moldova	✓	✓	✓
23.	Mongolia	✓	✗	✓
24.	Montenegro	✓	✓	✓
25.	Morocco	✗	✓	✓
26.	Poland	✓	✗	✓
27.	Romania	✗	✓	✓
28.	Russia	✓	✗	✓
29.	Serbia	✓	✓	✓
30.	Slovakia	✓	✓	✓
31.	Slovenia	✓	✗	✓
32.	Tajikistan	✗	✓	✓
33.	Tunisia	✗	✗	✓
34.	Turkey	✓	✓	✓
35.	Turkmenistan		✓	✓
36.	Ukraine	✗	✓	✓
37.	Uzbekistan	✗	✓	✓
	✓	26✓	28✓	37✓
	✗	8✗	7✗	0✗

✓ = Yes

✗ = No

= No Info

INTRODUCTION

Factoring, as a financial service based on the sale of accounts receivables (short term assets) is a very useful financing tool for efficient and, when done without recourse, off balance sheet access to working capital, especially for small and medium size companies (SME). The service had been known for many years in developed economies before it started gaining momentum in developing and transition countries recently. It is believed that the recent momentum has been sparked by a transfer of know-how and increased demand for liquidity in times of crisis.

The EBRD has been involved in the promotion of factoring through the activities of our Trade Facilitation Programme (TFP) and the Financial Institutions (FI) team's investments and since 2012 by working on the improvement of legal environment for factoring in the EBRD region. Under the programme, the EBRD offers technical assistance in the creation of a facilitative legislative environment, an appropriately designed regulatory regime and seeking to support the development of local and/or regional reverse factoring programmes.

The following survey, which gives an overview of the current legal landscape for factoring in EBRD countries of operation, has been prepared to understand the various approaches EBRD countries of operation take when regulating factoring and to use the received information to advocate and plan potential legal improvement projects.

The survey shows that many of EBRD countries of operation have started working on or have already introduced specialised laws or specific provisions in general commercial legislation facilitating factoring operations. However, what survey also shows is that the development of factoring services and product diversification differs from country to country and seem to be conditioned by many factors including market sophistication and existence of supportive legal provisions.

Legal rules and regulations have a direct impact on the selection of potential providers of factoring services and products they are able to offer. An overly strict regulation leads to concentration of services usually in the banking sector where it is offered as a side service to typical banking products. This may prevent the development through specialization and pioneering attempts of smaller market players. On the other hand, no regulation at all may lead to the problems of adverse selection and confusing distinctions between factoring and last resort financing or bad debt collection. Rigid contract law rules prevent the development of some products (see below). The lack of clear definitions or long established court practice increases legal risks thus, influencing on the price and competitiveness of factoring.

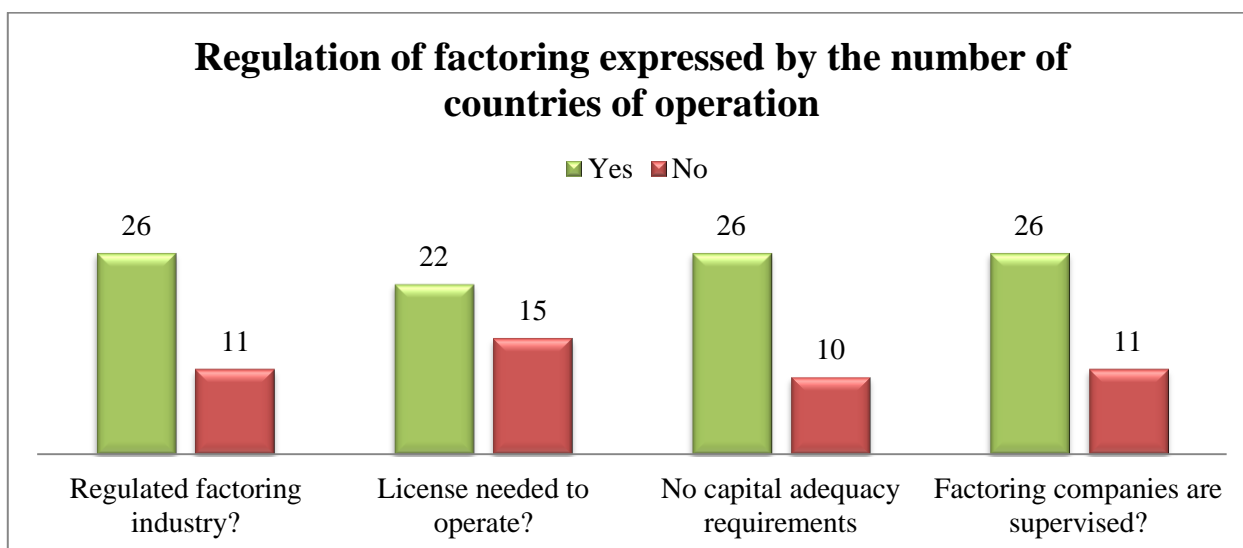
The survey examines three crucial aspects pertaining to governing the legal framework for factoring within a specific jurisdiction, namely: (i) regulation of factoring as a financial services industry, (ii) factoring contract and (iii) other implications such as tax, foreign exchange matters relevant for factoring as well as remedies in cases of late payments available for creditors in a particular jurisdiction. For clarity and convenience purposes, these matters have then been divided in more specific topics/questions.

The first aspect reviewed in every country relates to the level of regulation applicable to factoring industry. The survey shows that current practices across the EBRD countries of operation vary from not subjecting factoring to financial services type of regulation to treating factoring operations as a type of banking and hence applying strict regulation regime to factoring companies. In strict regulation regimes, factoring companies are usually subject to capital adequacy rules and prudential risk-based supervision of their supervisors. On the other hand, in jurisdictions where factoring is not at all considered a regulated financial service, each factoring company has the liberty to operate according to its own corporate rules and contractual relationships being usually subject only to anti-money laundering and similar general inspection laws. A third type of an approach that is somewhat of a middle ground approach is represented by countries regulating factoring industry as a type of a financial service but stopping short from subjecting it to extensive capital requirements. This type of regulatory approach usually consists of introducing regulators/supervisors which are authorised to issue operating licences, approve managers, review business plans and financial reports, control start-up capital and conduct occasional on-sight inspections.

Based on the survey it seems that for jurisdictions considering creating or updating their factoring regulatory regimes, an appropriate level of supervisory oversight might be beneficial for the development of the factoring industry as it may play a role in improving the public perception of factoring and its wider use thereof. However, it also seems that there are no significant benefits for subjecting factoring providers to expensive banking like capital adequacy regulation considering that factoring services are not funded by deposit taking and hence do not pose systemic risks comparable to regular banking industry.

The survey shows a clear inclination towards regulation of factoring among EBRD countries of operation, with 26 out of 37 reviewed countries having a regulatory body supervising factoring companies in place. The survey also shows that the majority of countries that do regulate factoring services, does not impose capital adequacy requirements for factoring companies. With Only eight being an exception to this (Armenia, Egypt, Hungary, Kyrgyzstan, Mongolia, Romania, Russia, Tunisia).

22 of the 26 countries, which have a regulated factoring industry, require a specific license to start providing factoring services while in the other cases a simple registration in a designated register would suffice.

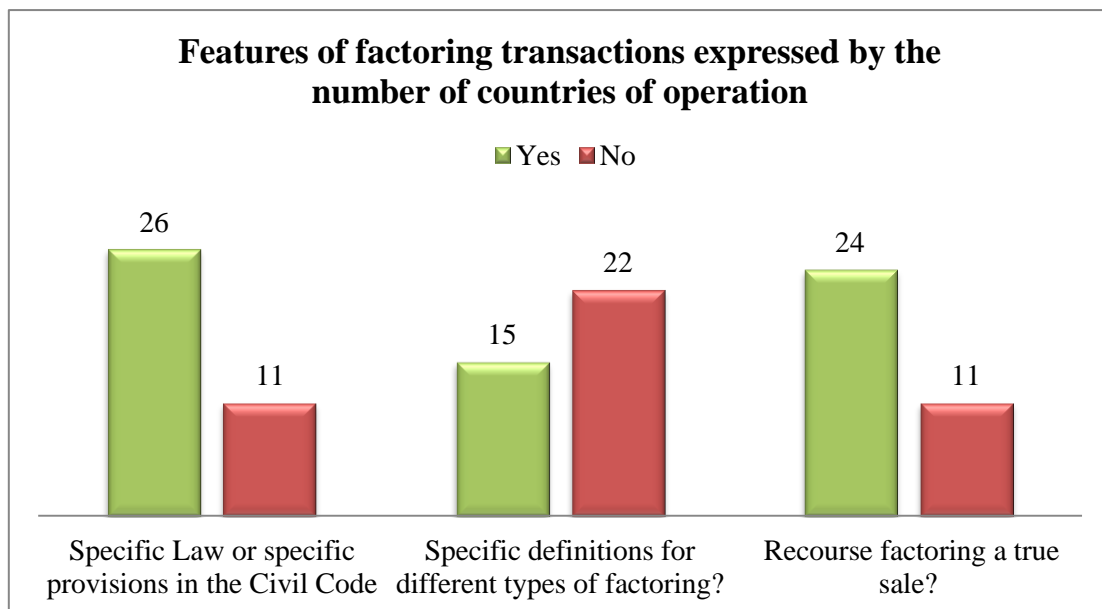


The factoring contract, and its distinctive features, is the second aspect which is examined in this survey. Even though, many of the EBRD's countries of operation have started working on or have already introduced specialised laws on factoring, there are still countries where there are no special provisions on factoring contracts or established and published court practice that would compensate for this lack of clarity. Instead, in these countries the factoring framework constitutes only of general contract law provisions. Although technically speaking, factoring can be seen as simply an assignment of accounts receivable, which is possible in the majority if not all jurisdictions, factoring is usually contracted as a complex partnership agreement, covering a range of business services based on two main functions, financing and administration of receivables. By combining these functions, the factoring market has developed various types of products which require different and specific contract law considerations, which are not legally supported in every jurisdiction.

It appears that 26 EBRD countries of operations have either adopted a specific code on factoring or their civil code contains some specific provisions on factoring. The rest of the EBRD countries do not have specific contract law rules on factoring and parties rely on the general assignment provisions when drafting contracts. Due to the lack of understanding of the product in a developing environment and due to the lack of developed case law and the tradition of publishing judicial decisions, this sometimes creates uncertainties in relation to interpretation of contracts and hence increases perceived risks and/or stifles creativity of business practices.

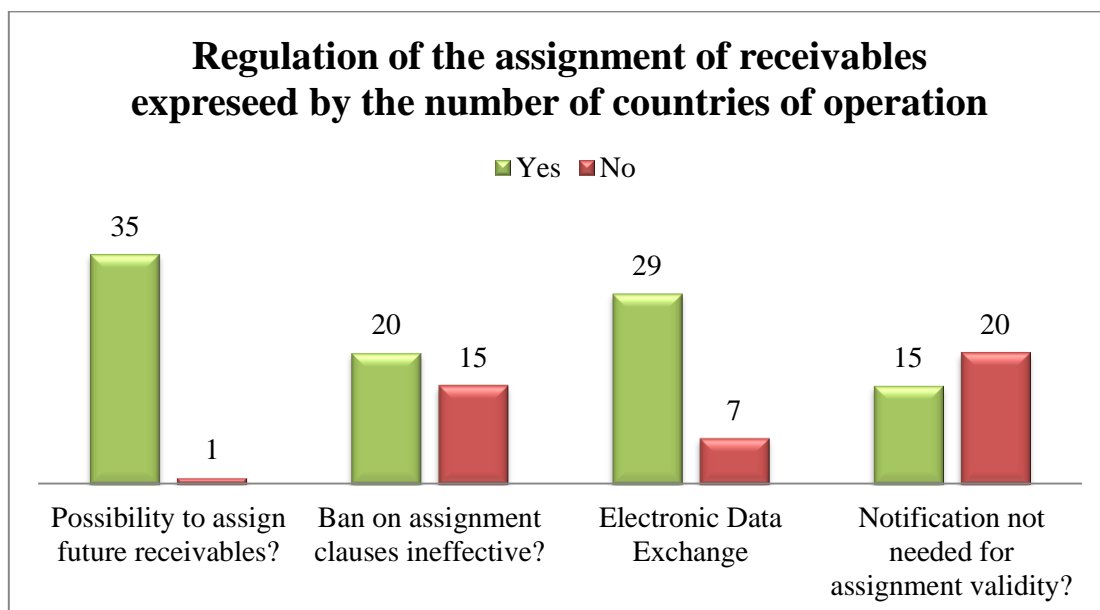
We have tried to identify how local laws define factoring as this may influence the type of service that can be offered and the rights and obligations of the parties of a factoring contract. In this respect, the survey contained further questions related to the types of factoring foreseen within the legal framework of a particular country. In particular, we were interested to see the status given to recourse factoring by the relevant legislation, namely whether recourse factoring is considered a true sale or a secured transaction. This distinction is potentially critical in a bankruptcy case because a factor that has purchased accounts owns the title over those accounts and is usually able to continue to collect on the accounts without interference of the bankruptcy proceedings. A secured lender, on the other hand, is usually subject to a mandatory stay of proceedings and can also be subject to some

form of cram down in bankruptcy. Confusion around these concepts is very damaging and should be avoided by clear, bright-red line rules. It is believed that recourse factoring indeed is a form of title finance and should not be re-characterized as a secured transaction. In contrast to a collateralized loan, the purpose of the transaction of receivables in factoring is sale and not provision of collateral. The right of recourse against the client is not the main obligation (as the repayment of a debt is in secured transaction) but merely a guarantee for the value (solvency) of the transferred receivable issued by the client (seller of receivable). The survey showed diversification on this issue as well, as 24 countries consider the recourse factoring to be a true-sales transaction compared to 11 countries where recourse factoring is considered to be secured lending. It also seems that the legislation is not always clear on this issue and the answers we received were often based on either the practice of the courts or the respondents' opinion based on the general provisions of the local law. The factoring industry would benefit if these uncertainties would be lifted and properly clarified in relevant jurisdictions.



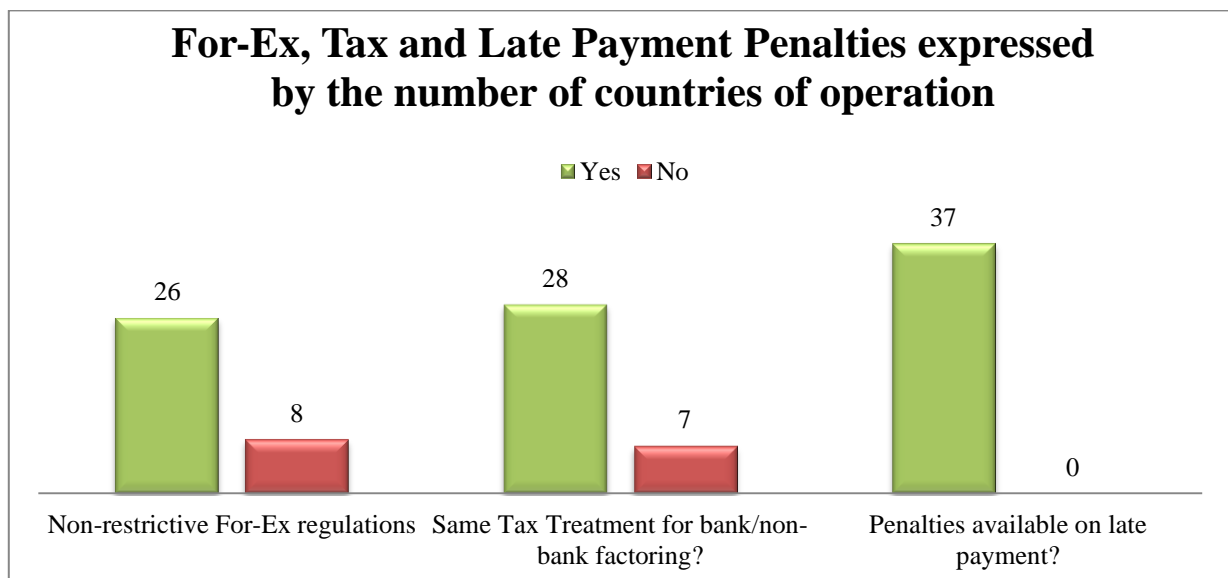
The possibility for companies to assigning future accounts receivable within their factoring relationship is an important feature as it helps reserving a priority over future accounts receivable for factors and the legal framework should be as flexible as possible on this issue. The possibility of assigning future receivables is an important feature for the factoring industry, as this enables establishment of long-term factoring relationships and may protect the factors' priority in receivables in case of competing claims. Local laws may impose restrictions in this regard *i.e.* by requiring a certain level of determination (identification) of the receivables at the time of assignment. Some jurisdictions permit assigning future claim as long as the debtor is known or the debt identifiable at the time of the assignment. This may include future debts from already existing trade contracts or even from yet inexistent ones. In contrast, some jurisdictions require a *precise* identification of the claim (value, debtor, due date, underlying contract, etc.) at the time of assignment, which make assignment of future debts practically impossible. 35 out of 37 surveyed jurisdictions allow the assignment of future receivables while in 1 jurisdiction assignment of future receivables is prohibited.

Another important legal issue to be considered when discussing legal framework for factoring is the issue of validity and effects of the clauses which are inserted into sale and purchase agreements which may forbid the parties to assign the claim to third parties. These bans on assignment clauses are particularly common in contracts between small businesses acting as suppliers to large companies which dominate the market. Combined with the extension of payment terms, these clauses put such suppliers in a disadvantageous position, since they cannot seek working capital financing from financial markets based on their accounts receivable. There is no clear cut solution on whether a ban on assignment clauses should be overridden as it represents a conflict between two legitimate interests: on the one hand, freedom of the contract and, on the other hand, the freedom of using property and prevention of misuse of dominant position. This issue is more a policy than a legal argument since different approaches can be defended with equal justifications. Since the ban of assignment of trade receivables can be especially detrimental for SMEs with little bargaining power and which clients do not offer supply chain finance at market rates, it might be consistent for a jurisdiction trying to promoting SME access to finance to adopt rules that allow overriding such bans in case of factoring. The 2001 UN Convention on the Assignment of Receivables in International Trade provides a good source of inspiration for adopting such legislative changes. As the below graph suggests, in 20 countries the ban on assignment clause is effective against a factoring contract while in 15 other countries it is not, however, in those cases there may be other ramifications to protect the legitimate interests of other party in place, such as right to compensation in case of damages for the original debtor arising from the fact of assignment.



Finally, the survey also seeks to understand the tax regime applied to factoring transactions as an issue which could be of key importance for the viability of the factoring industry when compared to banking sector. In this respect, it is of crucial importance to understand whether factoring arrangements are treated in the same way as banking transactions where, the interest payments are usually tax deductible. In some cases, VAT is charged on the entire factoring transaction, namely the service fee and the interest payments. The survey shows that 28 out of 37 surveyed countries apply the same tax treatment for bank/non-bank factoring companies. Situations where, non-bank factoring companies are required to charge VAT on both components of price of factoring (interest and

factoring fees) while banks are able to charge it only on fee for services, must be avoided as this puts factoring companies in an unfavorable position of having more expensive services. Besides tax implications, foreign exchange and late payment penalties are also important components for the development of factoring industry. In order to decrease the risks associated with foreign exchange in international factoring; domestic factors should be allowed to purchase cross-border receivables from domestic clients in the (usually foreign) currency of the receivable. Our survey, a bit surprisingly, discovered that only 7 out of 37 surveyed jurisdictions provide for forex restrictions which vary in nature but usually provide for a restriction to accept payments in foreign currency. This shows that the industry has been able to advocate its interest in this respect well and that the local authorities have come to understanding that no extra risk is being introduced in the market if they allow the foreign currency receivables to be transferred in the hands of domestic factoring industry for payment in face currency of those receivables. With regard to the late payment interest charged on late payments, it is important to note that the legal frameworks of all the surveyed countries provide of some sort of recourse/interest for late payments.



DISCLAIMER

The European Bank for Reconstruction and Development, its members and all individual and/or companies who have contributed to this survey will have no responsibility whatsoever regarding the correctness, completeness and legal enforceability of any subject contained in this study. Moreover, European Bank for Reconstruction and Development, its members and all individual and/or companies who have contributed in this survey shall not be liable for any loss, cost, damage or liability that third parties may suffer through relying in this survey.

COUNTRY SURVEY REPORTS



ALBANIA

List of relevant legislation/regulation

The following Albanian legislation was considered: (i) Law No. 9630 on Factoring, dated 30 October 2006; and (ii) the Civil Code No. 7859, dated 29 July 1994 (as amended).

1. FACTORING OPERATIONS

1.1 Regulation of factoring operations

Factoring operations are regulated in Albania, the regulator being the National Bank of Albania (the “**National Bank**”), which issues licences for performing factoring activities.

1.2 Licensing conditions and procedure

Companies applying for factoring licence shall submit to the National Bank documentation evidencing the subscription of the minimum share capital, *i.e.* ALL 20,000,000 (approximately EUR 145,000), by-laws, articles of incorporation, list of founders and their respective participation, evidence of registration with the Trade Registry, certificates and documentation regarding the founders’, administrators’ and/or legal representatives’ fulfilment of the legal criteria for holding such positions, proposed business plan of the company, etc. Among other conditions, the administrators must have: university degree, at least five years of professional experience, of which at least three years acting in a banking and/or financial sector or in any other related field, a good ethical and professional reputation.

1.3 Capital adequacy and reporting requirements

No financial covenants apply to the non-banking factoring companies.

As regards reporting requirements, non-bank financial institutions shall submit to the National Bank, within the first half of the following year, a copy of the annual report and a copy of the statutory auditor’ opinion, reflecting the financial and accounting position on individual and consolidated basis. Also, the factoring companies shall submit quarterly reports. According to the Regulation 2/2013 of the National Bank - factoring companies shall keep records (a classification) of their factoring contracts on quarterly basis.

Depending on the time elapsed between maturity and payment, the factoring companies have the obligation to qualify and keep records of the factoring contracts, as follows: (i) “*standard*”, when principal or interest is not paid completely between 1 and 30 days from maturity, (ii) “*special mention*” when the principal or interest is not paid completely between 31 and 90 days from maturity, (iii) “*sub-standard*”, when the principal and interest is not paid completely between 91 and 180 days from maturity, (iv) “*doubtful*”, when the principal or interest is not paid completely between 181 and 365 days from maturity term, and (v) “*loss*”, when the principal or interest is not paid completely or interest is not paid totally for a period longer than 365 days from maturity.

1.4 Supervision of the factoring companies

The National Bank has the right to inspect all documents/offices/financial activity and to revoke licences issued to factoring companies.

2. THE FACTORING CONTRACT

2.1 Definition of the factoring contract

The Law on Factoring mentions the following types of factoring: (i) domestic, export, and import factoring, (ii) non-recourse and recourse factoring. However, even in case of non-recourse factoring the assignor retains responsibility if, for any reason other than financial inability, the debtor does not pay the receivable.

Albania is not a member of the UNIDROIT Convention on International Factoring or UNCITRAL Convention on the Assignment of Receivables in International Trade.

2.2 Receivables subject to factoring.

Factoring may have as object existing and/or future receivables arising from contracts of sale of goods and/or services concluded between the assignor and its customers (debtors). The receivables may be domestic or international, but the origin thereof is limited to contracts of sale of goods and services.

The assignment of future receivables is possible. However, the agreements under which the future receivables will arise must be concluded within maximum 24 months from the signing date of the factoring agreement. No further restrictions are stipulated with respect to the assigned receivables or the time exposure of factoring companies to such receivables.

Both recourse and non-recourse factoring are considered true sale transactions under Albanian law.

2.3 Assignment of receivables

The assignment of receivables must be concluded in writing for validity purposes. Although a law on electronic signature has been adopted, the procedure is not widely used and the hard-copy agreements are preferred.

The assignment must be notified to the debtor. Registration with the Charge Registry is available, but not mandatory. The contractual prohibition against the assignment of receivables is not specified as a condition for invalidity of transaction. Therefore it would be considered as inapplicable against the debtor. There is no difference for this matter if the factoring is done with or without recourse.

3. MISCELLANEOUS

Foreign-exchange rules - Albania has a liberal foreign exchange policy. In other words, contracts are valid in Albania if the parties of such contracts settle their obligations in foreign currency. This is applicable not only in export – import activities but also for the domestic transactions. There is no specific rule under the Albanian law that the receivables created in export activity which are

denominated in a foreign currency must be converted and paid into a local currency by the domestic factoring company.

VAT issues – For VAT purposes factoring is considered a financial service and the applicable VAT is 0%.

Consequences of late payment – The contractual default interest applies. Apparently the law provides for an indemnification of ALL 5,000 (approximately EUR 36 in case of late payment).



ARMENIA

List of relevant legislation/regulation

The following Armenian legislation was considered: the Civil Code No. AL-239 dated 28 July 1998 of the Republic of Armenia (as amended).

1. FACTORING OPERATIONS

1.1 Regulation of factoring operations

Under Armenian law, only companies holding a specific licence, are entitled to perform leasing operations. Apart from banks, “*credit organisations*” such as, factoring companies, leasing companies and universal credit organisations may apply for a licence to perform factoring activities. The supervising authority is the Central Bank of Armenia (the “**Central Bank**”).

1.2 Licensing conditions and procedure

The procedure for licensing is essentially the same for all credit organizations. The Central Bank grants the licence provided that: (i) all the submitted documents correspond to the requirements of the Central Bank; (ii) the obligatory share capital (*i.e.* AMD 150 million which amounts to approximately EUR 280,000) was fully paid in a deposit at the Central Bank or another Armenian bank; (iii) the company’s place of business and equipment correspond to the requirements of the Central Bank; (iv) main “*officers*” of the company (executive director, chairman of the board, head of executive administration and the deputies thereof, board members, members of the executive administration, general accountant and deputy thereof, head of the supervising committee and deputy thereof, members of the supervising committee) correspond to qualification requirements of the Central Bank; (v) shareholders with at least 10% holding have received the Central Bank’s approval.

Depending on their position, officers have to pass qualification exams/interviews either at the Central Bank or a specialised organization approved by the Central Bank.

1.3 Capital adequacy and reporting requirements

Credit organizations are required to submit numerous reports to the Central Bank. These include daily, weekly, monthly, quarterly and yearly reports.

As regards capital adequacy requirements, factoring companies are required to keep a minimum ratio between the general share capital and the total risk weight assets of 10% as well as a maximum single borrower risk of 25%.

As mentioned under Sub-section 1.1 above, leasing companies and universal credit organisations are also qualified to perform factoring activities. While for universal credit organisations the same ratios apply as in case of factoring companies, leasing companies must observe different requirements, *i.e.* minimum share capital of 100 million AMD and a minimum ratio between the general share capital and the total risk weight assets of 8%.

1.4 Supervision of the factoring companies

The Central Bank, as regulator and supervising authority of factoring companies and other credit organisations based on the Law on the Central Bank is entitled to: (i) inspect such companies; (ii) issue warnings; (iii) revoke licences; (iv) revoke *officers'* qualifications; (v) apply penalties; (vi) issue mandatory instructions.

2. THE FACTORING CONTRACT

2.1 Definition of the factoring contract

Armenia does not have a special law on factoring, but a chapter of the Civil Code (Chapter 48 – *“Financing upon assignment of monetary claim (factoring)”*) is dedicated thereto. Hence, the Civil Code defines the factoring contract, as follows: *“Under the contract of financing for assignment of the monetary claim, one party (the finance agent) transfers or undertakes to transfer to the other party (the client) monetary funds with reference to a monetary claim of the client (creditor) against a third party (the debtor) arising from the supply of goods, performance of works or provision of services by the client to the third party, and the client assigns or undertakes the duty to assign that monetary claim to the finance agent.”*

As regards the types of factoring, the Civil Code indicates that factoring is presumed to be non-recourse, unless otherwise stipulated in the contract: *“Unless otherwise provided by the contract between the client and the finance agent, the client is not liable for non-performance or improper performance of the assigned claim by the debtor ...”*

Armenia is not a member of the UNIDROIT Convention on International Factoring or UNCITRAL Convention on the Assignment of Receivables in International Trade.

2.2 Receivables subject to factoring

Pursuant to the definition of factoring, any receivables arising from sale of goods, performance of works or provision of services may be subject to factoring. Both, existing and future receivables, may be subject to factoring. The law provides for no restrictions regarding maximum time exposure of factoring companies to those receivables. Also, there are no stipulations in the law regarding the possibility of the factoring company to re-negotiate the payment terms, thus this may be achieved contractually between the factoring company and the debtor.

As far as future receivables are concerned, the law requires such receivables to be defined in a manner which allows identification thereof at the time they arise.

As a general rule, factoring will not be treated as a sale transaction in Armenia, since there are no provisions in the law that explicitly qualify factoring as a sale transaction. On the other hand, as factoring is not frequently used in Armenia, it is not clear what is the nature of

factoring, thus the possibility of interpreting factoring as a sale transaction is not entirely excluded.

2.3 Assignment of receivables

Factoring contracts must be concluded in writing. Although the Electronic Data Exchange messages and electronic signatures are stipulated in the legislation and available, they are not widely used in practice for entering into commercial contracts.

Registration of factoring contracts is not required and no stamp duty applies. The debtor must be notified in writing with respect to the assignment and has the right to request documents evidencing the assignment. Otherwise, without notification or sufficient evidence, the debtor's payment to the original creditor discharges the debt.

Any contractual prohibition of assignment does not invalidate the factoring agreement. However, in presence of such prohibition, the original creditor is liable towards the debtor for breaching the contractual prohibition. This rule applies equally to recourse and non-recourse factoring.

3. MISCELLANEOUS

Foreign-exchange rules - *credit organizations* (including factoring companies) have the right to perform their financial transactions in foreign currency, except for provision of consumer credit. Thus, factoring companies can purchase receivables created in export activity by paying for them in their nominal (foreign) currency, provided that the Central Bank does not interpret such factoring transactions as provision of consumer credit.

VAT issues - Factoring is exempt from VAT in Armenia, irrespective of the company that performs it (banking or non-banking).

Consequences of late payment - The Bank Reference Rate determined by the Central Bank applies in case of delayed payment. Currently the Bank Reference Rate equals to 12% per year and hasn't changed since February 2011.



AZERBAIJAN

List of relevant legislation/regulation

The following Azeri legislation was considered: (i) the Civil Code No. 779-IG dated 28 December 1999 (as amended); and (ii) the Law on Non-banking Credit Organisations dated 25 December 2009 (as amended).

1. FACTORING OPERATIONS

1.1 Regulation of factoring operations

Based on the Law Non-banking Credit Organisations, non-banking organisations may perform factoring activities based on a specific licence issued by the Central Bank of Azerbaijan (the “**Central Bank**”).

Factoring is defined by the Civil Code as financing in exchange of assignment of a monetary claim. Under a factoring contract, a factor extends, or undertakes to extend, funds to a client in return for an assignment of the client’s monetary claim against a third party arising out of the sale of goods, performance of works or services by the client to such third party.

1.2 Licensing conditions and procedure

In order to obtain the necessary licence, non-banking organisations shall submit the required documentation to the Central Bank, including: notarised copies of the constitutive documents, evidence that the minimum required share capital has been paid, information about organisational structure, information on qualifications, experience and reputation of the main actors of the organisation, information on financing sources and credit policy. The Central Bank considers the application within 30 calendar days (with possible prolongations if the documentation/information provided is incomplete). Licences are issued for indefinite term.

1.3 Capital adequacy and reporting requirements

No capital adequacy or other financial covenants apply to non-banking factoring companies.

As far as reporting is concerned, factoring companies must submit to the Central Bank quarterly reports on prudential requirements within 10 days from the end of each quarter. Within 5 months from the end of the financial year, factoring companies must submit audited yearly financial reports to the Central Bank and publish such reports in mass media.

1.4 Supervision of the factoring companies

The Central Bank supervises the activity of factoring companies according to the Law on Regulation of Inspections Conducted in Business Sector and Protection of Businessmen’s Interests. The Central Bank may perform annual regular controls and also extraordinary controls, if necessary. Further to such controls the Central Bank prepares reports regarding its findings. Among others, the Central Bank has the authority to revoke licences granted to factoring companies.

2. THE FACTORING CONTRACT

2.1 Definition of the factoring contract

The Civil Code contains special provisions on factoring and stipulates that the general rules on assignment of receivables shall apply to factoring as well. The definition of factoring provided in the Civil Code refers rather to the service than to the factoring contract, as reflected under Sub-section 1.1 above.

2.2 Receivables subject to factoring

Factoring can have as object monetary claims arising out of sale of goods, performance of works or services. No restrictions are stipulated in the law with respect to maturity of receivables that can be factored or maximum time exposure of factoring companies to those receivables. Also, the factoring company becomes an owner of assigned claims, thus it should be entitled to dispose of such claims including by negotiating/restructuring their terms. No conditions are stipulated in the law with respect to such disposal.

Future claims may be subject to factoring, in which case the assignment takes place at the moment the respective claims arise, not at the moment the contract is concluded.

Under Azerbaijan law assignment is a true sale. However, the law does not refer to recourse and non-recourse factoring and according to some local practitioners recourse factoring may be interpreted as secured lending.

2.3 Assignment of receivables

The law requires the assignment agreement to be concluded in writing for validity purposes. Such legal requirement cannot be fulfilled by using an Electronic Data Exchange message. A law on electronic signature has been adopted, but is not widely used for executing commercial contracts.

The assignment must be notified to the debtor. No registration or stamp duties are applicable.

Contractual prohibitions against assignment are valid in case of factoring. The assignor who breaches such prohibition is liable to pay damages to the counterparty. As regards the factoring contract concluded in breach of the prohibition, some local practitioners indicate that invalidation thereof is rather unlikely.

3. MISCELLANEOUS

Foreign-exchange rules – No foreign-exchange restrictions apply, thus receivables created in export activity and denominated in foreign currency can be paid in the respective foreign currency.

VAT issues – Local practitioners indicate that factoring is not sufficiently used in practice to conclude whether it can raise VAT issues or not. Most of them consider that factoring is a financial service, thus VAT exempt. Some are of the opinion that the factoring commission/service charge may be subject to 18% VAT, while the discount or interest is VAT exempt.

There are no differences of VAT treatment between banking and non-banking factoring companies.

Consequences of late payment – In case of late payment, contractual interest rates apply. In the absence of such contractual interests, the interest is determined based on rates established by the Central Bank.

BELARUS

List of relevant legislation/regulation

The following Belarus legislation was considered: (i) Banking Code of the Republic of Belarus No. 441-Z dated 25 October 25 2000 (Chapter 19) (the “**Banking Code**”); (ii) Civil Code of the Republic of Belarus No. 218-Z dated 7 December 1998 (Chapter 43) (the “**Civil Code**”); (iii) Law of the Republic of Belarus No. 471 dated 23 November 2015 “On Issues of Financing against Assignment of Monetary Claims (Factoring)” and (iv) Law of the Republic of Belarus No. 113-Z dated 28 December 2009 “On Electronic Document and Electronic Signature.”

4. FACTORING OPERATIONS

4.1 Regulation of factoring operations

Factoring operations are regulated in Belarus, the regulator being the National Bank of the Republic of Belarus (the “**National Bank**”), which issues licences to banks and Non-Banking Financial Institutions (NBFIs) for rendering factoring activities and is responsible for their supervision.

4.2 Licensing conditions and procedure

In Belarus, apart from banks, factoring services may be rendered by Non-Banking Financial Institutions (NBFI), which are obliged to obtain a license pursuant to article 107 of the Banking Code of the Republic of Belarus.

NBFIs may operate only in the form of a joint stock company. The legislation sets a minimum size of the authorized fund of NBFI – 500 000 Belarusian rubbles (approximately 250 000 Euro). Additionally, NBFIs are obliged to meet certain technical and organizational requirements pursuant the Banking Code of the Republic of Belarus. NBFIs do not have to abide any complementary requirements for rendering factoring services.

4.3 Capital adequacy and reporting requirements

NBFIs are obliged to submit various kinds of reports to the National Bank (monthly, quarterly, yearly and occasional). Only annual financial report is subject to the audit. Additionally the National Bank obliges NBFIs to disclose certain information about the activities of the company (yearly financial report, organizational structure etc.) on the official web-site of the NBFI.

4.4 Supervision of the factoring companies

National Bank controls the compliance of the legislation by NBFIs. Among other matters, the National Bank is entitled to conduct inspections, check the order of transactions, revoke licences for performing banking activities, issue mandatory acts regarding registration and reports of NBFIs, detect offences and impose penalties on NBFIs which broke banking and financial legislation.

5. THE FACTORING CONTRACT

5.1 Definition of the factoring contract

Both Civil Code and Banking Code contain a definition of a contract of financing against assignment of monetary claims (factoring), which are quite similar.

The Civil Code and the Banking Code recognise open and hidden factoring; domestic and international factoring; recourse and non-recourse factoring; export and import factoring; and reverse factoring.

Belarus is not a member of the UNIDROIT Convention on International Factoring or UNCITRAL Convention on the Assignment of Receivables in International Trade

5.2 Receivables subject to factoring

Both monetary claims the payment under which is already due (existing claim) and the right to claim payment that will arise in the future (future claim) may be assigned to a factoring company.

There is no specification in Belarus as to what would be deemed sufficient description of a future monetary claim. Legislation of Belarus does not specify the origin of receivables that can be factored. The only prohibition concerns the assignment of monetary claims inseparably connected to the creditor: claims for alimony, compensation for damage to life and health.

5.3 Assignment of receivables

Pursuant to the Civil Code, assignment of claims must be executed in the same form as the transaction from which such claim arises, i.e. in a simple written form or in notarial form depending on the underlying transaction.

Both recourse and non-recourse factoring are considered true sale transactions. However, there is no direct confirmation in the legislation of the abovementioned.

Parties may conclude a contract via exchange of electronic documents (including e-mails), provided that it is possible to conclusively establish that such electronic documents were sent by the parties to the contract. Electronic signature is allowed but not widely used in commercial transactions.

Assignment of a monetary claim to a factor shall be valid even if there is a contractual provision between a creditor and a debtor of its prohibition. However, the breach of such a prohibition shall not release a creditor for the liability or obligations to the debtor due to such an assignment.

6. MISCELLANEOUS

Foreign exchange rules – NBFIs may apply foreign currency when purchasing receivables under the contract of factoring and do not have the obligation to exchange receivables into Belarusian rubbles.

VAT issues – Banks and NBFIs are exempted from paying VAT for rendering factoring services. Legislation stipulates no difference in the VAT regime whether the assignee's income is structured as a factoring commission, service charge or interest payments.

Consequences of late payment - The law provides the possibility of contractual penalty (stipulated in the contract between a creditor and a debtor and assigned to the factor) and a penalty established by law pursuant to Article 313 of the Civil Code. If the penalty is not agreed by the parties, its amount is regulated by the legislation (e.g. 10% of the price of the goods improperly supplied under a supply agreement).



BOSNIA AND HERZEGOVINA

List of relevant legislation/regulation

The following Bosnian legislation was considered: (i) the Law No. 14/16 on Factoring of the Federation of Bosnia and Herzegovina dated 24 February 2016; (ii) the Law on Obligations (Official Gazette No. 29/78 of the FSRY) dated 30 March 1978 (as amended) adopted in the Federation of Bosnia and Herzegovina and the Republic of Srpska; (iii) the Companies Law adopted in the Federation of Bosnia and Herzegovina dated 21 June 1999 (as amended) and the Republic of Srpska (Official Gazette of RS, No 127/08, 58/09, 100/11 and 67/13); and (iv) the Law on Banks adopted in the Federation of Bosnia and Herzegovina and the Republic of Srpska No. 01-020-329/03 dated 5 May 2003 (as amended).

1. FACTORING OPERATIONS

1.1 Regulation of factoring operations

When assessing the factoring industry on the territory of Bosnia and Herzegovina, two separate systems must be taken into account: (i) the legal system applicable in the Republic of Srpska and (ii) the legal system applicable in the Federation of Bosnia and Herzegovina (the “**FBIH**”). While the general rules contained in the Law on Obligations or Companies Law are quite similar, only FBIH has adopted a special law on factoring, thus different factoring rules apply, as detailed below.

Factoring in general and the activity of factoring companies are not regulated in the Republic of Srpska. Thus, there is no regulator or supervisory regime for the factoring operations and the factoring services are structured around the provisions of the Law on Obligations regarding assignment.

On the other hand, factoring is a regulated industry in the FBIH. According to the Law on Factoring of FBIH (the “**FBIH Factoring Law**”) the Federal Banking Agency acts as the supervising authority for factoring companies. Factoring is defined as a financial service consisting in providing finance based on the transfer of receivables (factoring transaction), maintenance of accounts (ledgering) relating to the receivables and protection against default in payment by debtors.

1.2 Licensing conditions and procedure

There are no special licences applicable to provision of factoring services in the Republic of Srpska. In order to register a company in the Republic of Srpska the founders need to submit the incorporation act (or decision on incorporation) certified by the court, statute of the company, written consent of the members of the board if they are nominated and completed registration form.

Companies set up in FBIH (as joint-stock or limited liability company) must obtain a licence from the Federal Banking Agency (the “**Agency**”) in order to perform factoring services. In addition, members of the management and supervisory board have to be approved by the Agency as well.

In order to receive a licence in the FBIH the application needs to contain information regarding the founders of the company and the amounts of their stakes/shares, sources of capital, business plan for the first three years, proposed members of management and supervisory boards, evidence that the share capital has been paid in (of minimum KM 750,000.00, equivalent of approximately EUR 325.000).

Factoring companies in the FBIH have to implement risk management procedures involving identification, measurement and management of potential risks and internal audit structures in accordance with the specific rules to be prescribed by the Agency.

The prior approval of the Agency is necessary for any acquisition of a qualifying stake (10% of the voting rights or of the capital stock) in factoring companies. In addition the holder of a qualifying stake is requested to seek approval from the Agency for acquiring a qualifying stake prior to any further acquisition of stakes or shares on the basis of which it exceeds certain higher milestones of the voting rights or of the capital stock.

The law also prescribes a set of qualifications and other criteria that prospective managers need to fulfil before being authorised by the Agency such as: expertise, skills and experience necessary for conducting the company operations (relevant experience in management positions in a factoring or similar company), no involvement in bankruptcy, and fulfilment of the requirements set by the Companies Law. The managers are banned from acting in the same or similar position in more than one factoring company.

1.3 Capital adequacy and reporting requirements

No special capital adequacy regime is in place in the Republic of Srpska or FBIH Federation.

Factoring companies are required to apply IFRS accounting standards and send audited annual reports to the Agency. In addition, companies are required to report on any material change influencing their statute, seat, investment in other business entities and change of capital structure.

1.4 Supervision of the factoring companies

The Agency is authorized to conduct on site and off site inspections, in order to ensure proper application of the law. As part of its supervisory powers the Agency can give recommendations, issue warnings, put a company under a special supervisory regime and revoke an operating licence. The Agency is also entitled to impose fines for breach of the law between KM 10,000.00 and KM 100,000.00 (approximately EUR 5,000 to EUR 50,000) to

companies and between KM 2,000 and KM 15,000 (approximately EUR 1,000 to EUR 7,500) to natural persons.

2. THE FACTORING CONTRACT

2.1 Definition of the factoring contract

The laws of the Republic of Srpska do not regulate or define the factoring contract, thus the general rules on assignment apply.

The FBIH Factoring Law was introduced in 2016. Factoring transaction is defined as a transaction of sale and purchase of existing non-matured or future short-term receivables (maturing up to 180 days from the date of sale of goods or provision of services) arising from agreements on the sale of goods or provision of services, either nationally or abroad.

The FBIH Factoring Law mentions the following types of factoring: domestic, international, factoring without recourse and factoring with recourse. In addition, the FBIH Factoring Law also regulates the so-called reverse factoring, and other sub-categories of factoring services such as factoring with discount, factoring with advance payment, silent factoring, factoring with and without participation, etc. The object of domestic factoring is the sale and purchase of receivables arising from the sale of goods or provision of services between domestic entities on the domestic market. The object of international factoring is the sale and purchase of receivables arising from cross-border sale of goods or services and can be done through a single and/or two factor system.

Bosnia and Herzegovina is not a member of the UNIDROIT Convention on International Factoring or the United Nations Convention on Assignment of Receivables in International Trade.

2.2 Receivables subject to factoring

Any existing non-matured or future short-term receivables (maturing up to 180 days from the date of sale of goods or provision of services) arising from agreements on the sale of goods or provision of services, either nationally or abroad can be subject to factoring.

The FBIH Factoring Law explicitly allows factoring of future receivables, provided that such receivables are sufficiently determinable. The receivables are considered sufficiently determinable if the agreement contains information on the debtor, creditor, maximum amount and the basis for creation of receivable. The assignment becomes effective at the time such future receivables arise.

The FBIH Factoring Law explicitly stipulates that factoring represents a sale purchase transaction (a true sale transaction) and makes no distinction between recourse and non-recourse factoring in this respect.

2.3 Assignment of receivables

The FBIF Factoring Law requires that the factoring agreement is made out in written form. According to the Law on Obligations the actual assignment has no strictly determined form, so in theory any particular assignment under a factoring contract does not have to be recorded in written form. Therefore, based on a written factoring contract, individual receivables can be validly assigned using Electronic Data Exchange messages.

The Electronic Signature Act was adopted on the entire territory of Bosnia and Herzegovina in 2006. However, the electronic signature is not widely used in practice.

Registration is not required and no stamp duty applies. Also, notification of the debtor is not necessary for validity purposes and silent factoring is explicitly regulated. In case of multiple assignments by a client to various factors - the factor that first notified the debtor about the assignment will have priority.

Contractual prohibitions against assignment of receivables do not affect the assignment under factoring contracts, which remains valid. The same rule applies to both recourse and non-recourse factoring.

3. MISCELLANEOUS

Foreign-exchange rules – A domestic factoring company may purchase receivables denominated in a foreign currency by paying for them in their nominal (foreign) currency, regardless whether the payment is being made locally – to a local exporter, or abroad – to a foreign (non-resident) entity (cross-border payment).

VAT issues – According to the Value Added Tax Act, a VAT is charged on both interests and commission for factoring. However, the FBIF Factoring Law is very recent, thus it is still unclear if the VAT regime will be amended in light of the new provisions.

Consequences of late payment - The Law on Obligations provides that in case of delayed payment the counterparty is entitled to charge the default and even to avoid the contract.



BULGARIA

List of relevant legislation/regulation

The following Bulgarian legislation was considered: the Law on Obligations and Contracts of Bulgaria, promulgated in State Gazette No. 275/22.11.1950, dated 22 November 1950 (as amended).

1. FACTORING OPERATIONS

1.1 Regulation of factoring operations

Financial institutions, including factoring companies, must be registered in a special register kept by the National Bank of Bulgaria (the “**National Bank**”). As far as factoring is concerned, registration is required only if the factoring activity is performed as ordinary course of business, thus accounting for at least 30 % of the total activity of the company.

The regulatory powers of the National Bank with respect to financial institutions seem very limited (no actual supervisory powers – limited scope of inspections, no coercive measures). However, given some provisions allowing broad interpretation, the actual influence of the National Bank over such institutions could be significant.

While no special law has been adopted in Bulgaria with respect to factoring and the general civil laws are also silent in this respect, the definition of factoring, as a financial service, is stipulated in the Corporate Income Taxation Law, as follows: “*factoring is a transaction transferring one-off or periodical monetary receivables arising from delivery of goods or of services, regardless whether the person acquiring the receivables (the factor) takes the risk of collecting these receivables in return of remuneration*”.

1.2 Licensing conditions and procedure

Except for the registration of the company with the National Bank as financial institution, there are no other licensing requirements or necessary approvals. Even though the law speaks about “registration”, the process is more similar to licensing, since the National Bank assesses if the managers and shareholders meet certain criteria stipulated by law.

In order to be registered as a financial institution a company must meet, among others, the following conditions: (i) have a paid share capital of at least BGN 1,000,000 (approximately EUR 510,000) from clear and legitimate sources; (ii) management meeting the legal requirements, such as: university degree, experience of at least three years in the field of economics, law, finance, or computer science, non-conviction, no bankruptcy history/involvement for the last two years, good reputation, etc.; (iii) financially stable shareholders and beneficiary owners, all meeting certain legal requirements similar to the ones applicable to management.

1.3 Capital adequacy and reporting requirements

No capital adequacy requirements apply to factoring companies.

Financial institutions, including factoring companies, are required to provide quarterly and annual financial reports whose form and content is dictated by the National Bank. In addition, the National Bank may request financial institutions, subject to mandatory independent financial audit, to present annual financial statements, annual activity reports, annual consolidated financial statements and annual consolidated activity reports prepared in accordance to the Accountancy Law.

1.4 Supervision of the factoring companies

The National Bank is entitled to conduct inspections, require information, approve changes of the information provided and revoke the registration of factoring companies.

2. THE FACTORING CONTRACT

2.1 Definition of the factoring contract

Factoring is only mentioned in a few pieces of legislation, such as the Credit Institutions Law and the Corporate Income Taxation Law, but no special law has been adopted in this respect. Also, the general civil laws do not refer to factoring. The Obligations and Contracts Law contains general rules regarding assignment of receivables, which apply to factoring.

As indicated under Sub-section 1.1 above, the Corporate Income Taxation Law provides a definition of the factoring service, rather than the factoring contract. The mentioned definition refers to recourse and non-recourse factoring. No other types of factoring are mentioned in the law.

Bulgaria is not a member of the UNIDROIT Convention on International Factoring or UNCITRAL Convention on the Assignment of Receivables in International Trade.

2.2 Receivables subject to factoring

The receivables that can be subject to factoring are “*monetary receivables arising from delivery of goods or of service*“. The Credit Institutions Law speaks about: acquisition of receivables under loans or other forms of financing (factoring, forfeiting, etc.). No other restrictions are stipulated with respect to the receivables or the maturity thereof.

Future receivables (subject to being unconditional at the moment of transfer) may be assigned under Bulgarian law. The law does not explicitly require a certain level of minimum determination of those receivables in assignment documents but under the general law a receivable shall be determined or at least determinable.

Both recourse and non-recourse factoring are mentioned in the factoring definition (which is indicated for tax purposes only) and, according to local practitioners, are considered as sale transactions as opposed to lending transactions.

2.3 Assignment of receivables

Written form is not required for the validity of the factoring contract, but should be considered for any contract of a value higher than BGN 5,000 (approximately EUR 2,550), which can be proved only by written documents. A law on electronic documents and electronic signature has been adopted in Bulgaria, and, although the business environment is familiar with such manner of executing contracts, it is not widely used in practice.

Registration is not required for the validity of assignment and no stamp duties are applicable thereto. Notification of the debtor deems the assignment effective against the respective debtor (and third party security providers, if any), but lack of notification does not affect the validity of the assignment.

Contractual prohibitions against assignment are allowed. However, in practice there are debates regarding the consequences of breaching such prohibition, which, based on different interpretation of the law, may be: (a) invalidity of the assignment transaction qualified as a transaction with impossible object, (b) inapplicability of the assignment transaction against the debtor, (c) inapplicability of the assignment transaction against the debtor if the assignee was aware of the prohibition of the assignment, or (d) ineffectiveness of prohibition against assignment.

3. MISCELLANEOUS

Foreign-exchange rules – There are no requirements or limitations on payments in foreign currency under Bulgarian law.

VAT issues – Although transactions with receivables in general are VAT exempt, factoring transactions are taxable.

Interest payments are taxable, except for the default interest payment and penalties. The recipient is under the duty to issue protocol for the interest accrued, pursuant to the VAT Law, although no tax is being accrued. The tax base shall not include the amount of the commercial discount or reduction, if provided on the date when the tax event occurred. If the commercial discount or reduction is provided to the recipient after the date when the tax event occurred, the tax base shall be reduced at the provision thereof.

There is no difference of VAT treatment between banking and non-banking companies engaged in factoring.

Consequences of late payment - Late payment of assigned receivables or VAT triggers an additional debtor's obligation to pay default interest (base interest rate determined by the

National Bank plus 10 points). Alternatively, a penalty may be contractually agreed. In addition, Bulgaria has transposed the EU Late Payments Directive, which applies to commercial transactions between companies (“undertakings”), as well as between companies and public sector. In addition to the default interest, the EU Late Payments Directive provides for fines in case of late payments.



CROATIA

The following Croatian legislation was considered: (i) the Law on Factoring No. 94/14, 85/15, 41/16; (ii) the Law on Obligations No. 35/05, 41/08, 125/11, 78/15 and (iii) the Companies Law No. 111/93, 34/99, 121/99, 52/00, 118/03, 107/07, 146/08, 137/09, 125/11, 152/11, 111/12, 68/13, 110/.

1. FACTORING OPERATIONS

1.1 Regulation of factoring operations

Factoring is a regulated industry in Croatia. According to the Law on Factoring (the “**Factoring Law**”) the Croatian Financial Services Supervisory Agency (the “**Agency**”) acts as the supervisory body for factoring companies. Factoring is defined as the financial service of selling and purchasing existing non-matured or future receivables arising from agreements on the sale of goods or provision of services, either nationally or abroad, with or without recourse.

Apart from providing typical factoring services (domestic and international factoring, factoring with recourse and without recourse and reverse factoring), a factoring company is allowed to perform services which are directly or indirectly related to the business of factoring, in particular: a) the gathering, producing, analysing and giving of information about the creditworthiness of legal entities and natural persons which are self-employed; b) managing the client’s receivables arising from sale of goods, provision of services and consultations in relation to these; c) export financing on the basis of a purchase with a discount and without recourse to long-term, still undue claims on secured financial instruments (forfeiting); d) purchase of due claims (under certain conditions); e) discounting bills of exchange issued based on the sale of goods or provision of services and f) issuing credit cover when performing foreign factoring.

A factoring company is expressly prohibited from engaging in the purchase of Non-Performing Loans (the “**NPL**”) or “synthetic” purchase of risks or benefits related to NPLs. The maturity date of the receivable at the time of purchase on the part of a factoring company must not be longer than one year counting from the day of purchase. In case of the purchase of due claims, a factoring company may agree a new due/maturity date for the claim with the debtor of the receivable which must not be longer than one year counting from the day of purchase. As an exception to this rule, the maturity date of the receivable at the time of purchase on the part of the factoring company may be longer than one year in cases of forfeiting activities and where the state entities act as seller of the receivable.

1.2 Licensing conditions and procedure

Factoring services can be performed by factoring companies (joint stock or limited liability companies in possession of factoring licence issued by the Agency) and by factoring companies from another EU Member State under the EU rules and conditions for cross border

provisioning of financial services and banks. In addition, members of the management and supervisory board have to be approved by the Agency.

A factoring company must have a share capital of minimum HRK 1,000,000 (approximately EUR 150,000) during its operations. When applying for a licence, the company needs to provide the Agency with information on the founders of the company and the amounts of their stakes/shares, sources of capital, business plan for first three years, proposal of members of management and supervisory board and proof of payment of capital.

Factoring companies must implement risk management procedures involving identification, measurement and management of potential risks and internal audit structures in accordance with the specific rules to be prescribed by the Agency.

The law also stipulates a requirement for prior approval of acquisition of a qualifying stake (10% of the voting rights or of the capital stock) in factoring companies. In addition, the holder of a qualifying stake is requested to seek approval from the Agency for acquiring a qualifying stake prior to any further acquisition of stakes or shares on the basis of which it exceeds certain higher milestones of the voting rights or of the capital stock.

The law also prescribes a set of qualifications and other criteria that prospective managers need to fulfil before being authorised by the Agency. Such requirements include: expertise, skills and experience necessary for conducting the company operations (certain number of years of experience in management positions in a factoring company or bank, and/or in companies comparable to the operations of the factoring company), no bankruptcy involvement and fulfilment of the general conditions provided by the Company Law. Managers are banned from acting as manager or member of the management in another factoring company.

1.3 Capital adequacy and reporting requirements

No special capital adequacy regime is in place.

Factoring companies are required to apply IFRS accounting standards and send audited annual reports to the Agency. In addition, companies are required to report on any material change influencing their statute, seat, investment in other business entities and change of capital structure.

Supervision of the factoring companies

According to the Law, the Agency has the power to supervise factoring companies and determine whether they operate in compliance with the law. The law empowers the Agency to request information, supervise factoring companies, review their operations and impose supervision measures. In conducting the supervision, the Agency can take specific measures to eliminate illegalities and irregularities, revoke licences, initiate misdemeanour procedures, implement additional measures (e.g. order measures for ensuring solvency of the factoring

company, suggest appropriate decisions for increasing the share capital, ban dealings with certain members of management, shareholders, order release of members of the management board in case of serious breach of duties), and prohibit unlicensed companies from conducting factoring activities.

2. THE FACTORING CONTRACT

2.1 Definition of the factoring contract

Croatia has adopted a special law on factoring, which defines rather the factoring financial service than the factoring contract. Recourse and non-recourse factoring are expressly stipulated in the Factoring Law. In the event of un-collectability of the subject-matter of factoring in recourse factoring, the factoring services provider has the right to also claim factoring interest, a factoring fee and other costs in accordance with the factoring contract. According to the Factoring Law, in non-recourse factoring the factoring services provider bears the total collection risk and the supplier is not liable for the collectability of the receivable. . The Factoring Law defines also domestic factoring as factoring where all the entities are residents and international factoring, as factoring where at least one of the entities is non-resident.

Croatia is not a member of the UNIDROIT Convention on International Factoring or United Nations Convention on Assignment of Receivables in International Trade.

2.2 Receivables subject to factoring

Any existing non-matured or future receivables arising from agreements on the sale of goods or provision of services, either nationally or abroad can be subject to factoring. To be eligible for factoring the due time for payment of a receivable must not be more than twelve months away from the moment of factoring. A factoring company is allowed to negotiate the extension/restructuring of payment terms after purchasing receivables.

The Factoring Law is explicit in that, future receivables may be subject to factoring (provided that at the time of concluding the factoring contract they are sufficiently determinable). Future receivables claims are considered to be sufficiently determinable if the creditor, the debtor and the maximum amount of those receivables are determined in the factoring contract and if there are indications of the bases for the formation of those future claims. According to The Factoring Law, it is sufficient to determine the bases for the formation of future claims from the provision of certain types of services or from the delivery of certain types of goods regardless of whether there exists a contractual basis for providing those services or delivering those types of goods, at the time of concluding the factoring contract.

The law provides clear and unambiguous reference to the sale and purchase nature of factoring transactions. Factoring is defined as a legal transaction by which the provider of factoring services purchases the receivables with or without a right of recourse, on the basis and in accordance with a factoring contract concluded with a supplier and/or buyer. The

subject-matter of factoring for the purposes of assignment, can be established by invoices or other document by which, the supplier of goods or services provider, calculates or invoices for the delivered goods or services provided whether in the form of a written document or electronic record in accordance with the appropriate regulations. In addition, the Factoring Law provides for the purchase of receivables expressed in bills of exchange stating that a factoring company may purchase only those bills of exchange which are issued as a means for settling claims arising on the basis of delivering goods and providing services domestically and abroad, hence confirming the title transfer based on the sale transaction approach.

2.3 Assignment of receivables

The Factoring Law requires the written form of the factoring contract as a validity condition. According to the Law on Obligations, the actual assignment has no strictly determined form so, in theory, any particular assignment under a factoring contract does not have to be recorded in a written form. Therefore, based on a written factoring agreement, individual receivables can be validly assigned using Electronic Data Exchange messages. The Electronic Signature Act has been introduced in 2002. However, the electronic signature is not widely used in practice.

Registration of the factoring agreement is not required and no stamp duty is applicable. The notification to the debtor is not required for the validity of the assignment. In case of multiple assignments by a client to various factors, the factor that first notifies the debtor about the assignment will have priority.

A contractual prohibition against assignment of receivables is effective against factoring. A debtor of receivables factored against such contractual term would be entitled to disregard the notice on assignment and validly discharge its debt to the original creditor. There is no difference if factoring is done with or without recourse.

3. MISCELLANEOUS

Foreign-exchange rules – Croatian factoring company is allowed to pay for the receivable using foreign currency and to charge a non-resident also in foreign currency in cases where, it purchases the receivable which is validly expressed in foreign currency in accordance with the appropriate regulations.

VAT issues – According to the Value Added Tax Act, VAT is not charged on interests and is applied on the factoring commission.

Consequences of late payment – The general regime established in the Law on Obligations is that, for delayed performance of pecuniary obligations, the creditor is entitled to charge ‘default’ interest. Moreover, Croatia has transposed the EU Late Payments Directive, which applies to commercial transactions between companies (“undertakings”), as well as between companies and the public sector. In addition to the default interest, the EU Late Payments Directive provides for fines in case of late payments.



CYPRUS

List of relevant legislation/regulation

There was no specific legislation upon which we could base the following survey. As a result, we used the general principles of the local law as the basis of our responses below.

1. FACTORING OPERATIONS

1.1 Regulation of factoring operations

Factoring is not a regulated industry in Cyprus and no licensing requirements exist in the current legislation.

1.2 Licensing conditions and procedure

No licensing requirements exist in the current legislation.

1.3 Capital adequacy and reporting requirements

No capital adequacy or reporting requirements are provided for by the current legislative framework.

1.4 Supervision of the factoring companies

As the factoring market is not regulated, there is no supervisory authority for factoring companies.

2. THE FACTORING CONTRACT

2.1 Definition of the factoring contract

Cyprus is not a member of the UNIDROIT Convention on International Factoring or UNCITRAL Convention on the Assignment of Receivables in International Trade. There is neither a law on factoring nor special contract law provisions for factoring in general and no special definition of factoring or factoring types exists in the existing legislative framework.

2.2 Receivables subject to factoring

There is very little guidance in the legislation with respect to the origin or maturity of receivables that can be assigned. Due to the very limited legislation, it is not possible to ascertain for sure whether recourse factoring would be construed to be a true sale transaction or not. Future receivables cannot be subject to factoring.

2.3 Assignment of receivables

Assignment of receivables is performed by an agreement between the factoring company and the supplier. Debtors must be notified both by factors and suppliers about the agreement and the debtor's obligation to pay to the factoring company. The agreement must be concluded in writing for validity purposes. In theory, the requirement may be met by Data Exchange

messages, however, in practice contracts are concluded in hard-copy. Although certain laws have been adopted with respect to electronic signatures, the method is not widely used.

Notification of the debtor is required for the validity of the assignment.

The law is silent on whether contractual prohibitions on assignment are valid against factoring in Cyprus, therefore no effective conclusion could be reached on this issue.

3. MISCELLANEOUS

VAT issues - As a general principle, payments on receivables by obligors to purchasers or sellers will not be subject to any withholding tax in Cyprus. In case of payments made by obligors out of Cyprus to persons not resident of Cyprus there no VAT applies. In case purchasers or sellers are tax residents in Cyprus, then any interest payments will be subject to withholding.

Any discount or deferral of payment of the purchase price granted in case of sale of receivables will not be re-characterised in whole or in part as interest.

Consequences of late payment - Excess interest usually applies to overdue balances. Moreover, Cyprus has transposed the EU Late Payments Directive, which applies to commercial transactions between companies (“undertakings”), as well as between companies and the public sector. In addition to the default interest, the EU Late Payments Directive provides for fines in case of late payments.



EGYPT

List of relevant legislation/regulation

The following survey has been done based on review of the following Egyptian legislation: (i) Law No. 176/2018 on regulating the activities of financial leasing and factoring dated 14 August 2018 (the “**Factoring Law**”) (ii) Law No. 10/2009 on the establishment of the Financial Regulatory Authority dated 25 February 2009; (iii) the Financial Regulatory Authority’s Board of Directors’ Decrees no.72/2013 as last updated and no. 137/2018 on the regulatory and supervisory control for factoring (the “**FRA Factoring Decrees**”); (iv) the Egyptian Investment law No. 72/2017, dated 31 May 2017, and implementation regulations; (v) the Companies Law No. 159/198 (as amended), and implementation regulations and (vi) the Egyptian civil code No. 131/1948 (as amended) (the “**Civil Code**”).

1. FACTORING OPERATIONS

1.1 Regulation of factoring operations

Egyptian Financial Supervision Authority (the “**Authority**”) acts as a supervisory body and regulator for factoring companies. Non-banking factoring companies are required to obtain a licence from the Authority before starting factoring operations. Factoring activity is defined as ‘purchase by the factoring company of present and future financial rights resulting from selling of goods or services and providing other services related to management of such rights’. In addition, the law recognises a special financing activity – the retail factoring (*i.e.* factoring of retail receivables where the debtor is an end consumer) and some special regulation applies to such type of factoring.

1.2. Licensing conditions and procedure

In order to receive a factoring licence, a company shall be established as an Egyptian joint stock company. At least one of the shareholders shall be a juristic person holding a percentage not less than 50% of the company’s capital. Financial institutions’ shareholding shall be at least 25% of the share capital (*e.g.* bank, insurance company, mortgage finance company, financial leasing company, factoring company). The founders and the shareholders whose contribution in capital exceeds 10% must have no history of criminal activity within the past five years prior to the company’s incorporation request. The paid in share capital must be at least EGP 10,000,000 (approximately EUR 485,000). According to the FRA Factoring Decrees, if the factoring company will perform retail factoring, the minimum paid in share capital (in cash) is EGP 15,000,000 (approximately EUR 727,000).

The company must hold books to record the details of the transactions carried out (the nature and value of the contracted activity, the credit term, the means for settlement of outstanding dues and the documents proving it) and internal control system. In addition, the company must have independent premises for carrying out its activities, technical capabilities and the informatics system according to the standards issued by the Authority.

The managerial structure of the company must include a separate administration with a full-time responsible manager for managing transactions related to retail factoring

1.3 Capital adequacy and reporting requirements

There are certain capital adequacy, single debtor exposure limits and default reserve rules applicable to factoring companies.

The company's "capital base" (shareholders' equity plus recognised subordinated loans) relative to "outstanding debtors' accounts" (if not guaranteed by acceptable institutions) and its purchased commercial instruments shall not be less than 10% at any time. If the capital base is reduced to less than the minimum percentage stated above, the factoring company shall, within three months at most, raise the net ownership rights and supporting loans value to reach the said minimum percentage, or submit an application to the Authority requesting extension of the said grace period.

The rate of exposure to end-obligor's failure risk (*i.e. the debtor in non-recourse factoring, and the client in recourse factoring*) shall not exceed 20% of the capital base of the company for single obligors or 25% for affiliated obligors. In cases where the debtor is an end consumer, the transactions with that debtor and his spouse and minor children shall not exceed 5% of the company's Capital Base.

A factoring company must establish a reserve to service non-performing debts in the full amount of such debts and to reflect such debts in the financial statements. The auditor must include in its report on the financial statements their opinion on whether such reserves are considered sufficient or not.

A factoring company is required to provide the Authority with audited quarterly financial statements, audited annual financial statements, and full information on factoring transactions entered into with clients, and to quarterly disclose the amount of transactions entered into, including the amount of the factored debts, current balance, in addition to bad debts and reserves formed to face such debts, all according to the Egyptian Accounting Standards.

1.4 Supervision of factoring companies

The supervisory powers of the Authority are quite broad under the Factoring Law. They include performing inspections of factoring companies and taking measures to make sure that companies are complying with all the licensing rules and other applicable rules. For instance, it can issue warnings, suspend operations and revoke licences, send invitations to convene the factoring company's board of directors or general assembly, order the dissolution of the company's board of directors, prevent the conclusion of factoring contracts. More generally, the Authority issues detailed regulations governing factoring activities in accordance with the Factoring Law.

2. THE FACTORING CONTRACT

2.1 Definition of the factoring contract

The Factoring Law provides for a definition of the factoring contract as a financing contract between the client (i.e. seller) and the factoring company, where the factoring company shall purchase the present and future financial rights arising from the sale of the goods and the provision of services in accordance with the Factoring Law.

Further, the Factoring Law makes distinctions between domestic and international factoring, recourse and non-recourse factoring. Factoring will be considered domestic when both the client and the debtor are registered or are residents in the Arab Republic of Egypt. On the other hand, factoring will be considered international when one of the parties is registered or is resident outside Egypt. Under recourse factoring, the parties explicitly agree that the client (*i.e. assignor of the receivable*) guarantees the debtor's fulfilment of its obligations at the receivables' maturity date. On the other hand, the transaction takes the form of non-recourse factoring if the parties do not explicitly agree on recourse against the client, and thus the client only guarantees the existence of the receivable.

Egypt is not a member of the UNIDROIT Convention on International Factoring or United Nations Convention on Assignment of Receivables in International Trade.

The Factoring Law explicitly states that factoring activity is a true sale transaction. This implies that even recourse factoring constitutes a true sale transaction.

2.2 Receivables subject to factoring

In order to be eligible for factoring, a receivable must: (i) originate from the sale of commodities and services arising from commercial transactions relating to the principal activity/activities of each of the debtor and the client, and not from loan transactions; (ii) be devoid of existing and future rights; and (iii) not be restricted or conditional, unless agreed otherwise between the factoring company and its client.

In the case of retail factoring, where the debtor is an end consumer, the Factoring Law requires the retail factoring to comply with the requirements number (ii) and (iii) above. In addition, the FRA Factoring Decrees provides that the retail receivables must be arising out of domestic purchase transactions only. In addition, only purchase transactions relating to the following specific goods or services are eligible for retail factoring: transportation, durable goods, educational services, medical services, travel and tourism services and telecom services. Moreover, the factored paper shall not be less than EGP 1000 (approximately EUR 50) in order to be eligible for retail factoring.

There are no restrictions on the maturity of receivables or a maximum time exposure for a factoring company towards a single receivable, except for retail receivables which maturity must not be less than thirty days.

The Factoring Law is silent about the ability of the factoring company to negotiate extension/restructuring of payment terms after purchasing receivables. Accordingly, it does not restrict the right of the factoring company to negotiate or agree on different terms of payment after acquiring the receivables. However, in case of recourse factoring, the right of recourse is characterized as guarantee by the assignor. In this case, we assume that the assignor's approval may be required if such extension/restructuring involves more restrictive/burdensome obligations on the debt covered by recourse.

The Factoring Law explicitly authorises the assignment of future receivables that are predicted to arise to the benefit of the seller (i.e. the factoring company's client) as a result of the seller's activity, provided that they comply with the eligibility requirements set out under the Factoring Law.

2.3 Assignment of receivables

Pursuant to the Factoring Law, the parties shall enter into a written factoring contract which shall comply with the template contract of the Authority.

Electronic data exchange messages cannot be used and although electronic signature is regulated, it is not widely used in practice.

Article 39 of the Factoring Law explicitly provides that the assignment of rights is valid and becomes effective from the date of conclusion of the factoring contract. Whereas, according to Article 52 of the Factoring Law, the factoring contract only becomes effective against the debtor after the service of a notification upon the debtor, which notification shall comply with the Factoring Law's requirements and with the Authority's regulations. The debtor then benefits from a two week period to express any reservations it may have in relation to assigned receivables.

We note however that the according to Article 38 of the Factoring Law provides that the transfer of financial rights from the seller to the factoring company occurs "in accordance with the provisions of the civil code". According to the general rules of assignment of receivables under the civil code, in order to be effective vis-à-vis the debtor and third parties, the assignment must be (a) notified to the debtor in writing and via court bailiff notice, or (b) accepted by the debtor in writing with certified date. Under the Civil Code, if these formal requirements are not met the assignment will be effective only between the factoring company and the seller, but not against the debtor or third parties.

The reference under the Factoring Law to the provisions of the Civil Code with respect to the assignment of rights seems to lead to a confusion as to whether the notification is necessary for the assignment to become effective vis-a-vis third parties (as it is the case under the Civil Code). Especially that the Factoring Law does not require giving such notification, an established date, nor delivering of such notification to the debtor by way of a court bailiff.

While there's no legal certainty around this, market participants believe that the factoring contract becomes effective between the parties, as well as vis-a-vis third parties, from the date of the factoring contract, notwithstanding the more restrictive provisions regarding the assignment of receivables under the Civil Code. Whereas it only becomes effective against the debtor from the date on which the notification is served upon the debtor in accordance with the Factoring Law.

Contractual prohibitions against the assignment of receivables are allowed. Assignment in breach of such contractual prohibition is ineffective against the debtor, even if a formal notice was sent to the debtor unless the debtor agrees to such assignment. There is no difference in this respect if factoring is done with or without recourse.

No registration is required for the validity of the assignment and no stamp duty applies.

3. MISCELLANEOUS

Foreign-exchange rules – There are no special foreign exchange rules applicable to factoring transactions and local practitioners agree that export receivables, denominated in foreign currency, can be factored between locals and across border without any restrictions.

Consequences of late payment - The receivables assigned will be subject to the contractual penalties stipulated under the contract generating the assigned receivable. If the contract itself is silent, the general principles under the Civil Code will apply, which provide for a default interest of 4% in civil matters and 5% in commercial matters to be calculated from the date of the judicial claim.

VAT issues - According to the VAT Law No. 67 of 2016, all non-banking financial services that are subject to the supervision and control of the Egyptian Financial Regulatory Authority (FRA) are exempt from VAT, and this includes factoring.

ESTONIA

List of relevant legislation/regulation

The following Estonian legislation was considered: (i) the Law on Obligations dated 26 September 2001 (as amended); (ii) the Law on Money Laundering and Terrorist Financing Prevention dated 19 December 2007; and (iii) the Law Enforcement Act, dated 6 November 2013.

1. FACTORING OPERATIONS

1.1 Regulation of factoring operations

The supervising authority for non-banking factoring companies is the Financial Intelligence Unit. In case the respective companies intend to provide additional financial services they are supervised by the Financial Supervision Authority instead.

1.2 Licensing conditions and procedure

Factoring companies are not subject to a special licensing for factoring purposes, but they must have a general business licence and provide to the regulator information regarding management members, procurators, beneficial owners and owners.

In order to obtain the business licence, the following conditions must be met: (i) no criminal record of the non-banking factoring company, managers, procurators, beneficial owners and owners; (ii) compliance of the officers appointed by the non-banking factoring company with the applicable legal requirements regarding: education, professional suitability, abilities, personal characteristics, experience and reputation.

1.3 Capital adequacy and reporting requirements

No capital adequacy or other financial covenants apply to non-banking factoring companies.

Factoring companies must submit annual fiscal reports to the Commercial Register.

1.4 Supervision of the factoring companies

The functions of the supervisory authority include: analysing and monitoring constantly the factoring companies compliance with the financial soundness requirements, guiding and directing such companies towards prudent management, applying necessary measures with a view to protecting the interests of clients and investors, applying administrative coercion on the bases, to the extent and pursuant to the procedure prescribed by law and performing the functions arising from the Guarantee Fund Act, the Money Laundering and Terrorist Financing Prevention Act, the International Sanctions Act, etc...

The supervising authority may apply prohibitions on economic activities, permanent or temporary revocation of general business licence, penalties, impose instructions and may conduct inspections with respect to factoring companies.

2. THE FACTORING CONTRACT

2.1 Definition of the factoring contract

The law defines factoring as follows: *“In a factoring contract, one person (client in factoring) undertakes to assign to another person (factor) financial claims against a third person (obligor in factoring) which arise from a contract on the basis of which the client, in the client's economic or financial activities, sells an object or provides services to the obligor, and the factor undertakes to:*

- (a) pay for the claim and bear the risk of non-fulfilment of the claim, or*
- (b) grant credit to the client out of the fulfilment of the claim, administer the claim for the client and exercise rights arising from the claim, including organising related accounting, and collect the claim.”*

Based on the above, factoring is non-recourse, by definition. No other types of factoring are defined.

2.2 Receivables subject to factoring

Receivables that can be subject to factoring seem to be limited to the ones arising from sale of goods and provision of services. No other restrictions are applicable with respect to the origin or maturity of receivables that can be subject to factoring. The parties are free to negotiate and contractually agree extension/restructuring of payment terms after the transfer of receivables.

Future claims and contingent claims may be assigned if they are sufficiently defined at the time of the assignment. However, the law does not elaborate on the requirements for sufficient determination of receivables in the assignment documents.

There is no consistent opinion of the local practitioners with respect to the nature of factoring, *i.e.* true sale transaction or not. Some practitioners opine that both recourse and non-recourse factoring are true sale transactions. Others consider that only non-recourse factoring has elements of a sale transaction, while recourse factoring is more similar to a lending transaction. Nevertheless, all practitioners agree that neither of these interpretations is confirmed *expressis verbis* in the law.

2.3 Assignment of receivables

There are no specific form requirements applicable to factoring contracts, unless the assigned contract is subject to some mandatory form, which will then apply to the assignment contract as well. Execution of contracts by Data Exchange messages and electronic signature are possible and widely used in Estonia.

Notification of the debtor is required, but, according to local practitioners lack of notification does not deem the assignment invalid.

Prohibitions against assignment are allowed, but are ineffective against third parties, thus they do not deem the assignment (breaching the mentioned prohibition) invalid.

3. MISCELLANEOUS

Foreign-exchange rules - A domestic factoring company may purchase receivables by paying for them in their nominal (foreign) currency in case the receivables are denominated in such currency within export activity.

VAT issues – According to some local practitioners non-recourse factoring is not subject to VAT as long as the law does not provide for the tax applicable thereto.

There is a certain VAT risk associated to assignment of receivables below market value. If the receivables are acquired below market value, the tax authority may consider the acquisition of receivables as provision of a debt collection service, which is subject to VAT, and treat the difference between the market value of the receivables (as at the moment the receivables are acquired) and the amount actually paid for the receivables to be the value subject to VAT. If the discount reflects the actual economic value (market value) of the receivables (as at the moment the receivables are acquired), there should be no VAT applicable.

Factoring commission/service charge should be subject to VAT at the rate of 20%.

Interest charged on advances against receivables is, in itself, exempt from VAT.

There is no difference of VAT treatment between banking and non-banking factoring companies.

Consequences of late payment - The parties are free to determine the default interest rate in the factoring contract. However, in the absence of a contractually agreed default interest, the statutory default interest applies. In this respect, some local practitioners indicate a 8,05% per year interest rate, while others mention that the last interest rate applicable to the main refinancing operations of the European Central Bank plus 8% per year applies.

FYR MACEDONIA

List of relevant legislation/regulation

The following Macedonian legislation was considered: (i) the Law on Financial Companies No. 158/10, 53/11, 112/14 and 153/15; and (ii) the Law on Obligations No. 18/2001, 78/2001, 04/2002, 59/2002, 05/2003, 84/2008 81/2009 and 161/2009.

1. FACTORING OPERATIONS

1.1 Regulation of factoring operations

Pursuant to the Law on Financial Companies non-banking financial institutions (the “**NBFI**”) require prior licence on establishment and operation issued by the Ministry of Finance of the Republic of Macedonia (the “**Ministry**”) in order to provide factoring services. The Ministry is the regulator and supervising authority for financial companies, including factoring companies.

NBFIs must obtain the Ministry’s approval in order to (i) complete statutory amendments (mergers, acquisitions, divisions); (ii) appoint or change members of management board/manager(s); (iii) carry out changes in the shareholder structure; (iv) expand the portfolio of financial services and (v) increase/decrease the share capital.

1.2 Licensing conditions and procedure

NBFIs must obtain a licence from the Ministry, which shall decide with respect to the licence within 60 days from the submission of the application. The documents required upon application for the licence include: draft articles of incorporation, a proof of the paid share capital, sources of the share capital, information regarding shareholders, a list of proposed members of the governing body, a work program of the company with financial reports projection for the following three years, proof of various internal procedures (*e.g.* crediting and survey of creditworthiness of clients, etc.). The paid-in share capital of the company should be at least MKD 6,000,000 (approximately EUR 100,000).

A person may be appointed as a member of management board only if it (i) has completed its university education; (ii) has at least three years work experience in the financial/banking sector; (iii) has not been member of the management board of a company subject to bankruptcy; (iv) is not prohibited to perform its activity or profession; and (v) is not a member of a management board of a commercial bank, branch of a commercial bank or savings house. The Ministry approves the members of the management board proposed by the company.

1.3 Capital adequacy and reporting requirements

No special capital adequacy regime is in place. The value of provided factoring services (*i.e.* purchased receivables) cannot be higher than tenfold the value of the NBFI’s share capital.

Apart from this, the relevant Law on Financial Companies does not provide for any additional financial covenants for NBFIs.

NBFIs must submit reports on their financial activities, economic standing and source of funds to the Ministry at least twice a year. Such reporting does not have to be audited. Aside from this, a NBFI is obliged to (i) submit an annual financial statement along with an auditor's report to the Ministry not later than 31 May for the previous year; and (ii) to publish the annual financial statement and auditor's report in one daily newspaper.

1.4 Supervision of the factoring companies

The supervisory authorities of the Ministry are: gathering data and reports via off-site monitoring of NBFIs and analysing such reports, performing inspections at the NBFIs. In case the Ministry determines that a NBFI providing factoring services breached the law, it can impose written warnings, orders for compliance with the law, temporary prohibition of providing factoring services or revocation of the licence for establishment and operation.

2. THE FACTORING CONTRACT

2.1 Definition of the factoring contract

FYR Macedonia has not adopted a special law on factoring and there are no special contract law provisions in this respect. Thus, the general rules on assignment of receivables stipulated in the Law on Obligations apply to factoring.

Apart from the definition of factoring in the Law on Financial Institutions there is no other definition of factoring contract in FYR Macedonia. The mentioned definition refers to recourse and non-recourse factoring without giving further details or indicating other types of factoring.

FYR Macedonia is not a member of the UNIDROIT Convention on International Factoring or United Nations Convention on Assignment of Receivables in International Trade.

2.2 Receivables subject to factoring

There are no restrictions regarding the origin of receivables that can be factored as long as they can be transferred (*i.e.* excluding non-transferable personal claims). According to the practice in FYI Macedonia, almost all NBFIs are purchasing receivables arising from sale of goods or provision of services. Under Macedonian law, only receivables which are not yet mature can be subject to factoring. The purchase of matured receivables is considered as standard assignment of receivables under the Law on Obligations and it is not a regulated activity. The applicable law does not prescribe maximum time exposure of factoring companies to factored receivables.

The parties must have in mind that assignment of receivables cannot be used for delaying the payment by circumventing the deadlines provided in the Law on Financial Discipline (2013).

Abuse of assignment of receivables for the purpose of delaying the payment is sanctioned with: (i) a pecuniary fine between EUR 5,000 and EUR 10,000 for the private/public legal entity, and (ii) a fine between EUR 750 and EUR 1,500 for the responsible (natural) person at the private/public legal entity.

Assignment of future receivables is not explicitly regulated by the Law on Financial Companies, thus it is not prohibited. Considering the lack of specific regulation, the general rules on assignment of receivables from the Law on Obligations shall apply. According to these rules, in order to have a valid assignment, the factoring agreement must contain a determined or determinable obligation *i.e.* information that will enable the obligation to be determined (*e.g.* information about the debtor and creditor, the maximum amount, the due date, etc.). In any case, local practitioners agree that factoring of future receivables is highly untested on the market.

Considering that the general provisions regulating the assignment of receivables are applicable to factoring as well, both recourse and non-recourse factoring could be considered as a true sale transaction. The law makes no reference or distinction between the nature of these two types of factoring.

2.3 Assignment of receivables

Factoring contracts should be concluded in writing. According to the Law on Obligations written form is not a validity condition for assignment, thus, in theory, any particular assignment under a factoring contract does not have to be recorded in written form. Therefore, based on a written factoring agreement, individual receivables can be validly assigned using Electronic Data Exchange messages.

Electronic signature is regulated, however the practice of e-commerce is underdeveloped and local tax authorities might still require the agreement to be executed in paper-based form for tax purposes.

Pursuant to general rules on assignment, notification of the debtor is required for validity purposes, thus the assignor must notify the debtor regarding the assignment. Otherwise, the assignment will have no effect towards the debtor, who will be entitled to pay to the assignor.

Under the applicable regulation on foreign exchange operations, factoring is deemed as a credit operation with non-resident. Therefore, residents are obliged to send reports to the Macedonian National Bank in case of purchase of receivables from legal relations between residents, if the purchaser is a non-resident, and purchase of receivables from legal relations between non-residents, if the purchaser is a resident.

The contractual prohibition against assignment of receivables is valid against factoring in FYR Macedonia. The consequence of its breach is invalidity of transaction.

3. MISCELLANEOUS

Foreign-exchange rules – There is no obstacle against payment in a foreign currency if the client is not a Macedonian resident. However, if the client is a Macedonian resident, the domestic factoring company will not be able to purchase the receivables in their nominal (foreign) currency. Under the relevant regulation, foreign currency can be used only for expressing the value of the agreement between Macedonian residents, but the payment has to be performed in the national currency (MKD). Therefore, before the payment of the purchase price, the value of the receivables would have to be exchanged in MKD.

VAT issues – The tax treatment of assignment of receivables, especially factoring agreements is highly untested. The VAT regulation stipulates VAT exemption for so called “*banks and finance trade*”, but factoring is not inserted in the exhaustive list of “*bank and finance trade*” activities. Also, the VAT regulation does not explicitly regulate whether assignment of receivables (including factoring services) fall under the scope of the VAT regime. A payment of factoring commission/service charge could be considered as charging for the provided services to the client and hence such fee will be taxable with the applicable VAT rate of 18%. According to the applicable VAT regulation, (i) the reduction of the price as discount for advance payments, and (ii) the price discount expressed in the invoice and recorded in the accounting books are not calculated in the VAT tax base. Interest paid by a debtor due to late payments is also not subject to VAT.

Consequences of late payment - Penalties for late payment are stipulated in the Law on Obligations and these penalties also apply in case of late payment under factoring contracts. According to the Law on Obligations the party in default with the fulfilment of the monetary contribution owes, besides the principal, default interest.

Additionally, according to the Law on Financial Discipline, in case of late payments, the creditor is entitled to: (i) compensation in the amount of MKD 3,000 (approximately EUR 50); (ii) reimbursement of expenses; and (iii) penalty interest provided by the law (in cases the counterparty has carried out its contractual obligations). On the other hand, for late payments the party in default (private/public legal entity) could be sanctioned with a pecuniary fine between EUR 5,000 and EUR 10,000, while the responsible natural person could be subject to a pecuniary fine between EUR 750 and EUR 1,500.



GEORGIA

List of relevant legislation/regulation

The following Georgian legislation was considered: (i) the Law No. 121 on Activities of Commercial Banks dated 23 February 1996 (as amended); and (ii) the Civil Code No. 786-IIS dated 26 June 1997 (as amended).

1. FACTORING OPERATIONS

1.1 Regulation of factoring operations

Georgian non-banking factoring companies are not required to obtain any licences, certifications or authorizations provided that they duly register with the Georgian Commercial Registry and obtain a certificate of registration. There is no specific supervisory body for factoring companies or any accompanying regulatory mechanism applicable to factoring operations performed by non-banking factoring companies.

Georgian law does not provide for special provisions on factoring apart from mentioning of factoring in the Georgian Banking Law. The mentioned law vaguely defines factoring as trade finance transaction where the financing of a client's working capital includes collection of the client's accounts receivable, lending and guarantees of foreign exchange and credit risks.

1.2 Capital adequacy and reporting requirements

No capital adequacy or reporting requirements are provided for by the current legislative framework.

1.3 Supervision of the factoring companies

As the factoring market is not regulated, there is no supervisory authority for factoring companies.

2. THE FACTORING CONTRACT

2.1 Definition of the factoring contract

As detailed under Sub-section 1.1 above the Georgian Banking Law defines factoring as a financial service and no definition of the factoring contract is provided. The same law further mentions that factoring can be done with or without recourse. Thus the only provisions applicable to factoring contracts are the provisions on assignment of claims under the Civil Code.

Georgia is not a member of the UNIDROIT Convention on International Factoring or United Nations Convention on Assignment of Receivables in International Trade.

2.2 Receivables subject to factoring

As factoring is not regulated there are no restrictions on receivables that can be factored.

Future receivables can be factored, provided that they are identifiable under an existing agreement. The law unfortunately does not give any guidelines as to the test to be used to determine if a receivable is identifiable enough to be transferred.

Georgian law does not have specific provisions on factoring and hence no indication of the nature of different types of factoring. However, banks consider non-recourse factoring as true sale transaction and recourse factoring as secured lending for their reporting purposes.

2.3 Assignment of receivables

According to the Civil Code the assignment of a claim is effected by a contract concluded between the creditor and a third party. The contract does not have to be in a specific form, unless specifically requested by the assignee. Until the debtor is notified of the assignment of the claim, he is entitled to pay to the assignor. If the assignor has agreed on the assignment of the same claims with multiples assignees, then the assignee with whom the assignor entered into relations first shall be entitled to the claim. If this cannot be determined, then priority shall be given to the assignee who has notified the debtor earlier. The assignor is obligated to hand over all documents in his possession with respect to the claims and rights, as well as all information that is required for use of these claims and rights, to the assignee.

Since there is no specific requirement for the written form of assignment, receivables can be validly assigned using Electronic Data Exchange messages. Electronic signature is regulated, but it is not widely used in practice.

Registration is not required for the validity of assignment and no stamp duty applies.

The Civil Code allows contractual prohibition against assignment of receivables. A breach of such provision deems the assignment invalid.

3. MISCELLANEOUS

Foreign-exchange rules – There are no special foreign exchange rules applicable to factoring transactions and local practitioners agree that export receivables denominated in foreign currency can be factored between locals and across border without any restrictions.

VAT issues – Factoring is considered a financial service and as such has been exempted from VAT and this is applied to both interest and/or discount charged as part of factoring service.

Consequences of late payment - Based on the Civil Code consequences of late payment may be contractually agreed between the parties, thus the law does not indicate any specific penalties.

GREECE

List of relevant legislation/regulation

The following Greek legislation was considered: (i) the Law No. 1905/1990 on Factoring (as amended); and (ii) the Laws regarding the National Bank of Greece No. 3424/7 December 1927 (Government Gazette A 298), dated 7 December 1927 (as amended).

1. FACTORING OPERATIONS

1.1 Regulation of factoring operations

Provisioning of factoring services is regulated in Greece by the Law No. 1905/1990 and Law No. 4261/2014, based on which the National Bank of Greece (the "**National Bank**") is the supervising authority, which issues licences to factoring companies upon incorporation or to existing companies transforming into factoring companies.

1.2 Licensing conditions and procedure

Certain conditions shall be met by the companies applying for the factoring licence, such as a required share capital of at least 1/4 of the minimum share capital that is mandatory for the establishment of banking companies (currently EUR 18,000,000, thus 1/4 thereof equals EUR 4,500,000). Also, the National Bank requires disclosure of the main actors of the factoring companies, *i.e.*: (i) shareholders with minimum 10% holding or voting rights; (ii) the ten shareholders with the largest holding or voting rights; (iii) the persons having decision powers regarding the company's activities; (iv) all members of the Board of Directors and (v) the head of each department of operations.

Any share transfers must be approved in advance by the National Bank, if the transferee thereby acquires a holding higher than 10% of the paid-up share capital, except for transfers through succession or parental concession.

When applying for the factoring licence, the companies shall subscribe the minimum initial share capital, disclose the main actors, as described above, and submit the required documentation evidencing that these persons fulfil the legal conditions for holding their positions (*e.g.* criminal records, certificates confirming that there are no bankruptcy procedures, statement regarding the origin of capital used for purchasing shares, CVs, recommendation letters, etc.). Also, the company shall submit the Articles of Association, a feasibility study, including full and detailed development and action plan for the first three years of operation. The National Bank has the right to oppose the appointment or participation of any of the above persons if it considers them unsuitable or incapable to undertake the respective duties.

1.3 Capital adequacy and reporting requirements

Capital adequacy requirements apply only to credit institutions performing factoring.

Factoring companies are required to report: (i) monthly: the account balance, accounting statement of any branch of a company established in EEA, balance sheets, income statements; (ii) quarterly: situation of the shareholding structure and special holdings, of the shareholders' equity, balance sheet on consolidated basis and interim financial statements, income statement on consolidated basis, credit risk, market risk, client portfolio, concentration risk, exposures to foreign residents, liquidity, covered bonds issued and exposures to credit institutions; (iii) half-yearly: situation of big debtors, subsidiaries and foreign branches; (iv) yearly: situation of shareholders directly holding 1% or more of the share capital, shareholders who cumulatively possess the majority of the voting rights, obligors' changes, operational risk, published yearly financial statements of subsidiaries and foreign branches, financial statements.

Factoring companies are under an ongoing obligation to report to the National Bank any change of the persons having decision powers regarding the company's activities, members of the Board of Directors or managers as well as any amendment of the Articles of Association with respect to the business object.

1.4 Supervision of the factoring companies

The National Bank is entitled to issue, revoke and suspend factoring licences, to supervise the activity of factoring companies, issue mandatory instructions and impose penalties.

2. THE FACTORING CONTRACT

2.1 Definition of the factoring contract

According to the Law No. 1905/1990 on Factoring (the “**Factoring Law**”), “*factoring agreements are concluded in writing between a commercial supplier of goods or services and an agent of business receivables who undertakes for consideration to provide the supplier with services regarding the observation and collection of part or the total of the supplier's receivables namely arising from agreements for the sale of goods, the provision of services or the performance of works*”.

Greek law recognizes the following types of factoring: (i) recourse and non-recourse factoring; (ii) domestic and international factoring; (iii) disclosed and undisclosed factoring; and (iv) advance and maturity factoring.

Greece is not a member to the UNIDROIT Convention on International Factoring or UNCITRAL Convention on the Assignment of Receivables in International Trade.

2.2 Receivables subject to factoring

The Factoring Law refers to factoring of claims arising from, indicatively, contracts for the sale of goods, provision of services or performance of works. Since the law does not expressly limit the origin of receivables that can be factored, presumably any type of receivables may be factored. The law does not provide for any restriction on the maturity of receivables that can

be factored and there is no maximum time exposure of factoring companies to the factored receivables.

The factor may engage in the collection, prepayment, accounting, legal supervision and management of receivables and/or in the coverage of supplier's credit risk. After notification of the debtor, the factor substitutes the assignor, thus it may also negotiate the extension or restructuring of the debt.

The law on factoring expressly allows assignment of future receivables without setting out any specific requirements for the validity of such assignment. The Civil Code also allows assignment of future receivables as long as they are either defined or definable; *i.e.* they arise from a cause already in existence at the time of the assignment or from a cause that will arise in the future. To this end, the type, scope and debtor (not necessarily named in the agreement as long as his identity is ascertainable or will be ascertainable in the future) of the future receivable must be specified in the agreement.

Based on the Factoring Law, transfer of ownership over receivables is done through the deed of assignment, without further qualifications, thus there is no difference between recourse and non-recourse factoring in this respect.

2.3 Assignment of receivables

The factoring agreement must be concluded in writing. Although the Directive 2000/31/EC on electronic commerce and Directive 99/93/EC on electronic signature have been transposed into the Greek law, it is unclear if the electronic signature is widely used at the moment.

The registration of assignment is not required as long as it is concluded in writing. In case the assignment is registered, the priority between multiple assignees follows the sequence of registrations. Also, factoring agreements are exempt from stamp duty and from any other tax, duty or charge in favour of the state or any other entity of the public sector. Notification of the assignment to the debtor is required for validity purposes, however, the law expressly provides that if the debtor pays to the factor prior to the formal notification this payment is valid and the debt is released.

Any contractual prohibition against the assignment of receivables is ineffective in case of factoring.

3. MISCELLANEOUS

Foreign-exchange rules - Based on the Civil Code, if the receivables are payable in Greece, and if not otherwise agreed, the debtor has the right to pay in either domestic or foreign currency. Thus, the parties are free to specify the currency in which payment shall be made in the factoring agreement.

VAT issues - Factoring agreements and other related agreements are subject to a beneficial tax regime. The taxable gross revenues of factors are subject to a VAT rate of 23%. The value for tax purposes includes any gross revenue resulting from factoring activities, without any discount except for VAT.

Regarding income tax, non-banks engaged in factoring may deduct up to 1.5% of the average yearly amount that the factor has prepaid for receivables to be collected from export activities without recourse, and up to 1% of the average amount of the prepayment amounts for receivables with recourse.

Consequences of late payments - Local practitioners indicate that fines are imposed in case of late payments; other penalties, including penal sanctions, apply in case of tax evasion.

According to the Study of Legal Environments across Europe published in 2013 by the EU Federation of Factoring and Commerce Finance, in case of late payments a default interest of 2.5% per year applies in addition to the contractual interest. Moreover, Greece has transposed the EU Late Payments Directive, which applies to commercial transactions between companies (“undertakings”), as well as between companies and public sector. In addition to the default interest, the EU Late Payments Directive provides for fines in case of late payments.



HUNGARY

List of relevant legislation/regulation:

The following Hungarian legislation was considered: (i) the Law No. CXII on Credit Institutions and Financial Enterprises, dated 1996 (as amended); (ii) the Law No. CXXXIX on the National Bank of Hungary, dated 2013 (as amended); and (iii) the Civil Code dated 26.02.2013.

1. FACTORING OPERATIONS

1.1 Regulation of factoring operations

Provisioning of factoring services is regulated in Hungary by the Law CCXXXVII of 2013 on Credit Institutions and Financial Enterprises (the “**Banking Law**”) and Law CXXXIX of 2013 on the National Bank of Hungary, supplemented by various by-laws issued by the Hungarian National Bank (the “**National Bank**”). The mentioned laws define (i) factoring companies as financial undertakings that provide factoring services on a regular basis for making profit. Factoring services are in turn defined as purchasing (with or without the assumption of the debtor’s risk) and/or advancing financing against receivables, regardless of who keeps the records of the receivables’ in terms of their maturity and who collects the account receivables.

1.2 Licensing conditions and procedure

The National Bank issues licences and supervises the activity of factoring companies. According to local practitioners a quite strict test is applied when determining if the company should apply to the National Bank for licence and it has been reported that even the second transaction can establish the for-profit nature of the activity, and thus, trigger licensing obligation.

In addition to an operating licence a company has to apply to the central bank for approval of its board of directors (both executive and supervisory). Shareholders holding 10% or more of shares of the factoring company have to be approved as well.

A factoring company (the term used by the Hungarian laws is “*financial enterprise*” as it applies to other types of regulated financial activities) is required to have a minimum initial capital of HUF 50,000,000 (approximately EUR 160,000). In addition, in order to obtain the licence, a company intending to provide factoring services must meet certain personal, technical, IT and similar requirements. The licensing procedure requires provision of various documents related to, for example, organisational and management structure of the entity, decision-making and control mechanisms, organizational and operational procedures, various foreign certificates in case of foreign ownership, information on shareholders, a medium-term business plan, for the first three years, and similar. According to local practitioners the licensing procedure usually takes between six and eight (6-8) months.

1.3 Capital adequacy and reporting requirements

Hungarian factoring companies generally fall under the Basel III capital requirement regime as applied in Hungary by the Act on Credit Institutions and Financial Undertakings, which contains detailed capital adequacy rules.

Factoring companies are required to fulfil various reporting obligations towards the supervisory authority, such as daily, weekly, monthly, quarterly, yearly and occasional submissions. Quarterly reports (including, among others, financial report, balance sheet, data regarding anti-money laundering activities and complaints of consumers) have to be submitted. Only the yearly financial report (prepared at the end of the financial year) has to be audited.

1.4 Supervision of the factoring companies

In the event that the financial institution fails to comply with the relevant requirements the National Bank may take various measures, such as: require the factoring company to take a certain action, issue warnings, prohibit or restrict the operation of the company, prescribe additional capital requirements, conduct on-site inspections and revoke licences issued to the company or managers, appoint supervisor and impose fines, etc.

2. THE FACTORING CONTRACT

2.1 Definition of the factoring contract

The Civil Code provides that: *“Under a factoring contract the factor undertakes to pay a certain amount of money, and the debtor undertakes to assign his claim from a third party to the factor; if the obligor fails to satisfy the assigned claim at the time when due, the debtor shall be liable to repay the funds received with interest, and the factor shall be liable to re-assign the claim”*. Thus, the Civil Code regulates only the recourse factoring as a nominated contract (*i.e.* under which the factoring company has recourse against the client who assigned the receivables in case the original debtor fails to pay). However, as mentioned under Sub-section 1.1 above, the Banking Law qualifies as factoring operations both recourse and non-recourse factoring. Such inconsistency may create uncertainty in practice. According to local practitioners problems occur in particular with respect to the registration requirement of those contracts that qualify as factoring under the Banking Law, but exceed the sphere of factoring as defined by the Civil Code.

Hungary is a signatory of the UNIDROIT Convention on International Factoring.

2.2 Receivables subject to factoring

No particular restrictions apply to the type and nature of receivables that can be subject to factoring. From a licensing point of view, the maturity of the claims purchased is a key differentiation factor. If the debt purchased by the factor derives from lending, and the loans

are not yet terminated, or not yet overdue, the standard interpretation of the regulator is that for the acquisition of such claims a lending licence is also necessary.

According to the Civil Code future receivables can be assigned, provided that the debtor, the title, the amount and due date of such receivables are identified. According to local practitioners the use of catch-all formulas ("*any and all existing and future claims of the assignor against the debtor arising out of a certain contract*") is market standard regardless of the afore-mentioned strict criteria. The assignor is obliged by law to hand over to the assignee any and all documents as proof of the existence of the claim, and also those which may be necessary for the enforcement of the claim.

Both recourse and non-recourse factoring are considered as a true sale transaction, *i.e.* the title of the receivables is transferred to the factor and will be indicated in its books. Please see the considerations regarding registration of assignment under Sub-section 2.3 below.

2.3 Assignment of receivables

Under Hungarian law written form is not required for the validity of assignment, thus a receivable may be validly assigned using an Electronic Data Exchange messages. The written form is, however, preferred in practice. Hungary has adopted a law on electronic signature, but currently the electronic signature is not widely used.

Notification of the original debtor is not required for the validity of assignment, however, registration in the security registry is. In the absence of registration the transfer of title over receivables is not effective, *i.e.* the assignee acquires only (unregistered) pledge over the receivables.

The security registry is an online registry (publicly available on the internet) operated by the Hungarian Chamber of Public Notaries. The public notary must only identify and register the assignor and assignee into the security registry (*i.e.* not the factoring transaction, but the parties thereof). Once the parties are registered, any of them can proceed with electronic registration of the actual factoring transaction, *i.e.* without further involvement of the public notary.

Contractual prohibitions against the assignment of receivables are allowed. The effect of such prohibitions is that regardless of the fact that the original debtor has been notified about the assignment, he is still legally allowed to pay his debt to the assignor and not to the factor.

3. MISCELLANEOUS

Foreign Exchange rules - A domestic factoring company can purchase receivables by paying for them in their nominal (foreign) currency, thus there is no strict obligation to pay for them in domestic currency.

VAT Issues – The VAT treatment applicable to assignment of receivables and factoring is somewhat uncertain in Hungary following the relevant ECJ decisions. While assignment of a claim is VAT exempt, assignment of a contract (including a loan agreement) is subject to VAT. However, the distinction between the two is not always obvious. Also, certain other assignments are qualified as provision of services and are therefore subject to VAT. Further, if an assignment is subject to VAT, it may still be VAT-free (*i.e.* taxed at a rate of 0%, if the service provided by the factor qualifies as a financial service) or taxed at the full rate (*i.e.* 27%, if the main characteristic of the service is not financing itself, but the administrative management of non-performing loans).

If there is a service charge or factoring commission, then, based on EU case law, the service provided by the factor qualifies as debt collection service, which is subject to VAT. When there is a discount, the difficulty lies in proving that the discount is only a cost of financing provided (*i.e.* an interest) and not a service fee.

There is no difference in VAT treatment between banking and non- banking factoring companies.

Consequences of late payment - Under the Civil Code, the debtor shall pay interest on late payment from the time of default. The interest rate amounts to the National Bank's base rate in effect on the first day of the calendar half-year to which it pertains, or if the monetary debt is to be satisfied in a foreign currency, the base rate of the issuing central bank, or failing this, the money market rate, even if the debt is otherwise free of interest. In case of contracts between "*business parties*" or "*any contract concluded by a contracting authority that is liable for the payment of a monetary claim with a party other than a contracting authority*" the base interest rate mentioned above shall be increased by eight percentage points. In such latter cases the debtor shall be required to provide compensation to the creditor for recovery costs in local currency (HUF) in an amount equivalent to at least EUR 40. Any contract term excluding liability for the fixed-rate recovery cost, or setting the amount thereof in less than EUR 40 shall be null and void.

Additionally, if interest up to the date of default is due and payable to the creditor, the debtor shall pay interest on late payment in addition to the interest due, as of the date of default at a rate of one-third of the National Bank's base rate in effect on the first day of the calendar half-year to which it pertains, or, if the monetary debt is to be satisfied in a foreign currency, one-third of the base rate of the issuing central bank, or failing this, one-third of the money market rate, but not less than the default interest specified in the above paragraph on the aggregate. For the purposes of calculating the interest, the National Bank's base rate in effect on the first day of the calendar half-year affected shall apply to the entire period of the given calendar half-year. Obligation to pay interest shall be effective even if the party in default justifies the delay. Moreover, Hungary has transposed the EU Late Payments Directive, which applies to commercial transactions between companies ("undertakings"), as well as between companies

and public sector. In addition to the default interest, the EU Late Payments Directive provides for fines in case of late payments.

JORDAN

List of relevant legislation/regulation

The following Jordanian legislation was considered: (i) the Civil Code No. 4, dated 01.01.1977 (as amended); and (ii) the Companies Law No. 22, dated 1.11.1996 (as amended).

1. FACTORING OPERATIONS

1.1 Regulation of factoring operations

Non-banking factoring companies are not required to obtain any licences, certifications or authorizations provided that they duly register with the Ministry of Industry and Trade (the “**Ministry**”) and obtain a certificate of registration. Thus, there is no specific supervisory body for factoring companies. The Ministry is the regulatory body in charge of inspecting and/or scrutinising Jordanian companies’ activity in general.

1.2 Licensing conditions and procedure

No specific licensing requirements for factoring companies.

Capital adequacy and reporting requirements

Factoring companies are not subject to any capital adequacy requirements or other financial covenants.

No specific reporting applies to factoring companies, just the reporting requirements applicable to companies in general.

1.3 Supervision of the factoring companies

Although no specific regulator exists for factoring companies, based on the Companies Law, the Ministry (including the Companies Control Directorate) is entitled to supervise and inspect companies in general.

2. THE FACTORING CONTRACT

2.1 Definition of the factoring contract

Jordanian Law does not provide for special provisions on factoring. The only applicable provisions are the articles of the Civil Code regarding assignment of obligations and rights. Thus, no definition of factoring contract is provided by law and there is no reference to various types of factoring.

Jordan is not a member of the UNIDROIT Convention on International Factoring or UNCITRAL Convention on the Assignment of Receivables in International Trade.

2.2 Receivables subject to factoring

As far as the origin of receivables subject to assignment is concerned, no restrictions are provided in the law.

The Civil Code stipulates that the object of assignment must fulfil the following conditions: (i) to be clearly identified, (ii) to be unconditional or conditional upon a valid condition that does not violate public policy, (iii) not to be temporary, (iv) to be provided for valid consideration and (v) to have a clearly defined due date. With the qualifications mentioned above, local practitioners indicate that future receivables can be subject to factoring.

The law is silent on the types of factoring and the nature thereof. Legal practitioners have interpreted the general legal provisions on assignment of receivables as follows: non-recourse factoring (Art. 993 of the Civil Code) is a binding assignment and therefore, it is considered a true sale transaction, while recourse factoring (Art. 958 of the Civil Code) is rather a guarantee agreement, thus considered a secured lending transaction.

2.3 Assignment of receivables

The assignment contract must be concluded in notarised form, otherwise it shall not be effective towards third parties, but only towards the signatories thereof (the Notary Public requires all parties (assignee, assignor and debtor) to be present before it for physical execution). Execution of contracts by use of Data Exchange messages or electronic signature is used in very limited situations in Jordan.

The assignment contract is not subject to registration. However, for the validity thereof, the assignment must be signed/approved by the assignee, assignor and debtor. In order to be effective towards third parties, the assignment contract shall be concluded in notarised form. Pursuant to the Stamp Duty Law a stamp duty of 0.3% or 0.6% of the value of the assigned agreement applies, depending on the type of assignment and the parties thereto.

Given that the assignment is valid only with the consent of the debtor, the consent thereof is deemed to be the waiver of the non-assignment prohibition. In case of breach of such prohibition the breaching party is liable for damages.

3. MISCELLANEOUS

Foreign-exchange rules – Receivables can be purchased in the currency in which they are denominated, even if such currency is foreign.

VAT issues – There are no VAT risks or specific issues with respect to factoring. Profits generated by the factoring company are subject to 16% sales tax.

Consequences of late payment – According to the Civil Code the creditor is entitled to seek damages for any loss caused by late payment. The interest rate on late payments shall not exceed 9% per year.



KAZAKHSTAN

List of relevant legislation/regulation

The following Kazakh legislation was considered: (i) the Civil Code dated 27.12.1994 (as amended); (ii) the Law No. 474 on state regulation, control and supervision of financial market and financial organisations, dated 4.07.2003 (as amended); (iii) Law No. 2155 on the National Bank of the Republic of Kazakhstan, dated 30.03.1995 (as amended); (iv) Law No. 2444 on banks and banking activity, dated 31.08.1995 (as amended); and (v) the Law 202-V ZRK on permissions and notifications, dated 16.05.2014 (as amended).

1. FACTORING OPERATIONS

1.1 Regulation of factoring operations

A section of the Civil Code of Kazakhstan (the “**Civil Code**”) is dedicated to factoring, which is defined as financing against assignment of monetary claims. Factoring operations are regulated in Kazakhstan, the regulator being the National Bank of Kazakhstan (the “**National Bank**”), which issues licences for performing, among others, factoring activities.

1.2 Licensing conditions and procedure

The Law on permissions and notifications provides that for any banking activity or other operations such as factoring a special licence must be obtained from the National Bank. In order to obtain such licence, the applicant must submit, among others: statute of the company, registration certificate, identification documents for the natural persons, evidence that the licence fee has been paid, documents confirming compliance with specific qualification requirements.

1.3 Capital adequacy and reporting requirements

According to the Law on state regulation, control and supervision of financial market and financial organisations the regulator may request any reports, including audited financial reports in order to verify the activities of financial organisations and their affiliated persons, including to determine the financial condition of financial organisations and their affiliated persons, to identify and prevent violations of the consumer rights, to detect and prevent unauthorised activities related to financial services or issuance of financial instruments, etc.

1.4 Supervision of the factoring companies

The National Bank has very broad powers, including: regulation, control and supervision of financial institutions. It establishes the procedure for issuance, suspension and withdrawal of licences for professional activities in the financial market, it can conduct inspections, it approves prudential standards and other binding norms and limits for financial institutions, it approves the executives of financial institutions, etc.

2. THE FACTORING CONTRACT

2.1 Definition of the factoring contract

The section on factoring of the Civil Code defines the factoring contract as follows: "*an agreement under which one party (financial agent) transfers or undertakes to provide financing to the other party (the client), and the client assigns to the financial agent the receivables arising out of client's customer relations with a third party (the debtor)*". Recourse and non-recourse factoring seem to be indirectly referred to in the Civil Code, but not defined.

Kazakhstan is not a member of the UNIDROIT Convention on International Factoring or UNCITRAL Convention on the Assignment of Receivables in International Trade.

2.2 Receivables subject to factoring

Based on the Civil Code, only monetary claims arising from the customer relations of the client with third parties may be subject to factoring. No other restrictions are stipulated and, according to local practitioners, the assignee may re-negotiate the payment terms with the debtor.

The law allows future receivables to be subject to factoring, provided that their description is sufficient as to permit identification at the time they arise. Article 731 of the Civil Code (Special Part) indicates that the monetary claim which is the subject of the assignment has to be determined in the factoring contract in a manner that would allow to identify the existing monetary claim at the moment of execution of the factoring contract; and for the future monetary claims – no later than the moment when the future claim actually arose.

Under Kazakh law recourse factoring is considered as secured lending transaction. Under article 736 of the Civil Code (Special Part), factoring can be structured either as (a) “true sale” whereby the financial agent (assignee) gets the right to all the amounts receivable from the debtor and the client (assignor) is not liable if the amounts paid by the debtor are less than the amount paid by the financial agent (assignee); or (b) “secured lending transaction” whereby the client (assignor) will remain to be liable to the financial agent (assignee) if the debtor paid less than owed by the client (assignor) to the financial agent (assignee). Any additional payments made by debtor to the financial agent (assignee) shall be returned by it to the client (assignor). It is possible to amend these rules in factoring contract.

2.3 Assignment of receivables

According to Article 346 of the Civil Code (General Part) the factoring contract has to be concluded in writing. A law on electronic signature has been adopted, but it is not clear whether it is widely used in practice.

No registration or payment of stamp-duty or other documentary tax is required in order to achieve validity of assignment against the debtor or third party creditors. Under Article 735 of the Civil Code (Special Part), the debtor is obliged to make payment in favour of the financial agent only upon receipt of a written notification from the client or financial agent that the assignment has taken place. The notification should clearly indicate the monetary claim due and the financial agent, to which payment shall be made. Within the reasonable period of time, the financial agent should provide evidence to the debtor that the assignment has taken place upon such request of the debtor. Should the financial agent fail to provide such evidence, the debtor is entitled to make the payment under such monetary claim in favour of the client, and such payment will be considered as properly made.

No other requirements for the validity of the assignment.

Contractual prohibitions against assignment do not affect the factoring transaction. On the other hand, subsequent assignment of a monetary claim by the financial agent is not allowed, unless such further assignment is expressly allowed in the factoring contract.

3. MISCELLANEOUS

Foreign-exchange rules – Generally, under Article 282 of the Civil Code (General Part), monetary obligations in Kazakhstan are fulfilled in Tenge. However, pursuant to Article 14 of the Law on Currency Regulation and Currency Control, transactions between residents and non-residents may be carried out either in Tenge or foreign currency. Thus, a domestic factoring company may purchase the receivables created in an export activity by paying for them in their nominal (foreign) currency.

VAT issues -

Consequences of late payment – The Civil Code provides that, in case of delayed payment the defaulting party is liable for the direct and indirect damages caused to the other party.



KOSOVO

List of relevant legislation/regulation

The following Kosovo legislation was considered: (i) Law No. 03/L-209 on Central Bank of the Republic of Kosovo, as amended and supplemented; (ii) Law No. 04/L-093 on Banks, Microfinance Institutions and Non-Bank Financial Institutions, as amended and supplemented; (iii) Central Bank of the Republic of Kosovo Regulation on the Registration, Supervision and Activities of Non-Banking Financial Institutions, dated 28 May 2015; (iv) Central Bank of the Republic of Kosovo Regulation on Factoring, approved on 29 October 2018; (v) Central Bank of the Republic of Kosovo Advisory Letter 2016 – 1 on the Internal Capital Adequacy Assessment Process, dated August 2016; (vi) Central Bank of the Republic of Kosovo Regulation for Reporting of Non-Bank Financial Institutions, dated 31 March 2016; (vii) Law No. 04/L-094 on the Information Society Services; (viii) Law No. 04/L-077 on Obligational Relationships; and (ix) Administrative Instruction No. 03/2015 for Implementing the Law No. 05/L-037 on Value Added Tax.

1. FACTORING OPERATIONS

1.1 Regulation of factoring operations

Factoring is a recently regulated industry in Kosovo. According to the Central Bank of the Republic of Kosovo Regulation on Factoring (“**Regulation on Factoring**”), factoring is defined as a permitted financial activity whereby the factor (i.e. the licensed/registered entity) buys and/or accepts existing non-matured or future short-term receivables of up to one (1) year, which derive from the main contract for purchase/sale of goods or services from the supplier. A factoring transaction can be based on a purchase/sale of receivables or in a simple transfer of receivables. In this respect, a factoring transaction shall be deemed to be a purchase and/or assignment (acceptance) of the receivables, unless the contract specifically sets out that the transaction is related only to a specific transfer of the receivables. The supervisory authority for factoring activities is the Central Bank of the Republic of Kosovo (“**CBK**”). Therefore, factoring activities are exercised by entities specifically licensed/registered for this purpose by the CBK.

Factoring transactions are categorized on the basis of the origin of the parties to a factoring contract, the subject matter of factoring, and the risks for the collection of the receivables that are assumed by the parties to factoring. To this end, the Regulation on Factoring recognises and defines the following general types of factoring: (i) domestic factoring; (ii) foreign factoring; (iii) factoring with recourse; and (iv) factoring without recourse. Reverse factoring is recognised as a special type of factoring.

In addition to the above, the licensed/registered legal entities for engaging in factoring activities can also engage in the following activities which are necessary for the exercise of

the financial activity of factoring: (i) the gathering, producing, analysis and giving of information about the creditworthiness of legal entities and natural persons which are organized as business organization; (ii) managing the client's receivables arising on the basis of goods sold and services provided and consultations in relation to these; (iii) collection of receivables; (iv) export financing on the basis of a purchase with a discount and without recourse to long-term, still undue claims on secured financial instruments (forfeiting); and (v) issuing credit cover when performing foreign factoring. A licensed/registered entity cannot engage in purchasing of non-performing loans, nor in purchasing risks or benefits on the basis of non-performing loans portfolio of credit institutions.

1.2 Licensing conditions and procedure

Only factoring companies licensed by the CBK can perform factoring transactions in Kosovo, and are subject to a minimum capital threshold of **EUR 150,000.00 (with words: one hundred and fifty thousand Euros)** for the activity of factoring itself. The procedures for the registration, licensing, reporting supervision and revocation of licensing of entities engaged in factoring are governed by the laws and subsidiary legal instruments that apply to the respective legal entity that holds a factoring license, i.e. a Non-Banking Financial Institution (“**NBFI**”) or a Bank. As such, there is no distinct procedure specifically tailored to the application for a factoring license.

In light of the above, the application for licensing of NBFIs (registered as Joint Stock Companies or Limited Liability Companies), is mandatorily preceded by a formal meeting with the CBK in which the applicant will present – *inter alia* – information on the source of funds, ownership and managerial team and relevant timeframes. The application itself should contain – *inter alia* – the constituency documents of the applicant; copies of the business registration documents; the amount of the applicant's committed capital, including the payable sums and the legal source of the capital; the business plan which includes the organization structure; evidence on the professional ability of each director or senior manager. NBFIs that offer exclusively factoring services and are registered as Joint Stock Companies or Limited Liability Companies are required to have the wording “factoring” or “factor” in their name.

The licensing application process for Banks (registered as Joint Stock Companies) is similar, and should contain – *inter alia* – the authorized and committed capital of the entity, as well as the amounts and legal source of funds; the business plan which includes the organization structure; the list of shareholders which hold or will hold five (5) percent of more of the entity's shares and information of the CEO or Senior Manager(s) of the entity, including their business and professional activity for the past ten (10) years.

1.3 Capital adequacy and reporting requirements

There are no capital adequacy requirements for NBFIs. However, since Banks can engage in factoring activities, it should be noted that the CBK does provide a regulation on capital adequacy of Banks, which requires all Banks to maintain a minimal ratio of twelve (12) percent of the total of the capital and eight (8) percent of the first-class capital, in relation to weighted assets risk and other risks.

The CBK Regulation for Reporting of Non-Bank Financial Institutions provides that NBFIs engaged in factoring activities, shall provide the CBK with a monthly report on the requests from factoring, no later than fifteen (15) days at the end of each month. On the other hand, NBFIs also have to provide the CBK with a semi-annual report, no later than fifteen (15) days at the end of every six (6) months, containing – *inter alia* – the balance, the income balance, obligations towards banks and other financial institutions. All reporting conducted by NBFIs must be compliant to the International Financial Reporting Standards (“**IFRS**”). Likewise, the audit of NBFIs, conducted by a previously licensed auditor specifically for the NBFI, must be IFRS compliant.

1.4 Supervision of the factoring companies

The CBK is the exclusive supervisory authority of factoring companies. The personnel of CBK can visit the offices of such financial institutions to check their registers, books, documents and other evidence, to receive information from them, and undertake any other action which the CBK may consider necessary or advisable. The financial institutions are bound to provide the CBK with information and evidence on their activity and financial situation, whereas the latter may publish this information wholly or in part, in aggregated form.

The CBK may undertake specific action towards its duly licensed entities, which include monetary fines, as well as other administrative measures such as warnings or written orders, suspensions, revocations of licenses, whereas these measures do not exclude the possibility of civil or criminal liability. In addition, the CBK may also take these measures against individuals which are part of, or related to said entities, by – *inter alia* – issuing written warnings, monetary fines, firing or suspension of the individual.

2. THE FACTORING CONTRACT

2.1 Definition of the factoring contract

The Regulation on Factoring defines the factoring contract as a written contract by which the factor assumes the obligation to provide factoring to a supplier, namely to pay the invoice of the supplier issued to a purchaser, in exchange for the sale and/or transfer by the supplier of its receivables towards the purchaser to the factor, as well as the payment by the supplier to

the factor of a factoring fee and all of the costs of factoring. It also specifically provides that a factoring contract shall not be deemed to be a loan contract.

Kosovo is not a member of the UNIDROIT Convention on International Factoring or the United Nations Convention on Assignment of Receivables in International Trade.

2.2 Receivables subject to factoring

Receivables qualify as subjects of factoring as long as they originate from the sale of goods or provision of services. Such receivables shall also be existing/actual, non-matured, or future short-term receivables of up to one (1) year, in order to be subject of factoring.

When it comes to factoring with recourse, unless otherwise provided in the factoring contract, in spite of the existence of the recourse or the collection of the receivables, the sale and/or the transfer of the receivables shall be deemed to have occurred and completed at the moment when the factoring contract is signed. Therefore, factoring with recourse is deemed to be a true sale if the transaction is structured as a sale, rather than a mere transfer of receivables. On the other hand, in the case of factoring without recourse, if the receivables of factoring without recourse turn out to have a lien of any kind, the factoring is considered as being with recourse, in which case the liability of the supplier towards the factor shall be as is in cases of factoring with recourse.

2.3 Assignment of receivables

The Regulation on Factoring regulates the assignment of receivables only with respect to the factoring exercised by financial institutions, whereas the assignment of receivables exercised by non-financial institutions and those that do not offer factoring services as their regular activity, is governed by the Law No. 04/L-077 on Obligational Relationships.

The Law No. 04/L-094 on the Information Society Services provides that information shall not be denied the legal effect, validity or enforceability, solely due to its being in the form of a data message. In practice, however, the use of Electronic Data Exchange messages to effect assignments has been scarce. The same law also provides for electronic signatures, and – similar to Electronic Data Exchange – electronic signatures do not enjoy a wide use in practice.

Pursuant to general rules applicable to assignment, notification of the debtor is required for validity purposes (i.e. the assignor shall notify the debtor regarding the assignment). Otherwise, the assignment will have no effect towards the debtor, who will be entitled to pay its debt to the assignor.

The contractual prohibition against assignment of receivables does not invalidate factoring. Nevertheless, the debtor can release its obligation to the original creditor regardless whether it has been notified of such assignment.

3. MISCELLANEOUS

Foreign-exchange rules – There is no obstacle to pay the purchase price in a foreign currency if the client is not a Kosovo resident. However, if the client is a Kosovo resident, the domestic factoring company will not be allowed to purchase the receivables in their nominal (foreign) currency, but only in national currency (EUR). Therefore, before the payment of the purchase price, the value of the receivables would have to be exchanged in local currency.

VAT issues – The Administrative Instruction No. 03/2015 for Implementing the Law No. 05/L-037 on Value Added Tax provides that “[t]ransactions including negotiation related to exchange, deposits, accounts receivable, supply of liquidity through payments, transfers, transactions related to the debt relationship, checks and other negotiable instruments when such actions or transactions are performed by financial or bank institutions under the respective legislation” are exempted from VAT.

Consequences of late payment – A debtor whose monetary payments are overdue is legally obligated to pay overdue interest, in addition to the main debt. The overdue interest rate is set by law at a default of eight (8) percent per year, unless the law provides otherwise. However, the parties may also contract an overdue interest rate which may be lower or higher than the default rate.



KYRGYZSTAN

List of relevant legislation/regulation

The following Kyrgyz legislation was considered: (i) the Civil Code No. 15, dated 8.05.1996 (as amended); (ii) the Law No. 59 on the National Bank of the Kyrgyz Republic, dated 29.07.1997 (as amended); (iii) the Law No. 29 on banks and banking activity, dated 29.07.1997; and (iv) the Law No. 124 on microfinance organizations, dated 23.07.2002.

1. FACTORING OPERATIONS

1.1 Regulation of factoring operations

The regulator for companies performing factoring operations is the National Bank of Kyrgyz Republic (the “**National Bank**”). According to the Civil Code apart from banks, other credit organizations (microfinance institutions, but not credit unions) as well as other commercial organizations can also perform factoring activity, if they obtain the relevant licence from the National Bank.

1.2 Licensing conditions and procedure

Non-banking companies must apply to the National Bank for a licence similar to the banking licence for being permitted to deliver factoring services.

In order to receive “*banking*” licence, which is necessary for performing, among others, factoring activity, a microfinance company must provide the following information to the National Bank: copies of the constitutive documents, general organizational structure, list of the members of governance bodies and information about their compliance with the professional aptitude requirements imposed by law, evidence that the licence fee is paid, feasibility study (business plan), evidence of shareholders contribution to the share capital and of the sources thereof.

1.3 Capital adequacy and reporting requirements

Capital adequacy rules apply to banks, but it is not entirely clear if they extend also to microfinance companies. According to some local practitioners microfinance companies shall comply with the following requirements: minimum amount of authorized capital, capital adequacy, maximum amount of risk per borrower, ratio of liquidity and limit of risk on return deposits.

Microfinance companies shall provide audited yearly financial reports and quarterly reports.

1.4 Supervision of the factoring companies

The National Bank is entitled to: establish prudential regulations, issue directives, guidelines and recommendations, perform inspections of banks and microfinance institutions’ activities, request and receive information and reporting, impose financial rehabilitation measures such

as interim administration, establishment of direct banking supervision, penalties, suspension or revocation of licence, etc.

2. THE FACTORING CONTRACT

2.1 Definition of the factoring contract

There is no special law on factoring, but the Civil Code contains a chapter in this respect. The Civil Code defines the factoring agreement as follows: *“under an agreement for finance secured by assignment of receivables one party (financial agent) assigns or obliges to assign to another party (client) money in lieu of client’s (lender’s) accounts receivables to the third party (debtor), arising out of the provision of goods by the client, performance of works or rendering of services to a third party, while the client assigns or obliges to assign such accounts receivables to the financial agent”*.

The Civil Code speaks about recourse and non-recourse factoring.

The Kyrgyz Republic is not a member of the UNIDROIT Convention on International Factoring or UNCITRAL Convention on the Assignment of Receivables in International Trade.

2.2 Receivables subject to factoring

Based on the definition of the factoring agreement provided in the Civil Code, factoring may have as object receivables arising from the sale of goods and delivery of services or works. No limitations or restrictions are stipulated in the law with respect to receivables subject to factoring.

Future receivables can be subject to factoring. For a valid assignment the receivables must be defined in the contract in a manner that allows their identification upon occurrence.

Both recourse and non-recourse factoring are considered true sale transactions.

2.3 Assignment of receivables

Written form is mandatory for any contracts concluded between legal persons, between legal persons and natural persons and between natural persons (in such last case if the value of the contract is above a certain amount which is quite low). In light of such requirements, factoring agreements must be concluded in writing. Execution through Data Exchange messages is possible by using electronic signature which is regulated in Kyrgyz Republic, but used mostly by financial institutions.

Registration of the factoring contract is not required and no stamp duty applies. Nevertheless, if the contract stipulating the receivable to be assigned is subject to registration, the assignment contract will have to be registered as well. The debtor must be notified by the assignee or assignor in writing with respect to the assignment.

Any prohibition against assignment cannot invalidate the assignment concluded in breach thereof.

3. MISCELLANEOUS

Foreign-exchange rules - Since the legislation does not directly prohibit payments under contracts in foreign currency and provides that parties are free to agree on the terms of contract (including price) - settlements of accounts between parties can be made in foreign currency, provided that payments are carried out through banks that have licences for operations in foreign currency.

VAT issues – financial services, including factoring, are exempted from VAT. There is no difference of VAT treatment between banking and non-banking entities as far as factoring is concerned.

Consequences of late payment – Default interest is due in case of delayed payment. Interest is determined based on the duly established banking interest rate on the date when monetary obligation is fulfilled. In addition, the unlawful use of someone else's money under a monetary obligation may result in the charge of 5% penalty per year of the amount in arrears, unless the parties' agreement establishes a higher amount.

LATVIA

List of relevant legislation/regulation

The following Latvian legislation was considered: (i) the Civil Law dated 24.04.1997 (as amended); (ii) the Commercial Law of Latvia dated 4.05.2000 (as amended); and (iii) the Credit Institutions Law dated 24.10.1995 (as amended).

1. FACTORING OPERATIONS

1.1 Regulation of factoring operations

Factoring in general and the activity of factoring companies are not regulated by the Latvian Law. No special licence/certification/authorisation is required for non-banking factoring companies.

There is no special body exercising the supervision on factoring services.

1.2 Licensing conditions and procedure

No special licence is required for providing services, appointment of managers and shareholders, whereas the provisions of Companies Act and other legislation for appointing a manager and accepting a decision of the shareholders apply.

1.3 Capital adequacy and reporting requirements

No reporting obligations are provided solely for the scope of factoring services. Whereas general reporting obligations exist depending on the type of the corporate entity (limited liability company, joint-stock company, etc.) and under Credit Institutions Law in case of consumer credits.

1.4 Supervision of the factoring companies

Provision of factoring services is not supervised by any supervision authority in the financial market at the moment.

2. THE FACTORING CONTRACT

2.1 Definition of the factoring contract

Latvia is a member of 1988 UNIDROIT Convention on International Factoring.

There is no specific law on factoring however Chapter 6 of the Commercial Law regulates factoring contract. Chapter 6 defines factoring contract as a contract, by which one

contracting party (customer) undertakes an obligation to transfer money claims of a client against a third party (debtor) known thereto, as well as to fulfil other commitments specified in the factoring contract to another contracting party – merchant (factor) for the agreed remuneration.

Various types of factoring contracts are not specifically mentioned in the law, however the law does differentiate the situation in which the client guarantees the successful collection from the one where it does not (recourse and non-recourse factoring). In case parties omit to mention the type of factoring in their contract a non-recourse type is applied by default.

2.2 Receivables subject to factoring

As factoring is not regulated there are no restrictions on receivables that can be factored. There is also no restriction on the maturity of receivables that can be factored and the applicable law does not prescribe maximum time exposure of factoring companies to factored receivables. There is no explicit provision prohibiting the extension/restructuring of payment terms after purchasing of receivables nor are there any special conditions provided.

Assignment of future receivables is possible - subject to proper definition of the receivable. The claims to be transferred must be identified in the factoring contract so that it would be possible to determine it not later than at the time of occurrence thereof. However, the law lacks guidance on the level of identification necessary to satisfy the identification requirement. A future claim is considered 'transferred' to the factor at the time of occurrence thereof.

Various types of factoring contracts are not specifically mentioned in the law, however the law does differentiate the situation in which the client guarantees the successful collection from the one where it does not (recourse and non-recourse factoring). Considering that the general provisions regulating the assignment of receivables are applicable to factoring as well, both recourse and non-recourse factoring could be considered as a true sale transaction, but no validation of this proposition could have been found in the local legal practice.

2.3 Assignment of receivables

An assignment does not have to be in a written (paper based) form which allows for the possibility to use an Electronic Data Exchange message for factoring. The Electronic Documents Law also allows electronic transactions.

According to the commercial code there are no specific registration or notification steps to fulfil in order to achieve the validity of assignment. However, until the debtor is fully notified

he is authorised to discharge the debt to the original creditor. Debtor`s consent is not required for the validity of an assignment. No stamp duties is payable on assignment.

Contractual prohibition against the assignment of receivables is not valid against factoring transactions.

3. MISCELLANEOUS

VAT issues – Latvia complies with the EU VAT legislation whereby factoring commission/service charge is taxable. Interest is VAT exempt. VAT treatment of factoring does not change depending on the participants of the transaction. The VAT treatment of discount depends on the background, i.e. when discount is related to collection services, it is considered a payment for service and hence taxable whereas when discount reflects the actual value of the risk transferred and when there is no direct link between service rendered and payment received, discount is not subject to VAT.

Consequences of late payment - The general regime established in the Civil Code is that, in the case of late payment, the creditor is entitled to default interest. Moreover, Latvia has transposed the EU Late Payments Directive, which applies to commercial transactions between companies (“undertakings”), as well as between companies and public sector. In addition to the default interest, the EU Late Payments Directive provides for fines in case of late payments.



LEBANON

List of relevant legislation/regulation

The following Lebanese legislation was considered: (i) Code of Obligations and Contracts; and (ii) Law No. 379/2001 on Value Added Tax (as amended).

1. FACTORING OPERATIONS

1.1 Regulation of factoring operations

Factoring operations are not regulated in Lebanon.

1.2 Licensing conditions and procedure

As the factoring operations are not regulated, there is no specific licence, certification or authorisation for non-banking factoring companies, as long as these companies do not generally receive deposits from any third parties and/or do not grant them any loans, facilities or similar transactions

1.3 Capital adequacy and reporting requirements

No capital adequacy requirements or other financial covenants apply to factoring companies.

1.4 Supervision of the factoring companies

As the factoring market is not regulated, there is no supervisory authority for factoring companies.

2. THE FACTORING CONTRACT

2.1 Definition of the factoring contract

There is no definition of factoring under the Lebanese law.

Lebanon is not a member of the UNIDROIT Convention on International Factoring but it is a party to the UNCITRAL Convention on the Assignment of Receivables in International Trade.

2.2 Receivables subject to factoring.

According to the Code of Obligations and Contracts, the creditor may assign the debt except where such assignment is prohibited by law, by the will of the contractors or by the *intuitus personae* nature of the obligation.

As per article 281 of the Code of Obligations and Contracts, it is possible to assign future receivables. Furthermore, the provisions of the Code of Obligations and Contracts apply not only to the assignment of receivables arising from debts but also to the assignment of rights in general, unless prohibited by a specific law or by the nature of the concerned right.

Accordingly, an assignment of rights resulting from the provision of services is more likely to be prohibited in the context of an employer/employee relationship but will be possible when it comes to monetary debt, regardless of its origin.

2.3 Assignment of receivables

Articles 280 to 286 of the Code of Obligations and Contracts applies to the assignment of receivables.

Article 285 of the Code of Obligations and Contracts provides that the assignment transfers to the assignee the debt together with all the related privileges and hindrances thus, conferring to the assignee the same status as the original assignor. Consequently, and in all cases, factoring is considered as a true sale transaction. There are no restrictions under Lebanese law on the maturity of receivables that can be factored nor on the maximum time exposure of factoring companies to those receivables.

A stamp duty (3% of the amount of the receivable), is due in case the assignment is done in writing, on a paper form.

For the assignment to take effect vis-à-vis third parties (such as assignor's creditors, assignor's heirs) and more specifically the debtor, the latter should either be notified of the assignment or acknowledge it in a written instrument with an undisputable date (article 283 Code of Obligations and Contracts).

The assignment does not have to be in a written (paper based) form. However, any and all documents pertaining to the receivables or the rights assigned should be handed to the assignee in order for the latter to fully enjoy its status as a new creditor (article 284 of the Code of Obligations and Contracts). It is however to be noted that the assignment of commercial instruments such as cheques and bills of exchange should be accompanied by the endorsement of such instruments by the assignor.

There is no law on electronic signature in Lebanon, however an assignment of receivables done through an Electronic Data Exchange message could still be considered valid since an assignment is valid once the assignor and assignee simply consent to it i.e. no further formalities need to be fulfilled.

As per article 280 of the Code of Obligations and Contracts, the assignment of receivables may be prohibited by the will of the parties. Such prohibition is valid when it is not conflicting with the law or public policy rules. Any breach by the creditor of a valid contractual obligation prohibiting factoring shall render the factoring null and void, regardless of whether the factoring was made with or without recourse.

3. MISCELLANEOUS

Foreign-exchange rules - There are no restrictions in the Lebanese system on the currency to be used in commercial transactions.

VAT issues - VAT in Lebanon is governed by Law No. 379/2001 which provides in its articles 2 (as amended by the Legislative Decree No. 7340/2002) and 3, that every person or legal entity exercising, in Lebanon, an activity which is subject to VAT, shall be subject to the payment of VAT when its annual turnover is equal to or above /150,000,000/ LBP. According to the same provisions, all financial activities including but not limited to commercial, industrial, artisanal and professional activities are subject to VAT. The commission/service charge resulting from factoring is therefore subject to VAT. The VAT rate is set by articles 23 and 25 of the abovementioned law at 10% of the amount that will be ultimately cashed.

Consequences of late payment – The legal interest rate (currently at 9%) will apply in this case. Late payments may also be sanctioned by monetary penalties expressed as a lump sum or additional interest, depending on what the parties may agree.



LITHUANIA

List of relevant legislation/regulation

The following Lithuanian legislation was considered: (i) the Civil Code No. VIII-1864 of the Republic of Lithuania, dated 18.07.2000 (as amended); and (ii) the Law No. IX-1068 on Financial Institutions, dated 22.12.2011.

1. FACTORING OPERATIONS

1.1 Regulation of factoring operations

According to the Law on Financial Institutions factoring is considered a financial service in Lithuania and can only be rendered by a financial institution. The Financial Institutions law defines factoring as a lending transaction consisting of purchase, advance payment or discounting of a pecuniary claim arising from an irrevocable payment obligation, with or without the taking of lending risk, irrespective of a person into whose accounting these claims are included and who collects the payment.

1.2 Licensing conditions and procedure

No special license is required for providing factoring services. Financial institutions have generally to be established in compliance with the laws of the Republic of Lithuania regulating the establishment and pursuit of the private companies. In addition to this general requirement, in order to start providing financial services, a financial institution has to have adequate accounting procedures, internal control system, qualified personnel and management as well as sufficient IT infrastructure.

1.3 Capital adequacy and reporting requirements

A financial institution is required to have a minimum share capital of LTL 150 000 (about EUR 43 500) if incorporated as a public limited liability company or LTL 10 000 (about EUR 2900) if as a private one. The annual financial statements and consolidated financial statements have to be audited by an independent audit firm. No special capital adequacy regime is in place.

2. THE FACTORING CONTRACT

2.1 Definition of the factoring contract

Lithuania is not a member of 1988 UNIDORIT Convention on International Factoring nor 2001 United Nations Convention on Assignment of Receivables in International Trade.

There is no law on factoring or specific factoring related provisions in other laws except from the one in the Financial Institutions Law. Provisions on assignment of receivables from the Civil Code apply to factoring transactions. Various types of factoring contracts are not specifically mentioned in the law, however the Civil Code does differentiate the situation in which the client guarantees the successful collection from the one where it does not (recourse

and non-recourse factoring). In case parties omit to mention the type of factoring in their contract a non-recourse type is applied by default.

2.2 Receivables subject to factoring

The law contains no restrictions on receivables that can be factored. There is also no restriction on the maturity of receivables that can be factored and the applicable law does not prescribe maximum time exposure of factoring companies to factored receivables. There is also no explicit provision prohibiting the extension/restructuring of payment terms after purchasing of receivables however the debtor cannot be exposed to more onerous terms after assignment.

Assignment of future receivables is possible and is specifically mentioned in the Civil Code. However, the law lacks guidance on the necessary conditions to be fulfilled or the level of identification necessary to satisfy the identification requirement. A future claim is considered transferred to the factor at the time of occurrence thereof. If the assignment of receivables is related to a certain event, the assignment shall be recognised as having occurred upon occurrence of such event. In such cases no additional formalisation of the assignment is required.

It seems that both recourse and non-recourse factoring could be considered as a true sale transaction if the intention on a transaction is to provide financing to the client. However it should be noted that there is no available court practice to confirm this position.

2.3 Assignment of receivables

The form of assignment has to follow the form of the main contract giving rise to a receivable. In order for the assignment to be concluded, the creditor who has assigned his claim, has to hand over to the new creditor the documentary evidence pertaining to the claim.

The Law on Electronics Signature provides for usage of electronic documents instead of papers however the law is not widely used in practice.

According to the Civil Code there are no specific registration or notification steps to fulfil in order to achieve the validity of assignment. However, until the debtor is duly notified with a written notice he is authorised to discharge the debt to the original creditor. Debtor`s consent is not required for the validity of an assignment. No stamp duties is payable on assignment.

Contractual prohibition against the assignment of receivables is valid against factoring transactions, however the Civil Code is not very clear about the consequences of breach of such clause.

3. MISCELLANEOUS

Foreign-exchange rules – a domestic factoring company may purchase receivables denominated in a foreign currency by paying for them in their nominal (foreign) currency,

regardless whether the payment is being made locally – to a local exporter, or abroad – to a foreign (non-resident) entity (cross-border payment).

VAT issues – Lithuania follows the EU VAT legislation whereby factoring commission/service charge is taxable. When a discount is related to collection services, it is considered a payment for service and hence taxable whereas it is less clear when discount reflects the actual value of the risk transferred (interest).

Consequences of late payment – in case of late payment the creditor is entitled to default interest. Moreover, Lithuania has transposed the EU Late Payments Directive, which applies to commercial transactions between companies (“undertakings”), as well as between companies and public sector. In addition to the default interest, the EU Late Payments Directive provides for fines in case of late payments.



MOLDOVA

List of relevant legislation/regulation

The following Moldovan legislation was considered: the Civil Code of Moldova No. 1107-XV, dated 6 June 2002 (as amended).

1. FACTORING OPERATIONS

1.1 Regulation of factoring operations

Under Moldovan law no licence is required for non-banking factoring companies. Also, there is no regulator for such companies. Factoring is defined in the Civil Code, as detailed under Sub-section 2.1 below.

1.2 Licensing conditions and procedure

Under Moldovan law no licence is required for non-banking factoring companies.

1.3 Capital adequacy and reporting requirements

No capital adequacy requirements.

There are no specific forms of reporting or auditing for non-banking factoring companies. However, for certain types of joint-stock companies (such as financial institutions, insurance companies, leasing companies, voluntary pension funds, IPO societies) the law requires external audit of the financial statements. This requirement is not applicable to companies incorporated in the form of limited liability companies.

1.4 Supervision of the factoring companies

No supervision of the factoring companies is foreseen.

2. THE FACTORING CONTRACT

2.1 Definition of the factoring contract

The Civil Code provides for the following definition: *“under factoring contract, a party which is the provider of goods and services (the supplier) undertakes to assign to the other party, the factoring company (the factor), actual or future claims under contracts of sale of goods, services and works, while the factor is to perform at least two of the following functions:*

(a) financing of the supplier, including granting of loans and advance payments;

(b) accounting of claims;

(c) collection of claims;

(d) assuming the risk of debtor's insolvency for the claims that have been acquired."

The Civil Code seems to distinguish between notified and non-notified factoring and also contains some provisions on recourse factoring: *"The supplier is liable for debtor's solvency, if the risk has not been taken over by the factor"*.

Moldova is not a member of the UNIDROIT Convention on International Factoring or UNCITRAL Convention on the Assignment of Receivables in International Trade.

2.2 Receivables subject to factoring

The Civil Code does not stipulate any restrictions regarding the origin of the assigned receivables and allows the assignment of existent or future receivables that are determined at the date of the agreement or may be determined when they come into existence.

The parties are bound to specify the size, volume, field and properties of receivables that form the subject matter of the contract, as well as the elements for determining the payment amount. All terms and conditions related to the exposure of the factoring companies to the receivables shall be determined in the factoring agreement.

As a general rule, the receivables purport the volume of rights as existent at the date of the assignment. The law does not prohibit the factoring company to negotiate extension/restructuring of payment terms. However any amendments operated cannot affect the debtor's rights and cannot make the payment terms more onerous.

Under Moldovan law factoring operations are considered complex financial operations, which include characteristics of loan and assignment agreements. For instance, the Law on Financial Institutions No 550 of 21.07.1995 as well as the Law on Foreign Currency Regulation No 62 of 21.03 qualify factoring as loan operation. In light of the above it is not entirely clear if factoring, whether recourse or non-recourse, is considered a true-sale transaction or not.

2.3 Assignment of receivables

The assignment agreement must be concluded in writing. Such condition may be fulfilled also by Electronic Data Exchange messages if all requirements established by the law for the formation of the contract in general (exchange of messages, containing the agreement of the parties on the significant clauses of the contract) and of a factoring agreement in particular (express stipulation of the amount to be paid by the factor) are observed. In addition, the requirements regulated by the Law on Electronic Signature and Electronic Document No 91 of 29.05.2014 shall be met. Despite of many incentives supporting the usage of electronic signature, the procedure is rarely used in private business relationships and did not substitute the documents signed in hard copies.

Thus, the only formal condition required for the validity of the factoring agreement is the written form thereof, without the need of registration. Also, no stamp duty or documentary

taxes are applicable in case of factoring contracts. Another validity condition is the stipulation of the amount to be paid to the factor. The amount is computed based on the given circumstances, focusing in particular on the eventual “*delcredere*” fee and, additionally, on the share held by total deductions from the assigned claims.

The debtor shall be notified with respect to the assignment. However, failure to notify does not serve as a ground to declare the factoring agreement invalid.

The assignment of a claim by the supplier to the factor shall be effective notwithstanding any agreement between the supplier and the debtor prohibiting such assignment. This provision is without prejudice to supplier’s liability towards the debtor for damage inflicted by the assignment operated contrary to contractual provisions. The same rule applies to both recourse and non-recourse factoring.

3. MISCELLANEOUS

Foreign-exchange rules - As a general rule, payments and transfers between Moldovan residents on the territory of the Republic of Moldova shall be made in national currency. The only exceptions to the rule concern Moldovan banks, microfinance organizations, leasing companies, etc. Factoring companies are not explicitly exempted from the general rule, thus local payments shall be made in local currency. However, payment in foreign currency seems to be available in case of international factoring.

VAT issues – Factoring is exempted from VAT according to the Fiscal Code. The same exemption applies to discount or interest.

The Fiscal Code does not expressly stipulate VAT treatment in case of non-banking institutions. Therefore, by using analogy as well the law provisions that “*doubts arise in the application of tax legislation shall be interpreted in favour of the taxpayer*”, factoring performed by non-banking companies shall be exempted from VAT.

Consequences of late payment - Penalties applied to late payments may be established according to parties’ agreement. These may be in fixed amount or as a share in the value of the unperformed obligation. Any penalty clause shall be made in writing. Failure to observe such requirement concerning written form shall render the penalty clause void.



MONGOLIA

List of relevant legislation/regulation

The following Mongolian legislation was considered: (i) the Law on Non-Banking Financial Activities; and (ii) the Civil Code of Mongolia.

1. FACTORING OPERATIONS

1.1 Regulation of factoring operations

The Law on Non-Banking Financial Activities (the “**NBFA Law**”) includes factoring in the list of non-banking financial activities subject to regulation/licensing. Factoring companies must be registered as non-banking financial institutions (the “**NBFI**”). The Financial Regulatory Commission (“**Commission**”) regulates NBFIs in general (including providers of factoring) based on NBFA Law and the Law on the Legal Status of the Commission. Factoring is vaguely defined in the NBFA Law: as a sale (transfer) by creditor or lender of its right to claim monetary payment to a third party who thereafter becomes fully responsible for enforcement (non-recourse factoring).

1.2 Licensing conditions and procedure

The licence required for factoring activities is the general licence required for becoming a NBFI, thus the general requirements for establishment of NBFIs apply. Board members and shareholders of NBFI are scrutinized by the regulator at the time of licence application. The minimum share capital required for NBFIs is MNT 400,000,000 (approximately EUR 176,000) in Ulaanbaatar city and less in rural areas.

1.3 Capital adequacy and reporting requirements

NBFIs are subject to capital adequacy requirements and provisioning, although more relaxed than the ones applicable to banks.

As applicable to all NBFIs, factoring companies are required to submit quarterly financial reports to the Commission. Such reports are not required to be audited.

1.4 Supervision of the factoring companies

The Commission possesses a broad spectrum of regulatory authorities in respect of NBFIs including on-site and off-site inspections, temporary/permanent revocation of licences, imposing penalties and issuing instructions.

2 THE FACTORING CONTRACT

2.1 Definition of the factoring contract

Apart from the definition of factoring in the NBFA Law (as mentioned under Sub-section 1.1 above) there is no definition of the factoring contract in the law. Likewise, there are no

definitions of various types of factoring. Nevertheless, from the given definition of factoring activity it appears that only non-recourse factoring is regulated by the NBFA Law.

Mongolia is not a member of the UNIDROIT Convention on International Factoring or United Nations Convention on Assignment of Receivables in International Trade.

2.2 Receivables subject to factoring

Mongolian legislation contains no restrictions on the type or the maturity of receivables that can be factored. Although negotiating extension/restructuring of payments is not prohibited, if the due date is extended more than once, the quality of the asset would probably be classified as worsened in light of the provisioning regulations applicable to NBFIs.

As far as future receivables are concerned, the law does not stipulate expressly that they can be subject to factoring, neither does it prohibit factoring of future receivables.

The applicable law assumes only non-recourse factoring to be a regulated financial service. Considering that the general provisions on assignment of receivables are applicable to factoring as well, non-recourse factoring could be considered as true sale transaction.

2.3 Assignment of receivables

There is no strict requirement that the assignment agreement be concluded in writing. However, the Civil Code requires the assignment to be in the same form as the original transaction, so if the original transaction is based on a written contract then the assignment of the rights arising out of it should be as well. This might prevent development of factoring using Electronic Data Exchange messages. There is a law on electronic signature in Mongolia, but it is not widely used.

Registration of, and notification of the debtor about, the assignment are not required for validity purposes. Registration of assignment is regulated in the Law on Pledge of Movable and Intangible Property, in force as of 1 September 2016. Under the mentioned law, registration does not affect validity of assignment against the debtor, but ensures priority over third parties. There are no other requirements for validity of assignment. The Civil Code provides that in case of competing factors, the earliest to conclude the assignment agreement shall prevail, or, if not possible to determine that, the earliest to notify the account debtor shall prevail.

The Civil Code expressly allows contractual prohibitions against assignment of receivables, but is not very clear on the effects of such prohibitions, *i.e.* whether the breach might invalidate the transaction or make it inapplicable against the debtor. According to local legal practitioners a more cautious interpretation is advised (invalidity of transaction).

3. MISCELLANEOUS

Foreign-exchange rules – As NBFIs, factoring companies are permitted to denominate and execute payments in foreign currencies based on the Law on Executing Payments in National Currency.

VAT issues – Although most financial services are exempt from VAT, factoring is not explicitly mentioned as such in the Law on VAT as opposed to lending, for instance. For this reason it is difficult to determine the VAT treatment of factoring transactions.

Consequences of late payment - Banks and other authorized lenders can charge default interest on late loan repayments. Other entities and individuals can charge either a pre-fixed penalty amount or a percentage (up to 0.5% per day) of the due and unpaid amount. In either case penalties cannot exceed 50% of the unpaid outstanding claim.



MONTENEGRO

List of relevant legislation/regulation

The following Montenegrin legislation was considered: (i) the Law No. 01-1540/2 on Obligations, dated 7 August 2008; and (ii) Law No. 01-316/2 on Banking, dated 27.02.2008.

1. FACTORING OPERATIONS

1.1 Regulation of factoring operations

Factoring in general and the activity of factoring companies are not regulated by the Montenegrin Law. The only relevant provisions are the general provisions on assignment of receivables stipulated in the Montenegrin Law on Obligations (the “**Law on Obligations**”). Factoring is predominantly performed by banks, but there are also non-banking companies providing factoring services. Non-banking providers do not need to obtain licence/certification/authorisation for providing factoring services.

Nevertheless, the Montenegrin Ministry of Finance is currently working on a law on factoring (whose draft is not yet available to the public) and which, once finalised, will need to go through the applicable legislative process, so it is not clear when such law will be adopted and come into force.

1.2 Licensing conditions and procedure

The only requirement for companies is to be properly registered with the Central Business Registry of Montenegro.

In order to register a company (limited liability) in the Central Business Registry of Montenegro, the founders need to submit: the incorporation act (or decision on incorporation) certified by the court, statute of the company, written consent of the members of the board, if they are already nominated, and completed registration form.

1.3 Capital adequacy and reporting requirements

No special capital adequacy and reporting regime is in place.

1.4 Supervision of the factoring companies

Provision of factoring services is not supervised by any authority in the financial market at the moment.

2. THE FACTORING CONTRACT

2.1 Definition of the factoring contract

There is no special law on factoring and no special provisions in this respect. The Banking Law mentions factoring as one of the services that a bank can provide in addition to its core services. The Banking Law briefly defines factoring as purchase, sale and collection of

claims. As already mentioned, the general provisions of the Law on Obligations regarding assignment of receivables apply to factoring transactions.

Montenegro is not a member of the UNIDROIT Convention on International Factoring or United Nations Convention on Assignment of Receivables in International Trade.

2.2 Receivables subject to factoring

As factoring is not regulated, there are no restrictions on receivables that can be factored. There is also no restriction on the maturity of receivables that can be factored and the applicable law does not prescribe maximum time exposure of factoring companies to factored receivables. However, extension of payment terms in case of recourse factoring cannot be done in a way to cause detriment to the client, *i.e.* the recourse guaranty would apply only during the original maturity term.

As there are no restrictions with respect to assignment of future receivables in the applicable legislation, local practitioners agree that such assignment should be possible subject to proper definition of the receivable. As a general rule, prescribed by the Law on Obligations, subject matter of an obligation shall be deemed defined if the agreement contains information based on which it can be determined, or if the parties have left such determination to be done by a third party (should such third party be unwilling or unable to define the subject of obligation, the contract shall be deemed null and void). The law unfortunately lacks guidelines on the level of details needed for the receivable to be considered determinable.

The law does not provide any specific description of the types of factoring, hence it does not treat recourse or non-recourse factoring differently. Considering that the general provisions on assignment of receivables are applicable to factoring as well, both recourse and non-recourse factoring could be considered as true sale transactions. However, there is no jurisprudence to confirm such interpretation.

2.3 Assignment of receivables

An assignment does not have to be in written (paper based) form, which means that Electronic Data Exchange messages may be used for entering into assignment contracts. A law on electronic signature was adopted, but the electronic signature is not widely used in practice.

Registration of assignment is not required for validity purposes and no stamp duty applies. Under the Law on Obligations the assignor is obliged to notify the debtor from the underlying agreement on the assignment in order to perfect it. Debtor's consent is not required for the validity of assignment. Should a creditor assign one and the same claim to various persons, the claim shall belong to the assignee being the first notified as such to the debtor by the assignor or to the assignee (recipient) who was the first to contact the debtor.

Contractual prohibitions against assignment are allowed and any agreement entered into contrary to the said contractual restriction shall be unenforceable against the debtor.

3. MISCELLANEOUS

Foreign-exchange rules – A domestic factoring company may purchase receivables denominated in a foreign currency by paying for them in their nominal (foreign) currency, regardless whether the payment is being made locally – to a local exporter, or abroad – to a foreign (non-resident) entity (cross-border payment).

VAT issues – VAT law specifically exempts factoring as a form of providing banking and financial services from VAT. However, this relates only to interest rate/discount and not to the factoring fee.

Consequences of late payment – The general regime established by the Law on Obligations is that for belated performance of pecuniary obligations the creditor is entitled to charge the default interest prescribed under the Law on Default Interest.

In addition, the Law on Deadlines for Settlement of Monetary Obligations applies to commercial transactions between companies, as well as between companies and public sector and introduces fines between EUR 1,000 and EUR 10,000 for companies and between EUR 500 and EUR 2,000 for natural persons (representatives of the defaulting companies).

MOROCCO

List of relevant legislation/regulation

The following Moroccan legislation was considered: (i) Law No.103-12 in relation to credit institutions and similar organizations promulgated by Dahir No.1-14-193 dated 24 December 2014 (the “**Banking Law**”); (ii) Code of obligations and contracts, dated 12 August 1913 (as amended) (the “**Code of Obligations and Contracts**”); (iii) Law No. 15-95 establishing the Commercial Code, dated 1 August 1996 (as amended) (the “**Commercial Code**”).

1. FACTORING OPERATIONS

1.1 Regulation of factoring operations

The Banking Law qualifies factoring operations as credit transactions. Factoring operations are regulated in Morocco, the regulator being the Bank al Maghrib (the “**Central Bank**”), which issues licenses for performing factoring activities and supervises their activities.

Article 34 of the Banking Law prohibits institutions other than licensed credit institutions (including banks or financing companies) from carrying out banking transactions in Morocco as part of their usual business (*profession habituelle*).

1.2 Licensing conditions and procedure

Under Moroccan law, factoring companies must be licensed as banks or financing companies. The license will vary with the activity that is applied for and can be limited to specific banking transactions, such as factoring operations. The Central Bank has the power to grant and revoke banking licenses.

1.3 Capital adequacy and reporting requirements

Basel III requirements have been implemented in Morocco with effect from 1 January 2014. Credit institutions, including the ones offering factoring, must, twice a year, establish and send to the Central Bank their financial statements on a consolidated, sub-consolidated and individual basis.

1.4 Supervision of the factoring companies

The Central Bank is responsible for monitoring compliance of credit institutions with the provisions of the Banking Law. For this purpose, the Central Bank may, in particular, require that credit institutions produce all documents and all information necessary to exercise this control function.

There is a disciplinary committee which is in charge of disciplinary issues and proposes disciplinary measures to the Central Bank in such matters. Such measures include: (i) the suspension of one or more directors, (ii) the prohibition or restriction to the exercise of certain operations by the credit institution in question, (iii) the appointment of a provisional administrator over that credit institution, and/or (iv) the withdrawal of the licence.

2. THE FACTORING CONTRACT

2.1 Definition of the factoring contract

There is no specific law on factoring in Morocco. The Banking Law and its implementing circulars give only the definition of factoring and classify factoring operations under the category of credit operations. The Banking Law defines factoring as an “agreement by which a credit institution undertakes to recover and to mobilize trade receivables, either by acquiring such receivables or by acting as creditor’s agent with, in this case, a performance guarantee.”

Except for the Banking Law, the Moroccan Commercial Code or the Code of Obligations and Contracts do not contain any special provisions on factoring.

Morocco is not a member of the UNIDROIT Convention on International Factoring or United Nations Convention on Assignment of Receivables in International Trade

2.2 Receivables subject to factoring

Pursuant to the Code of Obligations and Contracts, in order to be assignable, a receivable must be sufficiently determinable but does not need to be due. As an exception, professional receivables, even those resulting from an act to be entered into and regarding which the amount and/or due date have not yet been determined, can be assigned.

In absence of specific provisions to the contrary, under Moroccan law, the parties are free to determine maturity and time exposures of their receivables and negotiate extension / restructuring of payment terms after the receivables have been purchased.

2.3 Assignment of receivables

There is no specific legislation or case law on whether recourse (and non-recourse) factoring are considered to be true sale transactions under Moroccan law. However, it should be noted that a transfer of receivables only becomes enforceable (opposable) against the debtor and third parties (including an insolvency official) following notification by way of signification to the debtor or the acceptance thereof by the debtor. However, in case of an assignment of professional receivables, the transfer will be enforceable (opposable) against third parties (including an insolvency official), without the need for any further formality, as from the date affixed by the purchaser on the slip of assignment of professional receivables.

Receivables can be validly assigned using Electronic Data Exchange messages. Electronic signature is also regulated by law.

There is no specific provision under Moroccan law regulating the prohibition or restriction on an assignment of rights. Therefore, general contract law would apply and the parties may provide for the transferability or non-transferability of the receivables in their contractual arrangements

3. MISCELLANEOUS

Foreign exchange rules – Where a cross border transaction is not expressly authorised by the Foreign Exchange Instruction, a specific authorisation must be sought from the Foreign Exchange Office on a case-by-case basis. In order to settle cross border commercial and financial transactions, accredited banks can open foreign currency accounts with their correspondents abroad for themselves or for the account of their clients. Accredited intermediaries are authorized to enter into credit facilities with their correspondents abroad for the factoring of foreign currency receivables arising from the export of services, as evidenced by commercial foreign currency denominated papers or any document evidencing such receivable in a foreign currency.

VAT issues – All credit in Morocco transactions are subject to VAT of 10% with a right of deduction.

Consequences of late payment - The payment terms can specify the delay penalty due on the day following the payment date agreed upon by the parties. If the delay penalty has not been provided for in the payment terms, the applicable penalty will be at the abovementioned rate. The penalty is due without any other prior formality.

POLAND

List of relevant legislation/regulation

The following Polish legislation was considered: the Civil Code of Poland, dated 23.04.1964 (as amended).

1. FACTORING OPERATIONS

1.1 Regulation of factoring operations

Under Polish law, no licence is required for performing factoring activities and there is no regulator in this respect.

1.2 Licensing conditions and procedure

No licensing requirements exist in the current legislation.

1.3 Capital adequacy and reporting requirements

No capital adequacy or reporting requirements are provided for by the current legislative framework.

1.4 Supervision of the factoring companies

As the factoring market is not regulated, there is no supervisory authority for factoring companies.

2. THE FACTORING CONTRACT

2.1 Definition of the factoring contract

Factoring is not regulated by a special law, so the general rules regarding assignment of receivables provided by the Civil Code apply. Consequently there is no definition of the factoring contract and no types of factoring are mentioned.

Poland is not a member of the UNIDROIT Convention on International Factoring or UNCITRAL Convention on the Assignment of Receivables in International Trade.

2.2 Receivables subject to factoring

There are no limitations provided by law with respect to the origin or maturity of the assigned receivables.

The assignment of future receivables is possible, the assignment being effective only once such receivables arise. Additionally, the assigned receivables must be precisely described in the assignment agreement.

According to local practitioners both recourse and non-recourse factoring are considered true sale transactions. Recourse factoring is a true sale transaction, as long as the intention of the parties is to structure the contract as a true sale associated with the liability of the seller for the debtor's solvency or satisfaction of the sold claim. As long as this intention is clear, such contract will be upheld as valid and effective based on the general freedom to contract rule.

2.3 Assignment of receivables

The assignment agreement is generally entered into in writing, which is not a validity condition (unless the initial agreement regarding the receivable to be assigned must be concluded in writing for validity purposes), but rather a probation condition. Although electronic signature is regulated, it is not widely used in Poland.

The assignment is not subject to registration. However, if an assignment agreement is an assignment by way of security the date of such assignment agreement must be certified by a notary public for such assignment to be effective towards the bankruptcy estate of the assignor. Date certification costs PLN 6 (approximately EUR 1.50) per page. Notification of the debtor seems to be necessary if the assignor intends to collect the receivables in his own name directly from the debtor.

Prohibitions against assignment are possible, but they are ineffective towards the assignee, which means that the assignment remains valid, but the assignor is liable towards the debtor for breaching the prohibition.

3. MISCELLANEOUS

Foreign-exchange rules – Payment can be made in the currency contractually agreed by the parties, there are no legal restrictions in this respect.

VAT issues - Assignment of receivables is not well regulated by tax law. Tax authorities have taken various approaches in the past, especially concerning VAT/stamp duty treatment.

In principle, assignment of receivables is subject to the general VAT rate (currently 23%), provided that the place of supply is in Poland. The particular terms of the transaction should be verified.

Depending on how the factoring agreement is structured, if discount/interest is considered as separate remuneration for financing, it should be VAT exempt.

Treatment may vary depending on what tax ruling is obtained by the factoring company.

Consequences of late payment – Contractually agreed default interest applies in case of late payment. Moreover, Poland has transposed the EU Late Payments Directive, which applies to commercial transactions between companies ("undertakings"), as well as between companies and public sector. In addition to the default interest, the EU Late Payments Directive provides for fines in case of late payments.



ROMANIA

List of relevant legislation/regulation

The following Romanian legislation was considered: (i) the Civil Code No. 287/2009, dated 17.07.2009; (ii) the Law No. 83 on non-banking financial institutions, dated 08.04.2009; and (iii) the Regulation No. 93 of the Romanian National Bank regarding non-banking financial institutions, dated 04.08.2009.

1. FACTORING OPERATIONS

1.1 Regulation of factoring operations

Under Romanian law, factoring operations are deemed to be crediting activities which (aside from credit institutions) can only be performed as a professional activity by a specific type of regulated entities designated as non-banking financial institutions (the “**NBFI**”). Such institutions must follow a registration procedure with the National Bank of Romania (the “**National Bank**”).

The National Bank is the supervising authority of NBFIs based on Law No. 93/2009 regarding non-banking financial institutions and the National Bank’s Regulation No. 20/2009 regarding non-banking financial institutions.

The Accounting Regulation implementing the relevant European directives, dated 17 July 2015, applicable from 1 January 2016 defines factoring, as follows: “*Factoring is the operation through which the client, named adherent, transfers the property of its commercial receivables (invoices) to the institution named factor, the latter being bound, according to the agreement concluded, to ensure the collection of the adherent's receivables. The institution, based on the received documentation, pays the nominal value of the receivables, less agio, either immediately or at their due date or at the contractually due date established with the adherent.*” A similar definition is provided by the Accounting Regulation according to financial reporting international standards, applicable to credit institutions, dated 16.12.2010.

1.2 Licensing conditions and procedure

In order to perform factoring activity a company duly incorporated in accordance to the Companies Law needs to meet the requirements set-out for NBFI's and perform the registration process with the National Bank. Requirements for registration as NBFI include: being incorporated as a joint-stock company (with some exceptions) and having a minimum share capital of EUR 200,000 (or EUR 3,000,000 if the NBFI intends to provide mortgage loans).

Founders, shareholders and other persons entrusted with certain management attributions (e.g. directors, members of the board etc.) must meet the conditions stipulated by law. Among others, the main actors of the NBFI are incompatible if they fall under the relevant provisions of the anti-terrorism legislation and they must be clear of any convictions of corruption, money laundering, tax evasion, theft, forgery etc.

Qualified shareholders must meet the legal requirements regarding financial soundness and the group structure must allow an efficient supervision by the regulator.

In addition to the above, the National Bank evaluates the professional experience and reputation of the designated managers.

1.3 Capital adequacy and reporting requirements

Certain financial covenants are applicable to NBFIs, such as: to maintain the level of own funds at least equal to the applicable mandatory share capital, to observe the legal requirements regarding large exposures, etc.

NBFIs are subject to reporting requirements to the National Bank and other specialized bodies (*e.g.* National Office for the Prevention and Control of Money Laundering). For instance, NBFIs are required to deliver quarterly reports to the National Bank concerning (i) capital level and financing contracted during the reporting period, (ii) own funds level and structure for the previous reporting period, and (iii) individual large exposures (*i.e.* exposures towards a single debtor exceeding 10% of the NBFI's own funds). The NBFI's financial statements are subject to auditing and certain NBFIs, which meet specific criteria regarding, among others, turnover, leverage, assets and own funds, are subject to stricter auditing provisions and need to be audited by auditors approved by the National Bank.

NBFIs are also subject to statistical reporting as they must provide statistical data regarding the (i) outstanding balance sheet assets and liabilities and (ii) main balance sheet assets and liabilities in local currency (RON) equivalent on quarterly basis.

1.4 Supervision of the factoring companies

The National Bank's supervisory duties include, performing inspections with the offices of NBFIs and applying sanctions such as fines (to the NBFI or its management), temporary suspension of one or more activities, de-registration of the NBFI from the relevant Registry held by the National Bank.

2. THE FACTORING CONTRACT

2.1 Definition of the factoring contract

Romania has not adopted a special law on factoring, thus the general rules on assignment of receivables stipulated by the Civil Code apply. While there are references to factoring in various pieces of legislation, including the definition of factoring operations, as detailed under Sub-section 1.1 above, no definition of the factoring contract is provided. Moreover, neither the Civil Code, nor the primary legislation governing banking or non-banking activities define any types of factoring. Recourse and non-recourse factoring are only mentioned (without being defined) by certain regulations regarding accounting and financial statements.

Romania is not a member of the UNCITRAL Convention on the Assignment of Receivables in International Trade or the UNIDROIT Convention on International Factoring.

2.2 Receivables subject to factoring

The law does not provide for any restrictions regarding the origin or maturity of the receivables that can be subject to factoring nor does it restrict the right of the factor to renegotiate the payment terms.

Based on the Civil Code future receivables can be assigned, provided that the assignment document includes elements that permit the determination of the assigned receivable. However, the Civil Code does not elaborate on the elements that would permit identification of the receivables in the future. It is typically recommended that these should include identification of the assigned debtor, object and relevant identification details of the underlying agreement, as well as the underlying cause of the receivables.

The “true sale” concept is not defined under Romanian law. In practice, from a legal perspective, achieving true sale is often translated into Romanian law concepts as achieving the transfer of the ownership right over the receivables from the patrimony of the assignor to the patrimony of the assignee.

From an accounting standpoint - the Romanian general accounting regulations do not include specific guidance on the recognition of receivables upon a recourse or non-recourse factoring. In light of the above, the qualification of a factoring as a true sale would need to be analysed on a case-by-case basis, based on aspects such as transfer of ownership, transfer of risks and rewards, transfer of control and administration, and probability of economic benefits to arise from the transaction.

2.3 Assignment of receivables

There is no specific requirement for assignment agreements to be in a paper based form. However, NBFIs are required to document their operations and written form is required to make evidence of the contracts/deeds concluded. Furthermore, the consumer protection legislation requires the contracts concluded with consumers to be in a written form. Electronic technology for transmission or exchange of business documents might enable parties to enter into binding agreements, provided that the requirements concerning electronic signature are fulfilled. There is a special law on electronic signature, but such method is not widely used due to probatory issues (*e.g.* practical difficulties in attesting signatures, risk of challenge in court, etc.).

Registration (with the Electronic Archive for Secured Transactions) is not required for validity of assignment, but is necessary for making the transfer effective against third parties and for establishing the priority ranking between creditors. No stamp-duty or other documentary taxes are required for validity of transfer. Also, notification of the debtor is not required for validity purposes, but rather for making the assignment effective against the

debtor. The assigned debtor may be bound to pay to the factor if: (i) it accepts the assignment in writing; or (ii) it receives a written notification of the assignment, on paper or in electronic format, in which the identity of the assignee is mentioned, the assigned receivable is identified and the debtor is asked to pay directly to the assignee.

According to the Civil Code, the assignment of receivables is effective against the debtor even if the assignment is subject to contractual prohibitions between the assignor and the debtor, provided that either (a) the assigned receivable consists in payment of an amount of money, (b) the debtor has consented to the transfer, or (c) the contractual prohibition is not expressly mentioned in the receivable title and was not (and should not have been) known by the assignee.

Even if the circumstances above are met, the assignment does not exonerate the assignor from liability against the debtor as a result of breaching the contractual prohibition.

These provisions are generally applicable to assignment of receivables - not specifically linked to factoring (whether with or without recourse).

3. MISCELLANEOUS

Foreign-exchange rules – A factoring transaction (*i.e.* the sale/purchase of the receivable against the non-resident assigned debtor) concluded between two Romanian residents falls under the Romanian exchange regulation requirement that payments resulting from sale of assets between Romanian residents be made in the national currency. The Romanian exchange regulation does not include an exemption from this requirement applicable to factoring operations regarding receivables created in exporting operations.

VAT issues - Under the Romanian VAT law, transactions with receivables are VAT exempt, without deduction right, except for the receivables' recovery/factoring operations which qualify as taxable transactions, subject to VAT. Nevertheless, if the aim of the transaction does not consist in receivables' recovery but in a granting of a credit, the transaction would be VAT exempt, not qualifying for the above mentioned exception.

The transactions with receivables shall be classified depending on the agreement concluded between the parties, in one of the following:

(a) operations whereby the person holding the receivables employs a person to recover them, which do not entail the assignment of receivables;

(b) operations entailing the assignment of receivables. Within such latter operations, the following sub-categories may be identified: (b1) the assignee buys the receivables, without the operation aiming the recovery of the receivables; (b2) the assignee buys the receivables, undertaking or not the risk for non-collection of such receivables, charging a commission for the recovery of the receivables to the assignor; (b3) the assignee buys the receivable, undertaking the risk for non-collection of such receivables, at a price lower than the nominal

value of the receivables, without charging a commission for the recovery of the receivables to the assignor.

The VAT treatment of the transactions mentioned above would depend on the charging of a commission by the assignee. Thus, where a commission would be charged by the latter for the receivables recovery, such would be subject to VAT. The taxable amount in this respect would consist in the commission charged, as well as the financing components (*e.g.* interest).

Consequences of late payment – The default interest agreed by the parties apply in case of late payments. In the absence of an agreed default interest, the statutory default interest applies. The statutory default interest is calculated based on the National Bank's reference interest to which a margin ranging from 4% to 8% may be applicable, depending on the type of contractual counterparties (*i.e.* professionals, contracting authorities, foreign counterparties, etc.). Moreover, Romania has transposed the EU Late Payments Directive, which applies to commercial transactions between companies ("undertakings"), as well as between companies and public sector. In addition to the default interest, the EU Late Payments Directive provides for fines in case of late payments.



RUSSIA

List of relevant legislation/regulation

The following Russian legislation was considered: (i) the Civil Code No. 51-FZ of Russia dated November 30, 1994 (as amended); (ii) the Federal Law No. 395-1 “On Banks and Banking Activities” dated 2 December 1990 (as amended) (“Law on Banks”); (iii) Federal Law No.115-FZ “On Combating Legalization of Income Received by Illegal Means, and Terrorism Financing” (“AML Law”) (as amended); and Federal Law No.86-FZ “On the Central Bank of the Russian Federation” dated 10 July 2002 (“Law on CBR”) (as amended).

1. FACTORING OPERATIONS

1.1 Regulation of factoring operations

Article 825 of the Civil Code of the Russian Federation ("Civil Code") provides a general definition of factoring product as "financing against assignment of monetary claims". It also specifies that any entity with legal capacity may provide this service in the role of a financial agent (i.e., a factoring company) subject to needed approvals and procedures as set by other laws.

Provisioning of factoring services is regulated in a two folded manner in Russia. Banks and NBFIs are entitled to provide factoring services on the basis of their general licences issued by the Central Bank of Russia (“CBR”) in accordance with the Law on Banks.

In addition, any commercial organisation (that is not a bank or a NBFI willing to provide factoring services must register with the Federal Service for Financial Monitoring (Rosfinmonitoring) as an entity providing factoring services no later than the date preceding to the date of execution of the first factoring agreement in accordance with the AML Law

1.2 Licensing conditions and procedure

Factoring activity of banks and NBFIs is subject to supervision by the CBR in accordance with the Law on CBR and the Law on Banks. This, in addition to an operating license assumes approval of its board of directors (both executive and supervisory) and qualified holdings.

In accordance with the AML Law a factoring company that is not a bank or NBFI must provide to Rosfinmonitoring detailed information about each factoring agreement entered into by such factoring company not later than three business days from the date of execution of such factoring agreement.

An NBFI factoring company is required to have a minimum initial set in law. In addition, in order to obtain the license, a NBFI company intending to provide factoring services has to meet certain personal, technical, IT and similar requirements. The licensing procedure requires provision of various documents related to, for example, organisational and management structure of the entity, decision-making and control mechanisms, organizational

and operational procedures, various foreign certificates in case of foreign ownership, information on shareholders, a medium-term business plan, for the first three years, and similar.

A non NBFI factoring company does not have to fulfil specific conditions and does not have to apply for license.

1.3 Capital adequacy and reporting requirements

Russian NBFI factoring companies fall under the prudential regulation regime of the Law on Banks which means that it shall comply with certain mandatory ratios (e.g., capital adequacy requirements, requirements on risk management, provisioning, etc.), while non NBFIs do not have capital adequacy requirements or any other type of prudential regulation.

NBFI Factoring companies are required to fulfil various reporting obligations towards the CBR, such as daily, weekly, monthly, quarterly, yearly and occasional submissions. However, only the yearly financial report (prepared at the end of the financial year) has to be audited.

A non NBFI factoring company must provide to Rosfinmonitoring detailed information about each factoring agreement entered into by such factoring company not later than three business days from the date of execution of such factoring agreement.

CBR is entitled to carry out inspections of activity of banks and NBFIs (and shall do so not less than once in each 24 months). The CBR is entitled to impose penalties and issue mandatory instructions to banks and NBFIs for breach of capital adequacy requirements and non-compliance with its mandatory instructions. Breach by a bank or an NFBI of banking regulations (including the Law on Banks and the AML Law) may lead to revocation of the licence granted to it by the CBR.

Rosfinmonitoring is entitled to carry out inspections to verify compliance by a non NBFI factoring company with the requirements of the AML Law. Rosfinmonitoring is also entitled to request and receive from factoring companies information connected with compliance with the AML Law and impose administrative liability for breach of the requirements of the AML Law. Breach by a factoring company of requirements of the AML Law (including failure by a factoring company to provide information to Rosfinmonitoring about each factoring agreement entered into by it) may lead to imposition on such factoring company of a fine in an amount of up to RUB1,000,000 (appr. USD14,000) or administrative suspension of its operations for the period of up to 90 days. Moreover, breach by a factoring company of requirements of the AML Law may lead to imposition of criminal or administrative liability on officers of that factoring company.

2. THE FACTORING CONTRACT

2.1 Definition of the factoring contract

Though Russian laws do not provide for a definition of “factoring” as such, factoring activity is regulated by Chapter 43 (Financing against assignment of monetary claims) of the Civil Code which contains the following description of a factoring agreement:

“Under a contract on financing against assignment of monetary claims one party (financial agent transfers or undertakes to transfer to the other party (client) monetary funds in consideration for monetary claims of the client (creditor) to a third party (debtor) which monetary claims result from delivery of goods, performance of work or rendering services, by the client to the third party, and the client assigns or undertakes to assign such monetary claims to the financial agent (factoring company).”

The Civil Code does not specifically define types of factoring. However it differentiates between a:

a) "true sale" structure - where under factoring agreement financing of a client is performed by way of purchase of the claim by factoring company, the latter acquires the right over all the sums which it will receive from the debtor under the claim, and the client shall bare no liability to the factoring company in the instance where the amounts recovered are less than the purchase price of the claim, i.e. **non-recourse factoring**; and

(b)"secured assignment" structure where the monetary claim is assigned to a factoring company as security for performance of client's obligations to the factoring company, factoring company shall provide the client with the report stating the sums received from the debtor and in case of any surplus exceeding the amount of client's liability to the factoring company, return such surplus to the client. If monetary funds received by the factoring company from the debtor appeared to be less than the sum of the client's debt to the factoring company the client shall be liable to the factoring company for the remaining debt, i.e. **recourse factoring**.

However, the Civil Code allows that the parties to a factoring agreement may agree that the client shall be liable to the factoring company for non-performance / improper performance by the debtor of the assigned claim even in a true sale transaction. Hence, as a matter of Russian law, a true sale transaction may also contain an element of recourse factoring.

The Russian Federation is a signatory of the UNIDROIT Convention on International Factoring (the "UNIDROIT Convention") (Federal Law No.86-FZ dated 05 May 2014). The Convention is effective in the Russian Federation starting from 1 March 2015.

2.2 Receivables subject to factoring

Pursuant to paragraph (1) of Article 826 of the Civil Code both monetary claims the payment under which is already due (existing claim) and the right to claim payment that will arise in the future (future claim) may be assigned to a factoring company. Article 826 of the Civil Code sets forth a general rule stating that a future monetary claim that is the subject of assignment shall be defined in the factoring agreement in a way that makes it possible to identify such claim at the time of its maturity. There is no explicit guidance in Russian law as to what would be deemed sufficient description of a future monetary claim. Russian courts have, however, formulated the principles relating to description of a future claim in a factoring agreement. In short, receivable cannot be described using general descriptions such as “all future monetary claims” of a particular entity; however, parties to a factoring agreement may specify that all future receivables of certain types will be assigned to the factoring agent. For example, parties may agree that all monetary claims “arising from any supply contracts entered into between the client and the debtor” will be assigned to the factoring agent.

2.3 Assignment of Receivables

Definition in Article 824 of the Civil Code restricts factoring services to monetary claims resulting from delivery of goods, performance of work or rendering services. The Civil Code does not provide for any requirements to, or restrictions on, the maturity of receivables to be assigned or maximum time exposure of the factoring companies to such receivables.

In non-recourse factoring the factoring company is allowed to negotiate payment terms after the purchase, while in the case of recourse factoring, if the payment terms were changed without the client's consent and such changes resulted in an increase of client's liability or otherwise adversely effected interests of the client, the client would only remain liable to the factoring company on the initial payment terms as if no changes were made to them.

Pursuant to Article 389 of the Civil Code, assignment of claim must be executed in the same written form as the transaction from which such claim arises– underlying transaction, i.e. in a simple written form or in notarial form, as applicable. If the underlying deal requires state registration (i.e., transactions with immovable property, participatory interest in limited liabilities companies), assignment of a claim arising from such underlying transaction must be similarly registered.

As envisaged by recent changes to Article 434 of the Civil Code, it should be possible to conclude an agreement (and the written form requirement will be deemed to have been met) via exchange of electronic documents (including e-mails), provided that it is possible to conclusively establish that such electronic documents were sent by the parties to the agreement. It still has to be established in practice what will be considered to be sufficient evidence of origin of an electronic document. Currently the use of electronic signature (regulated by Federal Law No. 63-FZ “On Electronic Signatures” dated 06 April 2011 (“Law

on Electronic Signature") and SWIFT system are recognised as valid means to determine who was the sender of an electronic document. However, there is a view, supported by the court practice (on issuance of bank guarantees via SWIFT) that even if parties have agreed to enter into agreements by way of electronic data exchange with electronic signatures, there should be a framework agreement on using of such way of conclusion of the agreements. This position is supported by the Association of Russian Banks. Currently electronic signature is widely used in trading, tax and accounting reporting.

Notification is not a condition for validity of assignment. Pursuant to Article 830 of the Civil Code the debtor is obliged to make payment to the factoring company, provided that it has received a written notification about the assignment and that the notification specifies the details of the assigned monetary claim and indicates the factoring company to whom the payment is to be made.

In addition, at the request of the debtor the factoring company must within a reasonable period of time provide the debtor with evidence of assignment. If factor fails to provide such evidence, the debtor would be entitled to make payment to the original creditor (assignor).

Contractual restriction on assignment of receivables does not affect validity of assignment. The protection awarded in this case would be that the client (assignor) is not exempt from liability to the debtor for breach of that contractual restriction. This is a general rule applicable to recourse and non-recourse transactions.

3. MISCELLANEOUS

For-Ex – On 28 December 2015 the Article 9 of the Federal law No.173-FZ "On Currency regulation and currency control" dated 10 December 2003 (the "Currency Control Law") was amended to specifically allow settlements in foreign currency between a Russian factoring company and a Russian client, provided that the assigned monetary claims are payable to the Russian client by a non-resident.

Tax issues – Assignment of receivables arising from VAT-able sale of goods (works, services) is generally subject to 18% Russian VAT. When the new creditor enforces the receivables, its tax base is determined as the excess of the income received from the debtor over the acquisition price of the respective receivable. The respective excess might arise, in particular, if a discount is granted by the assignor. It seems that there is no difference if the assignee's income is structured as factoring commission/service charge/interest payments made to it by the assignor (as an alternative to giving an upfront discount on the value of the assigned receivables).

Consequence of late payments – The Civil Code allows contractual penalties for late payments which depending on the model used can be combined damages or used instead in several permutations. In exceptional cases a court can reduce agreed contractual penalty, if it

found that collection of the contractual penalty may result in groundless (excessive) benefit for a creditor (factoring company).

If parties to an agreement did not envisage the contractual penalty, punitive penalties (interests on outstanding sums) may be collected under Article 395 of the Civil Code. Rate of such penalties is calculated on the basis of published average rates of bank private deposit interest in the place of location of the creditor (factoring company). The right to claim penalty in connection with the assigned claim, as a general rule, is assigned to the factoring company together with the receivables.



SERBIA

List of relevant legislation/regulation

The following Serbian legislation was considered: (i) the Law on Factoring, dated 16.07.2013 (Gazette of the Republic of Serbia No. 62/2013); and (ii) the Law on Obligations (Gazette of the SFRY No.29/78), dated 1.10.1978, (as amended).

1. FACTORING OPERATIONS

1.1 Regulation of factoring operations

Pursuant to the Law on Factoring (the “**Factoring Law**”) non-banking financial institutions (the “**NBFI**”) must obtain the prior approval of the Ministry of Finance (the “**Ministry**”) in order to provide factoring services (operating licence). The Ministry is the regulator and supervising authority for non-banking factoring companies. The Factoring Law defines factoring as “*a financial service of selling and purchasing existing non-matured or future short-term receivables arising from contracts on the sale of goods or provision of services, either nationally or abroad.*” Contracts for sale of goods or provision of services for personal, family or household use are explicitly excluded from the sphere of factoring.

1.2 Licensing conditions and procedure

In order to acquire an operating licence a factoring company must have minimum registered capital of RSD 40,000,000 (approximately EUR 330,000) fully paid-up in cash. Founders of the company, as well as the authorized representatives must have no criminal charges and no bans from holding the relevant positions or profession.

Documents that need to be submitted for obtaining the operating licence are: memorandum of association, data on the founder(s) and the authorized representatives of the factoring company and several certified statements by the founders related to the amount and source of the share capital.

1.3 Capital adequacy and reporting requirements

No special capital adequacy regime is in place.

Non-banking factoring companies are required to submit quarterly statistical reports (for statistical purposes) to the National Bank of Serbia (the “**National Bank**”) on all receivables, payables currently and securities in the portfolio of the factoring company. There are no other reporting requirements in place for NBFI providers of factoring services.

1.4 Supervision of the factoring companies

The Ministry is entitled to conduct inspections, in order to ensure that the factoring company holds complete files of all factoring transactions. The Ministry can revoke an operating licence if it determines that the conditions set forth in the Factoring Law are no longer fulfilled or that the operating licence was granted based on false information.

The Ministry is also entitled to impose fines between RSD 100,000 (approximately EUR 830) to RSD 2,000,000 (approximately EUR 16,600) to banks and companies, and between RSD 10,000 (approximately EUR 85) to RSD 500,000 (approximately EUR 4,100) to entrepreneurs, in case of violation of the Factoring Law. The Ministry can also issue non-mandatory instructions and opinions.

2. THE FACTORING CONTRACT

2.1 Definition of the factoring contract

The special Factoring Law adopted in 2013 regulates NBFI factoring services and contains factoring contract law provisions. As elaborated under Sub-section 1.1 the definition of factoring refers rather to the financial service than to the factoring contract.

The Factoring Law mentions the following types of factoring: domestic, international, factoring without recourse and factoring with recourse. In addition, the Factoring Law also regulates the so-called “reverse factoring”. The object of domestic factoring is the sale and purchase of receivables arising from the sale of goods or provision of services between domestic entities on the domestic market. The object of international factoring is the sale and purchase of receivables arising from cross-border sale of goods or services and can be done through a single and/or two factor system.

Serbia is not a member of the UNIDROIT Convention on International Factoring or United Nations Convention on Assignment of Receivables in International Trade.

2.2 Receivables subject to factoring

Any existing non-matured or future short-term receivables (with maturity date within one year of the date of sale of goods or provision of services), either in whole or in part, may be subject to factoring. The factoring company is free to negotiate the extension of receivables maturity, however in case of recourse factoring this should not be done to the detriment of the client, in which case the recourse guaranty would apply only on the original maturity term.

The Factoring Law expressly provides that future receivables may be subject to factoring, provided that they are determinable and the factoring agreement contains information on the debtor. However the law does not elaborate on the minimum requirements for the description of the future receivables, which creates uncertainty in practice. Assigning of future receivables becomes effective at the date such receivables arise.

The Factoring Law considers both recourse and non-recourse factoring as true sale transactions, and is explicit that the factoring contract (no distinction is being made between to recourse /non-recourse factoring) is not considered a loan/lending transaction.

2.3 Assignment of receivables

The Factoring Law requires written form of the factoring contract, but also allows conclusion thereof in electronic form. According to the Law on Obligations the assignment does not need to be concluded in writing, so in theory any particular assignment under a factoring contract does not have to be recorded in written form. Therefore, based on a written factoring contract, individual receivables can be validly assigned using Electronic Data Exchange messages.

Electronic signature is regulated, but it is not widely used in practice.

The factoring contract must provide information about the parties, what type of factoring is carried out, information on the receivable that is being factored, the amount and means of payment.

Notification to the debtor is required for the validity of assignment. The notification must be written or electronic form and contain information on the factoring contract, data on the factor to which the debtor is required to remit funds, and payment instructions.

Registration is not required for the validity of assignment and no stamp duty applies.

A contractual prohibition against assignment of receivables is without effect to the factoring agreement, and the receivable factored therein would be validly assigned. The same rule applies to both recourse and non-recourse factoring.

3. MISCELLANEOUS

Foreign-exchange rules – A domestic factoring company may purchase receivables denominated in foreign currency by paying for them in their nominal (foreign) currency, regardless whether the payment is made locally – to a local exporter, or abroad – to a foreign (non-resident) entity (cross-border payment).

VAT issues – According to the official opinion of the Ministry, in all factoring operations (both between banks and non-banking factoring companies) VAT is not charged on commission for factoring. Also, interest is not considered to be a fee for provision of goods or services, and therefore, is not subject to VAT, same as discount rates.

Consequences of late payment - The Law on Obligations provides that in case of late performance of pecuniary obligations the creditor is entitled to charge the default interest (current rate: 12.5 % for payment in RSD, and 8.05 % for payment in EUR, on an annual basis). Moreover, the mentioned law gives the possibility to the aggrieved party to avoid the contract if the other party fails to pay in due time.

Additionally, according to the Law on the Terms for the Settlement of Monetary Obligations in Commercial Transactions fines may be applied for breaching payment rules. Such fines range from RSD 100,000 (approximately EUR 900) to RSD 2,000,000 (approximately EUR 17,700). Fines ranging from RSD 5,000 (approximately EUR 45) to RSD 150,000

(approximately EUR 1,350) may be applied to the representatives of the defaulting companies.



SLOVAKIA

List of relevant legislation/regulation

The following Slovakian legislation was considered: the Civil Code No. No. 40/1964 of Slovakia, dated 01.04.1964.

1. FACTORING OPERATIONS

1.1 Regulation of factoring operations

No special licensing is required to companies in order to perform factoring operations, except for the general trade licence. Factoring companies are thus supervised by the Trade Office and the Ministry of Interior of the Slovak Republic based on the Act no. 455/1991 Coll. on Trade Licensing and the Slovak Trade Inspection under the Act no. 128/2002 Coll. on State Control of Internal Market in Consumer Protection Issues.

1.2 Licensing conditions and procedure

Since no special licence is required for factoring, the licensing conditions and procedure are the same as applicable to any company registered with the Trade Office.

The natural persons involved in the company's statutory bodies must have: a minimum age of 18 years, capacity to perform legal acts and impeccable character.

1.3 Capital adequacy and reporting requirements

No capital adequacy or other financial covenants apply to factoring companies.

Apart from the yearly financial reports, which do not have to be audited, no other forms/types of reporting are required.

1.4 Supervision of the factoring companies

The supervisory authorities mentioned under Sub-section 1.1 above are entitled to conduct inspections, revoke trade licences, issue penalties and mandatory instructions, etc.

2. THE FACTORING CONTRACT

2.1 Definition of the factoring contract

There is no special law on factoring, so the general provisions of the Civil Code regarding assignment of receivables apply. No definition of the factoring contract is provided in the law. As to the types of factoring, although not stipulated *expressis verbis*, the recourse and non-recourse factoring are implicitly recognised by the Civil Code.

The Slovak Republic is a signatory of the UNIDROIT Convention on International Factoring.

2.2 Receivables subject to factoring

There are no restrictions provided by law with respect to the origin or maturity of the receivables subject to factoring. However, in practice, factoring applies to short-term receivables, with a maturity period shorter than 1 year.

As a general rule future receivables cannot be assigned. Nevertheless, if a framework factoring agreement is concluded, the assignment of individual receivables may come into effect later, as they arise by virtue of a notice sent by the assignor to the factoring company.

Both recourse and non-recourse factoring are considered true sale transactions.

2.3 Assignment of receivables

The assignment agreement must be concluded in writing. The written form requirement may be fulfilled by Data Exchange messages, provided that the electronic signature is applied. Although regulated, the electronic signature is not widely used in practice. No registration, stamp duty, notification or other formality is required for the assignment agreement to be valid.

Prohibitions against assignment are allowed and deem the assignment concluded in breach thereof invalid. The same rule applies to both recourse and non-recourse factoring.

3. MISCELLANEOUS

Foreign-exchange rules – No special restrictions apply, thus the receivables may be paid in the currency in which they are denominated, even if such currency is foreign.

VAT issues – Assignment of receivables is not subject to VAT. The commission charge, discount, interest and fees are subject to a VAT of 20%. The same tax regime applies to all entities engaged in factoring, regardless of whether they are banks or non-banking entities.

Consequences of late payment – Default interest and compensations apply in case of late payment (the ones agreed contractually or, in the absence thereof, the statutory ones). Moreover, Slovakia has transposed the EU Late Payments Directive, which applies to commercial transactions between companies (“undertakings”), as well as between companies and public sector. In addition to the default interest, the EU Late Payments Directive provides for fines in case of late payments.



SLOVENIA

List of relevant legislation/regulation

The following Slovenian legislation was considered: (i) the Law No. 450-03/10-43/2 on Banking, dated 29.12.2006 (as amended); (b) the Law on Consumer Credit (Official Gazette of RS, No. 77/2004; and (c) the Code of Obligations (Official Gazette of the RS, Nos. 83/2001 and 32/2004).

1. FACTORING OPERATIONS

1.1 Regulation of factoring operations

Factoring in general and the activity of factoring companies are not regulated by the Slovenian law. No special licence/certification/authorisation is required for non-banking factoring companies, unless the factoring involves receivables arising from consumer credit. Though no (administrative) licence is required for rendering factoring services, an appropriate registration of activity of the (non-banking factoring) company is required. In accordance with the Standard Classification of Activities (SKD 2008) performing factoring services is possible, if the company is registered under category no. K 64.990 – “*Other financial service activities, except insurance and pension funding n.e.c. for non-banking factoring companies*”.

For factoring of receivables arising from consumer credits, the provisions on assignment of receivables of the Law on Consumer Credit (the “**Consumer Credit Law**”) apply. In case of consumer credits, the assignment of receivables to a third party (*i.e.* factor) is possible only if such party is a creditor providing consumer credits and fulfils all the applicable conditions under the Consumer Credit Law. In case of assignment of claims originating from consumer credit, there are multiple entities supervising the services of credit providers. The Market Inspectorate is the regulator and key supervising authority in the afore-mentioned field.

For factoring other than related to consumer credit, there is no special body exercising the supervision of factoring services.

1.2 Licensing conditions and procedure

Appointment of managers and shareholders shall observe the general provisions of the Companies Law, since no special licence is required to non-banking factoring companies.

1.3 Capital adequacy and reporting requirements

No capital adequacy requirements or other financial covenants apply to non-banking factoring companies. As regards reporting, the general reporting obligations as applicable to any other company, apply.

1.4 Supervision of the factoring companies

Please see the Sub-section 1.1 above.

2. THE FACTORING CONTRACT

2.1 Definition of the factoring contract

There is no law on factoring or specific factoring related provisions in other laws except from the Law on Banking. Thus, the general provisions of the Code of Obligations on assignment of receivables apply to factoring transactions.

The law mentions only recourse and non-recourse factoring, which are not defined in detail.

Slovenia is not a member of the UNIDROIT Convention on International Factoring or UNCITRAL Convention on Assignment of Receivables in International Trade.

2.2 Receivables subject to factoring

As factoring is not regulated there are no restrictions on receivables that can be factored. There is also no restriction on the maturity of receivables that can be factored and the applicable law does not prescribe any maximum time exposure of factoring companies to factored receivables. Likewise, there is no explicit provision prohibiting the extension/restructuring of payment terms after purchasing the receivables. The Code of Obligations provides that the debtor does not need to be included in the contract between the factor and client. Nevertheless, the debtor should be informed of the assignment and his legal position should not be worsened.

Since the law does not expressly prohibit assignment of future receivables, local practitioners agree that such assignment should be possible subject to proper definition of the receivable. The law unfortunately lacks guidelines on the level of details needed for the receivable to be considered determinable.

The law does not provide any specific description on the types of factoring, hence it does not treat recourse or non-recourse factoring differently. Considering that the general provisions regulating the assignment of receivables are applicable to factoring as well, both recourse and non-recourse factoring could be considered as true sale transactions. However, there is no jurisprudence to confirm such interpretation.

2.3 Assignment of receivables

Written form is not required for the validity of assignment, thus the assignment agreement may be concluded through Electronic Data Exchange messages. Although the electronic commerce and electronic signature are regulated, such methods are not used in practice for contracting purposes.

Notification of the debtor is required for perfecting the assignment agreement based on the Code of Obligations. No registration is required for the validity of assignment and no stamp duty applies. Special requirements are stipulated in the Consumer Credit Law for assignment of receivables arising from consumer credit. The assignor is obliged to notify the consumer in writing, unless it acts in the name of the assignee and for his account. Further the assignor is obliged to keep a copy of the agreed credit contract for the entire time of the assignment of the claim.

Prohibitions against assignment are allowed. If the prohibition is breached, the transfer would still be effective, however the debtor would be allowed to validly discharge the debt to either the assignee or the assignor. In this aspect there is no difference if the factoring was done with or without recourse.

3. MISCELLANEOUS

Foreign-exchange rules – A domestic factoring company may purchase receivables denominated in a foreign currency by paying for them in their nominal (foreign) currency, regardless whether the payment is made locally – to a local exporter, or abroad – to a foreign (non-resident) entity (cross-border payment).

VAT issues – Slovenia strictly follows the EU VAT legislation whereby factoring commission/service charge is taxable. The VAT treatment of discount depends on the background, *i.e.* when discount is related to collection services, it is considered a payment for service and hence taxable. When discount reflects the actual value of the risk transferred and when there is no direct link between the service rendered and the payment received, discount is not subject to VAT. Interest is VAT exempt. VAT treatment of factoring does not change depending on the participants to the transaction.

Consequences of late payment - The Code of Obligations provides that default interest must be paid by the defaulting party in case of late payment. If the payment was already late at the assignment date, the default interest already due will be assigned as well. In addition, Slovenia has transposed the EU Late Payments Directive, which applies to commercial transactions between companies (“undertakings”), as well as between companies and public sector. In addition to the default interest, the EU Late Payments Directive provides for fines in case of late payments.



TAJIKISTAN

List of relevant legislation/regulation

The following Tajik legislation was considered: (i) the Civil Code, dated 30.06.1999 (as amended); and (ii) the Law No. 648 on Banking Activity, dated 23.05.1998.

1. FACTORING OPERATIONS

1.1 Regulation of factoring operations

According to the Civil Code and the Law on banking activity, non-banking companies are required to obtain licence for carrying out factoring activities. The supervisory authority for banking activity, as well as for factoring activity is the National Bank of Tajikistan (the “**National Bank**”) based on the Law on the National Bank and the Law on banking activity.

1.2 Licensing conditions and procedure

In order to perform factoring activity companies must obtain a business licence and the managers thereof must be approved by the National Bank. The company applies for licence by submitting to the National Bank documents such as: statutory documents, detailed information regarding executive officers (evidencing, among others, their education and experience), information regarding the shareholders and beneficiary owners of the company and the financial status thereof (in case the shareholders are legal persons, the last three audited financial statements must be submitted), evidence that the share capital has legitimate sources, declarations of the executive officers and shareholders that they do not have a criminal record and that they are not subject to bankruptcy or restrictions on professional activities, etc.

In addition to the above, the company must submit a business plan providing business goals and activities, a description of the organizational structure and internal control system as well as the forecast balance sheet, income and expenses and cash turnover for the following three years. Also, for each owner of preferential interest, including the final beneficiary of a preferential interest, a list of all legal entities in which they hold shares must be provided. The company shall also provide information on the location of the head office and any other place in the Republic of Tajikistan or abroad, where the company’s activities are carried out.

1.3 Capital adequacy and reporting requirements

No capital adequacy requirements or other financial covenants apply to factoring companies.

Factoring companies must submit yearly audited reports to the National Bank.

1.4 Supervision of the factoring companies

As the factoring market is not regulated, there is no supervisory authority for factoring companies.

2. THE FACTORING CONTRACT

2.1 Definition of the factoring contract

Factoring is regulated by the Civil Code, which defines the factoring contract as the contract under which: *“one part (financial agent) shall transfer or undertake to make payment to the client for the sale of goods, the performance of works or rendering of services to the third person, while the client shall assign this monetary claim to the financial agent and pay remuneration”*. Under the Law on banking activity factoring is defined as *“financing against the assignment of a monetary claim”*.

No types of factoring are mentioned by the Tajik legislation on factoring.

Tajikistan is not a member of the UNIDROIT Convention on International Factoring or UNCITRAL Convention on the Assignment of Receivables in International Trade.

2.2 Receivables subject to factoring

The law does not impose any restrictions regarding the origin or maturity of the receivables which can be subject to factoring. Also, the law does not restrict the right of the factoring company to negotiate and contractually amend the payment terms of the assigned receivables.

Future receivables can be assigned, provided that they are defined in the assignment contract in a way that allows their identification at the moment they arise. No further details are provided in the law in this respect.

Although there is no specific indication of the recourse and non-recourse factoring in the legislation, under the Civil Code any factoring seems to be considered a true sale transaction. However, the legislation may also be interpreted as to consider the recourse factoring a secured lending transaction.

2.3 Assignment of receivables

The factoring agreement must be concluded in writing. Electronic signature is regulated, but it is not clear if it is used in practice or not.

Registration of the assignment contract is not required, unless the main obligation is stipulated in a contract subject to registration. Written notification of the debtor seems to be required, but it is not clear whether lack of such notification invalidates the assignment.

According to the Civil Code the assignment contract is valid even if concluded in breach of a contractual prohibition against assignment. However, the assignor remains liable towards his contractual counterparty for breaching the prohibition.

3. MISCELLANEOUS

Foreign-exchange rules - Pursuant to Tajik legislation payments between local companies must be done in local currency.

VAT issues - According to the Tax Code of Tajikistan factoring operations are exempted from VAT.

Consequences of late payment – The default interest agreed by the parties apply in case of late payment. According to Civil Code the defaulting party shall pay to the other party penalties in the amount of the losses caused to the latter by the delay. Moreover, Slovenia has transposed the EU Late Payments Directive, which applies to commercial transactions between companies (“undertakings”), as well as between companies and public sector. In addition to the default interest, the EU Late Payments Directive provides for fines in case of late payments.



TUNISIA

List of relevant legislation/regulation

The following Tunisian legislation was considered: (i) the Code on Obligations and Contracts, dated 15.12.1906 (as amended); and (ii) the Law No. 2001-65 on Banking, dated 10 July 2001 (as amended).

1. FACTORING OPERATIONS

1.1 Regulation of factoring operations

The Ministry of Finance and the Central Bank of Tunisia (the “**Central Bank**”) both act as supervisory bodies and regulators for factoring companies. Non-banking factoring companies are required to obtain a licence from the Ministry of Finance before starting factoring operations.

1.2 Licensing conditions and procedure

In order to obtain a business licence, a non-banking factoring company has to prove that a minimum share capital of TND 10,000,000 (approximately EUR 200,000) has been paid up and that it has been incorporated as a public limited company (PLC).

1.3 Capital adequacy and reporting requirements

Non-banking factoring companies fall under the prudential regulation regime of the Banking Law which means they are subject to all regulatory requirements applicable to banks such as, *inter alia*, provisioning, capital adequacy requirements and the governance structure.

Factoring companies are required to fulfil various reporting obligations towards the Central Bank, such as daily, weekly, monthly, quarterly, yearly as well as occasional submissions.

1.4 Supervision of factoring companies

The supervisory authorities of the Ministry of Finance and the Central Bank include performing random inspections, issuing mandatory instructions, sanctions which may take the form of penalties and even revoking licences (rarely used in practice, since there is no precedent so far).

2. THE FACTORING CONTRACT

2.1 Definition of the factoring contract

There is no law on factoring in Tunisia or contract law provisions for factoring in the Tunisian Code of Obligations and Contracts (the “**Code**”). Factoring as a concept is not clearly defined in any piece of legislation or regulation and the contractual techniques used to assign factored receivables based on the Code are mixed, being either assignment or contractual subrogation. Tunisian courts have recently made decisions determining that the legal underpinning of

factoring (as is constructed in practice) is assignment instead of subrogation and therefore the rest of this report will concentrate on the assignment rules.

As there is no general definition of the factoring, no types of factoring are defined by law either. However, market practice developed concepts of domestic and international factoring and majority of contracts are done with recourse.

According to recent judicial precedents, the Tunisian tribunals are inclined to consider recourse and non-recourse factoring as true sale transactions. However, no confirmation of this exists in the law.

Tunisia is not a member of the UNIDROIT Convention on International Factoring or UNCITRAL Convention on the Assignment of Receivables in International Trade.

2.2 Receivables subject to factoring

Since factoring is not defined the Tunisian law does not prescribe specific eligibility criteria for receivables to be factored, apart from the general limitations on transferability of personal and disputed claims contained in the Code. Thus, receivables arising from the sale of goods and provision of services can be factored. However, according to the interpretation of the Public Accounting Code by the Tunisian Ministry of Finance, receivables payable by the state owned companies or state authorities cannot be factored. Tunisian legislation does not impose any restrictions regarding the maturity of receivables that can be factored. Likewise, there is nothing in the law that would prevent the negotiation of an extension and/or restructuring of payment terms after purchasing receivables.

The validity of assignment of future receivables is legal and valid under Tunisian law. However, receivables must be well identified (amount of the receivables, debtors and creditors of the receivables), in the assignment document as eventual/possible receivables are not assignable.

2.3 Assignment of receivables

Written form is not required for validity of assignment. According to the Code the following conditions must be met for the validity of assignment: the receivable must be determined, *i.e.* parties and the amount of claim have to be indicated. Since there is no written form required for the assignment, technically, receivables could be validly assigned using Electronic Data Exchange messages, but there is no market practice to that effect. Electronic signature is regulated, but not used in practice.

Registration is not required for validity purposes. Notification of the debtor in writing is necessary in order to make the assignment effective towards the debtor and third parties. In practice debtors are regularly required to sign the assignment agreement to achieve this effect and avoid any potential uncertainties. Until the debtor is notified, he is entitled to pay the debt

to the assignor. Also, notification creates priority rights over receivables in case of competing rights. However, notification of the debtor is not a condition for the validity of assignment.

Contractual prohibitions against assignment are allowed and according to Code any assignment entered into in breach of such prohibitions is considered null (without effects).

3. MISCELLANEOUS

Foreign-exchange rules - In case of factoring of receivables created in export activity which are denominated in a foreign currency, a domestic factoring company cannot purchase those receivables by paying for them in their foreign currency. The price must be exchanged in Tunisian dinars which can lead to FOREX exposure and additional costs.

VAT Issues - Factoring companies are subject to VAT. Factoring commissions are subject to VAT at the rate of 18%. Interests charged by factoring companies are subject to VAT at the rate of 6%.

Consequences of late payment - The Code provides for penalty interest in case of late payments. These penalties are based on the maximum rate of bank overdrafts determined by the Central Bank increased by 0.5 percentage point.



TURKEY

List of relevant legislation/regulation

The following Turkish legislation was considered: (i) the Law No. 6361 on Financial Leasing, Factoring and Financing Companies, dated 13.12.2012; and (ii) the Code of Obligations No. 6098, dated 11.1.2011.

1. FACTORING OPERATIONS

1.1 Regulation of factoring operations

Turkey has adopted a special on Financial Leasing, Factoring and Financing Companies (the “**Factoring Law**”). Based on the mentioned Factoring Law, the Banking Regulation and Supervision Agency (the “**BRSA**”) supervises the mentioned activities, including factoring. The BRSA issues a prior approval for the establishment of the factoring company as well as a factoring operating licence. In addition to the BRSA, the Association of Financial Leasing, Factoring and Financing Companies (the “**Association**”) also regulates/supervises the non-banking financial institutions based on the Factoring Law and the relevant regulations.

1.2 Licensing conditions and procedure

Based on the Factoring Law, the licensing procedure before the BRSA consists of two phases: (i) obtaining the establishment permission and (ii) obtaining the factoring operating licence. The legal requirements for obtaining the establishment permission are: to be a joint stock company with at least five founding shareholders, whose shares must be issued against cash and bear the name of the shareholder, the name of the company shall include the designation “Factoring Company”, the founders and members of the board of directors shall meet certain legal requirements and have the professional experience required for carrying out the planned activities. The company must have a paid-in share capital of at least TRY 20,000,000 (approximately EUR 6,200,000). The shareholding structure must be transparent and allow efficient supervision by the BRSA. The applicant must also submit its business plans for the intended fields of activity, the financial projections and budgetary plan for the following three years.

At least five members of the BRSA must give their affirmative vote for the establishment of the factoring company. Following the issuance of the establishment permission, the company shall apply to the BRSA for the factoring operating licence within six months. For obtaining such licence the company must prove that it has a paid-in share capital at a level that enables execution of the planned business activities, to pay the system entrance fee (5% of the minimum share capital indicated above), to have clearly established service units, internal control, accounting, data processing, reporting systems and employees’ job description. The company must also prove that the managers meet the qualifications set out in the Factoring Law.

1.3 Capital adequacy and reporting requirements

The only financial requirements applicable to factoring companies are the ones mentioned under Sub-section 1.2 above.

The factoring company must submit its independent audit reports in relation to non-consolidated financials to BRSA until April 15 of the following year.

1.4 Supervision of the factoring companies

Based on the Banking Law No. 5411, BRSA shall regulate, enforce and ensure the implementation of the activities of factoring companies as well as their establishment, management, organizational structure, merger, disintegration, change of shares and liquidation. Thus, the authorities of the BRSA include: setting the conditions for and issuing the establishment permission and the factoring operating licence, revoking the permissions and licences granted, supervising the factoring companies, imposing restrictions on the factoring companies' activity/operations, approving the acquisition, transfer of shares, merger or division of the factoring companies, applying fines to the factoring companies.

The Association has competences with respect to the development of the profession, increasing the union and solidarity of the members, conducting training, presentation and research, defining the principles of the profession, announcing the precautions requested to be taken by the BRSA, preventing unfair competition between members, defining publicity conditions, etc.

2. THE FACTORING CONTRACT

2.1 Definition of the factoring contract

Although a special law on factoring is in place, no definition of the factoring contract is provided in the law. Also, no types of factoring are indicated by law, but the practice recognises certain categories, including recourse and non-recourse factoring.

Turkey is not a member of the UNIDROIT Convention on International Factoring or UNCITRAL Convention on the Assignment of Receivables in International Trade.

2.2 Receivables subject to factoring

According to the Factoring Law, receivables arising from sale of goods or services may be subject to factoring. No restrictions are stipulated with respect to the maturity of the receivables that can be subject to factoring. The factoring company is allowed to negotiate extension/restructuring of payment terms after purchasing the receivables.

Future receivables can be subject to factoring, provided that such receivables can be evidenced by invoices or equivalent documents and thus may be identified by the factoring company at the date they arise.

According to local practitioners factoring is considered a true-sale transaction.

2.3 Assignment of receivables

Based on the Code of Obligations, the assignment contract must be concluded in writing. Data Exchange messages cannot be used for fulfilling the written form requirement. Electronic signature is regulated in Turkey, however rarely used in practice.

Besides the written form requirement mentioned above, no registration or notification is necessary for the validity of the assignment and no stamp duty applies.

In case there is a contractual prohibition against assignment, the debtor can refuse to pay to the factoring company, thus the prohibition is valid against assignment irrespective whether the factoring is with or without recourse.

3. MISCELLANEOUS

Foreign-exchange rules – As a general rule, all receivables shall be paid in local currency pursuant to the Code of Obligations. However, if the parties agreed that the payment shall be made in a foreign currency, the factoring company is allowed to pay in such currency.

VAT issues - In Turkey deliveries and services are subject to VAT. Generally, assignment of receivables can be subject to VAT depending on the services, *e.g.* interest payments are subject to VAT. Nevertheless, income of factoring companies deriving from factoring transactions is exempt from VAT. Therefore, no VAT arises over the interest originating from factoring transactions. Any other services of the factoring company, such as consultancy services in relation to factoring (but which are not purely factoring transactions) are subject to VAT.

There is not any difference of VAT treatment between banking and non-banking factoring providers.

A Banking Insurance and Transaction Tax (BITT) of 5% (thus not VAT) is applied to all kinds of factoring charges including interest and commission.

Consequences of late payment – Since Turkish law is silent in this respect, the parties' agreement on consequences of late payment applies.



TURKMENISTAN

List of relevant legislation/regulation

The following legislation of Turkmenistan was considered: the Civil Law of Turkmenistan; the Tax Code of Turkmenistan; Law on Credit Institutions and Banking Activity.

1. FACTORING OPERATIONS

1.1 Regulation of factoring operations

Under Turkmenistan law, banks licensed to carry out credit operations are also entitled to carry out factoring activities. However, there is no specific regulation regulating factoring activity of non-banking companies. Given that non-bank financial institutions (“**NBFIs**”) are not regulated, factoring activities carried out by such NBFIs may be considered to be non-banking financial intermediation, which would fall under supervision of Ministry of Finance (the “**MoF**”).

1.2 Licensing conditions and procedure

While banks licensed to carry credit operations do not need any additional license to carry out factoring activities

1.3 Capital adequacy and reporting requirements

Besides the capital adequacy and reporting requirements applied towards banks, there are no specific regulations setting such requirements for factoring companies.

1.4 Supervision of the factoring companies

The Central Bank, is the regulator and supervising authority for banks in general. Given that NBFIs are not regulated, factoring activities carried out by such NBFIs may be considered to be non-banking financial intermediation, which would fall under supervision of MoF.

2. THE FACTORING CONTRACT

2.1 Definition of the factoring contract

The Civil Law of Turkmenistan does not provide for a definition of factoring or types of factoring. The only reference to factoring is given in Art.3.3.2 of the Law on Credit Institutions and Banking Activity, stating that institutions licensed to carry out credit operations are entitled to execute factoring operations in accordance with legislation of Turkmenistan.

Turkmenistan is not a member of the UNIDROIT Convention on International Factoring or UNCITRAL Convention on the Assignment of Receivables in International Trade.

2.2 Assignment of receivables

Factoring contracts must be concluded in writing. Assigning receivables through Electronic Data Exchange is not regulated specifically.

Registration of factoring contracts may be required in connection with import export and currency control and taxes, in particular, when one party of agreement is foreign entity.

3. MISCELLANEOUS

VAT issues – Primary assignment of receivables is not considered taxable operation (Art.96 of Tax Code). There is no difference in the VAT treatment between banks and NBFIs engaged in factoring.

Consequences of late payment – There is no general rule, but in accordance with the practices of local banks there is a penalty of 0.03% (without VAT) for every day of delay.



UKRAINE

List of relevant legislation/regulation

The following Ukrainian legislation was considered: (a) the Civil Code of Ukraine, dated 16.01.2003 (as amended); and (ii) the Law No. 2663-III on Financial Services and State Regulation of Financial Services, dated 12.07.2001 (as amended).

1. FACTORING OPERATIONS

1.1 Regulation of factoring operations

Factoring is considered a financial service and can only be rendered by a financial institution after registering for provision of factoring services in the register of financial institutions run by the State Commission for Regulation of Financial Services Markets of Ukraine.

1.2 Licensing conditions and procedure

No special licence is required for providing services, appointment of managers and shareholders, whereas the provisions of the Civil Code for appointing a manager and accepting a decision of the shareholders apply. Ukrainian factoring companies as financial institutions must also comply with other requirements, in particular concerning qualified and experienced staff and sufficient technical equipment to perform the service.

1.3 Capital adequacy and reporting requirements

A factoring financial institution is required to have a minimum share capital of UAH 3 million (approx. EUR 270,000) for factoring companies providing only factoring services or UAH 5 million (approx. EUR 450,000) for factoring companies providing other permitted types of financial services. Companies are required to keep records of all its operations and submit regular reports to the State Commission for Regulation of Financial Services Markets of Ukraine.

2. THE FACTORING CONTRACT

2.1 Definition of the factoring contract

Ukraine is a member of 1988 UNIDROIT Convention on International Factoring.

There is no specific law on factoring however Chapter 73 of the Civil Code regulates factoring contract. Chapter 73 provides a general definition of factoring contract providing that under factoring agreement (financing under the assignment of the monetary claim right) one of the parties (a factor) shall transfer or be obliged to transfer the funds into disposition of

the other party (a client) for a fee, and a client shall assign or be obliged to assign to the factor his right of the monetary claim against the third person (a debtor).

Various types of factoring contracts are not specifically mentioned in the law, however the law does differentiate the situation in which the client guarantees the successful collection from the one where it does not (recourse and non-recourse factoring). In case parties omit to mention the type of factoring in their contract a non-recourse type is applied by default.

2.2 Receivables subject to factoring

The law contains no restrictions on receivables that can be factored. There is also no restriction on the maturity of receivables that can be factored and the applicable law does not prescribe maximum time exposure of factoring companies to factored receivables. There is also no explicit provision prohibiting the extension/restructuring of payment terms after purchasing of receivables. However, debtors cannot be exposed to more onerous terms after assignment.

Assignment of future receivables is possible and is specifically mentioned in the Civil Code. However, the law lacks guidance on the necessary conditions to be fulfilled or the level of identification necessary to satisfy the identification requirement. A future claim is considered transferred to the factor at the time of occurrence thereof.

The Civil Code specifically refers to the purchase nature of a factoring transaction if the character of the transaction is a financing one. Having this in mind and considering that the general provisions regulating the assignment of receivables are applicable to factoring as well, both recourse and non-recourse factoring could be considered as a true sale transaction if the intention on a transaction is to provide financing the client.

2.3 Assignment of Receivables

An assignment per Civil Code does not have to be in a written (paper based) form; however a factoring contract as a financial services contract has to be in a written form. According to the Law on Financial Services and State Regulation of Financial Services, an agreement on rendering financial services must (in general) include the title of the document, identification and residence of parties to an agreement, name of the financial service to be provided, rights and obligations of parties, terms of the agreement and signatures of parties.

The laws on Electronic Signature and On Electronic Documents and Electronic Documents Circulation specifically provide facility for electronic transactions and it is specifically envisaged in laws that documents cannot be denied enforceability merely because they are concluded electronically.

According to the Civil Code there are no specific registration or notification steps to fulfil in order to achieve the validity of assignment. However, until the debtor is duly notified with a

written notice he is authorised to discharge the debt to the original creditor. Debtor`s consent is not required for the validity of an assignment. No stamp duties is payable on assignment.

Contractual prohibition against the assignment of receivables is not valid against factoring transactions; however a client that breaches the ban on assignment obligation towards its debtor is liable for potential damages resulting out of the factoring assignment.

3. MISCELLANEOUS

Foreign-exchange rules – A domestic factoring company can purchase receivables created in export activity by paying for them in foreign currency only subject to the receipt of a foreign currency license from the National Bank of Ukraine. Without such license the purchase price for receivables must be paid in domestic currency.

VAT issues – Any debt assignment transaction including factoring related to the currency values (monetary claims) is VAT exempt. This exemption applies to transactions and not to taxpayers, thus there is no difference between VAT treatment of banks and non-banks engaged in factoring.

However, Ukrainian tax authorities tend to challenge the possibility to assign debts related to the foreign economy activities. Having said this, the court practice in such cases is mostly in the favour of taxpayers

Consequences of late payment – Under Ukrainian law there are the following statutory penalties for late payments:

- (a) a late payment penalty calculated as a percentage from the overdue amount at the rate agreed between the parties but not exceeding the double discount rate of the National Bank of Ukraine (currently, the NBU discount rate is 17%); and
- (b) additional late payment interest at the rate agreed between the parties or, if the parties failed to agree, at 3% statutory interest rate.

Ukrainian law also permits to adjust the debt by the inflation index, which is measured by the consumer price index.



UZBEKISTAN

List of relevant legislation/regulation

The following Uzbek legislation was considered: (i) the Law “On Central Bank of the Republic of Uzbekistan” N 154-I, dated 21 December 1995; (ii) Law “On microcredit organizations” N ZRU-53, dated 20 September 2006; and (iii) Regulation on the procedure for commercial banks offering factoring operations on the territory of the Republic of Uzbekistan (MU 03.08.2000, N 953).

1. FACTORING OPERATIONS

1.1 Regulation of factoring operations

Pursuant to the Law On Central Bank of the Republic of Uzbekistan and the Law On microcredit organizations non-banking financial institutions (“NBFIs”) require prior license in order to provide factoring services.

Factoring operations in Uzbekistan are mostly offered by banks. In addition, factoring services can be offered through microcredit organizations as well. The Central Bank of the Republic of Uzbekistan regulates and supervises the microcredit organizations and other financial institutions.

Recourse factoring is qualified as a secured lending transaction therefore only non-recourse factoring qualifies as a factoring financial service. Factoring is defined as a financing of economic entities-suppliers against the assignment to the bank-financial agent of the right to receive payment accepted but not paid by payer of goods, works or services, without recourse.

1.2 Licensing conditions and procedure

In order to be licensed as a microcredit institution - a company has to have a minimum of 100,000 euros of authorized capital invested consisting out of cash and other assets, which shall not exceed 20% of the authorized capital.

The Central Bank establishes qualification requirements for the participation in executive bodies of financial institutions. Natural persons and legal entities residing in offshore zones and individuals who have bank accounts in offshore zones, cannot act as founders of financial institutions.

1.3 Capital adequacy and reporting requirements

No special capital adequacy regime is in place.

Financial institutions are subject to regular and ad-hoc supervision inspections. Regular inspections of financial and economic activities of private banks and other private financial

institutions are carried out not more than once every five years. Ad-hoc inspections are carried out when non-bank financial institution is reorganized or liquidated, or based on the decision of the Cabinet of Ministers, President of the Republic of Uzbekistan or the law enforcement agencies to conduct an investigation on the basis of the relevant resolutions.

Annual financial statements of microcredit organizations are audited and an microcredit organization with a book value of assets over one billion Uzbek Soms (cca 300,000 euro), must establish an internal audit unit and relevant procedures.

1.4 Supervision of the factoring companies

The Central Bank of Uzbekistan establishes mandatory rules for conducting financial transactions, accounting and reporting in the country. The Central Bank authorities include verifying reports, requesting information on financial institutions activities, issuing direct binding orders to eliminate violations.

2. THE FACTORING CONTRACT

2.1 Definition of the factoring contract

Uzbekistan is not member of 1988 UNIDROIT Convention on International Factoring or 2001 United Nations Convention on Assignment of Receivables in International Trade. There is no law on factoring or special contract law provisions for factoring apart from the Central Bank's Regulation on the procedure for commercial banks offering factoring operations on the territory of the Republic of Uzbekistan and general assignment of receivables rules in the Civil Code applicable to factoring operations.

Factoring is defined as a financing of economic entities-suppliers against the assignment to the bank-financial agent of the right to receive payment accepted but not paid by payer of goods, works or services, without recourse. There are no further specific definitions of various types of factoring services in the laws of Uzbekistan.

2.2 Receivables subject to factoring

According to the law, only receivables payable within 90 days and arising from sale of goods or provision of services can be factored. Receivables against organizations funded by public budget, insolvent enterprises, companies with illiquid balance sheet and loss making enterprises, debt obligations of individuals, receivables arising out of financing of capital investments, export consignment contracts, and compensations and barter transactions; cannot be factored regardless of the maturity of those receivables.

Assignment of future receivables is allowed. In order to have a valid assignment of a future receivable, the factoring agreement must contain a description of a receivable in a manner that allows to identify it in the future - not later than in time of its occurrence (e.g. information about the debtor and creditor of a receivable; the maximum amount; the due date; etc.). In any

case, local practitioners agree that factoring of future receivables is highly untested on the market.

Uzbek law defines only non-recourse factoring and it is considered as a true sale transaction. Recourse factoring is considered a secured lending transaction and not a true sale of accounts receivable.

2.3 Assignment of receivables

According to the law, an assignment has no strictly determined form of creation so in theory any particular assignment under a factoring contract does not have to be recorded in written form. However, the assignment has to follow the form of the original contract and therefore the assignment of receivables based on a transaction made in a simple written or notarial form must be made in the same form. Electronic Data Exchange system cannot be used to validly assign receivables. The Law on electronic digital signature regulates the usage of electronic signatures. However it is not widely used in Uzbekistan.

Pursuant to general rules for assignment, the validity of the assignment is conditioned only with a requirement for notifying the debtor i.e. the assignor has to notify the debtor for the performed assignment. Otherwise, the assignment will have no effect towards the debtor and he will be entitled to pay its debt to the assignor.

The contractual prohibition against the assignment of receivables has no effect on the validity of assignment to a factor in Uzbekistan.

3. MISCELLANEOUS

Foreign-exchange rules – If the client is an Uzbek resident, the domestic factoring company will not be able to purchase the receivables in their nominal (foreign) currency. Instead, a payment in a foreign currency is made into a transit deposit account of the client after which the funds are sold on the mandatory basis and converted in a local currency.

VAT issues – Factoring transactions performed by financial institutions (including microcredit) are exempt from VAT in Uzbekistan.

Consequences of late payment – Under the Uzbek law, a debtor who has delayed performance shall be liable to pay interest. The interest rate is determined by the bank's discount rate current at the location of the lender, on the day of fulfilment of payment or part thereof. These rules apply, unless a different interest rate is not set by law or contract.