

# Factoring Survey in Selected EBRD Jurisdictions

A survey of legal and regulatory regimes for factoring in selected EBRD jurisdictions



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The cut-off date for the survey was 1 September 2023.

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# Acknowledgments

The EBRD would like to thank all those who participated in the survey and responded to the questionnaire, including legal professionals, representatives of factoring associations, associations of banks and non-banking financial institutions, and financial services regulators. The time and commitment offered by all participants greatly contributed to the overall value of this survey. A full list of survey respondents is available in [Annex A](#).

The assessment forms part of the work of the Legal Transition Programme administered by the EBRD Office of the General Counsel. This assessment was led by Milot Ahma, Principal Counsel at the EBRD, and Liubov Skoryk, Associate Counsel. The team was complemented by Miguel Senlle Caride from the EBRD Legal Transition Team, and graphic designer Chloe Richards from Red Rocket Graphic Design.





# List of Questions

The following survey report of ten EBRD jurisdictions was prepared following a review of local laws and practices and based on input received from *local legal practitioners* answering the following questions:

## Regulatory issues

1. Is a licence required for non-banking financial institutions (NBFIs) to offer factoring services?
2. Can banks offer factoring services by virtue of their banking licence?
3. Which supervisory body(-ies) (if any) regulates / supervises (issues licences, scrutinises performance etc.) NBFIs offering factoring services and based upon which law(s)?
4. Do you consider supervisory and investigatory powers of regulator(s) in relation to factoring service providers sufficient?
5. Which forms / types of financial reporting (if any) are required from the NBFI providers of factoring services by the supervisory authorities? Annual, half yearly, quarterly financial reports? Audited or not?
6. Are there any obligatory covenants for the NBFI providers of factoring services, for instance, anti-money laundering, Basel III type provisioning, equity size / balance sheet ratio, data protection?

## Private and commercial law

7. Has your jurisdiction joined the UNIDROIT Convention on International Factoring (Ottawa, 1988)?
8. Has your jurisdiction joined the United Nations Convention on the Assignment of Receivables in International Trade (New York, 2001)?
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 your jurisdiction? If so, please quote this and provide a reference of the relevant provision(s) in the law / regulation.
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. Is it possible to assign future receivables?
15. What are the minimum legal requirements with respect to the identification / determination of the future receivables in order to ensure validity?
16. Are recourse factoring and non-recourse factoring both considered a true sale transaction (instead of recourse factoring being considered a secured lending transaction)?
17. Are any of the following necessary to achieve validity of assignment against the debtor or third-party creditors:
  - notification of assignment;
  - registration of assignment,
  - stamp-duty or other documentary taxes paid on transaction;
  - debtor's consent?
18. Are there formal requirements for the execution of assignment deeds / contracts?
19. Does the applicable law recognise equivalence between electronic and written communication?
20. Is there a law on electronic signature? Are electronic signatures widely used?
21. Is electronic invoicing possible?
22. Do invoices in electronic form carry the same weight as invoices in paper form?
23. Is electronic invoicing mandatory in B2B transactions?
24. Is electronic invoicing mandatory in B2G transactions?



- 25.** Can the validity of an e-invoice be checked on a state website / platform or a private provider's website / platform?
- 26.** If the debtor's consent is legally required to achieve validity of the assignment against the debtor, at what stages and in what format the consent must be secured?
- 27.** If notification to the debtor is legally required to achieve validity of the assignment against the debtor, what are the implications of not serving a notice?
- 28.** What are the legal implications in case the debtor still made the payment to the supplier (even though the debtor has been duly notified) instead of the factor?
- 29.** Can notification to the debtor be validly achieved by adding language to an e-invoice sent by the supplier to the debtor (if notification to the debtor is legally required to achieve validity of the assignment)?
- 30.** If registration of assignment is required, who has priority over the claim?
- 31.** If registration of assignment is required for validity and / or priority purposes, please specify all that apply below.
  - Registration is required for assignments by way of security (*i.e.* pledges of receivables as non-possessory pledge)
  - Registration is required for outright assignments (*i.e.* sale / purchase of receivable)
  - There is a central registry specifically for factoring transactions (invoices)
  - A central registry specifically for factoring transactions (invoices) is being planned or developed
  - There is no dedicated factoring transactions (invoices) registry but other registries (such as pledges registry) are being used
  - The registry is fully digital, no involvement of registry staff is required at any point

- The registry is partially digital, involvement of registry staff is required at some points
- The registry is not digital, involvement of registry staff is required at all stages of the registration
- Licensed private service providers can register assignments on behalf of factors
- There is a website where assignments can be registered
- There is an app where assignments can be registered
- There is an API integration with a licenced service provider where assignments can be registered
- Paper-based assignments can be registered
- Paper-based assignments cannot be registered
- It is possible to alter existing records in the registry
- It is impossible to alter existing records in the registry
- Information submitted to the registry becomes publicly available and searchable usually within 12 hours
- Information submitted to the registry becomes publicly available and searchable usually within 12 to 48 hours
- Information submitted to the registry becomes publicly available and searchable usually after 48 hours
- Information submitted to the registry is not publicly available / searchable

- 32.** Are there any restrictions or special rules applicable to reassignment of receivables by the factor?
- 33.** Is a contractual prohibition against the assignment of receivables valid against factoring in your jurisdiction? 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?
- 34.** Does the debtor have the right to invoke defences and rights of set-off against the factor?

## Miscellaneous

- 35.** Are there any VAT issues or problems in your jurisdiction concerning the assignment of receivables?
- 36.** What is the VAT treatment of factoring commission / service charge? What is the VAT treatment of discount or interest?
- 37.** Are there any differences in the VAT treatment between banks and non-banks engaged in factoring?
- 38.** 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)?
- 39.** Are there any penalties (and if so of what kind) applicable to late payments?
- 40.** Are there restrictions to data (personal and non-personal) transfers outside of your jurisdiction?
- 41.** Is further development of the factoring legislation being considered?

For the fourth edition of the Factoring Survey, we approached *factoring associations, associations of banks and non-banking financial institutions* in the ten selected jurisdictions with the following questions:

- 42.** What is the primary clientele of factoring services in your jurisdiction?
- 43.** What software solution do factoring companies use to track, manage and monitor factoring operations?
- 44.** How do factoring companies on-board clients (suppliers and / or buyers) onto their platform in order to fulfil the local Know Your Customer (KYC) requirements?
- 45.** Do trade credit insurance products exist in your jurisdiction? If so, is it possible to use trade credit insurance for capital relief purposes?
- 46.** Do factors have access to the data on companies' historical payment performance?
- 47.** Are there any factoring service providers (banks or non-banking financial institutions) providing cross-border factoring services (*i.e.* international factoring)?
- 48.** What is the most common basis for factoring services in your jurisdiction – recourse or non-recourse?
- 49.** What is the most common type of factoring offered in your jurisdiction – traditional or reverse?
- 50.** When offering factoring on a non-recourse basis, do you underwrite the non-payment risk yourself (as an institution) or rely on insurance products such trade credit insurance policies?
- 51.** What are the most common services provided by factors in your jurisdiction?
- 52.** If registration of assignment is required, does the registry ensure quick and effective registration?



- 53.** Are factoring companies allowed to negotiate extension / restructuring of payment terms after purchasing receivables and under what conditions (if any)?
- 54.** What are the typical market terms of account payable?
- 55.** If the VAT treatment of factoring transactions (and the ancillary services) were more favourable, would you expect a significant increase in operations?
- 56.** If the accounting treatment applied to the factoring transactions were more favourable, would you expect a significant increase in the operations?
- 57.** Do you think additional changes to the regulatory and / or legal framework are necessary in order to facilitate the offer as well as demand for factoring services?
- 58.** Is fraud perceived as a big problem in the factoring industry?
- 59.** Is weak contract enforcement perceived as a big problem in the factoring industry?
- 60.** Has the demand for factoring services increased during the crisis caused by Covid-19?

Additionally, we sought input from *national regulators* on the following questions:

- 61.** Are there any state-led programmes directly or indirectly supporting the factoring market?
- 62.** Do you consider the supervisory and investigatory powers for regulator(s) in relation to factoring service providers sufficient?
- 63.** How many factoring companies are there in your jurisdiction? How many of them are banks? How many of them are NBFIs? Of which, how many are credit organisations, microcredit organisations, finance brokers and independent factoring companies?
- 64.** Are Digital IDs recognised by law as an official form of identification in your jurisdiction?
- 65.** What was the volume of factoring transactions in your jurisdiction in 2022?
- 66.** What was the volume of cross-border factoring transactions in 2022?
- 67.** What is the estimated volume for factoring transactions in the next 5 years?
- 68.** Is further development of the factoring legislation being considered?

# Overview of Survey Results

## Regulation of factoring operations

Jurisdiction	Licence needed for factoring companies to operate?	No capital adequacy requirements for factoring companies? <sup>1</sup>	Factoring companies are supervised?
Armenia	✓	✗	✓
Egypt	✓	✗	✓
Georgia	✗	✓	✗
Greece	✓	✓	✓
Kyrgyz Republic	✓	✗	✓
Morocco	✓	✗	✓
Romania	✓ <sup>2</sup>	✓ <sup>4</sup>	✓
Türkiye	✓	✓ <sup>4</sup>	✓
Ukraine	✓	✓	✓
Uzbekistan	✓ <sup>3</sup>	✗	✓
✓	9	5	9
△	0	0	0
✗	1	5	1

Key: ✓ Yes ✗ No △ Limitations explained in the footnote

<sup>1</sup> We believe that any capital adequacy requirement for factoring companies pose disproportionate burden on them with no significant benefits. Therefore, absence of any capital adequacy requirements is considered to be more favourable to the development of the factoring industry.

<sup>2</sup> A registration process with the National Bank is required.

<sup>3</sup> An authorisation from the Central Bank is required.

<sup>4</sup> Only initial capital requirements and leverage ratios.



## Private and commercial law

Jurisdiction	Specific Law or specific provisions in the Civil Code on factoring?	Specific definitions for different types of factoring?	Eligible receivables restricted to those arising from sale of goods / provision of services?	Is it possible to assign future receivables?	Anti-assignment clause invalid?	Electronic execution of agreements?	Registration of assignments required?
Armenia	✓	✗	✓	✓	△ <sup>5</sup>	✓	△ <sup>6</sup>
Egypt	✓	✓	✓	✓	✗	✗	△ <sup>6</sup>
Georgia	✗	✗	✗	✓	✗	✓	△ <sup>6</sup>
Greece	✓	✗	✓	✓	✓	✓	△ <sup>6</sup>
Kyrgyz Republic	✗	✗	✓	✓	✓	✓	△ <sup>6</sup>
Morocco	✓	✗	✓	✓	✗	✓	△ <sup>6</sup>
Romania	✗	✗	✗	✓	△ <sup>5</sup>	✓	✓
Türkiye	✓	✗	✓	✓	✗	✓	△ <sup>6</sup>
Ukraine	✓	✗	✗	✓	△ <sup>5</sup>	✓	△ <sup>6</sup>
Uzbekistan	✗	✗	✓	✓	✓	✓	△ <sup>6</sup>

✓	6	1	7	10	4	9	1
△	0	0	0	0	2	0	9
✗	4	9	3	0	4	1	0

Key: ✓ Yes ✗ No △ Limitations explained in the footnote

<sup>5</sup> The debtor can still sue for breach of contract.

<sup>6</sup> For security assignments only.

## Miscellaneous issues affecting factoring

Jurisdiction	Non-restrictive forex regulations?	Same tax treatment for bank / non-bank factoring?	Penalties available on late payment?	Data privacy framework allows transfer of data to other countries? <sup>7</sup>	E-invoicing infrastructure?
Armenia	✓	✓	✓	✓	✓
Egypt	✓	✓	✓	✗	✓
Georgia	✓	✓	✓	✓	△ <sup>8</sup>
Greece	✓	✗	✓	✓	✗
Kyrgyz Republic	✓	✓	✓	✓	✓
Morocco	✗	✓	✓	✗	✗
Romania	✓	✓	✓	✓	△ <sup>9</sup>
Türkiye	✗	✓	✓	✓	✓
Ukraine	✗	✓	✓	✓	△ <sup>9</sup>
Uzbekistan	✗	✓	✓	✓	△ <sup>9</sup>

✓	6	9	10	8	4
△	0	0	0	0	4
✗	4	1	0	2	2

**Key:** ✓ Yes ✗ No △ Yes but subject to limitations

<sup>7</sup> Usually to a list of pre-approved “safe” countries or countries that ensure “adequate protection”.

<sup>8</sup> Only invoices uploaded to the tax services website can be checked.

<sup>9</sup> No centralised platform.

# 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-sized companies (SMEs).

Despite having been used for decades, factoring is experiencing a marked revival in the current economic context, boosted by the development of more sophisticated legal, regulatory, market and technical solutions.

Over the years, the EBRD has built up considerable expertise in developing factoring in the economies where it invests through financial and non-financial instruments. The Bank operates a successful [Trade Facilitation Programme](#) (TFP) across selected jurisdictions. Set up in 1999 to promote and facilitate international trade, the EBRD's TFP has also been supporting the financing of domestic and international factoring transactions since 2006 by providing third party guarantees and cash advances, as well as through the transfer of skills and expertise to factoring companies and continuing professional education programmes.

The TFP promotes the development of factoring by providing financing to its partner banks for their factoring activities, as well as by taking the political and commercial payment risk of international factoring transactions. As of February 2023, the EBRD TFP has supported the financing of domestic and international factoring transactions with a total of EUR 1.3 billion. The TFP currently has 16 factoring facilities in eight jurisdictions (Armenia, Bulgaria, Greece, Georgia, Romania, Türkiye, Serbia and Ukraine).

In 2022, the EBRD approved a new [Supply Chain Solutions Framework](#) under which it is risk sharing in supply chain finance (SCF) transactions, through both funded and unfunded participations. Transactions focus on reverse factoring, a buyer-led SCF product that leverages the strength of “Anchor Buyers” (for example, big retailers) that typically tend to have a higher credit rating and healthier balance sheets than their smaller suppliers, thus potentially lowering the cost of funding for such suppliers.

Under such a framework, the EBRD participates in individual sub-deals involving selected Anchor Buyers and their suppliers in EBRD economies by either (i) transferring a pre-agreed share of funds to the partner banks (for funded participations) or (ii) providing an AAA-rated irrevocable guarantee to Anchor Buyers (for non-funded participations). By leveraging the creditworthiness of Anchor Buyers, the framework will provide suppliers, particularly SMEs, with access to finance (which, in the case of SCF solutions, constitutes upfront cash to suppliers with no recourse) that is cheaper and easier to access compared with traditional channels.

Legal barriers to trade finance persist across the EBRD regions. This can increase factoring transaction risks (for example, courts redefining recourse factoring transactions as secured lending, which limits the rights of the factor if the client goes bankrupt) or limit the scope of factoring transactions (for example, no validity of assignment of future claims). The EBRD's [Legal Transition Programme](#) (LTP) has been working to improve the legal and regulatory environments for secured transactions. The LTP's efforts have focused on enabling the quick, cheap and simple creation of a proprietary security rights; providing an effective means of publicising the existence of security rights and clear rules governing competing claims to the collateral; and enabling prompt realisation at market value of the collateral.

Global efforts to strengthen factoring legal frameworks received a boost after the recent publication of the 2023 Model Law on Factoring by the International Institute for the Unification of Private Law (UNIDROIT) that builds on existing secured transactions instruments<sup>10</sup> and provides guidance to national legislators seeking to develop domestic legal frameworks for factoring.

To date, the LTP has been supporting the development of factoring services in jurisdictions such as Croatia, Georgia, Jordan, Kosovo, Montenegro, North Macedonia, Serbia, Tajikistan, Tunisia, Ukraine, Uzbekistan and the West Bank and Gaza. Most recently the LTP has focused on the digital enablers of factoring transactions and promoting the UNIDROIT Model Law on Factoring.



<sup>10</sup> The UNIDROIT Model Law on Factoring provides a streamlined instrument designed to facilitate both domestic and cross-border factoring, while remaining broadly consistent with the 2001 United Nations Convention on the Assignment of Receivables in International Trade and the 2016 UNCITRAL Model Law on Secured Transactions.



# Executive Summary

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 specialisation and pioneering attempts of smaller market players. On the other hand, no regulation at all may lead to problems such as 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 following survey gives an overview of the current legal and regulatory landscape for factoring and a snapshot of market practices in ten selected EBRD jurisdictions (Armenia, Egypt, Georgia, Greece, Kyrgyz Republic, Morocco, Romania, Türkiye, Ukraine and Uzbekistan).

The fourth edition of the Factoring Survey builds on the earlier editions, highlighting strengths and weaknesses in the national frameworks, captures changes that have taken place in national laws or practices since 2018 and seeks to assess whether these create an enabling environment for market participants to reap the benefits of factoring.



In comparison with the earlier editions of the survey where the results reflected solely the opinions of local legal professionals, the fourth edition is based on consultations with different groups of respondents, such as (i) law firms, (ii) factoring associations, associations of banks and non-banking financial institutions, and (iii) regulators overseeing the factoring sector in selected jurisdictions of EBRD operations. Furthermore, this edition also covers more extensively some considerations (e.g. digital infrastructure, data protection, market practices etc.) compared to the previous versions.

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

The first aspect reviewed in the survey relates to the level of regulation applicable to the factoring industry. Practices vary across jurisdictions where the EBRD invests, 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 the 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 approach that is somewhat of a middle-ground approach is represented by jurisdictions regulating

the factoring industry as a type of a financial service but stopping short of subjecting it to extensive capital requirements. This type of regulatory approach usually consists of introducing regulators / supervisors which are authorised to issue operating licences to factoring companies, approve managers, review business plans and financial reports, control start-up capital and conduct occasional on-sight inspections.

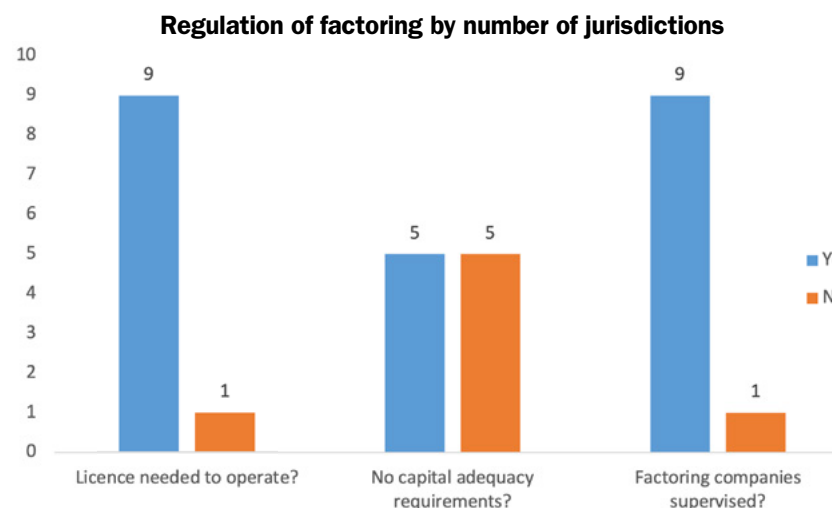
We believe that an appropriate level of supervisory oversight might be beneficial for the development of the factoring industry as it may play a role in improving the public perception of factoring and its wider use thereof. There also do not seem to be any significant benefits in subjecting factoring 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 of ten jurisdictions shows a clear inclination towards regulation of factoring among EBRD jurisdictions. Among the ten jurisdictions, Georgia is the only one that has neither factoring regulations in place nor a dedicated regulator. Because there is no concept of a factoring company in Georgia, they are out of the

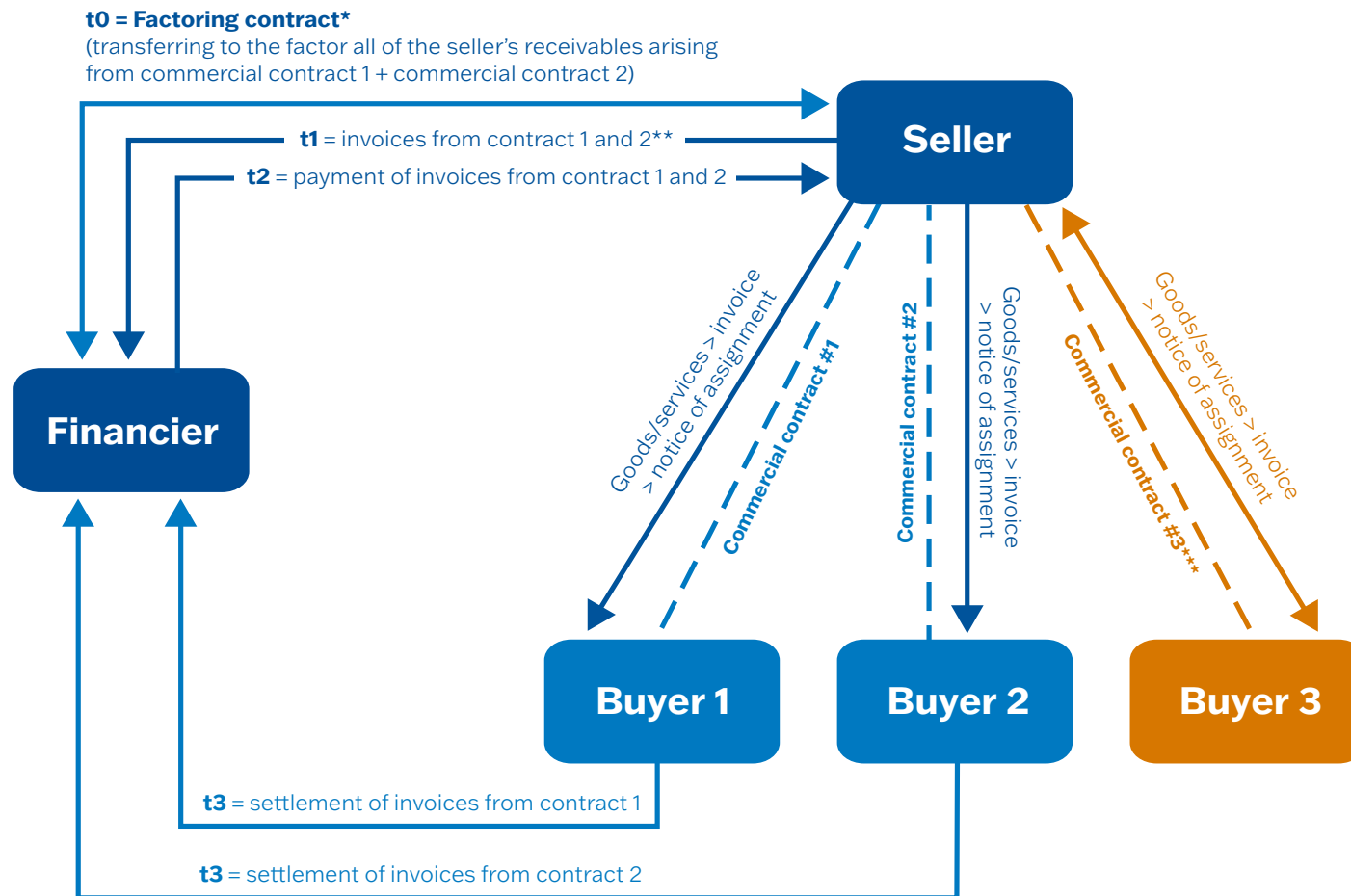
regulatory scope. However, this does not concern commercial banks and microfinance organisations which may conduct factoring activities by virtue of their licence / registration with the National Bank, to whom they are required to report.

The survey also shows that three surveyed jurisdictions do not impose capital adequacy requirements for factoring companies (Georgia, Greece, and Ukraine). Romania and Türkiye impose both initial capital requirements and leverage ratios which we deem to be less onerous on factoring companies, compared to capital adequacy requirements.

Seven jurisdictions (Armenia, Egypt, Greece, Kyrgyz Republic, Morocco, Türkiye and Ukraine) require a specific licence for NBFIs to start providing factoring services, whereas NBFIs in Romania need to perform the registration process with the National Bank and NBFIs in Uzbekistan need only an authorisation from the regulator. At the other end of the spectrum, Georgian non-banking factoring companies are not required to obtain any licences, certifications or authorisations, provided they duly register with the Georgian Commercial Registry and obtain a certificate of registration.



## Receivables subject to factoring and subsequent amendments to the Factoring Contract



This graph was prepared in the context of our project in Ukraine on Factoring together with International Law Institute and Aequo Law Firm (2023).

\* By virtue of the Factoring Contract, the Financier purchases, and the Seller sells, outright all of the receivables that arise from its Commercial Contract 1 and Commercial Contract 2. If the legislation allows, the Financier will also register the Factoring Contract in the appropriate registry to ensure priority against any third parties over those receivables.

\*\* As the scope of the Factoring Contract covers "all receivables generated from the Commercial Contract 1 and Commercial Contract 2" there should be no need to amend the Factoring Contract, or execute separate deeds of transfer, between the Seller and the Financier for any subsequent invoices submitted for financing which are issued under those commercial relationships. This makes the whole arrangement more efficient, flexible and less costly. Once an invoice arises, all the Seller will have to do is submit the invoice to the Financier for financing and notify Buyer 1 or Buyer 2 (as the case may be) that the settlement of the invoice is to be made to the Financier. This notification can be included in the relevant invoice.

\*\*\* If the Seller wants to factor receivables arising out of its commercial relationship with Buyer 3, it may have to amend the existing Factoring Contract with the Financier, or sign a new one. This is, unless the Factoring Contract foresees (and the legislation allows) that "all the Seller's receivables" are subject to the scope of the Factoring Contract. In that case, the Factoring Contract may not have to be amended at all and the Financier will be able to finance any invoice submitted by the Seller (usually upon conducting due diligence on the Buyer and the underlying commercial relationship between the Buyer and the Seller). In this case, the Financier will also want to register its title over "all of the Seller's receivables" in the relevant registry so to ensure priority against any third parties over all the Seller's receivables.



The factoring contract and its distinctive features, as well as other private and commercial law considerations, is the second aspect examined in this survey. Even though many of the EBRD's jurisdictions have started working on, or have already introduced specialised laws on factoring, there are still jurisdictions 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 jurisdictions, 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 requiring different and specific contract law considerations, which are not legally supported in every jurisdiction.

It appears that Egypt, Greece and Türkiye have adopted a specific law on factoring. Jurisdictions like Armenia and Ukraine have some specific provisions on factoring in their civil codes. Georgia, Romania, Kyrgyz Republic and Uzbekistan do not have specific contract law rules on factoring and parties rely on the general assignment provisions when drafting contracts. Morocco has a definition of factoring in Banking Law but relies on general provisions on assignment of claims. Notably, only Egypt provides legal definitions of different types of factoring.

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 jurisdiction. In particular, we were interested to see the status given to recourse factoring by the relevant legislation or courts, namely whether recourse factoring is considered a true sale or a secured transaction. This distinction is potentially

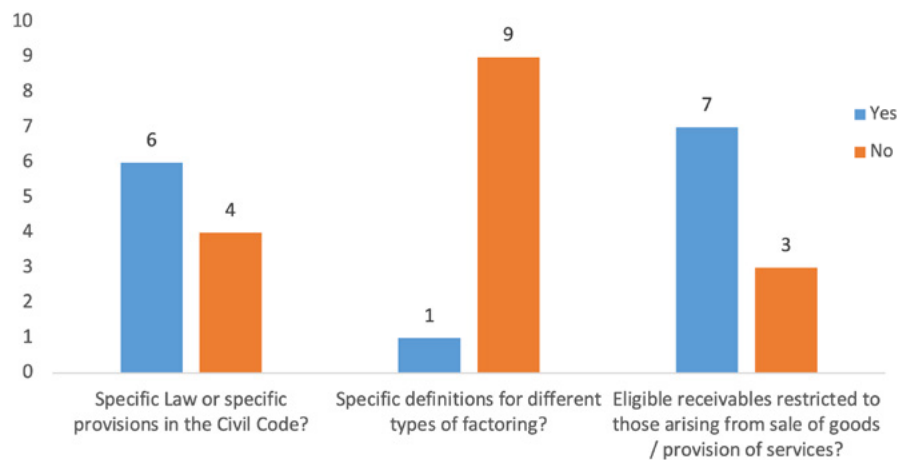


critical in a bankruptcy case because a factor that has purchased accounts owns the title over those accounts and is usually able to continue to collect on the accounts without interference of the bankruptcy proceedings. A secured lender, on the other hand, is usually subject to a mandatory stay of proceedings 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-characterised as a secured transaction. In contrast to a collateralised loan, typically (although not exclusively) 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 only the Kyrgyz Republic considers the recourse factoring to be a true-sale transaction compared to four jurisdictions where recourse factoring seems to be considered secured lending (Armenia, Georgia, Ukraine and Uzbekistan). Furthermore, in five surveyed jurisdictions (Egypt, Greece, Morocco, Romania and Türkiye), because of limited legislative guidance and lack of court practices, we were unable to conclude whether recourse factoring would be characterised as true sale or secured lending. The factoring industry would

benefit if these uncertainties were clarified in relevant jurisdictions. This is not to say, however, that factoring transactions cannot be structured as “assignments by way of security” where the factoring company willingly and knowingly becomes a secured creditor of their client. The issue is relevant only where parties intend to structure the transaction as “assignment by way of sale” or “absolute assignment” and where the whole transaction is re-characterised (presumably by a court of law) simply because the factoring company retains the right of recourse against the client.

In line with the best international standards and practices, receivables that can be subject to factoring shall originate from sale of goods or provision of services. This is the case in seven surveyed jurisdictions (Armenia, Egypt, Greece, Kyrgyz Republic, Morocco, Türkiye and Uzbekistan). In other three jurisdictions (Georgia, Romania and Ukraine), eligible receivables are not limited to trade receivables, which – in absence of other restrictions in the law or regulation – may lead to unintended consequences, including bad debt being assigned through factoring transactions / companies. We do not consider this to be a sound practice, not least because in such cases factoring companies are closer to debt collection companies, which tarnishes the reputation of the product and leads companies not to want to be associated with the product.

**Features of factoring transactions by number of jurisdictions**

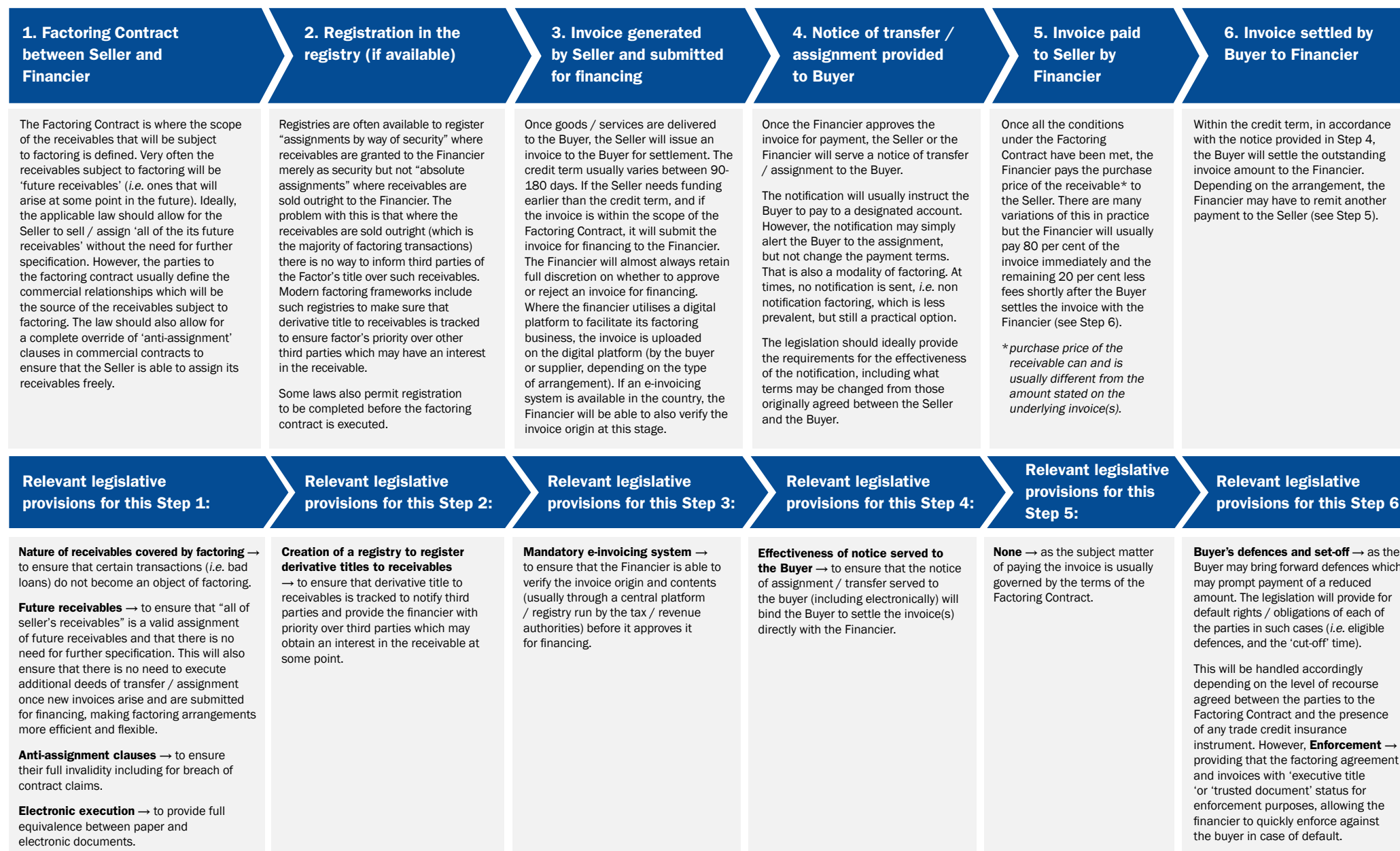


The possibility for companies to assign future accounts receivable within their factoring relationship is an important feature as it helps reserve a priority over future accounts receivable for factors, and the legal framework should be as flexible as possible on this issue. The possibility of assigning 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. A sound framework on assignment of future accounts receivable facilitates the efficiency of factoring transactions which is a crucial consideration for many factoring companies (both banks and NBFIs). This is because the parties will not have to sign new deeds of assignment every time an invoice arises in a commercial relationship, which lowers transaction costs considerably. See a figure below for an illustration of the practical importance of the framework around assigning future receivables.



## Typical stages of a factoring transaction including legal and practical implications



This graph was prepared in the context of our project in Ukraine on Factoring together with International Law Institute and Aequo Law Firm (2023).



Some jurisdictions permit assigning future claims, as long as the debtor is known or the debt is 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 makes assignment of future debts practically impossible.

The assignment of future receivables (of certain receivables, a group of receivables or all of them) is generally allowed in every surveyed jurisdiction. All jurisdictions seem to have a criterion for a future receivable to be sufficiently definable at the time of its assignment, but there is often insufficient guidance in terms of components of definability.

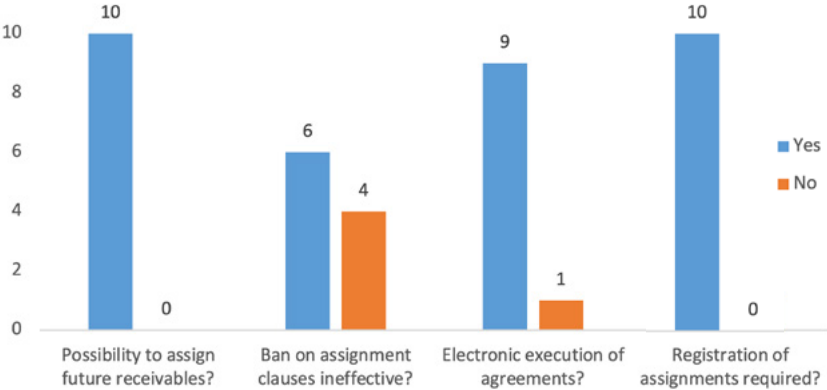
Another important legal issue to be considered when discussing legal framework for factoring is the issue of validity and effects of the clauses which are inserted into sale and purchase agreements, which may forbid the parties to assign the claim to third parties. These bans on assignment clauses are 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 at a disadvantage, 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 to which clients do not offer supply chain finance at market rates, it might be consistent for an economy trying to promote SME access to finance to adopt rules that allow complete override of anti-assignment clauses in case of factoring.

The 2023 UNIDROIT Model Law on Factoring provides a good source of inspiration for adopting such legislative changes. Unlike the 2001 UN Convention on the Assignment of Receivables in International Trade and the 2016 UNCITRAL Model Law on Secured Transactions, the 2023 UNIDROIT Model Law on Factoring does not preserve the right of a debtor to claim damages from the transferor for breach of contract in relation to an anti-assignment clause, as long as it relates to factoring transactions. As the below graph suggests, in four jurisdictions the anti-assignment clauses in commercial agreements are effective even against suppliers / creditors (Egypt, Georgia, Morocco and Türkiye), while in six other jurisdictions 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. While there is an override on anti-assignment clauses in six surveyed jurisdictions (Armenia, Greece, Kyrgyz Republic, Romania, Ukraine and Uzbekistan), we did not observe a complete override in any of those jurisdictions. This means that the assignment of receivables itself is not invalidated by the existence of the anti-assignment clause in the underlying commercial agreement out of which the receivables arise (e.g. contract for purchase of goods / services). However, the buyer in the contract still retains the right to sue the supplier for breach of contract.

Compared to traditional factoring contracts, electronic contracts have a lower overall transaction cost, are more accessible and time efficient. Therefore, this Factoring Survey analyses whether surveyed jurisdictions enable electronic execution of agreements. Egypt is the only jurisdiction where a factoring contract can be signed with a wet-ink signature only. In all other nine jurisdictions electronic execution is possible, but it is worth noting that Egypt, Greece and Türkiye do not recognise, or recognise only in limited cases, equivalence between electronic and written communication.

Registration of assignments is highly desirable for both assignments by way of sale and security assignments, since it provides effective notice of assignment against third parties and also priority between competing assignments over the same receivable(s). As such, it also has the potential to tackle fraud stemming from double factoring. While it is very common to see a requirement for pledges to be registered, outright assignments are not typically registered in the surveyed jurisdictions (in our sample, nine jurisdictions require only the registration of security assignments). Only Romania requires registration of both security and outright transfers for making the transfer effective against third parties and establishing priority ranking between creditors.

**Regulation of the assignment of receivables by number of jurisdictions**



The survey also seeks to understand the tax regime applied to factoring transactions, which could be of key importance for the viability of the factoring industry when compared to the 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 all surveyed jurisdictions, with the exception of Greece, apply the same tax treatment for banks / 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 VAT on fee services only, must be avoided, as this puts factoring companies in the unfavourable position of having more expensive services.

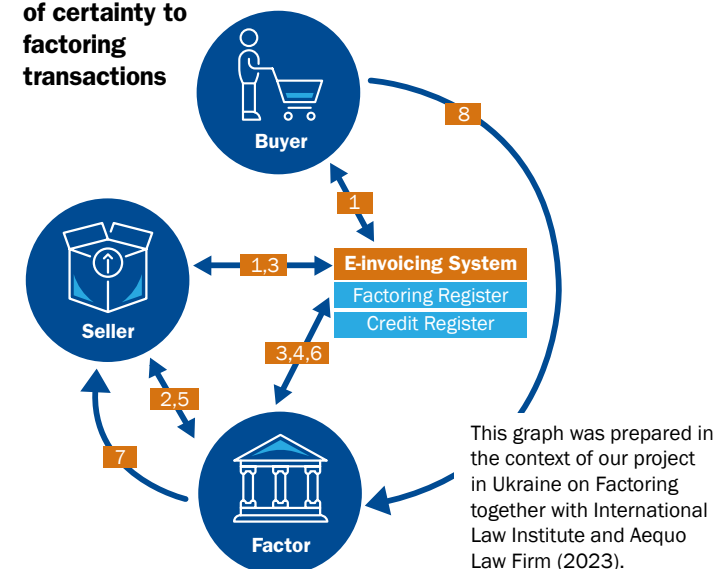
Besides tax implications, foreign exchange and late payment penalties are also important components for the development of the factoring industry. In order to decrease the risks associated with foreign exchange in international factoring, domestic factors should be allowed to purchase cross-border receivables from domestic clients in the (usually foreign) currency of the receivable. Our survey discovered that four surveyed jurisdictions (Morocco, Türkiye (for non-recourse factoring), Ukraine and Uzbekistan) have forex restrictions which vary in nature but usually provide for a restriction to the acceptance of payments in foreign currency. It is essential to stress that no extra risk is being introduced in the market if authorities allow the foreign currency receivables to be transferred into the hands of the domestic factoring industry for payment in the face currency of those receivables.

With regard to the interest charged on late payments, it is important to note that the legal frameworks of all the surveyed jurisdictions provide for some sort of recourse / interest for late payments.

To effectively manage factoring operations, financial institutions need to have a certain level of IT infrastructure. Nowadays, there are many vendors that offer off-the-shelf, cloud-based, IT solutions specifically tailored for streamlining the operations of financial institutions engaged in factoring. Financial institutions that decide to subscribe to such solutions, will usually need to agree to transfer the relevant data to jurisdictions where the IT service provider has its servers. There is almost always a possibility for in-house or in-country storage of data, but this typically comes at a significant surcharge. Therefore, it is important for national regulatory frameworks to enable transfer of data to other countries, as long as they ensure adequate protection thereof. The survey shows that eight out of ten surveyed jurisdictions allow for cross-border transfer of information to safe-listed countries and / or if a data subject provides consent to such transfers. However, in Egypt and Morocco these processes are quite burdensome, since they require approval from authorities.

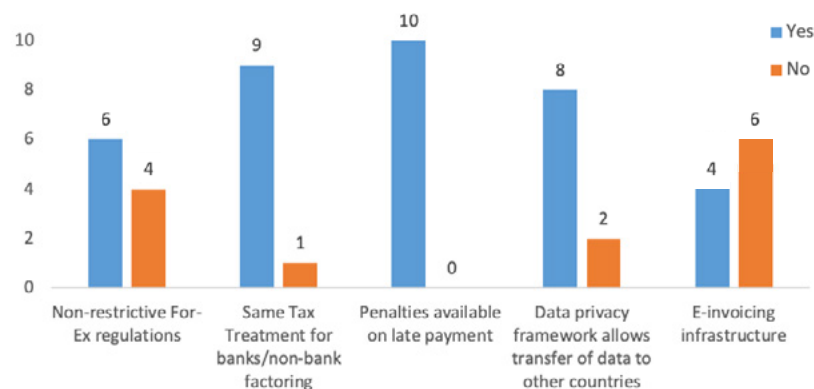
Electronic invoicing (e-invoicing) infrastructure is another important aspect for the development of the factoring industry. In jurisdictions where such infrastructure exists, electronic invoicing is mandated for all or the majority of B2B and / or B2G commercial relationships. This prompts all suppliers to issue invoices in a defined technical standard through the e-invoicing infrastructure. As the e-invoicing infrastructure is typically hosted by the relevant state revenue agencies, they have access to all invoices submitted. In addition to combatting informality, the existence of e-invoicing infrastructure provides an important verification layer, in order to ascertain the origin and authenticity of invoices. Among the surveyed jurisdictions, Armenia, Egypt, Kyrgyz Republic and Türkiye seem to have established centralised e-invoicing frameworks, with e-invoicing mandatory for both B2G and B2B transactions (albeit with some exceptions). In Romania, e-invoicing is currently only mandatory for B2G transactions. Electronic invoicing systems seem to be less developed and more decentralised in Georgia, Ukraine and Uzbekistan. There is no e-invoicing infrastructure in Greece and Morocco.

## E-invoicing: adding an element of certainty to factoring transactions



1. Upon supply of goods or services, the seller uploads a structured e-invoice (bundle of e-invoices) into the e-invoicing system, which is then automatically shared with the seller;
2. Factor conducts KYC procedures and establishes business relationship with the seller;
3. The seller shares the structured e-invoice (bundle of e-invoices) with the factor in a couple of clicks via the e-invoicing system interface;
4. The factor checks information on e-invoices in the Factoring Register and Credit Register via one single interface interconnected with the e-invoicing system;
5. The factor negotiates and enters into the factoring contract with the seller;
6. The factor records its rights of claim resulting from the factoring assignment in the Factoring Register, making the information available on request and establishing priority without the need for a separate notification;
7. The factor finances the seller according to the invoice (for instance, in the form of discounted payment);
8. The buyer pays the factor on the due date.

Miscellaneous issues by number of jurisdictions



Notably, no jurisdiction in our sample appears to offer any state-led programmes that directly or indirectly support the factoring market.

In addition to the individual profiles which elaborate the framework in detail, this fourth edition of the survey also features a summary one-pager for each jurisdiction which includes the key findings of the survey. This one-pager also includes a graph which applies the findings of the survey to a typical supply chain finance transaction and analyses the position of each party (*i.e.* buyer, supplier, financier). The case study and methodology of application can be found in [Annex B](#).

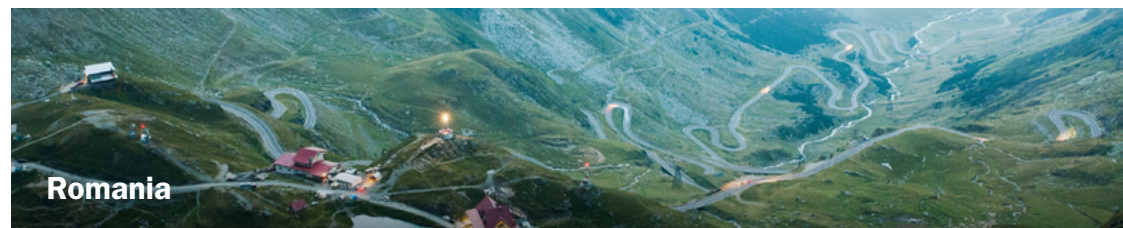
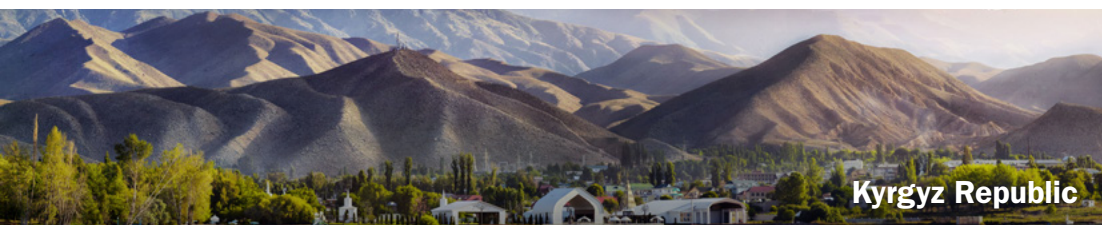
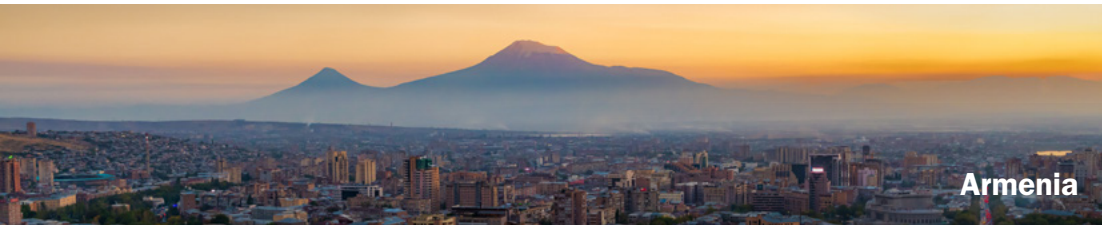
## Notable developments in the surveyed jurisdictions compared to the 3<sup>rd</sup> edition of the factoring survey (2018)

With regards to the progress the surveyed jurisdictions achieved since the third edition of the Factoring Survey was published, we would like to note the following developments:

- **Armenia** has not had notable changes in the legislation or practices, with exception of the slight take-off in the usage of e-signatures.
- **Egypt** increased capital adequacy requirements and introduced some other covenants for factoring companies – leverage, balance between assets and liabilities, liquidity standards, principles of assessing the credit level of clients and disclosure standards.
- Since the adoption of the Law on Microbanks in 2023 in **Georgia**, the new type of financial players – microbanks – were explicitly allowed to conduct factoring activities by virtue of their microbank licence, which is the first framework for regulation of factoring in Georgia. We also note a take-off in the popularity of e-signatures among businesses in Georgia.
- The Bank of **Greece** slightly revised regulatory framework in 2021 with respect to granting licences and the supervision of factoring companies.
- There are no notable changes in the legislative framework of the **Kyrgyz Republic**, although e-invoicing has become mandatory for most B2B and B2G transactions since mid-2020.
- **Morocco** ratified the UNIDROIT Convention on International Factoring in 2022.
- **Romania** has repealed the Act that provided the definition of factoring and at the moment there is no other piece of legislation that would define factoring.
- **Türkiye** made a number of amendments to the Factoring Law in 2018, including changes related to (i) licensing requirements (*i.e.* increase of minimum capital and removal of minimum number of shareholders), (ii) preventive measures that the regulator can take with respect to factoring companies, and (iii) factoring e-contracts.
- **Ukraine's** regulator – State Commission for Regulation of Financial Services Markets – was reformed in 2020 and the supervisory powers over factoring companies were passed onto the National Bank of Ukraine. Requirements for obtaining a licence by an NBFI were strengthened in 2021 (particularly with regards to the origin of the share capital). Ukraine is another jurisdiction where we observed an increase in electronic documents and signatures.
- In **Uzbekistan**, microfinance organisations do not need to obtain a licence to conduct factoring activities anymore, but instead are required to obtain a permission from the Central Bank. In 2022, capital adequacy requirements were introduced for factoring companies, which is seen as a negative development.
- It is worth noting that the **LTP is currently working with the governments of Georgia, Ukraine and Uzbekistan** to improve their frameworks governing factoring activities and bring them in line with best practices.



# Survey Reports







# Armenia

## List of relevant legislation / regulation

There have not been any changes in the legislative or regulatory framework governing factoring in Armenia since the last assessment, carried out in 2018-19. For the purposes of this edition of the survey, the following pieces of the Armenian legislation were considered: (i) Civil Code No. AL-239, dated 28.07.1998; (ii) Law “On credit institutions” No. LA-359-S; (iii) Regulation No. 13 of the board of the Central Bank of Armenia “On the procedure of licensing, registration, provision of consent and permission, verification of professional compliance and qualifications in the field of the activity of a credit institution”; (iv) Regulation No. 14 of the board of the Central Bank of Armenia “On the regulation of the activities of credit institutions, economic standards of the activities of credit institutions”; and (v) Law “On the protection of personal data” No. 49-ZR.

### 1. FACTORING OPERATIONS

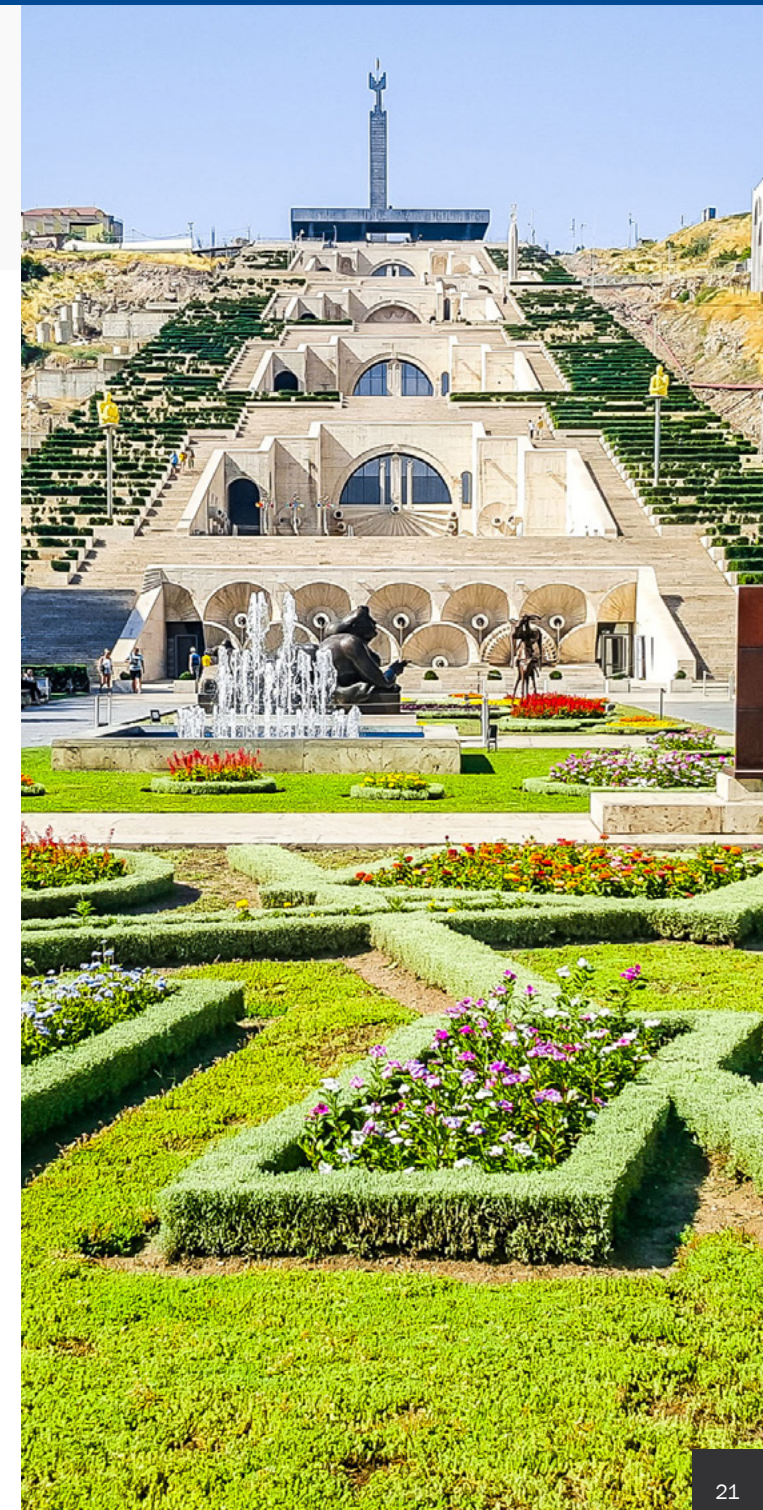
#### 1.1 Regulation of factoring operations

Under Armenian law, banks can offer factoring services by virtue of their banking licence. Apart from banks, “*credit organisations*” such as, factoring companies, leasing companies, and universal credit organisations may apply for a specific licence to perform factoring activities. The supervising authority is the Central Bank of the Republic of Armenia (the “**Central Bank**”), which is deemed to have sufficient supervisory and investigatory powers. The regulatory and supervisory approaches in Armenia seem to align with the principles of proportionality and risk-based supervision, where the intensity of regulatory requirements and supervisory oversight is based on the scale and nature of the activity.

#### 1.2 Licensing conditions and procedure

The procedure for licensing is essentially the same for all credit organisations. 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 approx. EUR 360,000) 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) meet the qualification requirements of the Central Bank; and (v) shareholders with at least a 10 per cent holding have received the Central Bank’s approval.

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





### 1.3 Capital adequacy and reporting requirements

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

Factoring companies are required to keep a minimum ratio between the general share capital and the total risk weighted assets of 10 per cent as well as a maximum single borrower risk of 25 per cent. The minimal amount of capital and charter capital size covenants is AMD 150 million.

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 AMD 100 million and a minimum ratio between the general share capital and the total risk weight assets of 8 per cent.

Credit organisations are also required to comply with anti-money laundering and data protection requirements.

### 1.4 Supervision of the factoring companies

The Central Bank, as a 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. PRIVATE AND COMMERCIAL LAW

### 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. 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 (art. 895) 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 the 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 no restrictions regarding the maximum time exposure of factoring companies to those receivables. As far as future receivables are concerned, the law requires such receivables to be defined in a manner that allows identification thereof at the time they arise, which is understood to be the name of the debtor, the name of the creditor, and the claim amount.

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 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 (wet ink or electronically). An electronic document protected by an electronic digital signature has the same legal effect as a document signed by a person in wet ink, unless the law states otherwise. Electronic signatures have been gaining momentum in commercial contracts in Armenia. Furthermore, electronic invoicing is mandatory in the territory of the Republic of Armenia in both B2B and B2G transactions. The validity of an e-invoice can be checked in the profile of a taxpayer on the website of the tax services.

The debtor's consent is not required, but 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 specifying the amount of the claim and factor's details or sufficient evidence, the debtor's payment to the original creditor discharges the debt. Notification cannot be validly achieved by adding language to an e-invoice sent to the debtor.

Registration of factoring contracts is not required and no stamp duty applies.

Any contractual prohibition of assignment does not invalidate the factoring agreement. However, in the 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. Reassignment of receivables is not allowed, unless otherwise agreed in the contract.

The debtor has a statutory right to present claims based on the contract concluded with the creditor that the debtor already had by the time of obtaining a notice from factor.

### 3. MISCELLANEOUS

Foreign exchange rules – Credit organisations (including factoring companies) have the right to perform their financial transactions in foreign currency, except for the provision of consumer loans and residential mortgage loans. 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 a 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 statutory late payment rate of 12 per cent applies, unless otherwise agreed in the contract.

Restrictions to data transfers – Personal data may be transferred to other countries with the subject's consent or where the transfer of data is made for processing of this data. There is an exception where data is transferred to a country from a "safe list".

No further development of the factoring legislation is reportedly being considered by the regulator.

### 4. MARKET INSIGHTS

According to the information received from the regulator, there are 18 banks and 31 licensed credit organisations offering factoring services in Armenia. The volume of domestic factoring transactions in 2022 was AMD 23,869,109, whereas the volume of cross-border factoring transactions was AMD 18,843,000. The weighted average growth rate of factoring in the past five years has been 1.4 per cent (the average growth rate being 2.7 per cent). In case of no major changes in economy or regulation, the estimated annual growth rate will be around 1.5-2.5 per cent.

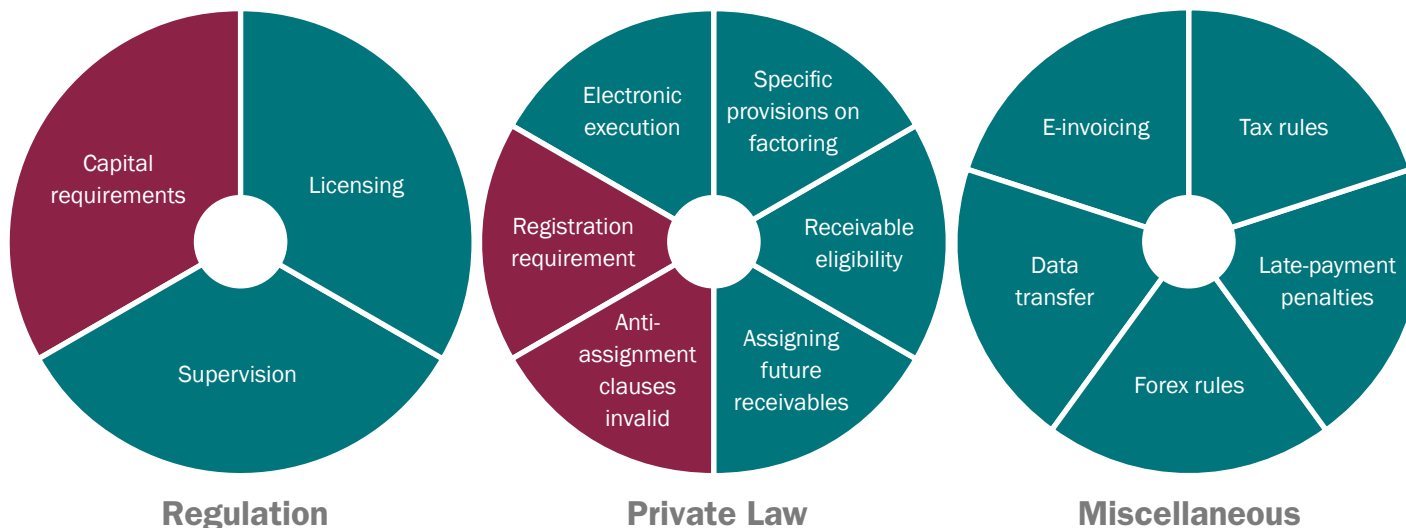
According to the Armenian banking association, the primary clientele of factoring services in Armenia appears to be large companies and SMEs, particularly in areas of fast-moving consumer goods, benefiting from reverse factoring programmes. The Union of Banks of Armenia confirmed that factors that are bank's clients have easy access to their clients' historical payment performance. The typical market terms of account payable is 30-60 days.

The two things that were flagged by the market participants as areas for further strengthening are accounting treatment applied to the factoring transactions and public contract enforcement.

According to the data from the FCI Annual Review 2023, factoring volumes in Armenia in 2022 amounted to EUR 146 million, a 2.5% increase from the previous year.



## Framework



## Case study application

● Not favourable
 ● Somewhat favourable
 ● Favourable
 ● Uncertain

Requirements of AB JSC	
Smooth on-boarding of suppliers <sup>1</sup>	Electronic execution <sup>2</sup>
<span style="color: red;">●</span>	<span style="color: green;">●</span>

Requirements of Factor Finance			
Verifiable authenticity of invoices <sup>3</sup>	Priority over third parties <sup>4</sup>	Insurance to cover risk of default <sup>5</sup>	Favourable tax treatment <sup>6</sup>
<span style="color: green;">●</span>	<span style="color: red;">●</span>	<span style="color: green;">●</span>	<span style="color: green;">●</span>

Requirements of Supplier Ltd.		
Smooth on-boarding <sup>7</sup>	Off-balance sheet financing <sup>8</sup>	Anti-assignment clauses invalid <sup>9</sup>
<span style="color: red;">●</span>	<span style="color: orange;">●</span>	<span style="color: orange;">●</span>

<sup>1</sup> Based on responses to Q. 44, 46 and Q. 64 of the Survey (see pg. 4-6 of the document)

<sup>2</sup> Based on responses to Q. 18 - 20 of the Survey

<sup>3</sup> Based on responses to Q. 21 - 25 of the Survey

<sup>4</sup> Based on responses to Q. 30 - 31 of the Survey

<sup>5</sup> Based on responses to Q. 45 of the Survey

<sup>6</sup> Based on responses to Q. 35 - 37 of the Survey

<sup>7</sup> Based on responses to Q. 44 and Q. 64 of the Survey

<sup>8</sup> Based on responses to Q. 45 and Q. 50 of the Survey

<sup>9</sup> Based on responses to Q. 33 - 34 of the Survey

## Market insights

**Factoring volumes (2022)**  
(FCI Annual Review 2023)

€ **EUR 164m**

**Factoring volume trend**  
**(2021 v. 2022)**  
(FCI Annual Review 2023)

↑ **2.5%**

**Banks/NBFIs offering factoring**  
Based on the response of  
Banking Association



**18 Banks**  
**31 NBFIs**

**New related-legislation/  
regulation planned**







# Egypt

## List of relevant legislation / regulation

There have been some notable changes in the prudential regulation of factoring companies in Egypt since the last assessment, carried out in 2018-19. For the purposes of this edition of the survey, 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 14.08.2018 (the “**Factoring Law**”); (ii) Financial Regulatory Authority’s decree No. 60/2017 issuing licensing requirements for companies wishing to undertake more than one financing activity (financial leasing, factoring and real estate financing), dated 19.04.2017; (iii) Financial Regulatory Authority’s decree No. 100/2020 regarding the governance rules for companies operating in the field of non-banking financial activities, dated 14.07.2020; (iv) Financial Regulatory Authority’s decree No. 137/2018 on the regulatory and supervisory control for factoring; (v) Financial Regulatory Authority’s decree No. 192/2018 regarding the financial solvency standards for companies offering factoring services, dated 31.12.2018; (vi) the Companies Law No. 159/198, and implementation regulations; (vii) Civil Code No. 131/1948; (viii) Financial Regulatory Authority’s decree No. 163/2018 regarding the regulations for offering factoring services, dated 22.11.2018; (ix) Financial Regulatory Authority’s decree No. 7/2019 regarding the rules and regulations regulating licensed companies offering factoring and financial leasing services, dated 16.02.2019; (x) Financial Regulatory Authority’s decree No. 72/2013 regarding the regulatory and supervisory controls for factoring activity, dated 12.01.2014; (xi) Law No. 10/2009 regulating the supervision of non-banking financial markets and instruments, and the establishment of the Financial Regulatory Authority, dated 01.07.2009; and (xii) Capital Market Law No. 95/1992.

## 1. FACTORING OPERATIONS

### 1.1 Regulation of factoring operations

The Egyptian Financial Regulatory Authority (the “**Authority**”) acts as a supervisory body and regulator for factoring companies and is deemed to have sufficient supervisory and investigatory powers.

Factoring companies are required to obtain a licence from the Authority before starting factoring operations. Banks cannot offer factoring services by virtue of their banking licence. 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 types 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 per cent of the company’s capital. Financial institutions’ shareholding shall be at least 25 per cent 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 per cent 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. If the factoring company intends to perform retail factoring, the minimum paid in share capital (in cash) is EGP 15,000,000.





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 IT 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 requirements, 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 eligible institutions) and its purchased commercial instruments was set to be not less than 10 per cent before 2022 and was increased to not less than 12 per cent at any time, effective from December 2022. Secondly, the new requirement mandated factoring companies to comply with a margin to cover the operational risk with a percentage of 15 per cent of the average operational profit of the last three years. Thirdly, factoring companies are now required to provide the Authority with their capital adequacy position in accordance with the template provided by the Authority every month.

Fourthly, the total loans and finances – except for supporting loans – obtained by the company should not exceed nine times the capital base of the company, after excluding the balances of loans and finances whose risks are covered by banks, factoring correspondents, credit risk coverage agencies, non-payment risk insurance companies, or through any other guarantees accepted by the Authority. The final change requires the ratio of liquid assets to net cash outflows within a thirty-day period be not less than 100 per cent.

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 per cent of the capital base of the company for single obligors or 25 per cent 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 per cent 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.

Factoring companies are also required to comply with anti-money laundering and data protection covenants.

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 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 comply 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. PRIVATE AND COMMERCIAL LAW

### 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.* assignor of the receivable) 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 is 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 is considered international when one of the parties is registered or is resident outside of Egypt. Under recourse factoring, 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 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 is silent on whether any type of factoring is considered a true sale transaction and there is no court practice on the matter.

## 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 both 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 (ii) and (iii) above. Retail receivables can arise 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 claim shall not be less than EGP 1,000 in order to be eligible for retail factoring.

There are no restrictions on the maturity of receivables or a maximum exposure for a factoring company towards a single receivable, except for retail receivables, maturity of which cannot be less than thirty days. The maturity date of the receivables must be stated in the factoring agreement.

The Factoring Law is silent about the ability of a 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 characterised 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 assignment of future receivables that are predicted to arise to the benefit of the seller (*i.e.* assignor of the receivable) as a result of the seller's activity,

provided that they comply with the eligibility requirements set out under the Factoring Law. This includes specifying the following details: name of the debtor and creditor, claim amount, claim invoice number and due date (if any).

## 2.3 Assignment of receivables

Pursuant to the Factoring Law, the parties shall enter into a written factoring contract with a wet-ink signature (as the law does not recognise equivalence between electronic and written communication) which shall comply with the template contract of the Authority.

Electronic data exchange messages cannot be used although electronic signatures are regulated, they are not widely used in practice. Electronic invoicing is mandatory in both B2B and B2G transactions. The validity of an e-invoice can be checked in the profile of the taxpayer on the website of the tax services.

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 and third parties after the service of a notification upon the debtor, and 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 according to Article 38 of the Factoring Law, the transfer of financial rights from the seller to the factoring company occurs "in accordance with the provisions of the Civil Code". The reference under the Factoring Law to the provisions of the Civil Code with respect to the assignment of rights has led to a confusion as to whether the notification is necessary and how to deliver it for the assignment to become effective vis-à-vis third parties (as it is the case under 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 (which means adding language to an e-invoice sent to the debtor is not a valid way of notifying), and (b) accepted by the debtor in writing with certified date (*i.e.* debtor's consent is required for the assignment to be valid and enforceable vis-à-vis third parties). 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. Notifying the debtor is therefore crucial as the first one to serve the notice on the debtor enjoys priority over the claim.

If a creditor assigns its rights to the factor and the debtor accepts the assignment without reservation, the debtor may not invoke a right of set-off against the creditor, which the debtor had the right to invoke before it accepted the assignment. In this case, the debtor can only invoke its right against the factor. If on the other hand, the debtor does not acknowledge the assignment, but has been notified of it, the assignment does not prevent the debtor from invoking the right of set-off.

While there's no legal certainty around this, market participants believe that the factoring contract becomes effective between the parties, as well as vis-à-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 writing in accordance with the Factoring Law.



The factor can reassign receivables to any entity licensed by the Authority to offer factoring services, local banks registered with the Authority or to any entity licensed to perform securitisation activities. Additionally, the factor may assign part or all of its rights in connection with international factoring to any foreign bank located outside of Egypt, which is subject to the supervision and control of an authority that has similar competencies to those of the Central Bank of Egypt.

Contractual prohibitions against 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.

Registration is required only for assignments by way of security, it can be done online and the website allows to alter existing records. 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 – Receivables assigned will be subject to contractual penalties stipulated under the contract generating the assigned receivable. If the contract itself is silent on the matter, general principles under the Civil Code apply, which provide for a default interest of 4 per cent in civil matters and 5 per cent in commercial matters to be calculated from the date of the judicial claim.

VAT issues – According to the VAT Law No. 67/2016, all non-banking financial services that are subject to the supervision and control of the Authority are exempt from VAT, and this includes factoring.

Restrictions to data transfers – The secondary regulation is expected to be adopted soon to ensure that personal data can only be transferred to a third country if it provides for a sufficient level of protection, and after receiving a licence or permit from the Personal Data Protection Centre that is yet to be established.

No further development of the factoring legislation is reportedly being considered by the regulator.

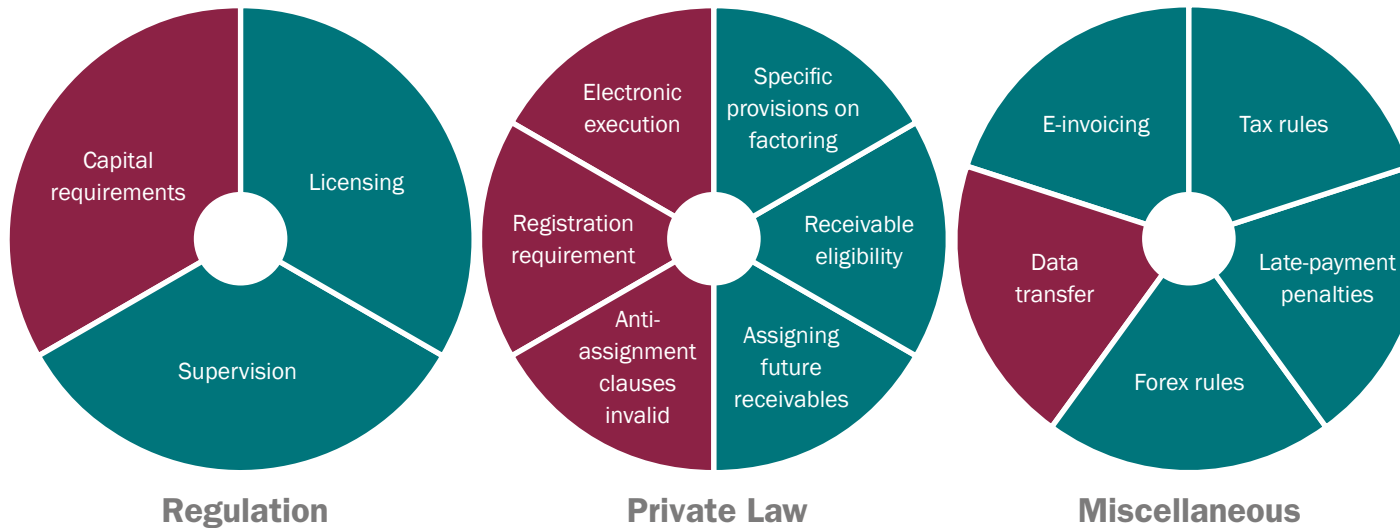
### 4. MARKET INSIGHTS

According to the information received from the regulator, there are 35 licensed NBFIs offering factoring services in Egypt. The volume of domestic factoring transactions in 2022 was EGP 31.3 billion, whereas the volume of export factoring was EGP 2.1 billion and that of import factoring – EGP 686 million. The volume of factoring transactions is expected to nearly double in the next five years.

According to the data from the FCI Annual Review 2023, factoring volumes in Egypt in 2022 amounted to EUR 1 billion, a 2.4% increase from the previous year.



## Framework



## Case study application

● Not favourable
 ● Somewhat favourable
 ● Favourable
 ● Uncertain

Requirements of AB JSC	
Smooth on-boarding of suppliers <sup>1</sup>	Electronic execution <sup>2</sup>
<span style="color: orange;">●</span>	<span style="color: red;">●</span>

Requirements of Factor Finance			
Verifiable authenticity of invoices <sup>3</sup>	Priority over third parties <sup>4</sup>	Insurance to cover risk of default <sup>5</sup>	Favourable tax treatment <sup>6</sup>
<span style="color: green;">●</span>	<span style="color: red;">●</span>	<span style="color: grey;">●</span>	<span style="color: green;">●</span>

Requirements of Supplier Ltd.		
Smooth on-boarding <sup>7</sup>	Off-balance sheet financing <sup>8</sup>	Anti-assignment clauses invalid <sup>9</sup>
<span style="color: orange;">●</span>	<span style="color: orange;">●</span>	<span style="color: red;">●</span>

<sup>1</sup> Based on responses to Q. 44, 46 and Q. 64 of the Survey (see pg. 4-6 of the document)

<sup>2</sup> Based on responses to Q. 18 - 20 of the Survey

<sup>3</sup> Based on responses to Q. 21 - 25 of the Survey

<sup>4</sup> Based on responses to Q. 30 - 31 of the Survey

<sup>5</sup> Based on responses to Q. 45 of the Survey

<sup>6</sup> Based on responses to Q. 35 - 37 of the Survey

<sup>7</sup> Based on responses to Q. 44 and Q. 64 of the Survey

<sup>8</sup> Based on responses to Q. 45 and Q. 50 of the Survey

<sup>9</sup> Based on responses to Q. 33 - 34 of the Survey

## Market insights

### Factoring volumes (2022)

(FCI Annual Review 2023 & FRA response)

€ **EUR 1B**

### Factoring volume trend

(2021 v. 2022)

(FCI Annual Review 2023)

↑ **2.4%**

### Banks/NBFIs offering factoring

Based on the response of the regulator



**35 NBFIs**

### New related-legislation/ regulation planned







# Georgia

## List of relevant legislation / regulation

There have not been any major changes in the legislative or regulatory framework governing factoring in Georgia since the last assessment. The following Georgian legislation was considered: (i) Law No. 121 “On activities of commercial banks”, dated 23.02.1996; (ii) Civil Code No. 786-IIS, dated 26.06.1997; (iii) Organic Law “On the National Bank of Georgia” No. 2828, dated 23.03.2010; and (iv) Law “On microfinance organisations” No. 3482, dated 18.07.2006.

### 1. FACTORING OPERATIONS

#### 1.1 Regulation of factoring operations

Banks can offer factoring services by virtue of their banking licence, and Georgian non-banking factoring companies are not required to obtain any licences, certifications or authorisations provided that they duly register with the Georgian Commercial Registry and obtain a certificate of registration. Since the adoption of the Law on Microbanks in 2023, microbanks were explicitly allowed to conduct factoring activities by virtue of their microbank licence. 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 have special provisions on factoring apart from mentioning factoring in the Georgian Banking Law. The mentioned law vaguely defines factoring as a 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

There are no capital adequacy requirements or reporting requirements similar to those of commercial banks applicable, however, this does not concern the annual audited reports, which NBFIs, for instance, microfinance organisations, shall submit to the National Bank of Georgia.

Banks and NBFIs are required to comply with anti-money laundering and data protection requirements.

#### 1.3 Supervision of the factoring companies

Due to absence of the factoring law, there is no clear concept of a factoring company and such entities are not supervised by the National Bank. However, this does not concern commercial banks or microfinance organisations that may conduct factoring activities by virtue of their licence / registration with the National Bank.

### 2. PRIVATE AND COMMERCIAL LAW

#### 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.

The Georgian law does not have specific provisions on factoring and hence no indication of the nature of different types of factoring. However, banks seem to 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 affected 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 multiple 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. The law recognises equivalence between electronic and written communication, but adding language to an e-invoice sent by the creditor to the debtor is not considered a due notification. Electronic signatures have become more widely used in business since our last assessment. However, electronic invoicing is not mandatory. Invoices uploaded to the tax services website (which are a fraction of all invoices) can be checked in the profile of the taxpayer by parties to the transaction.

Registration or debtor's consent is not required for the validity of assignment and no stamp duty applies.

There are no restrictions applicable to reassignment of receivables by the factor. The Civil Code allows contractual prohibition against assignment of receivables. A breach of such provision invalidates the assignment.

It is unclear whether the debtor has the right to invoke defences and rights of set-off against the factor.

## 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.

Restrictions to data transfers – Personal data can only be transferred to a third country if it offers a sufficient level of protection on the basis of an agreement between a data processor and a respective country with a permission from the Georgian Personal Data Protection Service.

Development of the factoring legislation – The EBRD has prepared the amendments to the following pieces of legislation, expected to be adopted in 2024, to create a conducive environment for factoring:

- Organic Law of Georgia on the National Bank of Georgia;
- Law of Georgia on Activities of Commercial Banks;
- Law of Georgia on Microfinance Organisations;
- Civil Code of Georgia;
- Law of Georgia on Facilitating the Suppression of Money Laundering and Terrorism Financing;
- Law of Georgia on Accounting, Reporting and Auditing;
- Law of Georgia on Registration Fees;
- Law of Georgia on Investment Funds; and
- Law of Georgia on Securities Market.

Additionally, IFC is working on expansion of Assets-Based Finance (ABF), which includes factoring (including reverse factoring), pre-shipment finance, distributor finance, secured revolving lines of credit, warehouse receipts finance, secured merchant cash advance etc. The plan is to assess and support improvements in (i) legislation / regulations, (ii) the technological infrastructure for ABF, (iii) financial institutions' ABF product offering, and (iv) SME knowledge and capacity to leverage ABF.

## 4. MARKET INSIGHTS

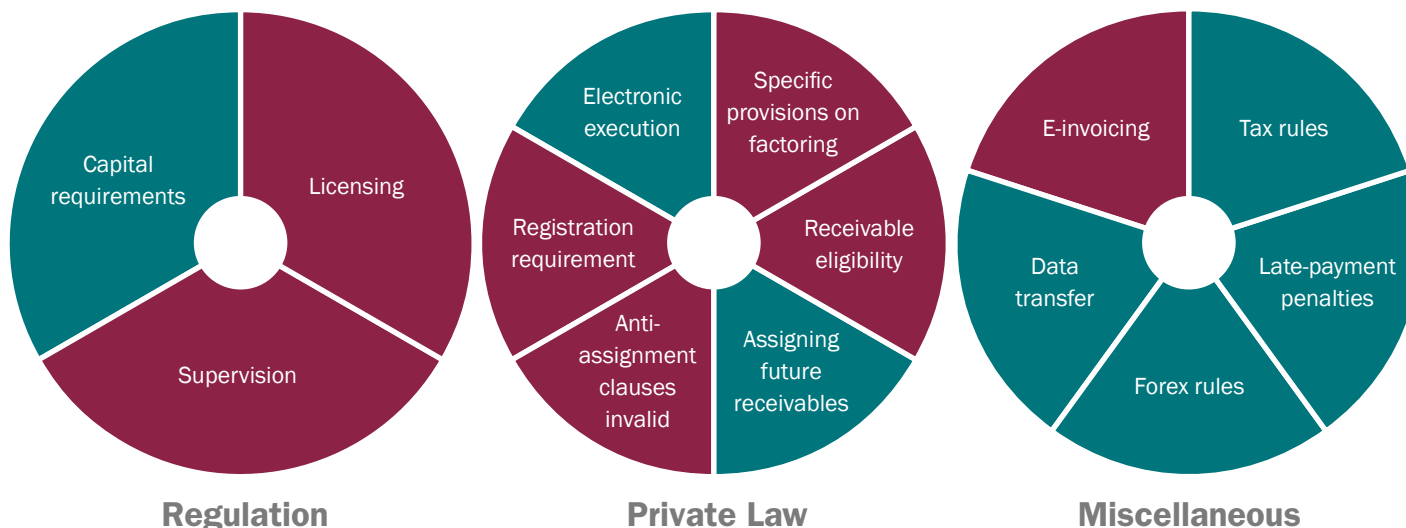
According to the information received from the regulator, there are five banks offering factoring services in Georgia. The volume of factoring transactions in 2022 was GEL 180 million. The estimated volume for factoring transactions is expected to reach GEL 400-500 million stock in the next five years.

According to the data from the FCI Annual Review 2023, factoring volumes in Georgia in 2022 amounted to EUR 247 million, a 33.5% increase from the previous year.



# Georgia

## Framework



## Case study application

● Not favourable ● Somewhat favourable ● Favourable ● Uncertain

Requirements of AB JSC	
Smooth on-boarding of suppliers <sup>1</sup>	Electronic execution <sup>2</sup>
●	●

Requirements of Factor Finance			
Verifiable authenticity of invoices <sup>3</sup>	Priority over third parties <sup>4</sup>	Insurance to cover risk of default <sup>5</sup>	Favourable tax treatment <sup>6</sup>
●	●	●	●

Requirements of Supplier Ltd.		
Smooth on-boarding <sup>7</sup>	Off-balance sheet financing <sup>8</sup>	Anti-assignment clauses invalid <sup>9</sup>
●	●	●

<sup>1</sup> Based on responses to Q. 44, 46 and Q. 64 of the Survey (see pg. 4-6 of the document)

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<sup>8</sup> Based on responses to Q. 45 and Q. 50 of the Survey

<sup>9</sup> Based on responses to Q. 33 - 34 of the Survey

## Market insights

### Factoring volumes (2022)

(FCI Annual Review 2023)

€ EUR 247m

### Factoring volume trend (2021 v. 2022)

(FCI Annual Review 2023)

↑ 33.5%

### Banks/NBFIs offering factoring

Based on the response of the regulator



5 Banks

### New related-legislation/ regulation planned



New factoring law expected to pass in 2024





# Greece

## List of relevant legislation / regulation

There have not been any major changes in the legislative or regulatory framework governing factoring in Greece since the last assessment. The following Greek legislation was considered: (i) Law No. 1905/1990 on factoring agreement and other provisions; (ii) Bank of Greece Executive Committee Act 193/1 from 27.09.2021 regarding the authorisation requirements for, inter alia, factoring companies; (iii) Bank of Greece Executive Committee Act 193/2 from 27.09.2021 regarding organisational requirements of, inter alia, factoring companies; and (iv) Greek Civil Code.

### 1. FACTORING OPERATIONS

#### 1.1 Regulation of factoring operations

In accordance with Law 1905/1990, factoring services can be provided by credit institutions or *société anonymes* that are exclusively engaged in the offering of factoring services (together referred to as “**NBFIs**”). The Bank of Greece 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, including minimum initial capital of no less than EUR 4.5 million, such amount corresponding to 1/4 of the respective minimum initial capital required for the authorisation of credit institutions established in the form of *sociétés anonymes*. Such initial capital must be paid up in cash. By way of exemption, upon permission by the Bank of Greece, up to half of the initial capital of a factoring company (EUR 2.25 million) can be subscribed by contribution in kind, provided that this covers its needs.

Furthermore, in the context of the licensing process, factoring companies shall disclose to the Bank of Greece: (i) all (direct and indirect) holders of a qualifying holding (set at 10 per cent) or persons otherwise exercising control on them; (ii) twenty largest shareholders (natural or legal persons); (iii) all members of the board of directors; and (iv) all key function holders.

Each of the persons falling under (i) above is required to submit a questionnaire for the assessment of the proposed acquisition of a qualifying holding in the factoring company, while each of the persons falling under (iii) and (iv) above is required to submit a questionnaire for their fit and proper assessment by the Bank of Greece. Upon review of the information disclosed on the factoring company's largest shareholders, the Bank of Greece may at its discretion request the submission of a qualifying holding questionnaire by additional persons (further to the holders of a qualifying holding). The Bank of Greece has the right to oppose the participation or appointment of any of the above persons as part of its suitability assessment.

When applying for the factoring licence, factoring 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 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.). Factoring companies shall submit, among others, their articles of association, a feasibility study, including full and detailed development and action plan for the first three years of their operation.





### 1.3 Capital adequacy and reporting requirements

Factoring companies are under an ongoing obligation to report to the Bank of Greece any change of the persons that have 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.

Factoring companies shall at all times satisfy own funds requirements by holding eligible capital no lower than the minimum initial capital.

Factoring companies are required to report: (i) quarterly (not audited): (a) details on their shareholding structure, (b) details of any qualifying holdings in a financial institution, (c) details of any qualifying holdings in a non-financial institution, (d) details of any customer's (natural or legal persons) obligations, who have a special relation with them, (e) an accounting statement on their activity in accordance with the International Financial Reporting Standards; (ii) semi-annually: published six-month financial statements (if applicable); and (iii) annually (audited): (a) published annual financial statements, (b) reports on their internal control systems.

Factoring companies are also required to comply with anti-money laundering and data protection covenants.

### 1.4 Supervision of the factoring companies

The Bank of Greece, which is deemed to have sufficient supervisory and investigatory powers, is entitled to issue, revoke and suspend factoring licences, to supervise the activity of factoring companies, issue mandatory instructions and impose penalties.

In this regard, the thresholds triggering the prior notification and pre-approval requirement for (directly or indirectly) acquiring or increasing a qualifying holding in a factoring company are: 10 per cent, 20 per cent, 33.33 per cent, 50 per cent.

## 2. PRIVATE AND COMMERCIAL LAW

### 2.1 Definition of the factoring contract

According to the Law No. 1905/1990 on Factoring (the **"Factoring Law"**), *"a factoring agreement is an agreement concluded in writing between a supplier of goods and services, engaged in the supply of goods and services as their main professional activity, and a factor that undertakes to provide the supplier for an agreed period of time against a fee services relating to the monitoring and collection of one or part or all of the supplier's receivables mainly arising from agreements for the sale of goods, the provision of services or the performance of works"*.

Even though the Factoring Law does not specifically provide for the different types of factoring, legal theory has drawn a distinction between the following types of factoring by reference to their different characteristics as developed in practice: (i) recourse and non-recourse factoring; (ii) domestic and international factoring; (iii) disclosed and undisclosed factoring; (iv) advance and maturity factoring. The above distinction is widely recognised by Greek courts.

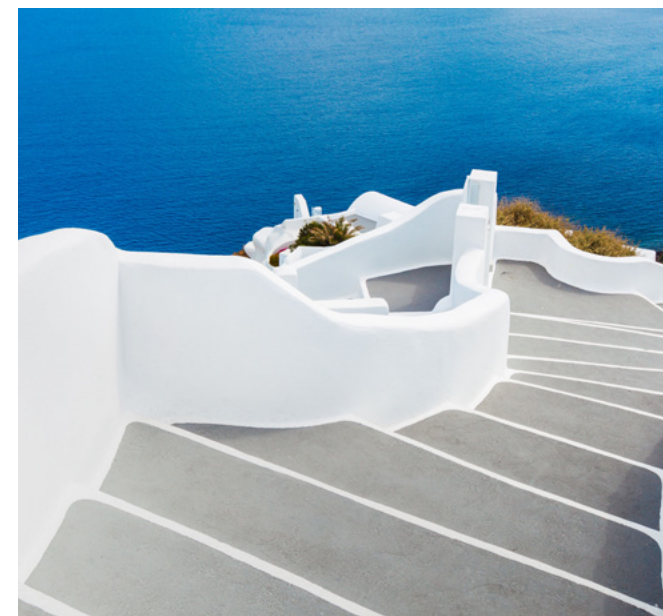
Greece is not a member to the UNIDROIT Convention on International Factoring or UNCITRAL Convention on the Assignment of Receivables in International Trade.

### 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. 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.

Any contractual prohibition against the assignment of receivables is ineffective in case of factoring. 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 assignment to 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. It is not clear whether recourse factoring is treated as a true sale transaction or secured lending transaction.



### 2.3 Assignment of receivables

The factoring agreement must be concluded in writing. Both wet-ink signature and electronic signature would suffice. In this regard, under the Greek law, an electronic document executed via a qualified electronic (digital) signature has the same legal value as a document signed by a person in wet ink. Although Regulation (EU) 910/2014 (eIDAS Regulation) applies in Greece, electronic signature is not widely used.

The registration of assignment is not required. Notification of the assignment to the debtor is required for the assignment to be enforceable vis-à-vis the debtor and third parties, 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. Invoices in electronic form carry the same weight as invoices in paper form and the notification can be validly achieved by adding a reference to the invoices sent by the supplier to the debtor. However, electronic invoicing is not mandatory in Greece and the validity of an e-invoice cannot be checked on a dedicated website.

Contractual prohibition against assignment of payments under the contract does not invalidate the assignment.

The debtor can raise the right of set-off only if it was available to the debtor at the specific time in the past.

### 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** – The assignment of receivables is subject to VAT at standard rate of 24 per cent. The factoring companies have the right to deduct input VAT corresponding to the factoring services. To the extent that credit institutions perform both VAT exempt and non-exempt activities, they can deduct input VAT only pro-rata.



This does not apply to NBFIs engaged in factoring, to the extent that they only provide non-exempt activities, such as factoring.

**Consequences of late payments** – In case of failure by a party to timely fulfil its payment obligation, default interest of 2.5 per cent per year will be incurred.

**Restrictions to data transfers** – Transfers of personal data outside Greece (and the European Union (“EU”)) are permitted only under certain conditions; the transfer of personal data should be in compliance with the general principles relating to the processing of personal data (e.g. lawfulness, transparency, accuracy, purpose limitation, accountability) and the provisions on international data transfers set out in the GDPR (*i.e.* adequacy decision, appropriate safeguards etc.).

No further development of the factoring legislation is reportedly being considered.

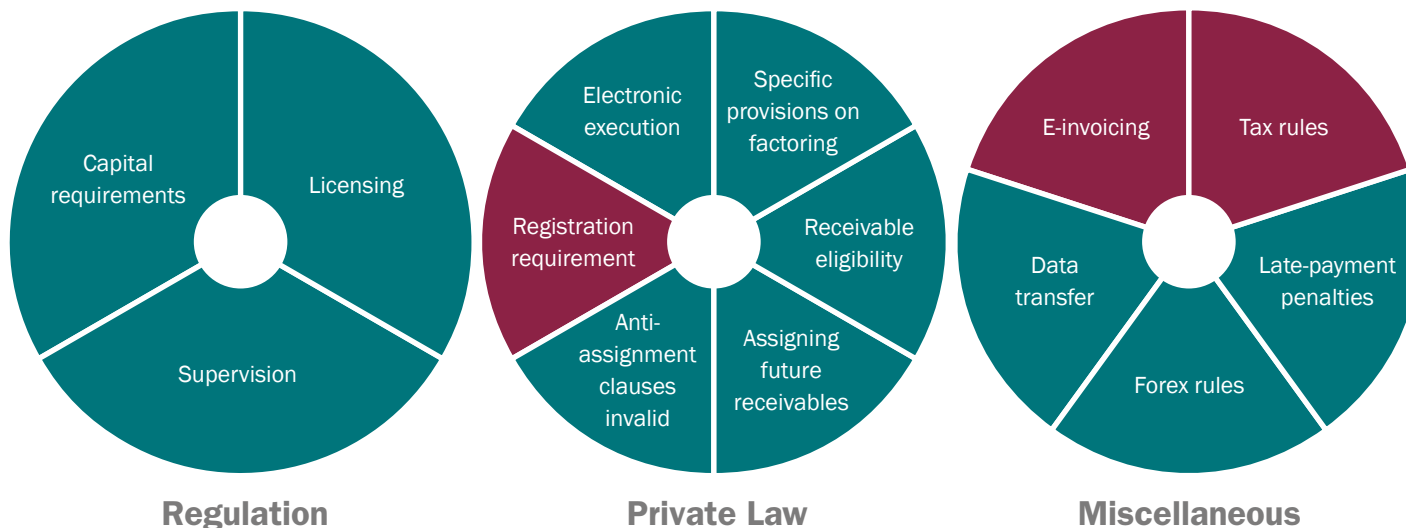
### 4. MARKET INSIGHTS

According to the information provided by the Bank of Greece, there are six credit institutions offering factoring services in Greece, five of which are affiliated with banks. The total operating income of factoring companies was EUR 74.9 million in 2022.

The volume of domestic factoring transactions in 2022 was EUR 20.6 million, and that of international factoring – EUR 2.9 million, in line with the data from the Hellenic Factors Association website.

According to the data from the FCI Annual Review 2023, factoring volumes in Greece in 2022 amounted to EUR 23 billion, a 31% increase from the previous year.

## Framework



## Case study application

● Not favourable ● Somewhat favourable ● Favourable ● Uncertain

Requirements of AB JSC	
Smooth on-boarding of suppliers <sup>1</sup>	Electronic execution <sup>2</sup>
● Favourable	● Favourable

Requirements of Factor Finance			
Verifiable authenticity of invoices <sup>3</sup>	Priority over third parties <sup>4</sup>	Insurance to cover risk of default <sup>5</sup>	Favourable tax treatment <sup>6</sup>
● Somewhat favourable	● Not favourable	● Uncertain	● Favourable

Requirements of Supplier Ltd.		
Smooth on-boarding <sup>7</sup>	Off-balance sheet financing <sup>8</sup>	Anti-assignment clauses invalid <sup>9</sup>
● Favourable	● Uncertain	● Favourable

<sup>1</sup> Based on responses to Q. 44, 46 and Q. 64 of the Survey (see pg. 4-6 of the document)

<sup>2</sup> Based on responses to Q. 18 - 20 of the Survey

<sup>3</sup> Based on responses to Q. 21 - 25 of the Survey

<sup>4</sup> Based on responses to Q. 30 - 31 of the Survey

<sup>5</sup> Based on responses to Q. 45 of the Survey

<sup>6</sup> Based on responses to Q. 35 - 37 of the Survey

<sup>7</sup> Based on responses to Q. 44 and Q. 64 of the Survey

<sup>8</sup> Based on responses to Q. 45 and Q. 50 of the Survey

<sup>9</sup> Based on responses to Q. 33 - 34 of the Survey

## Market insights

**Factoring volumes (2022)**  
(FCI Annual Review 2023)

€ **EUR 23B**

**Factoring volume trend**  
**(2021 v. 2022)**  
(FCI Annual Review 2023)

↑ **31%**

**Banks/NBFIs offering factoring**  
Based on the response of  
the regulator

 **6 NBFIs**

**New related-legislation/  
regulation planned**







# Kyrgyz Republic

## List of relevant legislation / regulation

There have not been any changes in the legislative or regulatory framework governing factoring in the Kyrgyz Republic since the last assessment, with the exception of changes in the e-invoicing regime. For the purposes of this edition of the survey, the following Kyrgyz legislation was considered: (i) the Civil Code No. 15, dated 08.05.1996 (as amended); (ii) Law No. 59 on the National Bank of the Kyrgyz Republic, dated 29.07.1997 (as amended); (iii) Law No. 93 on banks and banking activity, dated 11.08.2022; (iv) Law No. 124 on microfinance organisations, dated 23.07.2002; and (v) Regulation No. 18/3 on classification of assets and related deductions to the reserve for potential losses and damages, dated 21.07.2004.

### 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 organisations (microcredit and microfinance institutions, but not credit unions) as well as other commercial organisations 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 a “banking” licence, which is necessary for performing, among other activities, factoring, a microfinance company must provide the following information to the National Bank: copies of the constitutive documents, general

organisational 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 authorised 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.

There are also anti-money laundering and data protection requirements applicable to microfinance companies.

#### 1.4 Supervision of the factoring companies

The National Bank is deemed to have sufficient powers and entitled to: establish prudential regulations, issue directives, guidelines and recommendations, perform inspections of banks and microfinance institutions’ activities, request and receive information and reports, impose financial rehabilitation measures such as interim administration, establishment of direct banking supervision, penalties, suspension or revocation of licence etc.



## 2. PRIVATE AND COMMERCIAL LAW

### 2.1 Definition of the factoring contract

There is no special law on factoring. Regulation No. 18/3 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, factoring may have receivables arising from the sale of goods and delivery of services or works as object. 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. The minimum requirements with respect to the identification of the future receivables are the names of the debtor and creditor and the claim amount.

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

### 2.3 Assignment of receivables

Written form (wet ink or electronically) is mandatory for any contracts concluded between legal persons, between legal persons and natural persons and between natural persons (only if a contract value is above a set threshold). In light of such requirements, factoring agreements must be concluded in writing.

The law recognises equivalence between electronic and written communication, but electronic form is used mostly by financial institutions.

Larger companies in the Kyrgyz Republic are required to issue electronic invoices. Issuance, exchange and reception of e-invoices is done via ESF ([salyk.kg](http://salyk.kg)). Invoices in electronic form carry the same weight as invoices in paper form. The validity of an e-invoice can be checked online. It is unclear whether notification to the debtor can be validly achieved by adding language to an e-invoice sent to the debtor.

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. There are no restrictions applicable to reassignment of receivables by the factor.

The debtor has the right to invoke defences and rights of set-off against the factor, but this right can be limited contractually / by way of subsequent agreements.

## 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 per cent penalty per year of the amount in arrears, unless the parties’ agreement establishes a higher amount.

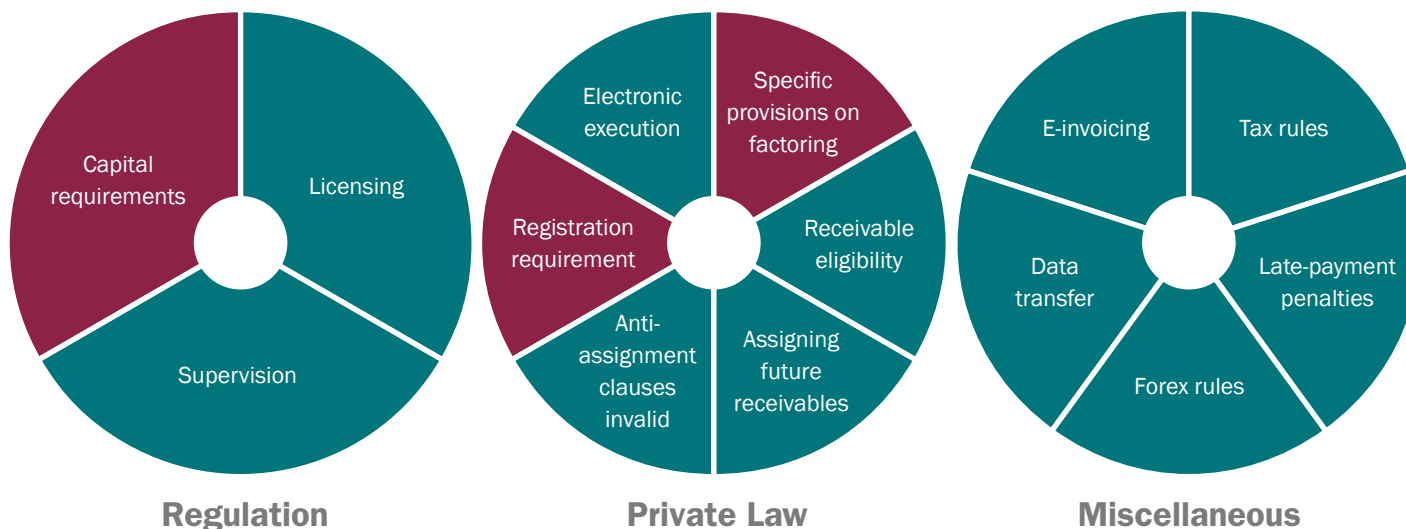
Restrictions to data transfers – Personal data can only be transferred to a third country if the third country provides a sufficient level of protection (as established by treaties between the countries). The transfer of personal data to countries that do not provide an adequate level of protection can take place with the subject’s consent. When transferring personal data, the holder of the personal data shall ensure necessary protection of the data, while respecting confidentiality.

No further development of the factoring legislation is reportedly being considered.

## 4. MARKET INSIGHTS

Nothing to report yet.

## Framework



## Case study application

● Not favourable
 ● Somewhat favourable
 ● Favourable
 ● Uncertain

Requirements of AB JSC	
Smooth on-boarding of suppliers <sup>1</sup>	Electronic execution <sup>2</sup>
<span style="color: orange;">●</span>	<span style="color: red;">●</span>

Requirements of Factor Finance			
Verifiable authenticity of invoices <sup>3</sup>	Priority over third parties <sup>4</sup>	Insurance to cover risk of default <sup>5</sup>	Favourable tax treatment <sup>6</sup>
<span style="color: red;">●</span>	<span style="color: red;">●</span>	<span style="color: grey;">●</span>	<span style="color: green;">●</span>

Requirements of Supplier Ltd.		
Smooth on-boarding <sup>7</sup>	Off-balance sheet financing <sup>8</sup>	Anti-assignment clauses invalid <sup>9</sup>
<span style="color: orange;">●</span>	<span style="color: grey;">●</span>	<span style="color: orange;">●</span>

<sup>1</sup> Based on responses to Q. 44, 46 and Q. 64 of the Survey (see pg. 4-6 of the document)

<sup>2</sup> Based on responses to Q. 18 - 20 of the Survey

<sup>3</sup> Based on responses to Q. 21 - 25 of the Survey

<sup>4</sup> Based on responses to Q. 30 - 31 of the Survey

<sup>5</sup> Based on responses to Q. 45 of the Survey

<sup>6</sup> Based on responses to Q. 35 - 37 of the Survey

<sup>7</sup> Based on responses to Q. 44 and Q. 64 of the Survey

<sup>8</sup> Based on responses to Q. 45 and Q. 50 of the Survey

<sup>9</sup> Based on responses to Q. 33 - 34 of the Survey

## Market insights

### Factoring volumes (2022)

**No data**

### Factoring volume trend (2021 v. 2022)

**No data**

### Banks/NBFIs offering factoring Based on the response of the regulator

**No data**

### New related-legislation/ regulation planned







# Morocco

## List of relevant legislation / regulation

There have not been any major changes in the legislative or regulatory framework governing factoring in Morocco since the last assessment. The following Moroccan legislation was considered: (i) Law No. 103-12 in relation to credit institutions and similar organisations promulgated by Dahir No. 1-14-193, dated 24.12.2014 (the “**Banking Law**”); (ii) Code of obligations and contracts, dated 12.08.1913 (the “**Code of Obligations and Contracts**”); and (iii) Law No. 15-95 establishing the Commercial Code, dated 01.08.1996 (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 licences 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 licence will vary with the activity that has been 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 licences.

#### 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 an annual consolidated, sub-consolidated and individual basis.

There are also anti-money laundering and data protection requirements applicable to NBFI providers of factoring services.

#### 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) suspension of one or more directors, (ii) prohibition or restriction to exercise certain operations by the credit institution in question, (iii) appointment of a provisional administrator over that credit institution, and / or (iv) the withdrawal of the licence.







## 2. PRIVATE AND COMMERCIAL LAW

### 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 mobilise 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 United Nations Convention on Assignment of Receivables in International Trade but has ratified the UNIDROIT Convention on International Factoring in 2022.

### 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. The minimum requirements with respect to the identification of the future receivables are the names of the debtor and creditor, claim amount and claim invoice number and due date (if any).

Drawing from the definition, eligible receivables must also originate from “trade”.

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. 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. It is unclear whether notification to the debtor can be validly achieved by adding language to an e-invoice sent to the debtor.

Factoring contracts must be concluded in writing (wet ink or electronically) and are recommended to be notarised. Electronic signature is regulated by law but is not widely used. Electronic invoicing is possible (but not mandatory) if a physical invoice is issued simultaneously. Validity of electronic invoices cannot be checked online.

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. There are no restrictions applicable to reassignment of receivables by the factor.

The debtor has the right to invoke defences and rights of set-off against the factor, but this right can be limited contractually / by way of subsequent agreements.





### 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 authorised 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 transactions in Morocco are subject to VAT of 10 per cent 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. When no specific interest rate was

foreseen by the parties, compensation is to be calculated on the basis of the Bank Al Maghrib's reference rate, increased by at least 7 percentage points. In practice, however, tribunals tend to apply the former 6 per cent interest rate.

**Restrictions to data transfers** – Transfer of personal data to third countries is subject to the prior authorisation of the national data protection authority.

No further development of the factoring legislation is reportedly being considered.

### 4. MARKET INSIGHTS

According to the information available on the website of the Central Bank, the volume of factored receivables had gradually dropped from MAD 15.8 billion in 2020 to MAD 14.5 billion in 2021, before a spike in 2022 to MAD 194.2 billion (around EUR 1.3 billion). At the same time, the FCI estimates that the volume of factoring transactions has remained steady since 2018 at the EUR 3-3.7 billion mark.

According to the data from the FCI Annual Review 2023, factoring volumes in Morocco in 2022 amounted to EUR 2.5 billion, a 50% increase from the previous year.

We also consulted with a Moroccan branch of the Spanish bank that provided some insight into the clientele of factoring services in Morocco that is primarily in the pharma, agribusiness, logistic and transport sectors. It was reported that the data on companies' historical payment performance is limited.

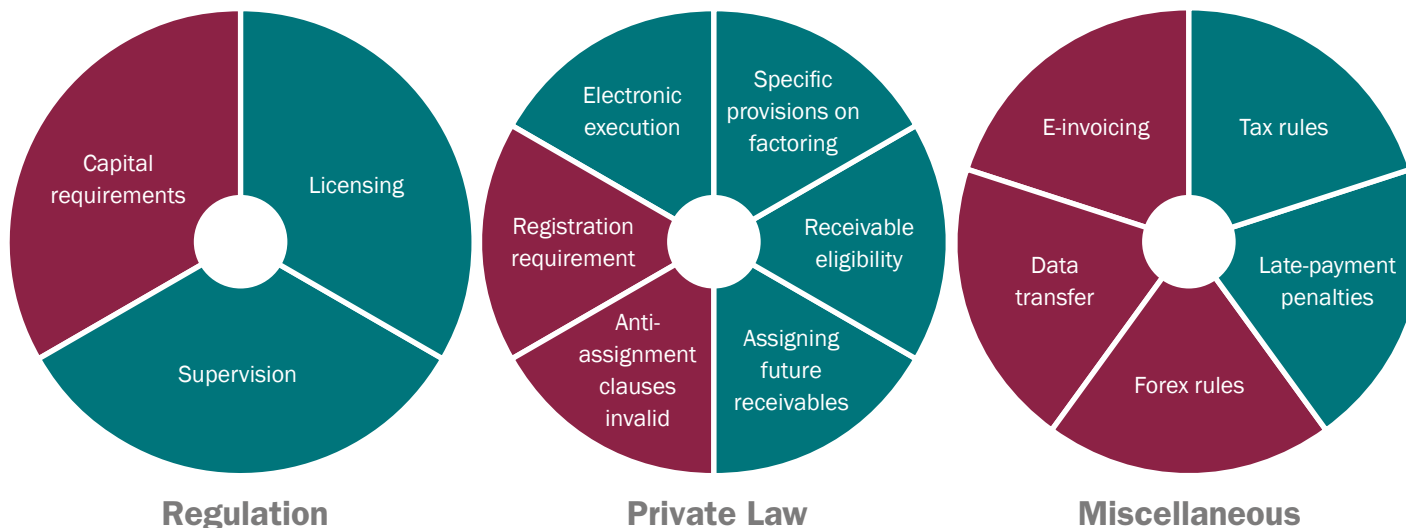
The typical market terms of account payable is 60-90 days.

The things that were flagged by the market participants as areas for further strengthening are:

- Accounting treatment applied to the factoring transactions;
- Foreign exchange rules;
- Fraud issues; and
- Weak contract enforcement.



## Framework



## Case study application

● Not favourable
 ● Somewhat favourable
 ● Favourable
 ● Uncertain

Requirements of AB JSC	
Smooth on-boarding of suppliers <sup>1</sup>	Electronic execution <sup>2</sup>
<span style="color: red;">●</span>	<span style="color: red;">●</span>

Requirements of Factor Finance			
Verifiable authenticity of invoices <sup>3</sup>	Priority over third parties <sup>4</sup>	Insurance to cover risk of default <sup>5</sup>	Favourable tax treatment <sup>6</sup>
<span style="color: red;">●</span>	<span style="color: red;">●</span>	<span style="color: green;">●</span>	<span style="color: green;">●</span>

Requirements of Supplier Ltd.		
Smooth on-boarding <sup>7</sup>	Off-balance sheet financing <sup>8</sup>	Anti-assignment clauses invalid <sup>9</sup>
<span style="color: red;">●</span>	<span style="color: green;">●</span>	<span style="color: red;">●</span>

<sup>1</sup> Based on responses to Q. 44, 46 and Q. 64 of the Survey (see pg. 4-6 of the document)

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<sup>7</sup> Based on responses to Q. 44 and Q. 64 of the Survey

<sup>8</sup> Based on responses to Q. 45 and Q. 50 of the Survey

<sup>9</sup> Based on responses to Q. 33 - 34 of the Survey

## Market insights

### Factoring volumes (2022)

(Bank Al-Maghrib 2022 Annual Report)

€ **EUR 2.5B**

### Factoring volume trend (2021 v. 2022)

(Bank Al-Maghrib 2022 Annual Report)


**↑ 50%**

### Banks/NBFIs offering factoring

Based on the FCI Annual Review 2023 & Bank Al-Maghrib Banking Supervision Annual Report 2020


**5 Banks**  
**2 NBFIs**

### New related-legislation/ regulation planned



However, it ratified the UNIDROIT Convention on International Factoring in 2022

# Romania

## List of relevant legislation / regulation

The most notable change since our previous assessment is that Romania has repealed the act that provided the definition of factoring. The following Romanian legislation was considered: (i) Civil Code No. 287/2009, dated 17.07.2009; (ii) the Law No. 93 on non-banking financial institutions, dated 08.04.2009; and (iii) Regulation No. 20/2009 on non-banking financial institutions issued by the National Bank of Romania.

### 1. FACTORING OPERATIONS

#### 1.1 Regulation of factoring operations

Under Romanian law, factoring operations are deemed to be credit 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 “**NBFIs**”). 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 that previously defined factoring was repealed in 2023. Currently, there are several references to types of factoring used in various pieces of legislation, but no definition provided.

#### 1.2 Licensing conditions and procedure

In order to perform factoring activities, a company duly incorporated in accordance with the Companies Law needs to meet the requirements set out for NBFIs 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). NBFIs must maintain a minimum level of own funds of at least the value of the minimum share capital.

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 including: 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 specialised 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 per cent 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.

There are also anti-money laundering and data protection requirements applicable to NBFIs.

### 1.4 Supervision of the factoring companies

The National Bank's supervisory duties include performing inspections in the offices of NBFIs and applying sanctions such as fines (to the NBFI or its management), referring cases to law enforcement authorities, issuing a written warning, temporary suspension of one or more activities, de-registration of the NBFI from the relevant Registry held by the National Bank.

## 2. PRIVATE AND COMMERCIAL LAW

### 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, 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. 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

As a general rule, assignment of receivables is a consensual agreement and may be executed in any form chosen by the parties. However, for evidentiary reasons, we recommend the assignment agreement to be concluded in written form, bearing signatures of the parties (either wet-ink signatures or qualified electronic signatures as per eIDAS Regulation). Furthermore, the consumer protection legislation requires the contracts concluded with consumers to be in a written form. In order for the assignment agreement to be easily enforceable in Romania, the assignment agreement (if not concluded in Romanian language) must be translated into the Romanian language by an official translator and the signature of the translator must be duly legalised in accordance with Romanian law.

The law does not generally recognise equivalence between electronic and written communication (however, invoices in electronic form carry the same weight as invoices in paper 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 signatures, but such method is still not widely used.

Electronic invoicing is possible, but mandatory only in B2G transactions. It is envisaged that e-invoicing will become mandatory in all B2B relations by 2024. Invoices sent via the national electronic invoice system "RO e-Factura" can be checked online, but invoices sent via other private platforms cannot.

Registration 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 (both for security and outright transfers). The creditor who registers the assignment in the National Register of Movable Publicity first has priority over the claim. There is a public website with registered assignments, but the submission of the registrations is performed by a licensed service provider on an API integration. Existing records can be altered with a link to

the original registration in limited circumstances (e.g. to correct clerical errors in the description of the underlying assignment or the identity details of the parties, to change or update the description of the underlying assignment or to update the identification details of one of the parties). Information submitted to the registry becomes publicly available and searchable usually within 12 hours. It is a fully electronic, efficient and affordable process.

No stamp duty or other documentary taxes are required for validity of transfer. Consent is not required either (with the exception of claims against public institutions) but is recommended to be obtained to mitigate a non-payment risk. 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).

If the assignment is effective against the debtor based on its written acceptance, the debtor may no longer claim towards the factor the set-off which it could have claimed against the assignor. On the other hand, if the assignment is made enforceable by way of notification, the debtor may claim towards the factor the set-off which it could have claimed against the assignor. Therefore, in order to eliminate the debtor's right to claim against the factor the set-off, which it could have claimed against the assignor, the assignment should be accepted in writing by the debtor.

The debtor may claim against the factor all defences which it could have claimed against the assignor irrespective if the assignment was made enforceable through notification or acceptance.

In order to restrict certain defences of the debtor against the factor, a waiver or limitation of the rights of action or defences could be included in the debtor's written acceptance. This should however be carefully drafted since under Romanian law a waiver of future rights may be held unenforceable by a Romanian court. In addition to the above, the assigned debtor has the right to be reimbursed by the assignor and the assignee (which are held jointly liable) for any expenses it has incurred as a result of the assignment.

Reassignment by the factor is possible and is subject to the general rules applicable to an assignment of receivables.

Factors can negotiate extension / restructuring of payment terms after purchasing receivables, which commonly occurs in reverse factoring transactions regarding maximum extensions and a factor's costs handling.

### 3. MISCELLANEOUS

Foreign exchange rules – The National Bank Regulation No. 4/2005 on the foreign exchange regime (the "**FX Regulation**") regulates fund transfers in Romanian and foreign currencies, with a distinction being made between operations carried out between residents, on one hand, and between residents and non-residents, on the other.

Subject to certain exemptions, payments made between residents can only be made in Romanian currency if they relate to trading in goods and services, whereas payments made between residents that do not relate to trading in goods and services and payments made between a resident and a non-resident can be made in any currency agreed upon by the parties (either Romanian or foreign).

Based on past enquiries with the National Bank, it is our understanding that the FX Regulation envisages situations where the trading of goods relates to tangible assets (*bunuri corporale*, in Romanian) but not intangible assets (*bunuri incorporeale*, in Romanian), such as receivables.

The payment of the purchase price under the factoring agreement is deemed to fall outside the scope of the FX Regulation, and thus the parties should be able to agree on the currency of the payment (either domestic or foreign).

VAT issues – Under the Romanian VAT law, transactions with receivables are VAT exempt, without deduction rights, except for the receivables' recovery under factoring operations which qualify as taxable transactions, subject to VAT. Nevertheless, if the aim of the transaction does not consist in the receivables' recovery but in granting 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 which do not entail the assignment of receivables whereby the person holding the receivables employs a person to recover them;

(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 purpose of the transaction being the recovery of the receivables: (1) if the sale price of the receivables is higher than the nominal value of the receivables, the assignor carries out a VAT-exempt transaction and the assignee carries out a transaction for which VAT would not apply, and (2) if the sale price of the receivables is lower than or equal to the nominal value of the receivables, neither the assignor nor the assignee carries out transactions for which VAT would apply; (b2) the assignee buys the receivables, whether or not it assumes the risk of default, and charges the assignor a recovery fee: the assignee is considered to provide a recovery service to the assignor, whose service is subject to VAT, as it receives a commission from the assignor for this transaction, but the assignment of the receivables by the assignor is not a VAT transaction; and (b3) the assignee buys the receivables, assuming the risk of default, at a price lower than the nominal value of the receivables, without charging the assignor a recovery fee: (1) the assignment of the receivables by the assignor is a VAT-exempt transaction; and (2) the assignee is considered not to provide a debt recovery service to the assignor, *i.e.* it does not carry out a transaction subject to VAT, as it does not charge a commission for this transaction.

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 per cent to 8 per cent may be applicable, depending on the type of contractual counterparties (*i.e.* professionals, contracting

authorities, foreign counterparties, etc.). It should be noted that in relations with a foreign element, when Romanian law is applicable and when payment in foreign currency has been agreed, the statutory default interest rate shall be 6 per cent per annum.

Restrictions to data transfers – According to the GDPR, the transfer of personal data from the EU to third countries is only allowed if that country ensures the same level of data protection. There are several tools to be considered when assessing whether such a transfer is allowed: (i) existence of an adequacy decision issued by the European Commission with respect to a third country whereby the European Commission declared that it considers such a country to offer an adequate level of protection; (ii) in the absence of such a decision, the transfer will be allowed if the personal data controller provides that adequate safeguards are in place (*e.g.* binding corporate rules, standard contractual clauses); and (iii) in the absence of the tools under items (i) and (ii) above, the GDPR provides a list of derogatory situations in which such a transfer may take place (*e.g.* explicit informed consent has been obtained from the data subject, or the transfer is required for the performance of a contract or the implementation of pre-contractual measures taken at the request of the data subject).

No further development of the factoring legislation is reportedly being considered.



#### 4. MARKET INSIGHTS

According to the information provided by the Romanian Factoring Association, established to protect and represent the general interests of the factoring industry and the persons employed in the factoring business in Romania, the primary clientele of factoring services comprises more mature SMEs and larger companies in the sectors of IT, automotive, electronics, energy, metals and fast-moving consumer goods.

13.5 per cent of the Romanian factoring market is international factoring. 90 per cent of the market is without recourse. Reverse factoring accounts for 33 per cent. The share of non-notification factoring is only marginal. There are eight cross-border factoring services in Romania that use the FCI two-factor system.

Most players in the market use global software providers, that specialise in the asset financing industry (e.g. Lendscape and Codix), but bespoke and local solutions are also present.

Onboarding of new clients takes place in person – due to regulations and group approaches (the main players being international players), KYC applies in most cases, which requires physical appearance in branches and physical production of original documents.

Most players in the market use specific credit insurance policies for their factoring business (own policy or the assignment of suppliers' policy), which cannot be used for capital relief purposes.

At market level, there is no comprehensive and dynamic database regarding companies' payment performance.

However, there is free access to a payment incidents record, where payments are made by promissory notes or checks. At the same time, data integrators have developed several initiatives meant to provide a view on companies' payment performance, but these are based on data supplied by other companies, banks and factoring players (still limited), so their relevance is still debatable, as it depends on the relevance of each data provider's list for a particular debtor.

The typical market terms of account payable is 60-90 days.

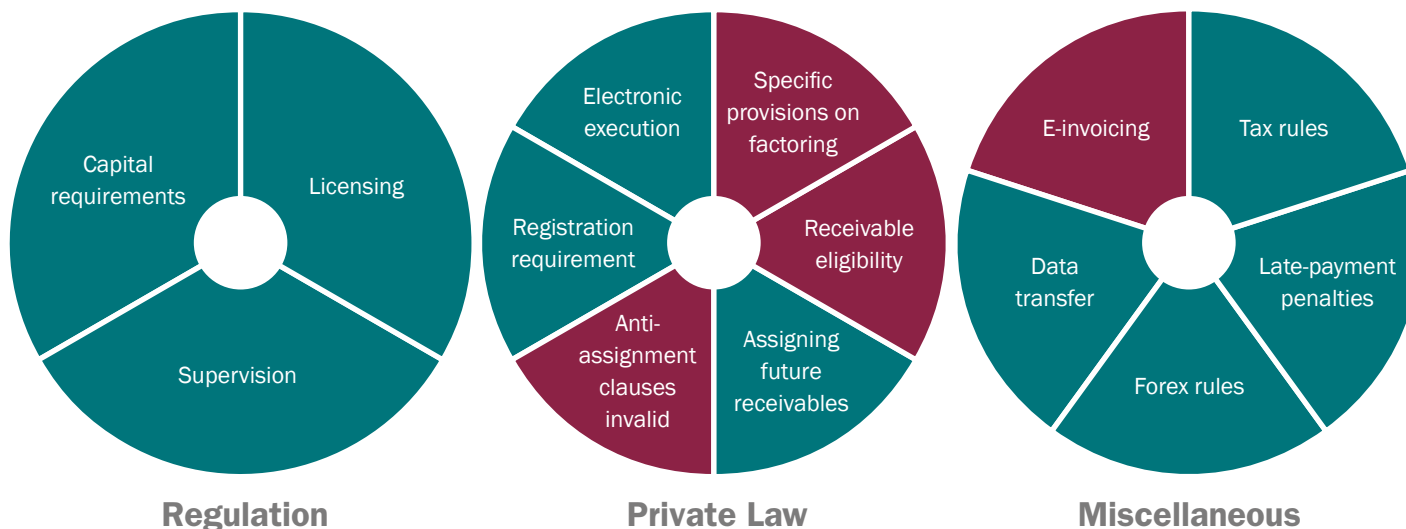
Overall, the market players have not flagged any concerns in the regulatory framework that require addressing.

According to the data from the FCI Annual Review 2023, factoring volumes in Romania in 2022 amounted to EUR 7 billion, a 31% increase from the previous year.





## Framework



## Case study application

● Not favourable
 ● Somewhat favourable
 ● Favourable
 ● Uncertain

Requirements of AB JSC	
Smooth on-boarding of suppliers <sup>1</sup>	Electronic execution <sup>2</sup>
<span style="color: orange;">●</span>	<span style="color: orange;">●</span>

Requirements of Factor Finance			
Verifiable authenticity of invoices <sup>3</sup>	Priority over third parties <sup>4</sup>	Insurance to cover risk of default <sup>5</sup>	Favourable tax treatment <sup>6</sup>
<span style="color: red;">●</span>	<span style="color: red;">●</span>	<span style="color: green;">●</span>	<span style="color: green;">●</span>

Requirements of Supplier Ltd.		
Smooth on-boarding <sup>7</sup>	Off-balance sheet financing <sup>8</sup>	Anti-assignment clauses invalid <sup>9</sup>
<span style="color: orange;">●</span>	<span style="color: green;">●</span>	<span style="color: orange;">●</span>

<sup>1</sup> Based on responses to Q. 44, 46 and Q. 64 of the Survey (see pg. 4-6 of the document)

<sup>2</sup> Based on responses to Q. 18 - 20 of the Survey

<sup>3</sup> Based on responses to Q. 21 - 25 of the Survey

<sup>4</sup> Based on responses to Q. 30 - 31 of the Survey

<sup>5</sup> Based on responses to Q. 45 of the Survey

<sup>6</sup> Based on responses to Q. 35 - 37 of the Survey

<sup>7</sup> Based on responses to Q. 44 and Q. 64 of the Survey

<sup>8</sup> Based on responses to Q. 45 and Q. 50 of the Survey

<sup>9</sup> Based on responses to Q. 33 - 34 of the Survey

## Market insights

**Factoring volumes (2022)**  
(FCI Annual Review 2023)

€ **EUR 7B**

**Factoring volume trend (2021 v. 2022)**  
(FCI Annual Review 2023)

↑ **31%**

**Banks/NBFIs offering factoring**  
Based on the FCI Annual Review 2023



**12 Banks/  
NBFIs**

**New related-legislation/  
regulation planned**





# Türkiye

## List of relevant legislation / regulation

Since our last assessment, Türkiye has amended the Factoring Law in 2018 with regards to (i) licensing requirements (*i.e.* increase of minimum capital and removal of minimum number of shareholders), (ii) preventive measures that the regulator can take with respect to factoring companies, and (iii) electronic factoring contracts. The following Turkish legislation was considered: (i) Law No. 6361 “On financial leasing, factoring and financing companies”, dated 13.12.2012 (the “**Factoring Law**”); (ii) Code of Obligations No. 6098, dated 11.01.2011; and (iii) Regulation “On procedures and principles of factoring transactions”, that entered into force on 04.02.2015.

### 1. FACTORING OPERATIONS

#### 1.1 Regulation of factoring operations

Türkiye has adopted a special Factoring Law. Based on the mentioned Factoring Law, the Banking Regulation and Supervision Agency (the “**BRSA**”) supervises the mentioned activities, including factoring. The BRSA is deemed to have sufficient supervisory and investigatory powers.

Banks can offer factoring services by virtue of their banking licence. 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, whose shares must be issued against cash and bear the name of the shareholder, the name of the company shall include “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 50,000,000 (an increase from TRY 20,000,000 reported in 2018). The shareholding structure must be transparent and allow efficient supervision by the BRSA. The applicant must also submit the articles of association of the factoring company, its business plans for the intended fields of activity, the financial projections and budgetary plan for the following three years.

In 2021, the requirement to have five founding shareholders in order to receive an establishment permit was rescinded.

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 in cash at a level that enables execution of the planned business activities, to pay the system entrance fee (5 per cent of the minimum share capital indicated above), to have clearly established service units, internal control, accounting, data processing, reporting systems and employees’ job descriptions. 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.

In addition to the financial requirements described above, the BRSA is authorised to request existing factoring companies to increase their share capital up to the new limit it may determine. NBFIs shall meet the equity / total assets ratio of at least 3 per cent. The BRSA is authorised to increase this ratio for specific companies depending on their financial situation. If an NBFI fails to meet this ratio, it cannot execute a factoring agreement until satisfying this criterion. Further, factoring companies are required to set provisions aside depending on the payment status and the securities pursuant to the legislation. However, compliance with the Basel III standards is optional. NBFIs can choose to comply with Basel III standards with the permission of BRSA and, if they do so, they cannot opt out from the Basel III standards.

The factoring company must submit 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

The BRSA shall regulate, enforce and ensure the implementation of the activities of factoring companies as well as their establishment, management, organisational 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 factoring companies, imposing restrictions on the factoring companies' activity / operations, approving acquisition, transfer of shares, merger or division of the factoring companies and applying fines to the factoring companies.

Factoring companies are also required to become members of the Association. 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. The Association is authorised to ensure coordination among its members and is responsible for establishment of the central invoice registration system.

## 2. PRIVATE AND COMMERCIAL LAW

### 2.1 Definition of the factoring contract

The Factoring Law defines a factoring agreement as “*a contract that includes any or all of collection, keeping of debtor's and the customer's records and financing or factoring guarantee functions by the factoring company by way of taking over current receivables certified with invoice or future receivables certified on the basis of the procedures and principles determined by the BRSA arising from sale of goods or services*”. No types of factoring are indicated by Factoring Law, but the foreign exchange control legislation refers to recourse factoring and non-recourse factoring while introducing different exchange control requirements.

In addition, certain BRSA decisions make reference to different types of factoring transactions including recourse factoring, non-recourse factoring, domestic factoring and international factoring depending on the relevant case by outlining the transactions but without clearly defining them.

Türkiye 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. Further, the factoring agreement shall clearly include the definition of the work, characteristics of the future receivable, its amount (if the amount cannot be determined already, maximum factoring limit to be determined on the basis of the data constituting the basis of the calculation) and conditions of the payment. The future receivable shall be documented with an agreement between the client and the debtor, purchase order, pro forma invoice or documents pertaining to the letter of credit. Existence of a commercial relationship arising from sale of goods or services and accuracy of the documents certifying that the future receivable arises within the scope of such commercial relationship shall be controlled. The invoice (or its equivalent) shall be issued after the future receivable comes into existence, and provided from the customer and added to the transaction folder by the institution.

It is unclear whether recourse factoring is considered a true-sale or secured lending transaction, as the law and court practice are silent on the matter.



### 2.3 Assignment of receivables

Based on the Code of Obligations, the assignment contract must be concluded in writing or through telecommunication devices allowing ID check of the customers. The second method was introduced in 2020 as part of COVID measures and is still effective. Signing via secured electronic signature, which is regulated under the Electronic Signature Law No. 5070, has the same effect as the wet-ink signatures. However, in practice, secured electronic signature is almost exclusively used for electronic governmental systems and almost never used for commercial transactions. In addition, even though it is not a validity requirement, the assignee may request to execute the assignment of receivables agreement before a notary for evidentiary purposes.

The law does not recognise equivalence between electronic and written communication, but e-invoices carry the same weight as invoices in paper form. E-invoicing is mandatory in transactions with large companies. Companies that have a gross sale revenue exceeding TRY 3 million within the 2022 financial year are required to start issuing e-invoices by the second half of the following financial year at the latest. This threshold is determined annually with respect to each financial year. There are also different thresholds for the persons doing business in certain sectors. In most cases, e-invoice obligors are obliged to issue e-invoices to other e-invoice obligors.

Factoring companies and banks are required to register the invoices (paper or electronic) pertaining to the receivables assigned to them in the Central Invoice Registry, managed by the Association and the Credit Record Bureau. This process is cost

and time efficient. It is impossible to alter the registry record, however, updates regarding the invoice (such as cancellation of the invoice by the company) would appear in the system. Registration in the registry does not determine priority over the claim. The system allows to check the validity of e-invoices in a personal profile through the e-invoice application and web portal of the Turkish Revenue Administration. It should be possible to notify the debtor through a language added to the invoice.

Besides the written form requirement mentioned above, no registration or notification is necessary for the validity of the assignment and no stamp duty applies. However, if the assignment is not notified to the debtor, the debtor would be discharged from its obligations by making payment to the seller.

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. There are no restrictions applicable to reassignment of receivables by the factor. Factoring companies are allowed to negotiate extension / restructuring of payment terms after purchasing receivables.

The debtor has the right to invoke defences and rights of set-off against the factor, but this right can be limited contractually / by way of subsequent agreements. In order to be able to set-off assigned receivables both receivables shall be due and the receivable of the debtor (i.e. debtor of the assigned debt) shall become due before or at the same time with the assigned receivable.



### 3. MISCELLANEOUS

Foreign exchange rules – As a general rule, all receivables shall be paid in local currency pursuant to the Code of Obligations. In case the transaction requiring a foreign currency payment is a recourse factoring, the customer shall fall within one of the foreign currency loan eligibility exceptions and be allowed to pay in such currency. This requirement is not applicable for non-recourse factoring transactions, based on a legislative U-turn in 2018-20.

VAT issues – In Türkiye, 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, the 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 no difference of VAT treatment between banking and non-banking factoring providers.

A Banking Insurance and Transaction Tax (BITT) of 5 per cent (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.

Restrictions to data transfers – In most cases, personal data cannot be transferred without the explicit consent of the subject. If the consent of the subject is not obtained, transfer of personal data abroad requires (i) sufficient protection in the relevant country, which is to be determined by the Personal Data Protection Board, or (ii) a written undertaking by the transferee to provide sufficient protection and the Board's permission in exceptional cases.

No further development of the factoring legislation is reportedly being considered.



### 4. MARKET INSIGHTS

The Association, professional, semi-governmental organisation tasked with improving market standards for factoring, leasing, financing, asset management and saving finance, advised that the primarily clientele of factoring services in Türkiye is micro companies and SMEs.

Seventeen banks and factoring companies provide cross-border factoring services. Factoring is Türkiye's second largest financial industry after banking and it accounts for 73 per cent of non-banking financial institutions' turnover. The services provided by factoring companies are mainly domestic and international factoring, collections, purchase order financing and supply chain finance. International factoring includes recourse / non-recourse export factoring and full service / collection only import factoring. Although in the domestic market, recourse invoice discounting with post-dated cheques is very common, non-recourse factoring is also increasing each year.

Factors often use bespoke enterprise software to track, manage and monitor factoring operations, but require in-person onboarding of new clients (i.e. physical appearance in branches and physical production of original documents).

A few factoring companies have credit insurance, but it cannot be used for capital relief purposes. Factors reportedly have access to the data on companies' historical payment performance – the information is of good quality and can be obtained promptly, albeit at a considerable cost.

The typical market terms of account payable are 90-180 days.

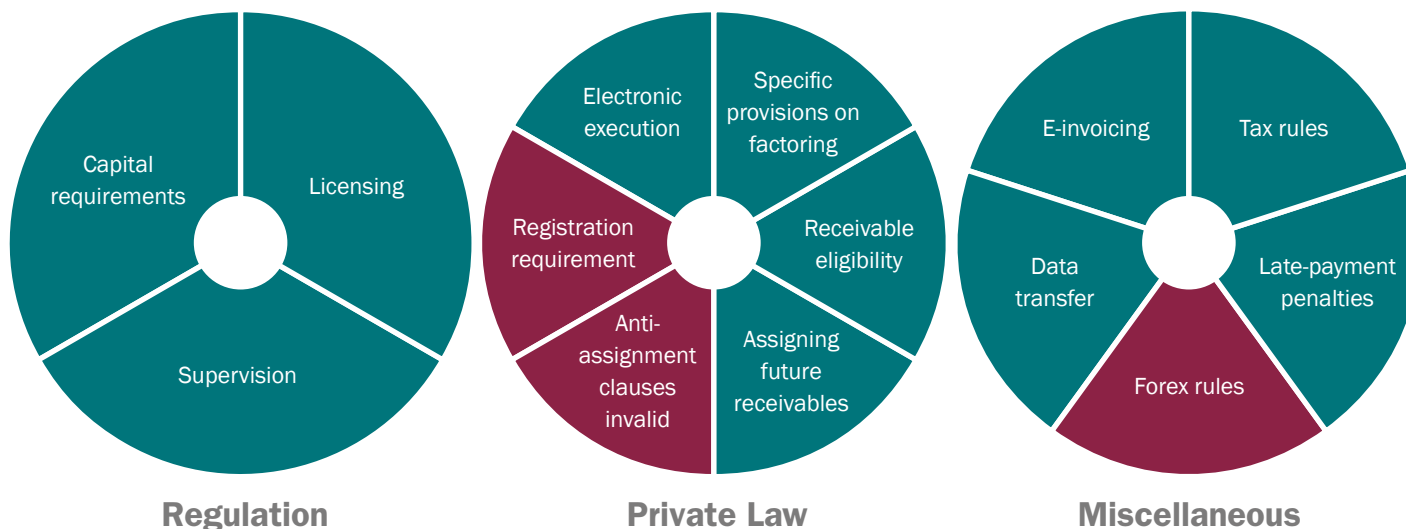
The Association underwrites the non-payment risk for factors offering factoring on a non-recourse basis in domestic transactions. Generally, import factor grants credit risk of the buyer for two-factor export factoring transactions.

The areas that were flagged by the market participants as areas for further strengthening are:

- Fraud issues;
- Weak contract enforcement;
- Ban on assignment clause in sales contract should not apply if the supplier is an SME at the time of the assignment;
- There should be Know Your Business legislation for NBFIs;
- Although all digital channels (web / mobile) permitted by the factoring law, only digital signature is permitted by the Code of Obligations. Digital contract signing for assignment of receivables should be available for factoring companies.

According to the data from the FCI Annual Review 2023, factoring volumes in Turkey in 2022 amounted to EUR 24 billion, a 51% increase from the previous year.

## Framework



## Case study application

● Not favourable ● Somewhat favourable ● Favourable ● Uncertain

Requirements of AB JSC	
Smooth on-boarding of suppliers <sup>1</sup>	Electronic execution <sup>2</sup>
●	●

Requirements of Factor Finance			
Verifiable authenticity of invoices <sup>3</sup>	Priority over third parties <sup>4</sup>	Insurance to cover risk of default <sup>5</sup>	Favourable tax treatment <sup>6</sup>
●	●	●	●

Requirements of Supplier Ltd.		
Smooth on-boarding <sup>7</sup>	Off-balance sheet financing <sup>8</sup>	Anti-assignment clauses invalid <sup>9</sup>
●	●	●

<sup>1</sup> Based on responses to Q. 44, 46 and Q. 64 of the Survey (see pg. 4-6 of the document)

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<sup>8</sup> Based on responses to Q. 45 and Q. 50 of the Survey

<sup>9</sup> Based on responses to Q. 33 - 34 of the Survey

## Market insights

**Factoring volumes (2022)**  
(FCI Annual Review 2023)

€ **EUR 24B**

**Factoring volume trend**  
**(2021 v. 2022)**  
(FCI Annual Review 2023)

↑ **51%**

**Banks/NBFIs offering factoring**  
Based on the FCI Annual  
Review 2023



**62 Banks/  
NBFIs**

**New related-legislation/  
regulation planned**







# Ukraine

## List of relevant legislation / regulation

Since our last assessment, there have been some changes in the regulatory framework of factoring in Ukraine primarily related to the supervisory authority for factoring companies. The following Ukrainian legislation was considered: (a) Civil Code of Ukraine, dated 16.01.2003; (ii) Law No. 2663-III “On financial services and state regulation of financial services”, dated 12.07.2001; and (iii) Law No. 679-XIV “On National Bank of Ukraine”, dated 20.05.1999.

### 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 National Bank of Ukraine. Before 2020, the State Commission for Regulation of Financial Services Markets was the supervisory authority for factoring companies, but its functions have been taken over by the National Bank of Ukraine. The National Bank of Ukraine is deemed to have sufficient supervisory and investigatory powers.

#### 1.2 Licensing conditions and procedure

NBFIs need a factoring licence to conduct factoring activities, and the requirements for obtaining one were strengthened in 2021 (particularly with regards to the origin of the share capital). 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 76,500) for factoring companies providing only factoring services or UAH 5 million (approx. EUR 127,600) for factoring companies providing other permitted types of financial services. Companies are required to keep records of all their operations and submit annual audited reports to the National Bank of Ukraine.

Factoring companies are also required to comply with anti-money laundering and data protection requirements.

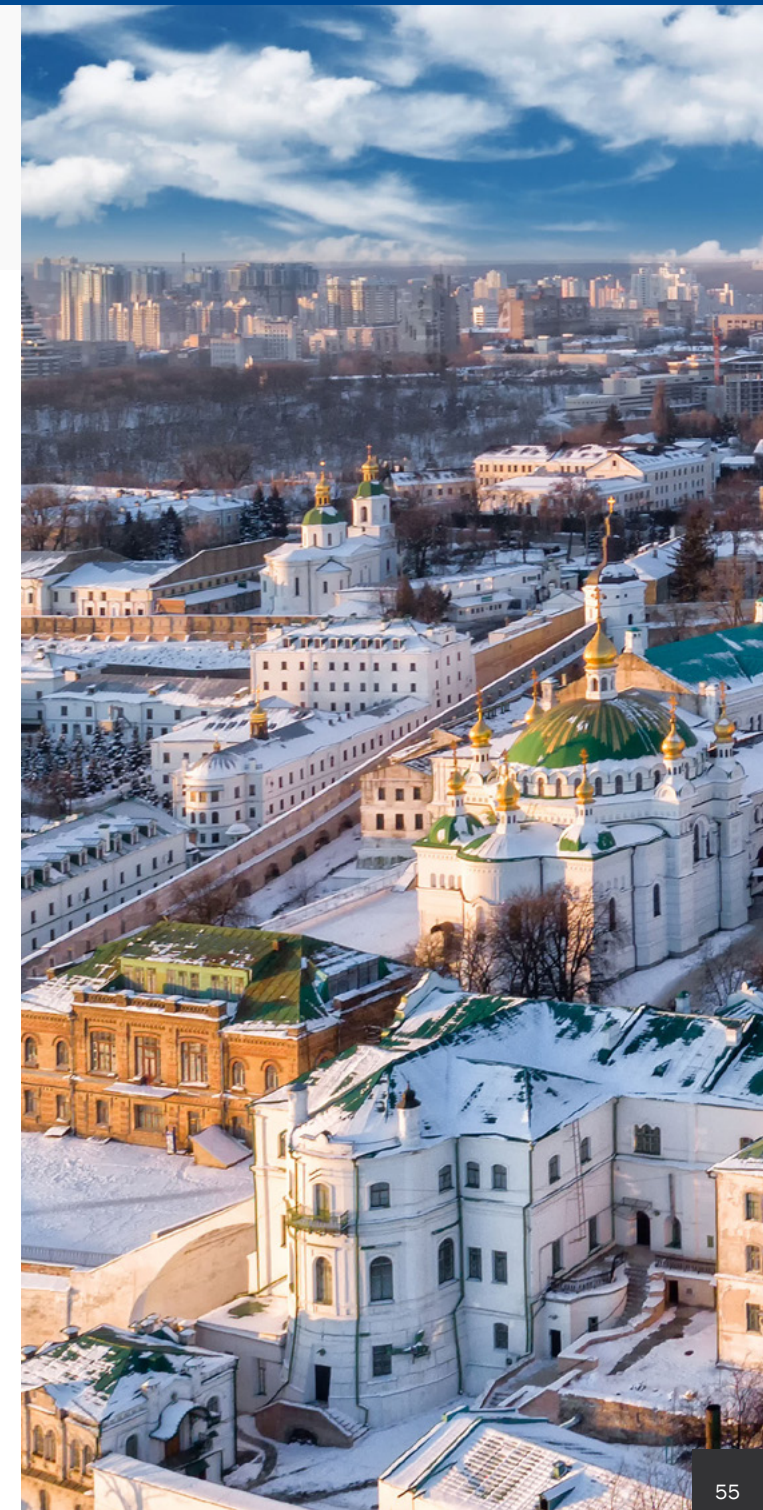
### 2. PRIVATE AND COMMERCIAL LAW

#### 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.

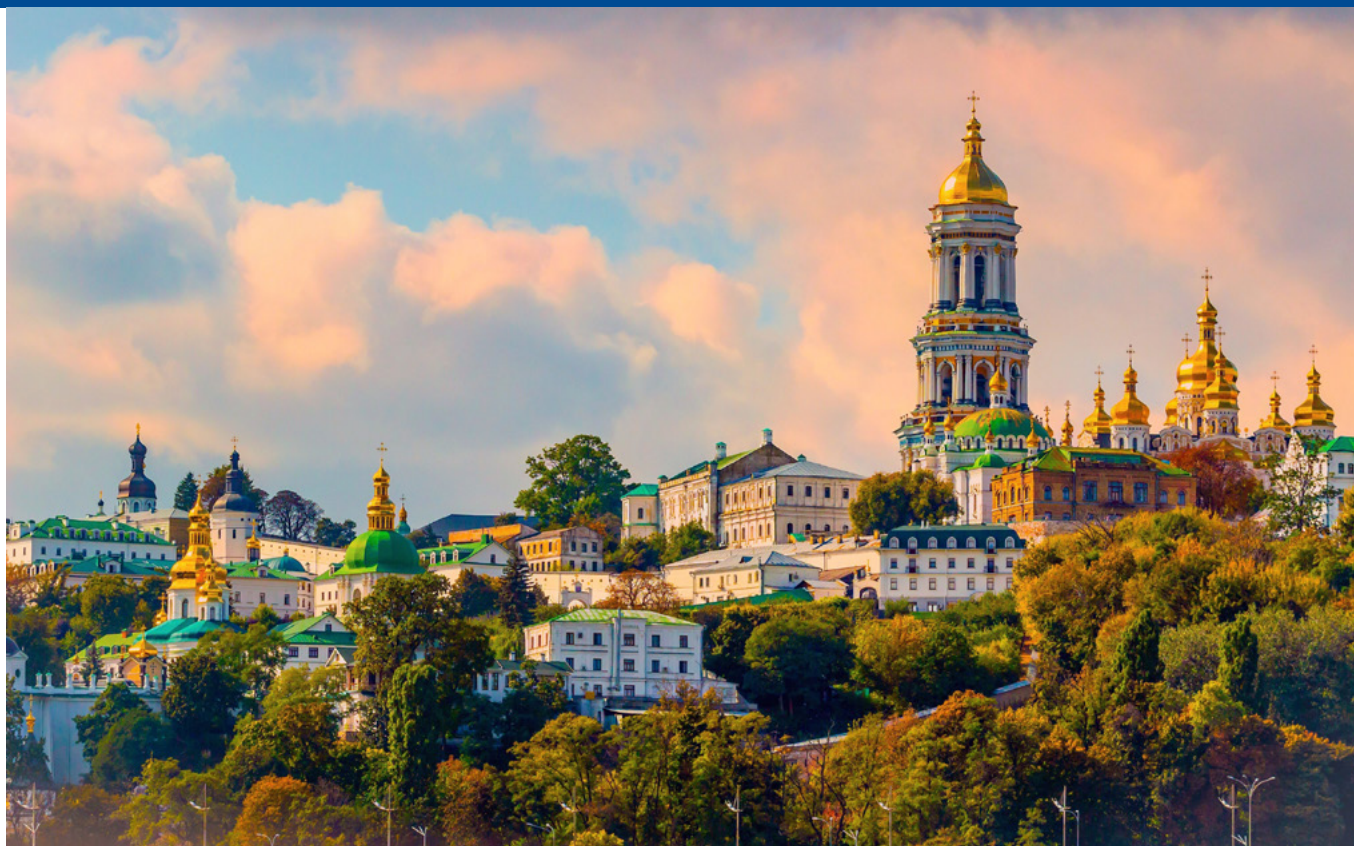
Assignment of future receivables is possible and is specifically mentioned in the Civil Code. However, the law lacks guidance on the necessary conditions to be fulfilled or the level of identification necessary to satisfy the identification requirement. There are precedents where courts require at least the name of the debtor and claim amount. However, there is no standard approach and the general expectation from the courts would be that the claim is “identifiable”. 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. The legislation and court practice confirm that only non-recourse factoring is considered a true sale transaction.

## 2.3 Assignment of receivables

Assignment contract must be in writing (in paper form with wet-ink signature or in electronic form with electronic signature). 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. Electronic signatures and documents are gaining popularity in Ukraine.



E-invoicing is possible but not mandatory in Ukraine. Invoices in electronic form carry the same weight as invoices in paper form, provided they are signed by the electronic signature. There is no state website / platform where it is feasible to check the validity of e-invoice. Counterparties that have agreed to use e-invoices in their commercial relations and also use services of EDI-service providers may use the functionality of their platforms to check the status of an e-invoice.

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 fully notified with a written notice the debtor is authorised to discharge the debt to the original creditor. Notification to the debtor can be validly achieved by adding language to an e-invoice sent by the supplier to the debtor.

Debtor's consent is not required for the validity of an assignment, but in practice factors appear to ask for it to minimise the non-payment risk. No stamp duty 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. Reassignment of receivables shall be specifically allowed by the factoring agreement.

The debtor has the right to invoke defences and rights of set-off against the factor and this right cannot be limited contractually.

### 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 licence from the National Bank of Ukraine. Without such licence 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 the 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 16 per cent); and
- (b) additional late payment interest at the rate agreed between the parties or, if the parties failed to agree, at 3 per cent statutory interest rate.

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

**Restrictions to data transfers** – Personal data can be transferred to a country from a “safe list” without any restrictions.

**Development of the factoring legislation** – The EBRD in cooperation with the National Bank of Ukraine is drafting a standalone law on factoring to separate debt collection from trade factoring; and bring the factoring framework in line with the best practices and UNIDROIT Model Law on Factoring.

### 4. MARKET INSIGHTS

According to the publicly available information, there were over 600 companies with a factoring licence in Ukraine as of 2021. During 2020, factors in Ukraine concluded more than 45,000 factoring agreements totalling EUR 2.27 billion, which is 46 per cent more than the number of agreements concluded in 2019. As of the end of 2020, the factoring market was one of the largest non-banking financial markets in terms of the volume of services provided.

According to the NABU, Ukrainian association of banks and non-banking financial institutions that works on improving legislation, introducing market standards and creating a platform solution for factoring, the primary clientele of factoring services in Ukraine is in the healthcare, pharma, agribusiness and fast-moving consumer goods sectors. Factors often struggle to get data on companies’ historical payment performance.

As per the Ukrainian Credit Union, aimed at accumulating savings of the credit unions-members and providing them with loans, some factors use special software to onboard their clients and track, manage and monitor factoring operations. They reported that the most common basis for factoring services in Ukraine is notification factoring.

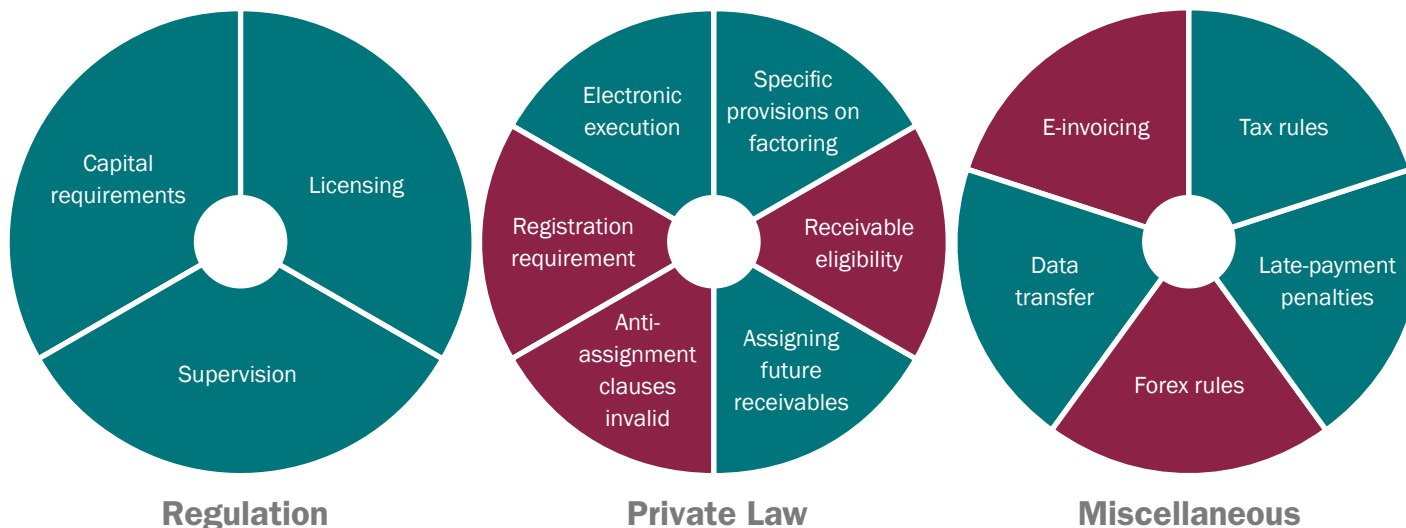
The things that were flagged by the market participants as areas for further strengthening are separation of debt collection from trade factoring, cross border currency control supervision and regulation in trade credit insurance.

According to the data from the FCI Annual Review 2023, factoring volumes in Ukraine in 2022 amounted to EUR 592 million, a 130% increase from the previous year.





## Framework



## Case study application

● Not favourable ● Somewhat favourable ● Favourable ● Uncertain

Requirements of AB JSC	
Smooth on-boarding of suppliers <sup>1</sup>	Electronic execution <sup>2</sup>
● Favourable	● Favourable

Requirements of Factor Finance			
Verifiable authenticity of invoices <sup>3</sup>	Priority over third parties <sup>4</sup>	Insurance to cover risk of default <sup>5</sup>	Favourable tax treatment <sup>6</sup>
● Not favourable	● Not favourable	● Favourable	● Favourable

Requirements of Supplier Ltd.		
Smooth on-boarding <sup>7</sup>	Off-balance sheet financing <sup>8</sup>	Anti-assignment clauses invalid <sup>9</sup>
● Favourable	● Somewhat favourable	● Somewhat favourable

<sup>1</sup> Based on responses to Q. 44, 46 and Q. 64 of the Survey (see pg. 4-6 of the document)

<sup>2</sup> Based on responses to Q. 18 - 20 of the Survey

<sup>3</sup> Based on responses to Q. 21 - 25 of the Survey

<sup>4</sup> Based on responses to Q. 30 - 31 of the Survey

<sup>5</sup> Based on responses to Q. 45 of the Survey

<sup>6</sup> Based on responses to Q. 35 - 37 of the Survey

<sup>7</sup> Based on responses to Q. 44 and Q. 64 of the Survey

<sup>8</sup> Based on responses to Q. 45 and Q. 50 of the Survey

<sup>9</sup> Based on responses to Q. 33 - 34 of the Survey

## Market insights

**Factoring volumes (2022)**  
(FCI Annual Review 2023)

€ **EUR 592m**

**Factoring volume trend (2021 v. 2022)**  
(FCI Annual Review 2023)

↑ **130%**

**Banks/NBFIs offering factoring**  
Based on the FCI Annual Review 2023



**600 Banks/  
NBFIs**

**New related-legislation/  
regulation planned**



*New factoring law expected  
to pass in 2024*



# Uzbekistan

## List of relevant legislation / regulation

There have been changes with respect to licencing and capital adequacy requirements for factoring companies in Uzbekistan since the last assessment, carried out in 2018-19. For the purposes of this edition of the survey, the following Uzbek legislation was considered: (i) Law “On Central Bank of the Republic of Uzbekistan” No. ZRU-582, dated 11.11.2019; (ii) Civil Code, dated 01.03.1997; (iii) Law “On non-bank credit organisations and microfinance activities” No. LRU-765, dated 20.04.2022; (iv) Law “On banks and banking activity” No. ZRU-580, dated 05.11.2018; (v) Regulation “On approval of the regulation on coordination and regulation of the activities of microfinance organisations and pawnshops” No. 3412, dated 11.01.2023; and (vi) the Law “On licensing” No. ZRU-701, dated on 14.07.2021.

### 1. FACTORING OPERATIONS

#### 1.1 Regulation of factoring operations

Factoring operations in Uzbekistan are mostly offered by banks. In addition, factoring services can be offered through microcredit organisations and payment organisations (together referred to as “**microcredit organisations**”) as well. The Central Bank of the Republic of Uzbekistan regulates and supervises the microcredit organisations and other financial institutions. Previously microcredit organisations were required to obtain a licence but now they only need a permission from the Central Bank of Uzbekistan to provide factoring services.

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 the 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 EUR 100,000 of authorised capital invested, consisting out of cash and other assets, which shall not exceed 20 per cent of the authorised capital.

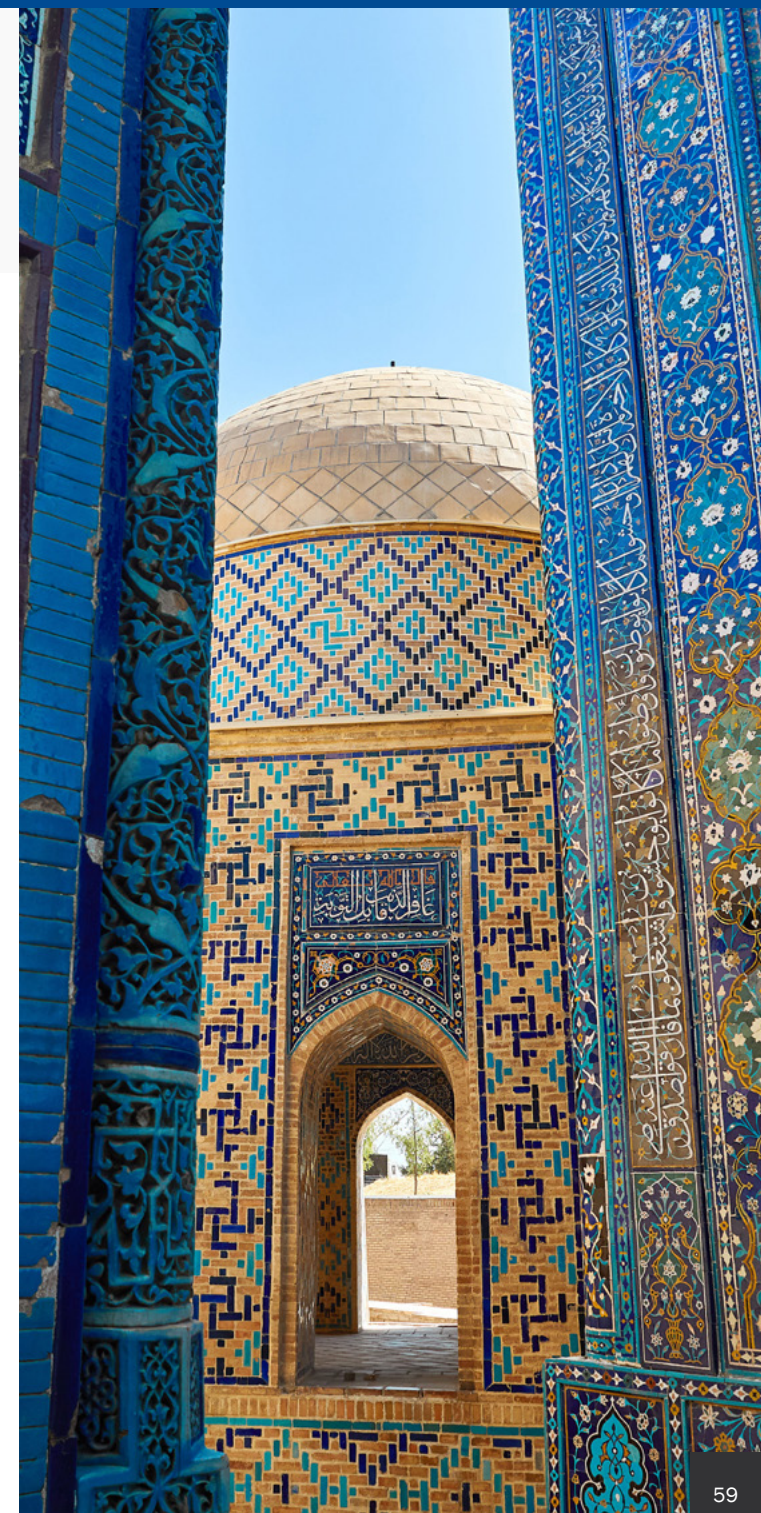
The Central Bank establishes qualification requirements for the participation in executive bodies of financial institutions. Natural persons and legal entities residing in offshore zones and individuals who have bank accounts in offshore zones, cannot act as founders of financial institutions.

#### 1.3 Capital adequacy and reporting requirements

In 2022, capital adequacy requirements were introduced, setting the following ratios for microcredit organisations (unless they operate using their own funds):

- capital adequacy ratios;
- liquidity ratios;
- maximum risk exposure per borrower or group of related borrowers;
- the maximum amount of risk per related parties of a microfinance organisation; and
- maximum amount of investments in the authorised fund (charter capital) and / or debt securities of legal entities.

Financial institutions are subject to ad-hoc supervision inspections. Regular inspections of financial and economic activities of private banks and other private financial institutions were recalled in 2018. Ad-hoc inspections can still be carried out when a non-bank financial institution is reorganised or liquidated, or based on the decision of the Cabinet of Ministers, the 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 organisations are audited and a microcredit organisation with a book value of assets over UZS 10 billion (approx. EUR 828,000) (previously it was UZS 1 billion) must establish an internal audit unit.

Microcredit organisations are also required to comply with anti-money laundering and data protection requirements.

#### 1.4 Supervision of the factoring companies

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

Despite this and the fact that the Central Bank of Uzbekistan cannot conduct regular inspections of factoring companies, we still believe that it has sufficient supervisory and investigatory powers.

## 2. PRIVATE AND COMMERCIAL LAW

### 2.1 Definition of the factoring contract

Uzbekistan is not a member of the 1988 UNIDROIT Convention on International Factoring or the 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.

The Regulation on the procedure for commercial banks offering factoring operations on the territory of the Republic of Uzbekistan (MU 03.08.2000 No. 953) that provided the definition of factoring was repealed. Currently, Uzbek laws do not provide for a definition of "factoring" as such, however factoring activity is defined by the Civil Code: *"under the contract of financing under assignment of monetary claim one party*

*(financial agent) transfers or undertakes to transfer to the other party (client) monetary funds on account of the monetary claim of the client (creditor) to a third party (debtor) arising from the provision of goods by the client, performance of work or rendering services to a third party, and the client assigns or undertakes to assign to the financial agent this monetary claim"*. There are no further specific definitions of various types of factoring services in the laws of Uzbekistan.

### 2.2 Receivables subject to factoring

The Regulation on the procedure for commercial banks offering factoring operations that banned receivables against organisations funded by public budget, insolvent enterprises, companies with an illiquid balance sheet and loss-making enterprises, debt obligations of individuals, receivables arising out of the financing of capital investments, export consignment contracts, and compensations and barter transaction from being factored was repealed. Currently, the Civil Code does not contain any restrictions on the origin of receivables.

According to the Presidential Decree No. 1154, all receivables under contracts concluded in Uzbekistan must be settled within 90 days from the date of actual shipment of goods or rendering of services.

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 – no later than the time of its occurrence (e.g. information about the debtor and creditor of a receivable, the maximum amount etc.). In any case, local practitioners agree that factoring of future receivables is highly untested on the market.

Non-recourse factoring is considered 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.

A cross-border assignment, where at least one of the parties is an Uzbek legal entity or non-resident of the Republic of Uzbekistan, must be made in a written form (*i.e.* signed by each counterparty) without regards to the place of its conclusion. The exchange of facsimile copies of execution pages with signatures is acceptable and satisfies the “written form” requirement.

The Law on electronic digital signature regulates the usage of electronic signatures. Apart from a “wet-ink” signature, an e-signature created in accordance with the requirements of Uzbek laws is allowed. However, it is not widely used in Uzbekistan.

Invoices in electronic form (with an e-signature) carry the same weight as invoices in paper form. Electronic invoicing is mandatory in B2B and B2G transactions. There are several electronic platforms that exist through which legal entities can issue, send and check invoices. The information on these platforms comes from a single database with all e-accounting invoices.

Notification to the debtor is not required to achieve validity of the assignment. Unless notified, the debtor discharges his obligations by paying to the original creditor. It is unclear whether adding language to an e-invoice sent by the supplier to the debtor can serve as an effective notification.

The contractual prohibition against the assignment of receivables has no effect on the validity of assignment to a factor in Uzbekistan. Unless the factoring contract states otherwise, the subsequent reassignment of a monetary claim is not allowed.

The debtor can raise the right of set-off only if it was available to the debtor at the specific time in the past.

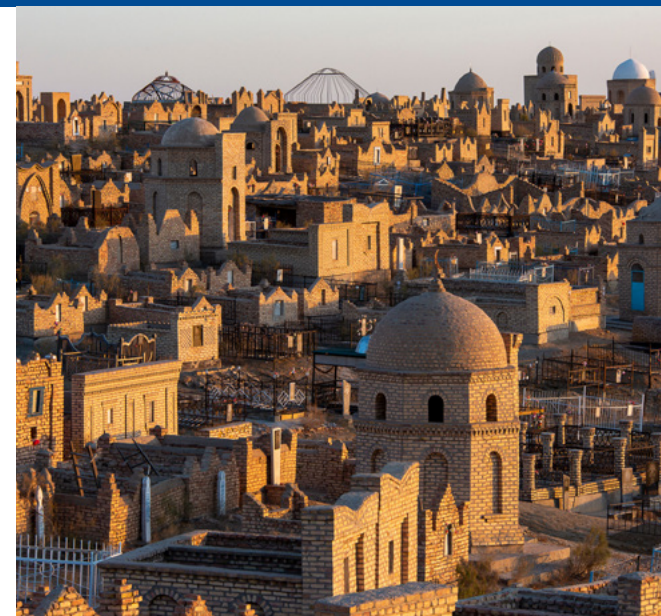
### 3. MISCELLANEOUS

**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 held by the client, after which the funds are sold, on a 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 set by law or contract. Uzbek law also requires repatriation of funds to be received within 180 days of the due for payment by the non-resident debtor. If the funds are not received at this time by the export factor, then the Law on foreign currency control will reclassify the transactions between the resident export factor and the non-resident as a movement of capital, subject to registration with the Central Bank. Failing to repatriate funds within 45 days (90 days for small enterprises) after the expiration of 180 days past the due date will result in the following sanctions:

- (i) a penalty of 5 per cent of the amount of non-repatriated assets – if the repatriation of assets is delayed up to 360 days from the export date;
- (ii) an additional penalty of 10 per cent of the amount of non-repatriated assets – in case of a delay in the repatriation of assets for 360-545 days from the export date.
- (iii) an additional penalty of 35 per cent of the amount of non-repatriated assets – if the repatriation of assets is delayed for 545 days from the export date.



**Restrictions to data transfers** – Personal data can be transferred to a third country if: (i) it ensures adequate protection of the rights of personal data subjects; (ii) the subject provided consent to this; (iii) there is a need to protect the constitutional order of the Republic of Uzbekistan, public order, rights and freedoms of citizens, health and morals; or (iv) in cases stipulated by international treaties of the Republic of Uzbekistan.

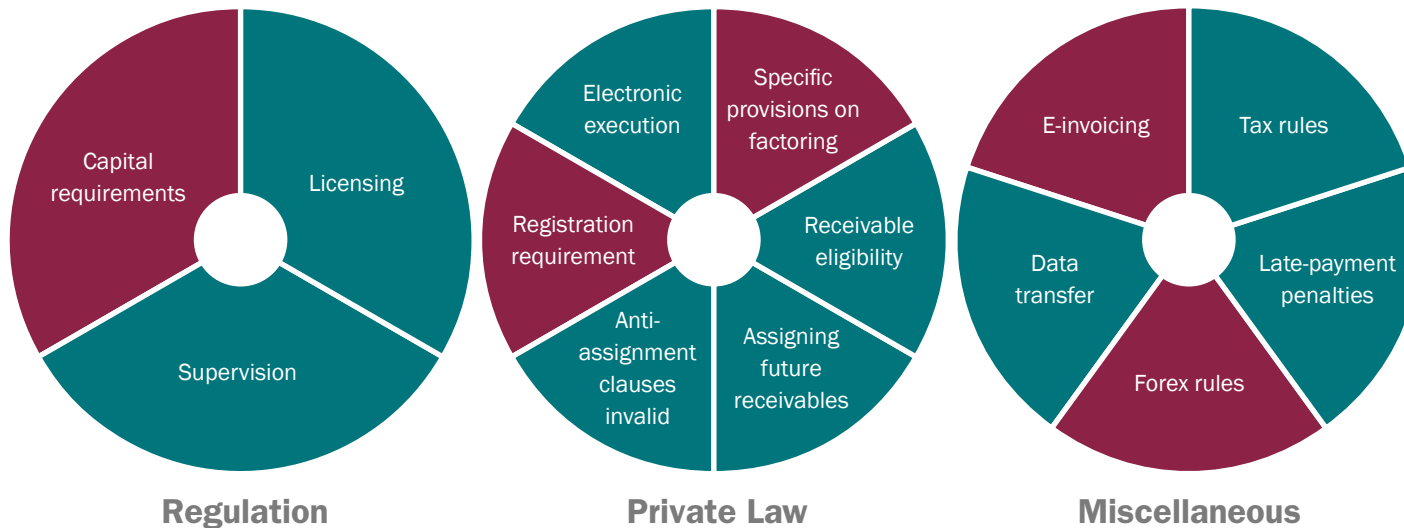
**Development of the factoring legislation** – The EBRD has prepared amendments to the factoring framework to bring it in line with the best practices and UNIDROIT Model Law on Factoring.

### 4. MARKET INSIGHTS

According to the information received from the regulator, there are nine banks and three microfinance organisations offering factoring services in Uzbekistan. The volume of factoring transactions in 2022 was UZS 853 billion.

According to the data from the FCI Annual Review 2023, factoring volumes in Uzbekistan in 2022 amounted to EUR 62 million.

## Framework



## Case study application

● Not favourable
 ● Somewhat favourable
 ● Favourable
 ● Uncertain

Requirements of AB JSC	
Smooth on-boarding of suppliers <sup>1</sup>	Electronic execution <sup>2</sup>
<span style="color: orange;">●</span>	<span style="color: orange;">●</span>

Requirements of Factor Finance			
Verifiable authenticity of invoices <sup>3</sup>	Priority over third parties <sup>4</sup>	Insurance to cover risk of default <sup>5</sup>	Favourable tax treatment <sup>6</sup>
<span style="color: red;">●</span>	<span style="color: red;">●</span>	<span style="color: grey;">●</span>	<span style="color: green;">●</span>

Requirements of Supplier Ltd.		
Smooth on-boarding <sup>7</sup>	Off-balance sheet financing <sup>8</sup>	Anti-assignment clauses invalid <sup>9</sup>
<span style="color: orange;">●</span>	<span style="color: grey;">●</span>	<span style="color: green;">●</span>

<sup>1</sup> Based on responses to Q. 44, 46 and Q. 64 of the Survey (see pg. 4-6 of the document)

<sup>2</sup> Based on responses to Q. 18 - 20 of the Survey

<sup>3</sup> Based on responses to Q. 21 - 25 of the Survey

<sup>4</sup> Based on responses to Q. 30 - 31 of the Survey

<sup>5</sup> Based on responses to Q. 45 of the Survey

<sup>6</sup> Based on responses to Q. 35 - 37 of the Survey

<sup>7</sup> Based on responses to Q. 44 and Q. 64 of the Survey

<sup>8</sup> Based on responses to Q. 45 and Q. 50 of the Survey

<sup>9</sup> Based on responses to Q. 33 - 34 of the Survey

## Market insights

**Factoring volumes (2022)**  
(Response from the regulator)

€ **EUR 62m**

**Factoring volume trend**  
(2021 v. 2022)

**No data**

**Banks/NBFIs offering factoring**  
Based on the response of the regulator

 **9 Banks**  
**3 NBFIs**

**New related-legislation/  
regulation planned**



*New factoring law expected  
to pass in 2024*

# Annex A

This Annex acknowledges the law firms, banking, non-banking and factoring associations, regulators and their representatives that assisted with completing the 2023 Factoring Survey. The EBRD would like to thank all those who responded to the questionnaire. The time and commitment offered by all participants greatly contributed to the overall value of this survey.

## Law firms

Jurisdiction	Law firm	Contributor
<b>Armenia</b>	<a href="#">TK Partners</a>	Varoujan Avedikian, Managing Partner Meri Hambardzumyan, Junior Associate
<b>Egypt</b>	<a href="#">Shalakany Law Office</a>	Youssef Helmy, Associate
<b>Georgia</b>	<a href="#">Law Offices Begiashvili&amp;Co</a>	Levan Gotua, Partner
<b>Greece</b>	<a href="#">Karatzas &amp; Partners Law Firm</a>	Alexandra Th. Kondyli, Partner
<b>Kyrgyz Republic</b>	<a href="#">Centil Law Firm</a>	Zhanyl Abdrakhmanova, Partner
<b>Morocco</b>	<a href="#">Dentons Morocco</a>	Mehdi Megzari, Partner
<b>Romania</b>	<a href="#">Radu Taracila Padurari Retevoescu SCA</a>	Victor Padurari, Partner Andreea-Ramona Nedeloiu, Senior Associate
<b>Türkiye</b>	<a href="#">Paksoy</a>	Sera Somay, Partner
<b>Ukraine</b>	<a href="#">Aequo Law Firm</a>	Bohdan Dmukhovskyy, Of-counsel
<b>Uzbekistan</b>	<a href="#">Centil Law Firm</a>	Husniddin Ochildiyeu, Partner

## Banking associations

Jurisdiction	Banking association	Contributor
<b>Armenia</b>	<a href="#">Union of Banks of Armenia</a>	Seyran Sargsyan, Executive Director
<b>Morocco</b>	Bank Representative - TRADE & WORKING CAPITAL ( <a href="#">CAIXABANK MAROC</a> )	Francisco Javier Goni-Avila, Responsible for Working Capital
<b>Ukraine</b>	<a href="#">Independent Association of the Banks of Ukraine</a> (NABU)	Mariia Kolganova, Executive Director





#### Non-banking associations

Jurisdiction	Non-banking association	Contributor
<b>Türkiye</b>	<a href="#">Association of Financial Institutions of Türkiye</a>	Filiz Ünal, Deputy Secretary General
<b>Ukraine</b>	<a href="#">Ukrainian Credit Union</a>	Liudmyla Kravchenko, Chair
<b>Romania</b>	<a href="#">Romanian Factoring Association</a>	Association's team

#### Regulators

Jurisdiction	Institution	Contributor
<b>Armenia</b>	<a href="#">Central Bank of Armenia</a>	Armen Fahradyan, Methodologist-Accountant (Banking System Regulation Division) Satik Movsesyan, Banking System Regulation Specialist
<b>Greece</b>	<a href="#">Bank of Greece</a>	Eleni Foteinou, Head of Other Institutions Supervision Section
<b>Uzbekistan</b>	<a href="#">Central Bank of Uzbekistan</a>	Bakhrom Juraev, Head of division in the Credit institutions regulation methodology department

# Annex B

## Case Study:

AB JSC is a retailer in the FMCG sector operating in a jurisdiction covered by the Survey, with a broad range of supplier base. To ensure that it retains its best suppliers and to optimise its cash flow management, it intends to set up a **supply chain finance (SCF) line** with Factor Finance so that **the invoices issued by its suppliers**, which AB JSC approves, **are purchased and paid promptly by Factor Finance** (at a small discount). Under the SCF line, **AB JSC will then pay Factor Finance** the full invoice at the invoice maturity date (90 days from its issuance).

The position of each party and their typical requirements in such scenarios are then analysed against the findings of the factoring survey for the relevant country. Each requirement is then rated using the below traffic light model, indicating the extent to which the legal and regulatory framework in the given jurisdiction is favourable in addressing such requirement for such party.

**Key:**

- **Not favourable**
- **Somewhat favourable**
- **Favourable**
- **Uncertain**

### Requirements of AB JSC:

- Factor Finance to provide the platform which offers fully remote on-boarding for its select pool of suppliers
- Deeds of assignment/sale of the invoice to the Factor Finance to be facilitated by the platform and be fully digital
- AB JSC have access to data on the suppliers' historical payment performance



### Requirements of Factor Finance:




- Supplier Ltd. to only upload electronic invoices which are verifiable through the State's revenue service website as issued by Supplier Ltd. for AB JSC
- Factor Finance is able to register its ownership of the invoice and assert priority over other third parties who may own an interest on that invoice
- Factor Finance is able to find trade credit insurance products in the market which would cover the risk of the default on the invoice
- Possibility to transfer personal/non-personal data abroad




### Requirements of the Supplier Ltd.:





- Able to easily on-board and identify in Factor Finance's platform
- Able to obtain financing on non-recourse, off-balance sheet, basis
- Invalidity of anti-assignment clauses in commercial contracts when it comes to factoring transactions



Requirements of AB JSC	
Smooth on-boarding of suppliers <sup>1</sup>	Electronic execution <sup>2</sup>
	

Requirements of Factor Finance				
Verifiable authenticity of invoices <sup>3</sup>	Priority over third parties <sup>4</sup>	Insurance to cover risk of default <sup>5</sup>	Favorable tax Treatment <sup>6</sup>	Possibility to transfer data abroad <sup>7</sup>
				

Requirements of Supplier Ltd.		
Smooth on-boarding <sup>8</sup>	Off-balance sheet financing <sup>9</sup>	Anti-assignment clauses invalid <sup>10</sup>
		

**Key:**  **Not favourable**  **Favourable**  
 **Somewhat favourable**  **Uncertain**

<sup>1</sup> Based on the responses in the survey to the relevant questions around the robustness of e-ID and e-KYC frameworks as well as access to historical payment performance (primarily Q.44, 46 and 64 of the Survey)

<sup>2</sup> Based on the responses in the survey to the relevant questions around the e-signatures frameworks, their usage, simplicity and enforceability (primarily Q. 18-20 of the Survey)

<sup>3</sup> Based on the responses in the survey to the relevant questions around the e-invoicing systems (primarily Q. 21-25 of the Survey)

<sup>4</sup> Based on the responses in the survey to the relevant questions around the factoring registries and registration requirements (primarily Q. 30-31 of the Survey)

<sup>5</sup> Based on the responses in the survey to the relevant questions around the existence of trade credit insurance products in the market (primarily Q. 45 of the Survey)

<sup>6</sup> Based on the responses in the survey to the relevant questions around the tax treatment of factoring offered by NBFIs vis-à-vis the Banks (primarily Q. 35-37 of the Survey)

<sup>7</sup> Based on the responses in the survey to the relevant questions around the possibility to transfer data to third countries (primarily Q. 40 of the Survey)

<sup>8</sup> Based on the responses in the survey to the relevant questions around the robustness of e-ID and e-KYC frameworks as well as access to historical payment performance (primarily Q.44, 46 and 64 of the Survey)

<sup>9</sup> Based on the responses in the survey to the relevant questions around the prevalence and treatment of non-recourse factoring and the availability of trade credit insurance (primarily Q.45 and 50 of the Survey)

<sup>10</sup> Based on the responses in the survey to the relevant questions around anti-assignment clauses and its effects in commercial transactions (primarily Q. 33-34 of the Survey)



## Contact

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Principal Counsel

Legal Transition Team

European Bank for Reconstruction & Development

[ebrd.com/what-we-do/sectors/legal-reform.html](https://ebrd.com/what-we-do/sectors/legal-reform.html)

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